



Office for Democratic Institutions and Human Rights

UKRAINE

PRE-TERM PARLIAMENTARY ELECTIONS 30 September 2007

OSCE/ODIHR Election Observation Mission Report



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OSCE/ODIHR Election Observation Mission Final Report

I. EXECUTIVE SUMMARY

Following an invitation from the Ministry of Foreign Affairs of Ukraine to observe the 30 September 2007 pre-term parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) on 10 August 2007. It assessed compliance of the election process with OSCE commitments and other international standards for democratic elections, and domestic legislation. For election-day observation, the OSCE/ODIHR EOM joined efforts with the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly to form an International Election Observation Mission (IEOM).

In its Statement of Preliminary Findings and Conclusions, the IEOM concluded that the elections were conducted mostly in line with OSCE and Council of Europe commitments and other international standards for democratic elections, and confirmed an open and competitive environment for the conduct of elections. However, the IEOM also noted some areas of concern, including some recent amendments to the election law, the inadequate quality of voter lists (VLs), and possible disenfranchisement of voters who crossed the state border after 1 August 2007.

These elections followed a political crisis which developed in spring 2007 between the President and the ruling coalition, largely stemming from a lack of clarity in the respective powers and Constitutional prerogatives of the President and the Cabinet of Ministers, compounded by ineffective checks and balances. It ended on 27 May when the President, the Prime Minister and the Speaker of Parliament agreed to hold parliamentary elections on 30 September.

The Parliament of Ukraine (*Verkhovna Rada*) consists of 450 members elected in a nationwide multi-member constituency for a five-year term. Mandates are distributed proportionally among lists of political parties and blocs receiving more than three per cent of votes cast.

The legal framework overall provides a sound basis for the conduct of democratic elections. The Parliamentary Election Law (PEL), adopted in 2004, was last amended on 1 June 2007. Some of these amendments raised concern, particularly: the procedure for compiling voter lists (VLs); provisions on home voting; and provisions for removing from VLs voters who crossed the state borders in a period prior to the election and did not return by 26 September. This last amendment disenfranchised some voters, and raised concerns over discrimination and invasion of privacy. The constitutionality of these particular provisions was challenged in the Constitutional Court, however, the latter was not able to render a judgment within a reasonable timeframe.

The elections were administered by a three-tiered election administration consisting of the Central Election Commission (CEC), 225 District Election Commissions (DECs) and 33,974

Precinct Election Commissions (PECs). Election commissioners at all levels were nominated by the parliamentary factions constituted at the opening of the outgoing Parliament.

The CEC managed the election process in an overall transparent and efficient manner. However, several important decisions were taken along party lines, and some disputes among the members on certain key issues raised doubts as to the ability of the election administration to conduct the process free from political party interests. While DEC and PECs, in general, fulfilled their duties in line with the law, their work was complicated by the fact many DEC and PEC members lacked previous experience, and by a high number of replacements, especially on PECs. PECs had to fulfill crucial tasks related to checking and amending the VLs in a challenging timeframe.

The quality of voter lists has remained an issue. Some political will to develop a permanent centralized voter register in Ukraine has been demonstrated, which should ultimately be linked to a state population register. A fully functional population register would provide a sustainable basis for voter registration, however there has been little progress in this regard until now. The VLs were compiled by Working Groups (WGs) on the basis of the VLs used in 2006 and data provided by some ten state agencies. WGs experienced a number of problems, including software incompatibilities that necessitated the re-entry of a large number of records. Opposition parties publicly expressed well-documented concerns about inaccurate VLs delivered by WGs in specific areas, including significant numbers of possible multiple records.

Starting on 1 August, the State Border Guard Service (SBGS) registered citizens of Ukraine who left or entered the country in order to remove the names of those voters who had not returned by 24:00 hours on 26 September from the VLs. In the absence of a Constitutional Court ruling on the provisions' constitutionality, the SBGS sent the names of 570,914 citizens to the election administration for their removal by PECs from the lists. This was performed in an inconsistent manner throughout the country.

The CEC registered the candidate lists of 20 political parties and electoral blocs, and registration was overall inclusive and transparent. However, the initial inaction of the CEC in registering the list of the Bloc of Yulia Tymoshenko (BYuT), and the decision to separately register a list presented by some PORA board members proved controversial and were overturned in court.

Administrative courts and the CEC received a significant number of election-related complaints and appeals. In general, the courts demonstrated a genuine effort to consider cases in a timely and transparent manner.

The campaign was highly active and competitive, presenting voters with a broad range of choices, and a high level of respect for the freedom of assembly and of expression was observed. Contentious issues included extensive campaigning of state officials from all sides, conditions of campaigning by the President, and instances of charities identified closely with political parties providing material incentives to voters.

The overall media situation in the country has improved following the 2004 presidential elections, and the media provided a broad coverage of the campaign and political developments in a variety of programs. However, several issues relating to the media landscape remain to be addressed, including the transformation of the state media into a proper public broadcasting service, the lack of transparency of media ownership, and the

widespread practice of selling hidden political advertising in news bulletins, in contradiction with the PEL.

