

INTERIM REPORT 1
20 August–4 September 2007

Executive Summary

- The President of Ukraine called pre-term parliamentary elections for 30 September 2007. The 450 seats in Parliament will be contested in one nationwide constituency, with mandates allocated proportionally among parties / blocs which pass a three-per cent threshold. The candidate lists of 20 political parties / blocs have been registered.
- The legal framework generally provides a solid basis for the conduct of democratic elections; however, an exercise of political will by all stakeholders is required to ensure proper implementation. Some recent amendments to the Parliamentary Election Law (PEL) raise concerns, in particular provisions on voting by homebound citizens (mobile voting), the abolition of absentee voting, and the compilation of voter lists.
- The elections will be administered by a three-tiered election administration: the Central Election Commission (CEC), 225 District Election Commissions (DECs), and over 34,000 Precinct Election Commissions (PECs). The CEC has thus far managed the process in an efficient manner; however, many parties perceive it to be overly politicized.
- Voter lists are being compiled by 679 Working Groups (WGs), based on the 2006 voter lists and information from local authorities and State agencies. WGs appear well-organized and professional.
- Data collection of citizens crossing the state border, in order to remove from voter lists the names of those eligible voters who have left the country, has raised concerns over issues of legality, possible disenfranchisement, as well as to its practical implementation. The respective government resolution is being challenged in the Constitutional Court.
- The election campaign was quick off the mark, with moderate levels of campaigning. The campaign has thus far proceeded in a calm and unimpeded manner. The OSCE/ODIHR EOM has received eight reports of campaigning by state or local government officials who are not candidates, and two reports of material inducements to possibly influence voter choice under the guise of charitable work.
- Some 20 formal complaints have been filed with the CEC, none of which have been upheld. Administrative courts have adjudicated over 39 cases. The majority of CEC decisions challenged in court were overturned, including registration of candidate lists.
- Campaign developments have thus far received fairly broad media coverage. A few recent cases of violence or intimidation targeting journalists have been reported.
- The CEC has registered 12 domestic and six international organizations as election observers.

Introduction

The President of Ukraine on 5 June called pre-term parliamentary elections for 30 September 2007. Following an invitation from the Ministry of Foreign Affairs of Ukraine, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 10 August 2007 established an Election Observation Mission (EOM) for the 30 September elections. The OSCE/ODIHR EOM, led by Ambassador Audrey Glover, consists of a 17-member core team based in Kyiv and 50 long-term observers (LTOs) who were deployed on 22 August and are based in 22 locations throughout the country. Core team experts and LTOs are drawn from 23 OSCE participating States. Participating States have been requested to second 600 short-term observers to observe voting, counting and tabulation.

The Political Context

In the context of a number of defections from opposition parliamentary groups to the governing majority in early 2007, President Viktor Yushchenko decreed pre-term parliamentary elections, originally scheduled for 27 May but eventually postponed to 30 September. Amongst the main forces contesting these elections are the five parliamentary parties; the Bloc of Yulia Tymoshenko (BYuT), the Communist Party of Ukraine (CPU), the Our Ukraine–People’s Self-Defense Bloc (OU–PSD), the Party of Regions (PoR), and the Socialist Party of Ukraine (SPU).

The Election System and Legal Framework

The Parliament of Ukraine (*Verkhovna Rada*) consists of 450 members elected in one nationwide multimember constituency for a five-year term. Seats will be distributed proportionally among the lists which have received more than three per cent of all votes cast. Parties and electoral blocs may register candidate lists; the law does not allow individual nominations.

The conduct of parliamentary elections is regulated by the Constitution of Ukraine and the Law on the Election of People’s Deputies (the Parliamentary Election Law, PEL), adopted in 2004 and last amended on 1 June 2007. In addition to the Constitution and the PEL, a number of other laws are relevant, including the Law on Political Parties, the Law on the Central Election Commission, and some provisions of the Code of Administrative Procedures and the Criminal Code. CEC decisions do not have the force of law, but their implementation is mandatory for all subjects of the electoral process.

The legal framework generally provides a solid basis for the conduct of democratic elections; however, an exercise of political will by all stakeholders will be required to ensure proper implementation. While a number of amendments to the PEL positively addressed previous OSCE/ODIHR recommendations, some concerns remain, in particular with regards to provisions on voting by homebound citizens (mobile voting), the abolishment of absentee voting, and the compilation of voter lists.¹ Almost all parties the OSCE/ODIHR EOM met were critical of the newly instituted provision for homebound voting, and many were also highly concerned about the new provisions for border entry and exit control, which they felt might disenfranchise a significant number of voters.² Other parties, however, have argued that such control is necessary to prevent voting on behalf of citizens who are residing abroad.

