

INTERIM REPORT 2
4–16 September 2007

Executive Summary

- Campaign activities have increased but tended to be limited mainly to the parliamentary parties. Most contestants have not complained about restrictions to their campaign activities. The issue of campaigning by state authorities and civil servants who are not candidates has come to the forefront. This has included criticism of the use of the President's photo on campaign posters, as well as 'working visits' by the President and the Prime Minister.
- The Central Election Commission (CEC) continues to manage electoral preparations in an efficient manner. However, it did not provide sufficient guidance to District Election Commissions (DECs) on the procedure for distributing managerial positions on Precinct Election Commissions (PECs) proportionally among the parliamentary parties and blocs. As a result, DECs did not take a uniform approach on this issue. In addition, during the reporting period, the CEC had not adopted a clarification on the application for voting at home. DECs have appointed PECs by the legal deadline.
- The 12 September deadline for Working Groups to deliver voter lists to DECs was generally respected. Working Groups faced a number of technical problems such as wrong format of addresses in the lists from the 2006 elections, which were used as a basis for compiling the voter lists for the upcoming elections. Overall, some 11 million records had to be re-entered due to incompatibilities with the current software.
- The issue of the constitutionality of the registration of citizens crossing the borders by the State Border Guard Service, and their possible subsequent removal from voter lists, is still pending with the Constitutional Court. Despite repeated requests, the OSCE/ODIHR EOM has yet to be given an opportunity to obtain the relevant information from the Border Guards.
- Media coverage of the campaign has been active and fairly extensive, focusing primarily on parliamentary parties and blocs. Among all contestants, the three biggest parliamentary groups received the highest amount of coverage. The Government, and to a lesser extent the President, also received substantial coverage. The overall tone of coverage of political actors in the media was neutral or positive. The amount of paid advertisement increased during the reporting period. State-owned media have provided free airtime and space, as foreseen by the Parliamentary Election Law (PEL). Voter education in the media has been very limited thus far.
- A number of complaints from contestants have brought the Courts to the forefront, including one challenging restrictions put on campaign tents in Kiev, and one on citizens' obligation to fill in registration cards when crossing the borders. Courts have ruled in favour of these two claims. The CEC has received ten complaints during the reporting period, six of which were rejected.
- Women are well-represented in the election administration, especially at DEC level. However, while five of the 20 registered candidate lists are headed by women, women are overall underrepresented on candidate lists, especially in top slots.

The Election Campaign

During the course of the reporting period, the campaigning of contestants increased, especially of the parliamentary parties. The Lytvyn Bloc, the Progressive Socialist Party, Svoboda, the Party of Free Democrats, the Green Party, the Suprun Bloc and the Kuchma Bloc were also visible, but to a lesser extent. The campaigning of other parties was marginal. Campaigning also tended to be more active in urban centres and focused on handing out leaflets rather than on large scale meetings or events.

Nevertheless, none of the parties that the EOM has met complained about restrictions to their campaigns or problems in carrying out their campaigns, with the exception of Svoboda and the Bloc of Yulia Tymoshenko (BYuT). In Svoboda's case, party activists said they experienced attacks by unknown persons, which the party claims are related to their campaign activities. BYuT has alleged that their activists and campaigns in Donetsk are being harassed in order to hinder their efforts in that region. Both BYuT and Svoboda have submitted reports for investigation by the police. The EOM will follow the handling of these cases.

Public rallies monitored by observers have tended to focus, across the board, on issues of corruption and on criticism of the parties' political opponents. Secondary issues have included calls for the increasing of pensions, wages, and other social welfare concerns. Rallies of the three largest parliamentary parties tended to be very well attended, while campaign events of smaller parties attended by EOM observers have drawn smaller crowds. Women tended to be generally well represented amongst the participants at all events observed.

Another issue that has come to the forefront during the reporting period is the campaigning by State authorities (including some governors) and civil servants who are not candidates, coming from both the parliamentary majority and the minority. This has included criticism of a Presidential 'social initiatives' campaign, which has been actively promoted by civil servants, the use of the President's photo on Our Ukraine–People's Self-Defense Bloc (OU–PSD) campaign billboards and 'working visits' of both the President and the Prime Minister to various regions (especially during a recent visit to Lviv region, where the President was openly campaigning for OU–PSD). Nevertheless, thus far, no court cases have been brought to the EOM's attention in this regard, and parties seem to be more interested in using such accusations as part of their political campaign rather than in putting an end to them. Isolated cases of party representatives of various contestants providing material incentives to voters under the guise of charity work were also noted by observers, specifically in Zhytomyr.