The CEC accredited election observers from 15 domestic non-governmental organizations (NGOs), 15 international organizations and 12 embassies. The most extensive observation effort was launched by the Committee of Voters of Ukraine. No observer organization expressed any concerns regarding their ability to carry out their work before or on election day.

Election day was calm and overall, voting was conducted in an orderly and transparent manner throughout the country. Voter turnout reached 62 per cent according to official CEC data. Observers assessed the voting process as good or very good in 98 per cent of polling stations visited; there were no significant regional variations in this assessment. The main problems observed during voting were connected with the poor quality and accuracy of VLs.

The vote count was assessed as good or very good in 90 per cent of reports. In some polling stations, not all counting procedures were followed. In 13 per cent of counts observed, the PEC experienced difficulties completing the results protocol. Reconciliation and tabulation procedures were assessed positively in 79 per cent of DEC. However, many DECs did not organize the process efficiently. In a majority of DECs observed, PECs were asked to correct deficiencies in the results protocols, often for minor technical reasons rather than due to mathematical inaccuracies. This further slowed down the tabulation process and the announcement of election results. In around one half of DECs observed, observers were not given access to the room where the results were computerized for transmission to the CEC.

Results were posted on the CEC website by polling station on election night when received from DECs. While the process of submitting results to the CEC was efficiently handled throughout most of the county, some DECs experienced considerable delays, and the CEC received the last outstanding polling station results only on the evening of 5 October. Election results were challenged in a number of polling stations, mainly in the east and south, and in the Kyiv region. Most of these complaints were rejected. Requests for a national recount and challenges against the final election results were rejected by the High Administrative Court.

This report offers recommendations for further improvement of the conduct of elections in Ukraine. The OSCE/ODIHR continues to remain ready to support the efforts of the authorities and civil society to conduct elections in line with OSCE Commitments.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the Ministry of Foreign Affairs of Ukraine to observe the 30 September 2007 pre-term parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) in Ukraine on 10 August 2007. It was headed by Ambassador Audrey Glover (United Kingdom) and consisted of 67 experts and long-term observers (LTOs) from 23 OSCE participating States, who were based in Kyiv and 21 regional centers.

For election-day observation, the OSCE/ODIHR EOM joined efforts with observer delegations of the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly (NATO PA) to form an International Election Observation Mission

(IEOM). Ms. Tone Tingsgård, Vice-President of the OSCE PA and Head of the OSCE PA delegation, was appointed as Special Co-ordinator by the OSCE Chairman-in-Office to lead the OSCE short-term observers. Ms. Hanne Severinsen headed the PACE delegation, Mr. Adrian Severin led the EP delegation, and Mr. Jan Petersen headed the NATO PA delegation.

On election day, the IEOM deployed 803 observers from 47 OSCE participating States, who observed the opening of 264 polling stations, voting in over 3,400 polling stations out of a total of 33,974, and counting in 292 polling stations. The IEOM also followed the tabulation process in 82 DECs, out of a total of 225.

The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other international standards for democratic elections, and domestic legislation. This final report follows a Statement of Preliminary Findings and Conclusions which was released at a press conference on 1 October 2007.¹

The OSCE/ODIHR EOM is grateful to the Ministry of Foreign Affairs, the Central Election Commission, as well as political parties and civil society of Ukraine for their co-operation. The OSCE/ODIHR EOM also wishes to express its appreciation to the OSCE Project Co-ordinator in Ukraine, the diplomatic missions of OSCE participating States and international organizations resident in Ukraine for their cooperation throughout the mission's duration.

III. POLITICAL BACKGROUND

The 30 September 2007 pre-term parliamentary elections were the fifth held since the independence of Ukraine in 1991. The last parliamentary elections, held on 26 March 2006, were assessed as having been conducted largely in line with OSCE Commitments, although certain shortcomings were noted with regard to the formation of election commissions, the work of the Constitutional Court, and the voter registration process.

Following the 2006 elections, negotiations between Our Ukraine (OU), BYuT, and the Socialist Party of Ukraine (SPU) to form a coalition were unsuccessful, and the SPU ultimately entered a majority governing coalition with the PoR and the Communist Party of Ukraine (CPU). This coalition put Viktor Yanukovich forward as their candidate for Prime Minister, and the proposal was eventually accepted by President Viktor Yushchenko.

In March 2007, a crisis was triggered by the movement of a number of opposition deputies from OU and BYuT to the governing side; this was deemed unconstitutional by the President, who issued a decree calling for early parliamentary elections for the end of May. The crisis was also resulting from a lack of clarity in the respective powers and prerogatives of the President and the Cabinet of Ministers in the Constitution as amended in December 2004, compounded by ineffective checks and balances.

The political crisis ended on 27 May, with an agreement between the President, the Prime Minister and the Speaker of Parliament. This agreement opened the way for a new presidential decree setting the date of the pre-term parliamentary elections for 30 September 2007.