¹ These and other issues have already been mentioned in the OSCE/ODIHR Needs Assessment Report (http://www.osce.org/documents/odihr/2007/07/25716_en.pdf).

² Despite repeated requests to the relevant authorities, the OSCE/ODIHR EOM was not provided with the numbers of voters recorded as having crossed the borders and gone abroad.

The Election Administration

The upcoming elections are administered by a three-tier election administration consisting of the Central Election Commission (CEC), 225 District Election Commissions (DECs) and over 34,000 Precinct Election Commissions (PECs).³ The recent amendments to the PEL have introduced political party representation in election commissions at all levels, with only the five parliamentary factions constituted at the opening of the outgoing Parliament eligible to nominate commission members.⁴

The CEC is a permanent body whose 15 members are appointed by the Parliament on the proposal of the President for seven-year terms of office. In the current composition of the CEC, eight members are affiliated with the majority coalition (PoR/SPU/CPU) and seven with the opposition (OU-PSD and BYuT). The chairperson was nominated by the minority, while the secretary represents the majority.⁵ Many parties have expressed concerns over what they perceive to be an ‘over-politicization’ of the CEC.

Since the start of the electoral period, the CEC has approved all decisions foreseen by the PEL, including the establishment of election districts, appointments of DECs, registration of candidate lists, campaign regulations, registration of observers, approval of the samples of election materials, issues pertaining to voter list compilation and the allocation of the election budget. The CEC has thus far managed the process in an efficient and transparent manner. As a rule, decisions are adopted unanimously. A notable exception were the decisions related to the registration of the list of PORA⁶ as a separate electoral subject, which were approved with the votes of the majority-nominated members against the votes of the minority.

The DECs were appointed on the 13 August 2007, as foreseen by the PEL. DECs have 18 members, with majority and minority equally represented and sharing the appointments of the managerial positions. The CEC has organized two rounds of DEC training, one for DEC Chairpersons and one for all DEC members. A comprehensive DEC manual has been distributed⁷ to DECs. Despite these efforts, in some regions, most notably in Zhytomyr, a high number of DEC members without previous experience could impact on performance.

Under the PEL, PECs must be appointed at latest on 14 September. BYuT has already expressed concerns that it may not be able to fill all PEC positions it is entitled to, especially in Donetsk

³ An additional district for out-of-country voting is established and administered by the CEC and the Ministry of Foreign Affairs. On election day, 113 polling stations will be opened in diplomatic missions of Ukraine in 79 countries.

⁴ Lists registered for an election have the right to be represented by one non-voting member at the CEC. In addition, each list may accredit up to five authorized representatives for the national election district and one authorized representative per DEC. All extra-parliamentary parties met with expressed to the OSCE/ODIHR EOM their disquiet about not having membership on election commissions at any level.

⁵ The PEL stipulates that appointments of the chairperson and the secretary for every commission shall be divided among nominees of the majority and the minority factions.

⁶ The civic youth organization PORA registered as a political party ahead of the 2006 parliamentary elections. While on 5 July 2007, PORA signed the “Declaration of the Joint Democratic Forces”, and subsequently became part of the OU-PSD Bloc, a controversy has developed since mid-August regarding an alleged decision of certain PORA members to leave the OU-PSD Bloc and run as a separate electoral subject. The subsequent new registration of PORA as a political party by the Ministry of Justice, and as an electoral subject by the CEC, was contested in courts.

⁷ The manual was jointly developed by the CEC, SEAUP II (Strengthening Election Administration in Ukraine Project II) and OSCE Project Coordinator in Ukraine.

and Luhansk regions. The bloc is considering nominating supporters from other parts of the country to fill these positions.

Voter Registration

While a new Law on the State Register of Voters of Ukraine was adopted in February 2007, it will only come into force in full on 1 October 2007. For the upcoming elections, voter lists will be compiled at the level of administrative districts (*rayons*), of city districts and at the level of cities of oblast importance (executive committee of city council). To this end, 679 Working Groups (WGs) have been formed. WGs compile voter lists using the voter lists from the 2006 parliamentary elections as a basis and incorporating relevant data received from local authorities and up to 10 different State agencies. In general, WGs appear to be well organized, staffed and equipped and to be performing their duties in a professional and competent manner.

