

# Interim report of the CIS-EMO Election Monitoring Mission

*August 1 – October 1, 2012*

*Ukraine*

International Election Monitoring Mission supervising the elections of People's Deputies to Verkhovna Rada of Ukraine on October 28, 2012, is conducted by the CIS-EMO International Election Monitoring Organization, which consists of people who have the recognized international authority in the field of maintaining voting rights and freedoms of citizens on the basis of European and world standards.

The mission has been observing the election campaign in Ukraine since August 1, 2012. Professional international observers involved in the mission have a significant amount of work experience on elections of all levels in many countries around the world and are officially registered by the Central Election Commission of Ukraine. This report is based on their observations.

The mission had the following targets: to estimate impartially and accurately Ukraine's readiness for the elections of People's Deputies to Verkhovna Rada, to reveal the factors defining the possibilities of breaching the country's election law by parties of electoral proceeding, as well as to develop legislative and methodological guidelines to prevent such issues in future.

The participants in CIS-EMO mission are grateful to the staff of Central election commission and personally to Vladimir Nikolaevich Shapovalov, its chairman, for his significant help in collecting factual materials for the present research. The mission also thanks all volunteers from headquarters of all regions of election proceedings of Ukraine, partner social organisms who helped to collect the information about violations during elections. The mission is also grateful to NDI of the USA for the opportunity given to use its data available on the Internet and to Office of Democratic Institutions and Human Rights of OSCE for methodological

data and a chance to speak freely from its ground in the course of the Conference dedicated to examination of fulfilling commitments in sphere of human perspective held in Warsaw from September 24 to October 5, 2012.

## **Political Realities of Ukraine**

Expert judgment of the pre-election situation in Ukraine on the eve of parliamentary election was made by the CIS-EMO International Observation Mission on base of qualitative analysis of social and political factors operating in Ukraine and drastically influencing the holding of election and final electoral result.

### *Key Markers in Analyzing Political Realities*

a. An impression that “antidemocratic power” clash with “democratic opposition” imposed by European and world society has a very relative nature that, as a rule, doesn’t distinct the real situation. In nowadays Ukrainian “peripheral capitalism” model such classes as “power” and “opposition” are conventionality.

When the “Power Elite” is unconsolidated and disconnected and there is an open internal war between leading financial-industrial groups and corporations of Ukraine (in Ukraine, as well as in Western countries they are called by the term “oligarchs”) to get leverage of real state authority, all existing political parties (symbolically ruling is the “Party of Regions”, and symbolically opposing are “Fatherland” (lead by Alexander Turchinok), “Ukrainian Democratic Alliance for Reform” (Vitaliy Klychko), etc.) only play the role of institutionalized political framework of realization of oligarchs’ economic interests. Thereby in Ukraine the “political party” class can be considered as a full-fledged institution of civil society conditionally. Plus bipartisan struggle in Ukraine is, first of all, a struggle between different financial-industrial groups of Ukrainian oligarchy to get the leverage of state authority which makes it possible for them to count on taxation preferences, protection in the system of distribution of government

work and government task programs, monopolization of these or those segments of the market and other close-authority dividends.

b. The “Party of Regions”, as well as its main opponents from political opposition, is utterly dependant on financial-economic interests of leading “oligarchs” which, referring to an old Ukrainian saying, “simultaneously put eggs in different baskets”. This means representatives of leading financial-economic groups are in the election lists of all key political players.

As a result, the very political, world outlook, civilization paradigm of these elections becomes leveled. Instead of it there is a strict and pragmatic struggle logic of “Akhmetov’s people” with “Zevago people”, “Poroshenko people” with “Kaletnik people” etc., where the party-and-politics component of the opposition is on the background.

c. In such situation local party organizations of conditional “power party”, as well as to conditional “opposition” “give themselves up to leasing” here and there to different territorial oligarchs to use their political brands in struggle in majoritarian districts. It’s interesting that this so-called ‘leasing’ is more expensive in key opposition parties in Western Ukraine and in the center while in the east and the south of Ukraine the situation with the political brand “the Party of Power” is opposite.