¹ This statement is available on the OSCE/ODIHR website (www.osce.org/odihr), as are the reports of previous election observation missions deployed by the OSCE/ODIHR since 1996.

IV. THE LEGAL FRAMEWORK

The legal framework generally provides a sound basis for the conduct of democratic elections. It comprises the Constitution of Ukraine, the Law on the Election of People's Deputies (the Parliamentary Election Law, PEL), as well as a number of other laws, 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.

The PEL was adopted on 25 March 2004, but underwent major amendments on 7 July 2005. The 450 members of Parliament are elected in one nationwide multi-member constituency for a five-year term. Pre-term parliamentary elections must be held within 60 days from the day the decision to dissolve the previous Parliament is published. Parliamentary mandates are distributed proportionally among the lists of political parties and electoral blocs that have received more than three per cent of all votes cast. Parties and blocs register candidate lists with the CEC; the law does not allow independent candidates in contradiction with OSCE Commitments.²

Most recent amendments were adopted on 1 June 2007, following negotiations between the governing majority and the opposition prior to these elections being called. While a number of amendments to the PEL positively addressed previous OSCE/ODIHR and Council of Europe recommendations, several new amendments raised concerns, in particular provisions on modalities for voting at home, for removing from VLs voters who have gone abroad, and the procedure for compiling VLs.

New provisions of the PEL that foresee the removal of those voters who crossed the borders after 1 August and were not recorded as having returned to Ukraine by 26 September from the VLs, not only disfranchised these voters, but also raised concerns of discrimination and invasion of privacy. Moreover, the removal from the VLs of names of voters who have gone abroad challenges the universal franchise guaranteed by Article 70 of the Constitution and the rules for eligibility to vote as stipulated in Article 2, paragraphs 1 and 2, of the PEL. It is also not in line with paragraph 7.3 of the 1990 OSCE Copenhagen Document, and the Venice Commission Code of Good Practice in Electoral Matters.

Although the constitutionality of these particular provisions was challenged in the Constitutional Court, the Court failed to render a judgment within a reasonable timeframe (see Section XIII, Complaints and Appeals). Furthermore, the removal of the possibility of voting with absentee voter certificates in pre-term elections also potentially deprived citizens of the right to vote. Finally, the June 2007 amendments established a 50 per cent turnout requirement for elections to be considered valid, which did not exist previously. Although the turnout requirement is waived for possible repeat elections, it has the potential to create cycles of failed elections.

The PEL provides for the cancellation of election results in polling stations under certain conditions.³ If results for a polling station are invalidated, the elections in that polling station are not repeated, regardless of whether they would affect the overall results. However, under

² Paragraph 7.5 of the 1990 OSCE Copenhagen Document stipulates that citizens have the right "to seek political or public office individually or as representatives of political parties or organizations, without discrimination."

³ According to Article 90 of the PEL, results of individual polling stations can be annulled if illegal voting amounts to 10 per cent of the ballots issued, or if 20 per cent of ballot papers have been destroyed.

the recent PEL amendments, the results of a whole district can not be annulled. This particular amendment appears to be at odds with an older provision of the PEL that remains in force, namely that a court can declare a decision of an election commission illegal, including a decision on election results and tabulation.⁴ Moreover, the fact that DEC's, and the CEC, are obliged to determine the election results regardless of the number of polling stations where voting has been declared invalid⁵ raises an additional concern for possible selective invalidation of results.

Finally, a number of previous recommendations of the OSCE/ODIHR and the Council of Europe remain to be addressed. These include the removal of the possibility to vote "against all", and the inclusion of invalid votes and votes cast "against all" in the calculation for the allocation of seats, since they do not express a distinct choice.

V. THE ELECTION ADMINISTRATION

The 30 September 2007 pre-term parliamentary elections were administered by a three-tier election administration consisting of the CEC, 225 DEC's and 33,974 PEC's.⁶ The recent amendments to the PEL introduced political party representation in election commissions at all levels, with only the parliamentary factions constituted at the opening of the outgoing Parliament (five for these elections) eligible to nominate commission members.⁷ Parties or blocs with registered candidate lists had the right to be represented by one non-voting member at the CEC. In addition, each list was entitled to accredit up to five authorized representatives for the national election district and one authorized representative to every DEC, as well as one authorized representative for every polling station on election day.

A. THE CENTRAL ELECTION COMMISSION

The CEC is the only permanent election-administration body. It has 15 members appointed by the Parliament upon the proposal of the President for a seven-year term. The mandate of the current CEC expires in 2011. A separate Law on the Central Election Commission regulates the structure and the status of the Commission.⁸ In the current composition of the CEC, eight members were affiliated with the governing majority coalition at the time of the elections (PoR/SPU/CPU) and seven with the opposition (OU-PSD and BYuT). The chairperson is affiliated with the then opposition, while the secretary represents the majority.⁹

Since 2 August 2007, the CEC adopted 485 decisions during its sessions, which as a rule were held every day during the electoral period. CEC sessions were public and followed in detail by the media. All decisions were published in the state newspapers *Uryadovi Kurier* and *Holos Ukrainy* and posted on the CEC website.