In view of the compressed timeframe, some State agencies in certain locations (e.g. in Kyiv) started updating the voter lists well ahead of the legal starting date of 5 August. Apart from a limited number of cases, local branches of State agencies submitted the required information on time. However, in many locations primary information received by the local branches of the State Department on Citizenship, Immigration and Registration of Persons of the Ministry of Interior was not digitalized and had to be entered manually. Furthermore, the information from the Tax Agency seems to be of limited value since the individual tax ID numbers are linked to a physical address which may no longer be current. The CEC has given an oral recommendation to WGs to only use data from the tax authorities for eventual cross-checks.

WGs received two copies of the 2006 voter lists, an electronic version from the CEC and a hardcopy from the local State Archive. In practice, the two lists appear to be slightly different, with the paper copies being more up to date since they include updating made after the electronic versions were sent by DEC's to the CEC in 2006.

Unlike in 2006, updated voter lists will be sent directly to DEC's rather than the CEC, and no national database of voters will be compiled. This makes it impossible to check for possible cross-region multiple entries on a nation-wide scale. Voter lists to be used at consular offices abroad are compiled by a WG set up by the Ministry of Foreign Affairs, which collects data from consular sections but does not forward updated voter lists to the CEC.

Since 1 August, the State Border Guard Authority has been registering Ukrainian citizens who cross the state border. Data collected and centralized by the Border Guard Authority must be sent to DEC's by 27 September; on the following day DEC's will forward the information to PEC's, which are supposed to remove those citizens from the voter lists. Citizens returning after 26 September could find themselves off the voter lists, with little or no time to appeal this decision since the deadline for DEC's and PEC's to consider complaints related to voter lists would appear to be 27 September, and for courts, 28 September. Questions remain concerning the interpretation of the relevant provisions of the code, and the actual deadlines to be considered.

On 30 August, President Yushchenko asked the Constitutional Court to rule on the constitutionality of a Government Resolution of 27 June, which relates to the system of registration of citizens. Measures foreseen in this Resolution include the creation by the State Border Guard Authority of a data base of citizens who cross the state border between 1 August and 26 September, with a view to remove them from the voter lists. The President argues that by adopting the resolution, the Government had violated several laws and usurped the CEC's

prerogatives.⁸ The effect of the Government Resolution was suspended simultaneously with its submission to the Constitutional Court by the President.⁹

The sensitive question of transliteration of names from the Russian into the Ukrainian form of the Cyrillic alphabet is perceived as an issue in a limited number of WGs, mainly in Eastern Ukraine and in Crimea.

Candidate Registration

The CEC has registered the candidate lists of 20 parties and blocs, who have nominated a total of over 4,800 candidates. An initial refusal of the CEC to register BYuT was contested before the Kyiv District Administrative Court, and the Court on 14 August obliged the CEC to register the Bloc. On 4 September, the CEC implemented a court ruling obliging it to strike PORA off the list of registered parties and blocs (see Complaints and Appeals for details of both cases).

The Campaign Environment

The election campaign was quick off the mark, with moderate levels of campaigning in evidence throughout the country. A lower level of campaign activity was noted in Donetsk and Zaporizhzhia oblasts and in the Autonomous Republic of Crimea. Parties and blocs are using a variety of campaigning techniques, including large rallies, some with live Q&A TV link-ups to party leaders in Kyiv), posters and billboard, campaign tents on sidewalks, door-to-door canvassing, and leafleting. The campaigning has thus far proceeded in a peaceful and unimpeded manner, with no undue interference or pressure reported. The parties and blocs most evident in the campaign, thus far, include BYuT, PoR, OU–PSD, Litvyn’s Bloc, and the Progressive Socialist Party of Ukraine led by Natalia Vitrenko.

OSCE/ODIHR LTOs have reported eight instances of campaigning (for OU–PSD, PoR and BYuT) by state and local government officials who are not candidates and are barred from campaigning, as well as instances of material inducements to possibly influence voter choice under the guise of charitable work by two parties, BYuT and OU–PSD. These cases are being followed by the OSCE/ODIHR EOM.