Today we may see that parliamentary deputies, representatives of these or those oligarchy groups, constantly change their political views and it is no wonder that there has recently appeared a term “tushka” (“carcass”).

In 2004-2009 there was a massive reinforcement of the main political parties “Our Ukraine” and “The Fatherland” with a number of significant representatives of the Ukrainian “oligarchy” of President Leonid Kuchma’s period; however since 2010 “The Party of Regions” had been reinforced with the representatives of key Ukrainian finance-and-industry groups.

Thereupon we should point out the fact that a lot of key opposition politicians of the period of “Orange Revolution” have also voluntarily joined

the new line of command of President Victor Janukovich. Among them were such “orange” politicians as Vladislav Kaskiv (the party “Pora”), Peter Poroshenko (“Our Ukraine”), Andrej Portnov (“The Fatherland”), Victor Baloga (“United Centre”) and many others.

d. It has already been mentioned that neither “The Party of Regions” nor “The Fatherland” nor “Ukrainian Democratic Alliance for Reform” nor other participants in parliamentary election campaign of 2012 are full-fledged institutional representatives of the Ukrainian civil society. That is why randomness, disorder and undisguised corruption in using their party brands (particularly in majoritarian districts) are the reason for local parties’ rejecting the candidates imposed “from ahead” by the “oligarchy” disbursing “leasing of party brand”.

That is why it is so common that a few representatives of one and the same party run in majoritarian districts’ elections at once. Only one of them is a local candidate officially nominated on the party convention in Kiev, and another one is self-nominee who mentions only his party membership in the ballot and in propaganda leaflets.

Such a situation may be explained by the fact that representatives of several finance-and-industry groups share the same election district and compete during the elections. It can be regarded as another proof of our thesis that the existing party-and-politics confrontation in Ukraine is rather a struggle for economic preferences than a full-fledged political competition of different visions and geopolitical priorities as well as party-and-politics platforms.

e. Nowadays in Ukraine the situation when the effective power in a lot of election districts stakes on the greatest regional oligarchs rather than on official representatives of “The Party of Regions” is significantly spread. In such case the notorious “management reserves” is used to support certain self-nominees because oligarchy protégés prefer not to show they are from a party and ballot through self-nomination or bail for their office. It is obvious

though that if they are elected, in future Parliament their votes will be blocked by any party that won the elections regardless of its declared political orientation.

Thereby, CIS-EMO mission supposes that “The Party of Regions” itself is not always a mandatory institution to represent interests of real effective power in the region, not to mention that it is not ultimately connected with this or that segment of Ukrainian civil society.

f. A thesis, promoted in the European Union by certain Ukrainian parties, that there is alleged crucial difference between “The Party of Regions”, the party in power, and the leading opposing parties such as “The Fatherland”, “Ukrainian Democratic Alliance for Reform”, “The Front of Changes” (lead by Arsenij Jysenyuk), etc., regarding their attitude towards adherence to democratic ideals turns to be “canard” when analyzed thoroughly.

The voting of November 17, 2011, for adding amendments and changes into the Ukrainian law “About election of People’s Deputies of Ukraine” can be regarded as a relevant example of this. That time “The Party of Regions”, as well as “The Fatherland” and “The Front of Changes” voted for rather antidemocratic (considering European experience) amendments of this law. Among them were the following points:

- the obligatory vote level of 5% what deprives more than several millions of grassroots voting for the parties of having their representation in Ukraine’s Parliament
- ban of creating bipartisan electoral blocks which offer minor parties an opportunity of running for office in Ukrainian Parliament
- ban of such fields in a ballot papers as “against all parties” and “against all candidates” which deprives 8-10% of voters to express their protest freely

A lot of Ukrainian and foreign experts consulting the representatives of CIS-EMO mission have a well-reasoned idea that consolidated voting of power sharing

“The Party of Regions” and nominal opposition “The Fatherland” and “The Front of Changes” for the reversion of majoritarian symmetrical system proves best the ultimate dependence of power party as well as leading opposition forces from Ukrainian major “oligarchs” interests. It is they who are interested in mass and unprecedented<sup>1</sup> buying-up of votes of majoritarian districts’ submerged tenth.