⁴ Law on the Election of People's Deputies, Article 110.7.

⁵ *Id.*, Article 93.11 and 96.13.

⁶ An additional district for out-of-country voting was established and administered by the CEC and the Ministry of Foreign Affairs. On election day, 115 polling stations were opened in Ukrainian diplomatic missions in 79 countries. The CEC in effect carried out the functions of a DEC for this district.

⁷ Art. 102-2, paragraph 1 and paragraph 8 are part of the newly introduced amendments to the PEL. The previous rules provided that every registered list nominates commission members.

⁸ The Law on the Central Election Commission was adopted in 2004.

⁹ Art. 102-2, paragraph 3 of the PEL stipulates that appointments of the chairperson and the secretary for every commission shall be divided among nominees of the majority and the opposition factions.

As stipulated by the PEL, decisions adopted by the CEC regulated all aspects of the election process, including the establishment of election districts, appointments of DEC members, registration of candidate lists and their authorized representatives, campaign regulations, registration of domestic observer organizations, accreditation of international observers, approval of the samples of election materials, printing and distribution of ballot papers and protocol forms, issues pertaining to VL compilation, and the allocation of the election budget. Individual CEC members were assigned to particular districts to be able to more closely follow the preparations. The CEC also dealt with various complaints submitted by parties involved in the process and with questions raised by candidates or authorized representatives of registered lists.

The CEC is supported by a professional staff, consisting of a secretariat with five departments and eight additional sections. On the eve of the elections, the CEC activated an IT system, through which DEC members submitted precinct results to a national database as soon as PEC results protocols were accepted.

In general, the CEC managed the process in a transparent and efficient manner. Disputes were infrequent and most decisions were approved unanimously.¹⁰ However, several important decisions were taken with the votes of the majority against the votes of the opposition-nominated members. These included: the postponement of the registration of BYuT's candidate list and the registration of a candidate list under the name PORA as an independent participant in the elections (see Section XIII, Complaints and Appeals on these two cases); approval of the modified form of application for homebound voting and the relevant clarification of how PEC members should check the validity of such applications;¹¹ clarification on the handover and use of the database compiled by the Border Guard Authorities by DEC members and PECs¹² (which was cancelled the following day); the clarification on the signing of the PEC results protocol¹³ and decisions on complaints filed by the major participants.

These disputed issues were also reflected in the broader political debate, and therefore raised doubts as to the ability of the election administration to conduct the process free from political interference. Although none of the issues at stake materialized, an increasing tendency to treat election administration matters as campaign issues could erode trust in the process.

B. DISTRICT ELECTION COMMISSIONS

Each DEC appointed for these elections consisted of 18 members, with majority and opposition equally represented and sharing the appointments of the managerial positions

¹⁰ The technical side of electoral preparations was eased by the application of the samples of forms used in the 2006 elections. As absentee voting was abolished for pre-term parliamentary elections, Art. 102, paragraph 7 of the PEL in particular provided that in the forms of the result protocols compiled by commissions at all levels, the lines for the number of absentee ballots used should be removed.

¹¹ The modified form was approved on 18 September, and the clarification on 20 September, in effect limiting the time available for its implementation, and only after VLs were opened for review and amendments.

¹² On 25 September, in the absence of three majority-nominated commission members, a clarification was approved on how DEC members and PECs should handle the database coming from the Border Guard Authorities (Decision No. 477). On the following day, the majority cancelled this decision, arguing that the language of the clarification was too soft and left PECs room for avoiding deletion of the names submitted. (Decision No. 490).

¹³ This clarification was approved on 28 September. While the aim was to avoid possible deadlocks in the compilation of PEC result protocols, it allowed DEC members to accept PEC result protocols which were not signed by all PEC members (Decision No. 501).

(chairperson, deputy chairperson and secretary), as foreseen by the PEL. At various stages of the process, 506 of 4,050 DEC members were replaced at the request of the parties or blocs who had nominated them. The last replacements took place as late as 28 September.

DECs were legally registered entities, operating with a separate budget approved by the CEC. Their main duties were to appoint the members of the PEC for the district and organize their training, distribution of sensitive election materials (ballots and forms of polling station result protocols) and receipt and tabulation of results after the end of counting, including two copies of the PEC results protocol and the used sensitive election materials. DECs compiled the results protocol for the district and submitted it to the CEC, together with one of the accepted copies of the PEC results protocols.¹⁴ Throughout the tabulation process, unofficial results were transmitted to the CEC server as soon as the figures from accepted PEC protocols were entered in the DEC database. These results, broken down by polling station, were posted on the CEC website.