The calling of a parliamentary session by the *Verkhovna Rada* Speaker on 4 September has influenced the election environment. While the opposition argues that, constitutionally, the parliament needs 300 deputies in order to function, the governing coalition has gone forward and convened a session attended by 269 deputies. The Parliament adopted a draft law on amending the Constitution,¹⁰ and submitted it to the Constitutional Court. The President warned that the calling of this session was illegal, as would any decisions it takes.

The Media

While the overall situation regarding freedom of the media has improved in Ukraine following the 2004 presidential elections, a number of problems of the media environment remain to be

⁸ Under the Law on the State Register of Voters of Ukraine, the CEC gained the powers of the register custodian on the day of the official publication of that law (27 March 2007).

⁹ Article 106.15 of the Constitution: “[President] suspends the operation of acts by the Cabinet of Ministers of Ukraine on grounds of their inconsistency with this Constitution, and challenges concurrently the constitutionality of such acts before the Constitutional Court of Ukraine.”

¹⁰ The draft foresees the removal from the Constitution of a provision ensuring immunity for the President, Members of Parliament, and judges.

addressed. These include the need to transform the State media into a proper independent public broadcaster, and issues of transparency of media ownership. A large number of broadcast and print media are operating in Ukraine; TV continues to play a major role in conveying information about political developments.

The PEL is the key law regulating media coverage of the election campaign, providing a detailed set of regulations. The PEL stipulates that such coverage should comply with the principle of “equal opportunities”. Each registered party/bloc is entitled to use, at the expense of the state, 30 minutes of airtime on national state TV (*UT 1*) and 30 minutes on state radio (*UR 1*), and to publish its platform in national state newspapers. The order of appearance of parties and blocs in the national media was determined by drawing lots at the CEC on 3 September.

As regards paid campaigning, media outlets are obliged to charge all contestants equal prices. Campaign material must be separated from other broadcasts or articles and be marked as such. News coverage of the campaign must be unbiased and balanced; campaign materials should not be part of informative programs. However, several interlocutors from the media community have alleged that contestants pay for time in news broadcasts. Print media at times publish articles containing campaign messages without marking them as campaign materials.

As before the 2006 parliamentary elections, representatives of media organizations and NGOs have formed an Expert Council on Mass Media, a temporary body to assess the conduct of the media campaign, and provide recommendations to the CEC as well as to the broadcast media regulatory body, the National Council for TV and Radio Broadcasting.¹¹ The Expert Council has already assessed a number of cases, most of them concerning the content of various TV or radio spots and their compliance with current legal provisions governing the campaign in the media.

From 16 August, the OSCE/ODIHR EOM has been monitoring the prime time broadcasts of eight TV channels¹² and the content of eight daily or weekly newspapers¹³, conducting quantitative and qualitative analysis. On 27 August, the OSCE/ODIHR EOM started analyzing news broadcasts of selected State and private regional TV channels.

Campaign developments have thus far received fairly broad media coverage. In addition to the campaign coverage available in news and current affairs programs, several private TV channels have been organizing discussion programs with representatives of parties and blocs. Overall, the contestants leading in the opinion polls dominate the campaign coverage and have been also very active in purchasing paid airtime.

A number of cases of violence or intimidation targeting journalists have been reported. A private newspaper, *Segodnya*, claims to have received threatening phone calls, including a bomb threat. The newspaper claims that the threats came after it announced its intention to file a lawsuit against a BYuT representative. In a separate incident, a *Segodnya* photojournalist was beaten at a BYuT rally in Odesa. BYuT has denied the incident took place as described by the journalist and accused *Segodnya* of “political provocation”.

¹¹ The Independent Council on Mass Media was established by the decision of the National Council for TV and Radio Broadcasting, and is supported by the OSCE PCU.

¹² State-owned *UT 1* and private *1+1*, *5 Kanal*, *Inter*, *ICTV*, *NTN*, *STB* and *TRK Ukraina*.

¹³ State newspapers *Golos Ukrainy* and *Uradovy Kurier*, as well as private *Fakty*, *Segodnya*, *Silsky Visty*, *Vechirny Visty*, *Ukraina Moloda* and *Zerkalo Nedeli*.

Complaints and Appeals

Provisions regulating electoral disputes and complaints are contained in the PEL and the Code of Administrative Procedures. The latest amendments to the PEL have eliminated discrepancies between the PEL and the Code by stipulating that decisions of first-instance courts will be reviewed according to the procedures established by the Code of Administrative Procedure.¹⁴

The right to appeal decisions, actions or inactions of election commissions or their members is granted to all electoral subjects. The PEL gives electoral subjects the right to file a complaint with an election commission, a court, or both. If a complaint is filed in both, the election commission (upon receiving notification from the court) must suspend consideration of the complaint until the court decision comes into force.