### *Hopes and Calls*

The CIS-EMO International Mission in the framework of its long-term observation program daily receives information from our regional monitoring centres about numerous violations of Ukrainian election legislation. Every such message is verified and, in case it is true, is immediately made public in available media sources and on mission’s personal information resources.

Thereby we see almost full picture of the Ukrainian electoral situation from both apparent, and buried and indirect<sup>2</sup> election law breaches’ points of view. Thereupon for the CIS-EMO mission it is obvious that some assessments of the Ukrainian election campaign are irrelevant and premature, particularly taking into consideration the fact that they make both European and world community consider parliamentary elections antidemocratic and their results illegal.

We should emphasize that international observers have enough reasons for worrying. That is why the CIS-EMO mission suggests that its colleagues take into account the following objective factors to estimate the election process and its results in Ukraine:

1. The majority of detected violations are connected not with a political struggle of party lists but with the struggle of single-seat candidates. Under conditions of political struggle among the representatives of “oligarchy” in majoritarian districts (it is independent from the kind of political brand “leased” by them during the election campaign) the CIS-

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<sup>1</sup> Applies both to “old” and “new” countries of European democracies

<sup>2</sup> See below

EMO mission detects that the violations are totally multidirectional, for they are not on-axis “authority” vs. “opposition”.

2. Under conditions of future struggle in courts to acknowledge the elections of October 28, 2012, legal in this or that district or, otherwise, illegal, managers of electoral headquarters, where key candidates to become deputies originate from, have assigned a task to their employees to collect negative information about breaches of election procedure by their main rivals in the district. The consequence of it is an obvious wish to enhance artificially the quantum index of violations which starts to contradict objective reality in election districts. In turn it fuels NGOs detecting totally fictitious non-existing breaches. The CIS-EMO mission is aware of the fact that both the officers of single-seat candidates and NGOs’ officers have neither authority nor resources nor wish to check the identity and relevance of the information about election laws breaches.

Here we must recall the end of the elections to State Duma in December, 2011, which turned out to be tragic and unprecedented for Russian political opposition. When GOLOS Association and other NGOs detected numerous facts of breaching election law procedures and appeared in court the lion’s share of the data turned out to be either electoral fraud made up by professional “pollsters” to reach the fixed number of breaches or irregularities in voting which were too minor to document. During the trials all the proofs of the opposition were brought to naught.

3. In Ukraine’s constitutional reality in force the very category of “local authority” needs analyzing. The matter is that judging by the constitution of Ukraine “the local authority” is divided into two sub-categories: a) “local government” represented by three-level Soviets of People’s Deputies (rural settlement/urban settlement/city, district, region) and their Executive committees, b) “state administrations” represented by nominees of Ukraine’s President and local administrations. The party-and-politics situation on a vast territory (in the west and in the significant part of

the centre and the north) is characterized either by the particular diarchy system (for instance, “The Party of Regions” in local administrations vs. opposition in local councils) or by more complicated combinations such as:

- nominally non-partisan local administrations vs. opposition in force in local councils
- nominally non-partisan local administrations vs. politically unconsolidated local boards
- situational political allies of “The Party of Regions” in local administrations vs. opposition in force in local councils (Carpatho-Ukraine)

The above-mentioned various combinations show that the very term “management resource” and its use are growing into very complex and ambiguous task. The local government boards that build local budgets and allocate estates during their sessions often have more administrative power than the leaders of local state administrations.