The OSCE/ODIHR EOM has received allegations from Party of Regions (PoR) of misuse of administrative resources, vote buying and illegal campaigning. However, no official complaints have been brought to the attention of the EOM.

To date, the EOM has met the majority of the 20 political parties and blocs registered in the electoral contest. Many continue to express their concerns regarding the tabulation process on election night, as well as the possible court cases that may result from irregularities.

The Election Administration

The CEC continued to manage the preparations for the election in an efficient manner. Decisions were approved concerning: the final layout of the ballot; printing and distribution of ballot papers; allocation of the campaign airtime and space in the media funded from the state budget; and replacements of authorized representatives of registered lists and of DEC members, on the

proposals of the parties and coalitions which nominated them. All CEC members keep close contact with the District Election Commissions (DECs) which have been assigned to each of them.

During the reporting period, all CEC decisions were approved unanimously or with a large majority, except a decision on three complaints of the OU–PSD Bloc against the broadcast media’s coverage of the autumn opening session of the outgoing Parliament, held on 4 September. The OU–PSD Bloc claimed that such coverage violates campaign rules, as the cost of the coverage is covered by the state-funded national television while funding the campaign from the state budget is not allowed, except for presentations explicitly provided for by the Parliamentary Election Law (PEL). The Bloc claimed that the cost of coverage should be subtracted from the campaign funds of the factions which participated in the parliamentary session, i.e. PoR, the Communist Party of Ukraine (CPU) and the Socialist Party of Ukraine (SPU). The complaint was rejected with the votes of the majority-nominated CEC members against the votes of the minority.

DECs appointed members of the Precinct Election Commissions (PECs) by the deadline of 14 September, as provided for by the PEL. The CEC clarification on the appointment of PEC members failed to provide sufficient guidance on the procedure for the proportional distribution of managerial positions (chairperson, deputy chair and secretary), as set in out Article 28.10 of the PEL. As a result, DECs did not take a uniform approach on this issue. Some DECs combined a consensual approach with the drawing of lots. Others negotiated the appointments or simply took a decision with a majority vote. The lack of certainty about the proper procedure provoked conflicts, and at least in one case (DEC 76, Melitopol), the DEC session ended without a decision being taken. There were several instances of factions not being able to nominate the total number of PEC members they are entitled to, e.g. in DEC 1 (Simferopol), DEC 186 (Kherson) and DEC 158 (Sumy). In many instances – DEC 24 (Kovel), DEC 27, DEC 28 and DEC 29 (Dnepropetrovsk), DEC 186 (Kherson) and others – different factions nominated the same people, or nominated individuals for more than one precinct. The EOM will follow possible appeals related to the PEC appointment.

Under the PEL, PECs should hold their first meeting within three days of their appointment. By the same deadline, a copy of the voter list of the polling station shall be handed over to them, for the purposes of public familiarization and inspection. In some areas (Zhytomyr), DEC members assessed the quality of the voter lists as lower than that of the ones used in the 2006 elections.

Voter Lists

The 12 September deadline for delivery of the voter lists by the Working Groups (WGs) to DECs was generally respected. EOM long-term observers assessed the relationship of WGs with DECs and local authorities as generally positive. Legal deadlines for provision of data by various state agencies to the WGs were largely respected. The EOM was informed of only one official complaint filed by a political party (PoR) to a DEC, in Kherson region, against the Ministry of Interior for failure to provide the required data, and against the WG for its performance.

All WGs used the electronic version of the 2006 voter list provided by the CEC, and most used the hardcopy of that list provided by the local archives as a basis for compiling the voter lists for these elections. In isolated cases (e.g. Kirovograd), WGs complained that they could not get the archive list or stated that they could not access it without a court decision (e.g. Mukachevo, Simferopol, Zhytomyr, Malyn).

More generally, working groups faced a number of technical problems. The most obvious issue concerns the sometimes wrong format of addresses in last year's lists. Since the software used to update the voter lists for these elections requires addresses to be complete and in a specific format, according to the CEC some 11 million records had to be re-entered in a short period, which may have opened the grounds for new errors. In a few cases (e.g. in Kiev), WGs had to make last-minute corrections and even reprint the lists because the city name was missing in the address column. In other isolated cases, DEC's had to send voter lists back to Working Groups for corrections or revision (e.g. DEC 43 in Donetsk region). This happened, for instance, when the list was sorted by voters' names rather than by street address as required by law, or when fields required for entering information on election day were missing on some pages.