The CEC organized two rounds of DEC training, one in Kyiv for DEC chairpersons and secretaries and one in the regions for all DEC members. In addition, a comprehensive DEC manual was issued and distributed to the DECs. Despite these efforts, field reports indicated a slow start of the commissions, with a high number of members lacking any previous experience. DECs experienced difficulties of varying degrees in the appointment of PECs, caused by the overly complicated requirements of the PEL.¹⁵ In some areas (Chernyiv and Kyiv), DECs disregarded the requirement for shared control of the managerial positions, giving priority to the equal representation of all factions.

DECs were legally responsible for the training of PEC members. In general, PEC chairpersons and secretaries attended training sessions, and were provided with manuals and methodological charts. The impact of training may have been limited by frequent replacement of PEC members.

C. PRECINCT ELECTION COMMISSIONS

Well over 500,000 PEC members implemented voting and counting procedures on election day.¹⁶ All of them were appointed during DEC sessions held on 14 September. The legal provision for equal representation of parliamentary factions on PECs could not always be implemented in practice. The smaller factions did not have sufficient support evenly distributed across the country to be able to fill all positions to which they were entitled. Nominees frequently were not readily aware that they had been appointed as PEC members. This resulted in frequent refusals and numerous subsequent replacements. Larger parties even

¹⁴ There is no legal deadline for submission of a DEC results protocol. The first DEC results protocols were submitted on the second day after the elections, while the last protocols (from DEC 1 and DEC 137) were only submitted five days after election day

¹⁵ Decision No. 63 of the CEC provided that every parliamentary faction is entitled to be represented in each PEC and has the right to nominate two, three or four members, depending on the size of the polling station. Article 28.10 of the PEL stipulates that every party/bloc shall have a number of PEC chairpersons, deputy chairpersons and secretaries proportional to the share of PEC members it is entitled to nominate in a given district. The principle of proportional representation applies to each size category of PECs (small, medium and large) separately. In addition, Article 102-2.10 requires that the chair and the secretary of a PEC may not both be representatives of the coalition or the opposition. The CEC issued an instruction on the appointment of members and chairpersons/deputy chairpersons and secretaries of PECs, establishing that quotas and largest remainders shall be used in the distribution of managerial positions (Decision No. 149).

¹⁶ The average number of PEC members in the sample of polling stations observed was 16.6, of those 16.1 reported to work on election day.

resorted to moving supporters from one part of the country to another part to serve as PEC members.¹⁷ In some cases, several parties nominated the same people as PEC members, or one party submitted the same person for more than one PEC. The low remuneration of PEC members further served as a disincentive for many citizens to serve on a PEC. In some districts, up to 50 per cent of the initially appointed members were subsequently replaced one or more times.

Within a very limited timeframe, PECs were obliged to receive the VL and open it for public checks and amendments, to check applications for homebound voting, to deliver invitations to every voter in the precinct and to receive election material.

PECs managed election-day procedures in line with the rules set by the PEL. Many of them struggled with the complicated counting procedures and with the completion of the results protocol.

VI. VOTER REGISTRATION

The quality of voter lists has remained an issue. There appears to be a political will to develop a permanent centralized voter register in Ukraine, which should ultimately be linked to a state population register. A fully functional population register would provide a sustainable basis for voter registration, however little progress has been made in this regard until now.

A new Law on the State Register of Voters of Ukraine was adopted in February 2007. It only came into force on 1 October 2007. For the 30 September 2007 elections, draft VLs were compiled by a total of 679 WGs. WGs were to use an electronic version of the 2006 draft VL provided by the CEC, a hardcopy of the 2006 VL from the local State Archives, and information from ten central agencies as a basis for compiling the voter lists for these elections. WGs appeared well organized overall, and the 12 September deadline for delivery of draft voter lists to DEC was generally respected.

The OSCE/ODIHR EOM assessed the cooperation between WGs, DEC and local authorities as generally positive. All WGs used the electronic version of the 2006 VL provided by the CEC, but not all used the hardcopy of the list provided by the local archives as a basis for compiling the VLs. 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). As a consequence, some WGs used a hardcopy version from one of the various stages of the 2006 election process as a basis for updating the new VLs, rather than the final copies eventually used on election day in 2006. In such cases, corrections made to the draft VLs in 2006 during the period of public review could not be taken into account, and current draft VLs may have repeated some of the errors identified and corrected in 2006.

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 (Ministry of Interior) was not digitalized and had to be entered manually. The OSCE/ODIHR 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. Furthermore, the information coming from the Tax

¹⁷ BYuT moved a limited number of PEC members to Crimea, Luhansk and Donetsk from other regions.

Agency seems to have been of limited value since individual tax ID numbers are linked to a physical address which may no longer be current. The CEC made a verbal recommendation to WGs to only use data from the tax authorities for possible cross-checks.

The compilation of accurate VLs was not only impeded by a lack of clear allocation of responsibility between relevant State institutions, but also by a number of technical problems. This was partly a consequence of the 2007 amendments to the PEL. In line with these amendments, WGs sent draft VLs directly to DECAs, rather than via the CEC as was the case in 2006, and no state-wide database of voter registration was compiled in order to cross-check for possible multiple entries.