4. The breaches of election law procedures detected by the CIS-EMO mission do not, however, make it possible to claim that they influence and corrupt free expression of popular will. As far as the mission’s opinion is concerned the interim report of the breaches being multidirectional shows that this combination can not be admitted critical and explosive, presenting a balance of powers and interests.

### **To the Participants of the Election Procedure**

In connection with the above-stated facts the CIS-EMO delegation calls upon state authorities and candidates to refrain from management resources abuse as well as form use of self-economic resources aimed at tampering/manipulating the election procedure and corrupting popular will during the elections of Ukrainian People’s Deputies. The delegation calls on politicians to block this question, and put public interests above their own ones.



## **To Mass Media**

International observers call on mass media representatives to be courageous and fair in their reports and withstand any censorship tendencies or any biases.

## **To PACE**

This pre-election campaign is overshadowed by imprisonment of ex-leaders of the government and opposition Julia Timoshenko and Jurij Lutsenko. The CIS-EMO mission shares the concern expressed by the assembly and insists that they should be freed before the elections by all legislative means. At the same time this issue shouldn't be the reason for speculating on the subject whether the elections are going to be legal because the elections should be estimated basing on all the factors influencing the process.

## **To Ukraine's Civil Society**

The CIS-EMO mission calls on the civil society of Ukraine to play a full-fledged and active part in the election procedure using all the means at their response including the resources of social mass media and the global network. As far as our opinion on this issue is concerned the state authorities should refine the rules of using the web-cameras at the polls. Besides the CIS-EMO delegation is quite pleased with the fact that non-partisan observers will be offered the possibility to watch casting, counting and summarizing votes.

## **Organising the Election Process in Ukraine**

The elections to Verkhovna Rada in December 28, 2012 will be held according to the new law "About the elections of people's deputies" which was passed by Parliament in November 17, 2011. 366 deputies voted for this law forming constitutional majority of seats in the deputy board of Verkhovna Rada. The bill drawn up by the working group formed by Ukraine's President underlies this law and all political forces sitting in Parliament at that time participated in its

preparing. The law was recognised by the international structures. Thus, the Parliamentary Assembly of the UN (PAUN) pointed out in its resolution of January 26, 2012 that it welcomed passing of the law by the consensus including the opposition. Their support proves that the law is likely to be trusted, for almost all suggestions of the Venetian commission have been taken into account. Besides, the law has been ratified by human rights organisations. In November 30, 2011 IFES and Laboratory of legislative leadership published a joint report where they noted that the document “reduces election frauds and abuses”.

In fact, that is the first amendment to the electoral legislation within independent Ukraine’s history; that is the electoral system is altered every 6-7 years. Most amendments are connected with the fact that the system of election on a population basis is being replaced with the mixed one which combines the principles of both majoritarian and the old system. According to this system, the half of mandates (225 seats) will be shared among the parties above the fixed rate and other 225 deputies will be elected by the majoritarian system in single-seat election districts.

Accordance of discretionary rights to the observers by social organisms has become a progressive innovation in the law “About the Election of People’s Deputies”. Now they are subjects to the election procedure possessing appropriate rights. According to the new law the period of storing the electoral documentation has been prolonged to 5 years since the official publication of parliamentary elections’ results. Per se it gives those who doubt the legitimacy of election procedure a chance to familiarize themselves with all electoral data during this period, and responsible authorities are able to punish culprits of breaching the law. It should be also mentioned that the law provides for obligatory installment of special levels of protection on ballots. This makes it impossible to print ballots anywhere but in statute-established places and prevents from vote-rigging.