The issue of the constitutionality of the registration of citizens crossing the state borders¹ by the State Border Guard Service, and the removal from voter lists of those who are outside Ukraine, is still pending with the Constitutional Court (see Complaints and Appeals below). Furthermore, the State Border Guard Service has yet to release any preliminary information on citizens' cross-border movements. During the reporting period, the EOM has not been able to meet the State Border Guard Service to obtain preliminary information or data, despite repeated requests.

The Media

Overall, media coverage of the election campaign and political developments has been active and fairly extensive; in comparison with the period covered by the previous EOM Interim Report, the extent of campaign-related information in the news and other informative programs has increased, as has the amount of paid campaign materials. The three biggest parties in the outgoing Parliament, PoR, BYuT and OU-PSD, dominate the overall media coverage of the campaign.

The state-owned broadcast media *UT 1* and *UR 1* and newspapers *Golos Ukrainy* and *Uradovy Kurier* have been providing all contestants with airtime and space, so far in line with the legal requirements and according to the plan set by the 3 September lottery organized by the CEC. Apart from campaign-related information available in news and current affairs programs, representatives of the leading political parties were also able to communicate their political messages in discussion programs on a number of national TV channels and some regional ones. The activities of the CEC have been well covered by the media, but voter-education information in the media has thus far been limited.

The amount of paid campaign spots in the media has been steadily increasing since the contestants launched their campaigns. However, out of all registered parties and blocs, only a few, namely BYuT, PoR, OU-PSD, SPU and the Lityn Bloc, are running visible and extensive paid campaigns in the key national media. Negative campaigning and negative messages targeting political opponents in paid advertisements is widespread.

Informative programs of the TV channels monitored by the EOM concentrated their coverage on a few political parties. According to the EOM media monitoring results, three parties and blocs (BYuT, PoR and OU-PSD) together received more coverage than the remaining 17 contestants combined in the newscasts of each of the monitored national TV channels, except for *NTN* news, where the Party of Free Democrats received more time than BYuT and OU-

¹ For further details on the foreseen role of the State Border Guards in the compilation of voter lists, please see OSCE/ODIHR Needs Assessment Report on the Ukraine 2007 Pre-term Parliamentary Elections, and the OSCE/ODIHR EOM Interim Report 1 at: http://www.osce.org/odihr/item_12_25904.html

PSD. BYuT received the biggest amount of news coverage in TV channels *UT 1*, *1+1*, *Inter*, *ICTV* and *5 Kanal* (between 11 per cent on *UT 1* and 17 per cent on TV *1+1*), while *TRK Ukraina*, *NTN* and *STB* granted the biggest portions of their coverage of contestants to PoR (17, 18 and 18 per cent, respectively). The Government, and to a lesser extent the President, received large amounts of news coverage on all monitored TV channels. The amount of news time given to the Government ranged from 23 per cent (*5 Kanal*) to 35 per cent (*UT 1*).

The overall tone of the coverage of political actors in the broadcast media was neutral or positive. Media focused primarily on the party leaders. At the same time, there is a notable lack of reflective reporting on election programs and platforms of the parties. The issue of parties purchasing favorable news coverage in the media was confirmed by a number of representatives of the media community. A similar practice was also noted during the 2006 election campaign, but this time it appears to be a much more widespread and established way of campaigning in the media.

Complaints and Appeals

The constitutionality of some provisions of the PEL still remains to be decided. As already reported, the President on 28 August asked the Constitutional Court to rule on the constitutionality of the provisions of Article 102 regarding the role of the State Border Guard Authorities in the compilation of voters list. On 4 September, 54 MPs of the Party of Regions filed a complaint to the same effect, which also challenged the constitutionality of Articles 43 to 47 of the PEL.² On 10 September, the Constitutional Court admitted the complaints, and set hearings for 18 and 19 September. On the other hand, the Constitutional Court has not yet considered the admissibility of a case submitted by the President regarding the constitutionality of two decrees of the Cabinet of Ministers on the responsibilities of various State institutions with regards to the compilation of voter lists, which he suspended on 7 and 14 September.³

On 12 September, the District Administrative Court of Kyiv, ordered the CEC to execute its earlier decision on home voting within three days.⁴ On 14 September, the CEC appealed the decision in the High Administrative Court. The same day, the District Administrative Court of Kyiv ruled in favor of a citizen who alleged that he was not allowed to cross the state border without filling in a registration card. The court ruled that this obligation, imposed by the State Border Guards, should not be mandatory for Ukrainian citizens. Interlocutors from the Party of Regions declared this ruling illegal, arguing that it amounted to a change of the requirements of the law.