According to the CEC, some 11 million records had to be re-entered by WGs due to incompatibilities between the software used for the compilation of the lists in 2006 and 2007. This may have further affected the accuracy of the draft VL. In a few cases (e.g. in Kyiv), 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, DECAs had to send VLs back to WGs 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.

In general, PECs throughout the country opened the VL for public review after receiving it on 17 September, as provided for by the PEL. In a number of areas, however, VL were made public after the deadline and were not easily accessible due to the limited working hours of some PECs. Furthermore, in some areas, voters received their voter invitations after the 21 September legal deadline, thus further reducing the chances for public scrutiny of the VLs.

Following the delivery of draft VLs by WGs to DECAs, political parties and civil society groups engaged in assessing draft VL as part of an overall public scrutiny exercise. According to reports from OSCE/ODIHR observers and domestic observers, the quality and layout of VL varied across the country, without evidence of regional patterns.

Representatives of the opposition, and BYuT specifically, publicly expressed well-documented concerns about inaccurate draft VLs delivered by WGs in specific areas, including significant numbers of possible multiple records. There are cases, such as DECAs 48–51 (Donetsk region) and DEC 62 (Zhytomyr region), in which DECAs had to send draft VLs back to WGs for further revision. While in DECAs 48–51 WGs were active in correcting the VLs and sent them back to the DECAs within two days, in DEC 62 WGs stated their inability to further improve the VLs and returned them to DECAs without updating them.

In a further effort perceived as streamlining the VLs, the Ministry of Interior sent police officers to carry out door-to-door checks to see whether people were residing at their registered addresses. This was done on the basis of three decrees of the Cabinet of Ministers, subsequently suspended by Presidential decrees as unconstitutional, thus calling into question the legal basis of these police actions.

According to PoR, police visited a sample of some 890,000 houses and apartments during the summer of 2007 and assessed that some 69,000 voters who were registered to live in these places were actually living abroad. The PoR estimated, by extrapolation of the police data accumulated, that the number of Ukrainian citizens residing abroad was some five million. The Minister of Interior claimed that such voters, when identified, should have their names

removed from the VLs as part of the VL review. The PoR expressed the same view, although the removal from the VLs of such names would have disenfranchised voters, in contravention to legal provisions. On 25 September, the Kiev District Administrative Court found the above police activities illegal.

In line with the 2007 amendments to the PEL (Art. 102–3.9 and 102–3.10), starting on 1 August, the State Border Guard Service (SBGS) registered citizens of Ukraine who left or entered the country in order to remove the names of those voters who had not returned by 24:00 hours on 26 September from the VL. The OSCE/ODIHR EOM requested a summary of the data accumulated since 1 August from the SBGS, but the request was declined on grounds of the confidentiality of the information. However, on 28 September, the CEC did share the data pertaining to the numbers of voters to be removed from the lists with the OSCE/ODIHR EOM.

Although the relevant provisions were challenged in the Constitutional Court, the court failed to render a judgment in a reasonable timeframe (see Section XIII, Complaints and Appeals). Consequently, in line with the provisions in place, the State Border Guard Service on 26 September sent the names of 570,914 citizens to the election administration for their removal from the lists. These numbers varied significantly from region to region, amounting to 6 per cent of the electorate in Uzhgorod region, 3 per cent in Ivano-Frankivsk, and over 2.5 per cent in Lviv, Ternopil and Chernyvttsy.

The CEC created some confusion among DEC's by first adopting on 25 September a resolution (No. 477) on the process of transfer of the SBGS data to PECs and by then canceling its own resolution the following day. The cancelled resolution was adopted in the absence of three CEC members affiliated with the then-ruling coalition, including the CEC Secretary, and was opening the ground for PECs to check whether people from the SBGS lists were indeed absent from the country before deleting their names from the VL.

As a consequence, the DEC treated the data received from the SBGS in an inconsistent manner throughout the country. DEC's first tasked WG's to split the data by polling station and only then send it to PECs. As a result, many PECs received it after the 27 September deadline or, in some cases, did not receive it at all. This gave a legal ground for PECs not to delete voters from the VLs. As reported by observers on election day, in many PECs, for example in DEC 70 (Uzhgorod region), DEC 108 (Luhansk region), DEC 125 (Lviv region), DEC 197 (Khmelnitsy region), DEC 207 (Chernyvttsy region) and DEC 218 (Kyiv City), PECs ignored the border guard data and let people vote if they showed up on election day. In other cases, e.g. in DEC 41 (Donetsk region) and DEC 126 (Mykolayiv region), PECs did not receive the data at all. Nevertheless, the CEC gave a rough estimate according to which more than half of the PECs removed names from VLs based on data provided by the SBGS.