In the network of Ukrainian election campaign that has begun on August 30, 2012, the CIS-EMO mission notices a large work content carried out by the country’s Central Election Commission (CEC). Particularly the CEC has organized

the participation in the elections of 87 subjects of election procedure, which are political parties or public associations, has checked and registered 5728 candidates for People's Deputies (2641 of them by party lists). At the same time the CEC hasn't registered 2 candidates by party lists and 43 single-seat candidates. Among 3087 candidates registered in 255 majoritarian districts 1701 persons were run for by the subjects of election procedure and 1386 were self-nominees. The voting will be held in 33764 polls founded on continuing basis; 32188 of them are regular and 1460 are special which means they were founded in institutions of confinements, hospitals and military units, and 116 are foreign, founded on European and world countries' territories.

Representatives of 22 subjects of election procedure in the CEC control the work of peripheral electoral commissions. About 5 representatives of party and social associations participating in the elections join peripheral electoral commissions.

### **International Supervision of the Elections**

Ukrainian People's Deputies elections are being observed not only by the CIS-EMO mission but also by the following social organizations:

- Office of Democratic Institutions and Human Rights, OSCE
- Committee for Open Democracy, the USA
- Ukrainian Congress Committee of America, the USA
- European Network of Election Monitoring Organizations (ENEMO)
- International Public Organization for Aid in the Development of Election Technologies "To Fair Elections!"
- International non-governmental organization CANADEM
- Parliamentary assembly of Organization of the Black Sea Economic Cooperation
- National Democratic Institute (NDI), the USA
- International public organization "Central-European Group for Political Monitoring"

- International public organization “Civil Union”
- International Expert Centre for Electoral Systems (ICES)
- The Konrad Azenauer Foundation, Germany
- International Republican Institute (IRI), the USA
- Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States, CIS

### *Hopes and Calls*

The CIS-EMO mission is assured that the work of international observers will make the Ukrainian elections transparent and clear for European and world society. Thereupon the mission suggests that the organizations should form Uniform databank on election breaches. International organizations should unite to process and analyze breaches, reveal contingent frauds and assess the results. It will make elections supervision more objective and independent from possible preferences of certain public organizations and it will help to aim the Ukrainian CEC at remedying deficiencies and vote-rigging and it will simplify the functions of elections supervision.

The CIS-EMO mission asks to remember the provisions of Conference for Security and Cooperation of 1990 approved by member-countries in Europe. These provisions specify the main rules for all international observers which they follow to decide whether the elections are legal or illegal. Here are these provisions<sup>3</sup>:

To make people’s will a base of the state power the participating states:

- hold free elections at reasonable intervals, as established by law;
- permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
- guarantee universal and equal suffrage to adult citizens

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<sup>3</sup> OSCE Human Dimension Commitments, Vol. 2, pg.68-69, point 7

- ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
- respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
- respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;
- ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;
- provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;
- ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

### **Hopes and Calls**

According to the CIS-EMO mission experts the Ukrainian party carries out these commitments adequately. As long as no one proved otherwise, it's improper and

provoking to state that the Ukrainian elections are illegal. The mission also notes that to evaluate the democracy of the election procedure one should decide whether the legislation in force, law enforcement practice and election procedure are up to existing criteria. Any resolutions of other countries as well as their own understanding and interpreting domestic policy issues should not refer to the international observers' attitude towards the elections.

According to Charter of Paris for a New Europe the main purpose of Office for Democratic Institutions and Human Rights OSCE is maintaining contacts and exchanging information about the election in the participating states. That is why the words by the head of the mission, Audrey Glover, devoted to the very beginning of the mission's work, 'equal electoral rights are a must of democratic elections....We've read instructions of PACE and the European Parliament, and will take these documents into account while drawing up its conclusions', astonished the CIS-EMO mission. The question, 'Will the resolution of Verkhovna Rada of Ukraine influence the assessment of Office for Democratic Institutions and Human Rights OSCE?' may be regarded as rhetorical. Of course, it won't. then why should the US Senate or PACE influence the Ukrainian elections? We would like our colleagues to give us a clear answer.