The Code of Administrative Procedures vests a new three-tier structure of Administrative Courts, with the responsibility to adjudicate on electoral disputes. The High Administrative Court is the final instance and also has jurisdiction over disputes on election results. Since the beginning of the electoral process, administrative courts have adjudicated more than 39 cases. In cases observed by the OSCE/ODIHR EOM, the courts have demonstrated a genuine effort to consider cases in a timely and transparent manner. However, governing as well as opposition parties have expressed lack of trust in the judiciary.

The majority of cases challenging decisions, actions or inactions of the CEC were upheld by the courts. In a notable case, on 4 September, the Kyiv District Administrative Court overturned the CEC decision to register PORA as a separate electoral subject and obliged the CEC to strike PORA off the ballot; the CEC implemented the court decision on the same day.¹⁵ On 28 August, the same court had ruled in favor of Our Ukraine–People’s Self Defense Bloc, on an appeal against the Ministry of Justice’s registration regarding changes to PORA’s statutes. On 4 September, the Administrative Court of Appeals upheld this decision.

The Kyiv District Administrative Court also ruled in favor of BYuT and OU–PSD, who had challenged the CEC Decision approving the application for homebound voting. The plaintiffs had argued that the CEC must define the procedures for proving a voter’s inability to vote in the polling station. The High Administrative Court on 25 August rejected the CEC appeal against that decision and ordered the CEC to adopt a new decision which would oblige PEC members to verify the accuracy of applications for homebound voting. As of 4 September, the CEC had not adopted a new decision on homebound voting.

On 14 August, the CEC lost a suit against BYuT, which had gone to the District Administrative Court over the CEC’s alleged inaction to register the bloc because of what the CEC considered to be incomplete information on the residence of candidates in BYuT’s registration documents.

According to the CEC, 20 formal complaints have been filed with the CEC since the start of the electoral process, concerning decisions, actions or inactions of the CEC. Of these, 14 were rejected on formal or technical grounds, and two were withdrawn. The remaining four complaints, which were all rejected after having been considered by the CEC, concerned violation of campaign regulations by BYuT and OU–PSD.

¹⁴ Law on the Election of People’s Deputies, Article 111.3.

¹⁵ PORA had initially declared its intention to run as part of OU–PSD, and members of PORA were included in the OU–PSD list. However, a splinter group registered individually in the PORA name and proceeded to submit its party list, which was registered as a separate electoral subject by the CEC.

On 28 August, the President challenged in the Constitutional Court the constitutionality of the PEL provisions regarding the State Border Guard Authorities and their role in the compilation of voters list. The Constitutional Court has three months, and in exceptional cases one month, to decide on the claim, once it has decided to consider the case. The case was forwarded to the judges for consideration on 4 September. To date, the Constitutional Court has yet to make a decision to consider this case.

Domestic and International Observers

Ukrainian legislation provides for domestic and international election observation. This is the second election which domestic non-partisan observer organizations will have the right to observe. The Committee of Voters of Ukraine (CVU) is expected to launch the largest observation effort amongst the twelve domestic organizations registered by the CEC. In addition to the OSCE/ODIHR EOM, the CEC has thus far accredited five other international observer groups.¹⁶

OSCE/ODIHR EOM Activities

The OSCE/ODIHR EOM opened its office in Kyiv on 10 August 2007. The Head of Mission has met the Minister of Foreign Affairs, the Chairperson of the CEC, the Minister of Justice, the Deputy Ministers of Internal Affairs and other officials, and Ambassadors of OSCE participating States. The OSCE/ODIHR EOM has established regular contact with the CEC, the diplomatic community, and the main political parties. The OSCE/ODIHR EOM has conducted initial meetings with many registered political parties and blocs, civil society, election administration bodies, the media, and other interlocutors. A first briefing for representatives of the diplomatic community and international organizations accredited in Ukraine was held on 23 August.

¹⁶ National Democratic Institute for International Affairs (NDI), International Republican Institute (IRI), European Network of Election Monitoring Organisations (ENEMO), Ukrainian World Congress, Organisation "For Fair Elections".