In practice, the requirement of the law to delete voters from the VLs and the provision that voters cannot be added to the VLs on election day, were interpreted in different ways, and there was not uniform implementation. In some cases, the VL was closed to voters on election day, while in other cases, DEC's and courts decided to allow voters to be included in the VL on election day.

Some courts around the country, for example in Kherson and Donetsk, opened on election day and ruled in favour of disenfranchised citizens who complained that they had been

removed from the VL.¹⁸ Reportedly, among the courts which were liberal in this respect were the courts in Poltava District, Kyiv and Luhansk. The court rulings further contributed to the generally inconsistent application of the relevant provisions of the PEL, pushing PECs to incorporate names in the VL on election day, a possibility which is not foreseen by the PEL. However, the OSCE/ODIHR EOM was not informed about any formal complaints submitted in relation to these late inclusions.

On 1 October, the District Administrative Court of Luhansk satisfied a claim lodged by OU-PSD, which challenged a decision of DEC 109 dated 30 September 2007. The DEC had decided that voters who had been removed from the VLs based on information submitted by the Border Guard Service should be added to the lists if they showed up at polling stations to vote.

VII. CANDIDATE REGISTRATION

The CEC registered, within the legal deadline, a total of 20 candidate lists submitted by political parties and electoral blocs. These parties and blocs nominated a total of 4,864 candidates, with individual lists containing between 41 and 450 candidates. Seven registered candidates were subsequently deregistered on their own request or after a proposal of the submitter of the list. The registration process was inclusive overall, and took place in a transparent and open environment.

Initial inaction of the CEC in registering BYuT was appealed by the bloc to the Kyiv District Administrative Court. On 14 August, the Court ruled that the CEC must register the Bloc. On 4 September, the same court overturned a CEC decision to register the former youth civic group PORA as a separate electoral subject rather than as part of the OU-PSD bloc and obliged the CEC to strike PORA off the ballot. While this registration initiative had been supported by some within the PORA leadership, it was not endorsed by the entire leadership, and therefore the decision was to the satisfaction of those within PORA who did not support registration separate from the OU-PSD bloc.

VIII. THE ELECTION CAMPAIGN

Overall and throughout the course of campaigning, the campaign environment remained peaceful, calm and without significant incidents. Minor cases of destruction of campaign material were noted. In one case of violence, a Svoboda party activist in Ivano-Frankivsk was physically assaulted following a campaign event (he claimed the two were related); but on the whole no serious infractions were noted. This atmosphere continued after election day.

The campaign was competitive, presenting voters with a broad range of political choices, and took place in an atmosphere of respect for the freedom of assembly and of expression. All political parties and blocs contesting the parliamentary elections met by the OSCE/ODIHR EOM said that they were able to carry out their campaigns freely and without hindrance from either state authorities or from other parties. This was also noted in the regions by OSCE/ODIHR long-term observers.

¹⁸ A prominent case concerned the Mayor of Donetsk, who was on vacation in August and had not been recorded as having returned to Ukraine.

The election campaign was highly active, but more so in urban than in rural areas. Parties and blocs used a broad range of campaigning techniques, including person-to-person meetings (especially in ubiquitous campaign tents), small gatherings, large rallies, and some concerts and entertainment events. The campaign also focused around regional trips of national leaders, who toured the country extensively. The rallies on the final evening of the campaign period included a 'Prayer for Ukraine', organized by BYuT in front of one of the main Kyiv churches, and a large concert with live televised link-ups to regional events across the country, staged by PoR.

In terms of content, the campaign was very much focused on criticism of opponents. However, some articulation of social-policy initiatives from all major parties was also noted in the observation of campaign rallies. Although divisive issues of language and of NATO membership were not initially at the fore of the campaign discourse, they were raised later in the contest through a referendum initiative proposed by PoR.

One contentious issue that arose during the course of the campaign was the extensive campaigning of state officials from all sides. The PEL proscribes campaigning by executive bodies and local government officials, unless they have been nominated as candidates. While its rationale is clearly to limit possibilities of abuse of state resources, this restriction to freedom of expression might be considered as disproportionate, in particular in relation to elected representatives at the local government level, who retain their party affiliation during the course of an election campaign.

A similar point of contention arose with regard to campaigning by the President. Although the PEL does not prevent the President from supporting a particular political party, many interlocutors noted that as the Head of State, the President should represent the entire nation and not any one particular political option. It is generally within the purview of each state to determine such norms. However, if a consensus exists that the President should not take up a partisan position during a campaign, the legal framework should be amended to make this clear.

A public relations strategy advertising the President's social initiatives was also noted by observers in many parts of the country. While not illegal, this initiative was funded from the state budget and could be considered indirect campaigning. Such initiatives are not viewed as best practice during a campaign, and consideration should be given to limiting them in the future.

During the campaign, a number of instances were observed of charities, closely related to political parties or blocs, providing material incentives to voters. Again, the law is not clear in this regard, but as a best practice, parties should refrain from linking themselves with the distribution of goods, which might be interpreted as vote buying and unduly impact upon the choice of voters. More seriously, a few cases of explicit vote buying were noted on election day and criminal cases have been initiated. It is hoped that these cases will be investigated and tried in accordance with the law..