The District Administrative Court also dealt with the claim of the Party of Regions against the Kyiv City Administration's action of removing campaign tents. On 12 September, it ruled that the City Administration violated the rights of subjects of the electoral campaign, and that the directive referring to 'small architectural installations' was illegal.

² Articles 43 to 47 are the general provisions for compiling voter lists.

³ The President suspended Decree No. 1097 of 5 September on 7 September, and Decree No. 1106 of 11 September on 14 September, simultaneously submitting them to the Constitutional Court. On 28 August, the President suspended Cabinet of Minister's Decree No. 885 of 27 June, however, due to the fact that the President canceled his own Decree later on 7 September, the case was automatically withdrawn from the Constitutional Court.

⁴ On 20 August, the District Administrative Court of Kyiv ordered the CEC to adopt a new clarification of the application form for home voting; this decision was upheld on 25 August by the High Administrative Court.

The District Court in Chernivitsi was late to give the decision on a case filed by the Socialist Party against BYuT regarding the distribution of illegal campaign leaflets, ruling only on 12 September. It partly satisfied the SPU's claim by ordering the suspension of further distribution of the leaflet, but did not declare BYuT's action illegal. Rather, the court asked the DEC to consider the legality of BYuT's action at a DEC session. According to information received by the EOM, the delay in the ruling was caused by an insufficient number of judges on the panel.

The Office of the Prosecutor General (PG) has no direct involvement in the electoral process. At the time of writing, 16 complaints have been received by the PG at the central level, and another 52 in the regions. The majority of cases have been rejected on grounds of lack of jurisdiction, and forwarded to the respective authorities. One complaint concerning alleged vote buying in Zakarpattia *oblast* is under examination. Three complaints filed by OU-PSD alleged illegal actions of the Speaker of Parliament by calling the parliamentary session on 4 September. The PG's office told the EOM that deciding on the legality of holding a session of Parliament was not within the jurisdiction of the PG, but rather within that of the Constitutional Court. On 12 September, an official letter with the same explanation was delivered to the OU-PSD.⁵

During the reporting period, the CEC received 10 formal complaints, bringing the total to 30. Of these ten complaints, four were rejected on formal or technical grounds, one was rejected due to lack of evidence, and one more rejected since the CEC did not find elements of alleged illegal campaigning. Regrettably, the CEC Legal Department did not provide the OSCE/ODIHR EOM with information on the content of pending complaints. The EOM was informed of more than 15 complaints on procedural irregularities and the illegal campaigning have been lodged with DEC's. None of the ones whose adjudication the EOM observed were upheld.

Participation of Women

In general, women play a role in the Ukrainian public sphere and are often active in political parties/blocs, as well as in leading non-governmental organizations. In the 2006 parliamentary elections, 39 female deputies (8.7 per cent) were elected; none of the government ministers are female.

Five of the 20 political parties registered for these elections are led by women, and five candidates lists are headed by women. However, many parties have no female candidates in their top five or top ten places on the list, and only two lists contain more than two women among their top ten candidates. The Progressive Socialist Party of Ukraine has the highest number of women in their top ten (six women). No parties that the EOM met have implemented or adopted internal policies or mechanisms to promote women's participation in these elections.

Within the CEC, 4 out of 15 members (26.6 per cent) are women, including one of the two deputy chairpersons and the secretary. The CEC does not keep gender-disaggregated data on lower-level election commissions, but according to reports from EOM long-term observers, women are particularly well represented at DEC level; on some DEC's, the majority of members are women. Ninety-six of the 225 DEC's are headed by women.

Domestic and International Observers

Both domestic and international organizations engaged in observation of these elections which the EOM have met, have said that there have been no obstacles to their observation efforts. The Committee of Voters of Ukraine (CVU) has, thus far, issued a number of public reports on the

⁵ A similar complaint lodged by OU-PSD was rejected by CEC on 14 September on the same grounds.

election process, as have the *OPORA* domestic NGO and the ENEMO international observer group. The ‘For Fair Elections’ international observation effort has held a public briefing on their preliminary findings, but to the knowledge of the EOM has not issued any public reports.

EOM Activities

During the reporting period, the OSCE/ODIHR EOM continued its regular activities, meeting state officials, the election administration, party representatives, court officials, media representatives, diplomatic missions and representatives of civil society. A second briefing for representatives of the diplomatic community and international organizations accredited in Ukraine was held on 7 September. LTOs deployed throughout the country continue to observe electoral preparations and the campaign in the regions and are preparing for the deployment of short-term observers.