The CIS-EMO mission would also like to question Andreas Gross, head of the PACE observers delegation to Ukraine and Chairman of the PACE Social Democratic Group, who stated, 'the degeneration of the political process' and 'pluralism and freedom of speech could never ever be destroyed again. Now, they are almost ruined.' As it has already been mentioned in the political part of our report, fast and mistaken evaluations of the situation in Ukraine can lead not only to false conclusions but also as a consequence to wrong actions which could fuel regional conflicts later. The opinions of PACE and OSCE observers are known to have a mind-building impact and society is sure to take them as they are. That is why the CIS-EMO mission call on all the politicians discussing the state of democracy in Ukraine to keep in mind their responsibility.

The Main Election Events in Ukraine To Be Observed Before the Election Day

The CIS-EMO mission points out that the final part of the pre-election campaign is going to be extremely important for the international observers' evaluations. The mission highlights several main points to pay full attention during the month before the election day.

- Till October 8 inclusive every election committee will have a preliminary poll
- Till October 13 inclusive every voter must receive a personal information message about the elections
- Till October 15 inclusive every party will be able to correct its list by removal of every inappropriate candidate according to the decision of respective party board
- Till October 15 inclusive each of registered single-seat candidates can withdraw their candidacy
- The decision on two previous points must be made till October 17 inclusive and till October 18 inclusive single-seat candidates and parties must be informed about the decision
- Till October 20 inclusive all international observation organizations in Ukraine must provide data about observers. The decision on that issue must be made till October 22 inclusive.
- Till October 22 inclusive all official observers of a party, a deputy candidate and public organizations must be submitted to the official election committee
- Till October 23 inclusive but not later than a day before it such an observer must be registered
- Till October 22 inclusive a voter can let the respective election committee or the Ministry of Foreign Affairs of Ukraine know about change of the voting place without changing the address
- Till October 22 inclusive party lists at respective polls are corrected either according to the statement of the subjects of election procedure or according to voters' statement or according to the court decision

- Till October 24 inclusive any disabled voter can ask to make a respective mark in the ballot to organize home voting
- At 12 a.m. October 26 all subjects of election procedure must stop pre-election propaganda

### **Hopes and Calls**

The CIS-EMO mission stresses that accurate time profile observing by the election organizers during the elections will preserve the legislation of Ukraine.

#### **The Main Initiative of the CIS-EMO Mission**

The CIS-EMO mission draws society's attention to breach characteristic for Ukraine connected with 'family voting'. The violation consists in the fact that many Ukrainian voters are abroad at the moment of elections holding. The family member who remains in the country shows their internal documents to the election committee gets ballots and votes for the whole family without letting know that his relatives are not in the country. The impact of the violation is crucial because the turnout is underestimated and the results of people's will are distorted.

In the law "About Election of People's Deputies in Ukraine" of 2011.11.17 there is no system of preventing "family voting". Analyzing the subordinate legislation of Ukraine the CIS-EMO mission found an effective normative document whose preserving is likely to diminish a "family voting".

This is the Resolution about the Ukrainian Resource database in Code of Ukraine on Administrative Offences passed by the administration of State Border Guard Service of Ukraine of 2007.06.25 and registered in the Department of Justice of Ukraine of 2007.07.05 (N 765/14032). According to point 4 of this Resolution "The database is created... to file in to district election committees three days before the elections citizens registered in political subdivisions who crossed the state border and at the moment of applying the ballots they are not available on the territory of Ukraine ....". However the CIS-EMO mission found out that this Resolution is ignored by State Border Guard Service of Ukraine having no legislative ground.

### **Suggestions**



The CIS-EMO Mission of International Supervision suggests that before a decision to implement the demands of the Provision about the database “Record of citizens who crossed the state border” in the text of the law “About the Election of People’s Deputies of Ukraine” is made, a provision of the Ukrainian CEC should be passed alongside with the Provision of the Cabinet of Ukraine which temporarily obligates respective state structures to follow the above-mentioned provis