Regarding campaign financing, there are currently no legal limits placed on campaign spending. All parties/blocs must submit financial returns on their revenues and expenditures to the CEC within ten days of the confirmation of the final results. While the CEC reviews the returns, either approving or rejecting them, there is no obligation for the CEC to make the information filed by parties/blocs public. In order to increase transparency and public scrutiny

of the financing of the campaign, it is recommended that the PEL be amended to require the CEC to publicly disclose this information.

IX. THE MEDIA

A. THE MEDIA LANDSCAPE

A large number of media outlets are currently operating in Ukraine; they include 1,454 television and radio broadcasting companies¹⁹ (as of July 2007) and more than 30,000 print media outlets²⁰, the vast majority of which are privately owned. Fifteen TV channels and 15 radio stations have nationwide coverage, or coverage of around two thirds of the Ukrainian territory. Among all media, nationwide private TV channels are the most popular outlets, and they hold the biggest share of the advertising market. Television plays a key role in conveying information about political developments. The newspapers with the highest circulation are tabloids; analytical coverage of business and politics is available in a number of weekly newspapers.

The State broadcast media comprises national TV *UT 1*, three national radio stations *UR 1*, *UR 2* and *UR 3*, and 27 state-owned TV channels (in the 24 regions, Crimea, Kiev and Sevastopol). In addition, there are other broadcast media controlled by local governments. There are two national state-owned daily newspapers, the governmental *Uradovy Kurier* and *Golos Ukrainy*, which covers the activities of the Parliament.

Overall, the situation of the freedom of the media in Ukraine has greatly improved following the 2004 presidential elections. The systematic intimidation and harassment of the media by state agencies as well as the practice of editorial guidelines imposed by the State on broadcast media outlets after the 2002 elections have disappeared, and overall, the atmosphere in which journalists operate has become more free.

However, a number of problems related to the media remain to be addressed. While there is a general consensus in Ukraine concerning the need to transform the State-owned media into fully-fledged public broadcasters, this transformation process has stalled. Lack of transparency in media ownership remains an issue of concern. Media professionals interviewed by the OSCE/ODIHR EOM acknowledged that the editorial independence of media outlets controlled by media tycoons was limited, in particular at the regional level.

B. THE LEGAL FRAMEWORK FOR THE MEDIA

The PEL requires that the media adhere to the principle of “equal opportunities” for all contestants. A fairly detailed set of provisions govern the campaign in the media.

The PEL stipulates that news coverage of the campaign must be unbiased and balanced, and that campaign materials should not be part of informative programs and should be advertised as such. Representatives of a number of media outlets confirmed to the OSCE/ODIHR EOM

¹⁹ This figure includes 865 TV and radio companies, 53 production studios, 15 distributors, and 521 program service providers. The figures were provided by the National Council for TV and Radio Broadcasting, the State body in charge of granting licenses to the broadcast media. There is also the State Committee for TV and Radio Broadcasting, which outlines State informational policy through the State-funded media.

²⁰ The Ministry of Justice registers print media outlets.

that it was common practice in this campaign for the media to sell portions of airtime in their informative programs (including news and current affairs programs) and space in newspapers to political parties for campaign purposes.

While the practice of placing hidden political advertisements in informative programs has been noted before in Ukraine, it appeared to be employed on a very large scale during this campaign. Not only is this practice in violation of the law, it also raises concerns about its potential to corrupt the media, imposes self-censorship on journalists, and raises questions about the relevance of the political information available to voters. Furthermore, such practice limits voters' access to information about parties which have insufficient financial resources to purchase such media coverage.

Provisions of the PEL adopted in June 2007 decreased the amount of airtime allocated to each political party or bloc by one half, to 30 minutes on State TV (*UT 1*) and 30 minutes on State radio (*UR 1*). Unlike in the 2006 elections, no free airtime was provided to contestants in the regional State media. This decrease in free airtime did not, however, appear to result in discontent among the parties and blocs. The PEL also stipulates that all parties and blocs contesting an election have the right to use space in the two State-owned newspapers *Golos Ukrainy* and *Uradovy Kurier* (a total of 7,800 characters of text in each newspaper). The cost of free airtime and space in the State media was paid for from the State budget.

In August 2007, an Expert Council on Mass Media was formed by a decision of the National Council for TV and Radio Broadcasting, with the support of the OSCE Project Co-ordinator in Ukraine (PCU). It is a temporary consultative body to assess the coverage of the campaign in the media and provide recommendations to the CEC and the National Council for TV and Radio Broadcasting. The Expert Council handled 16 cases, most of which concerned the content of campaign spots.

C. OSCE/ODIHR EOM MEDIA MONITORING

From 16 August, the OSCE/ODIHR EOM monitored daily the prime-time broadcasts of eight TV channels²¹ and one hour of broadcasts of *TV Era*²², as well as the content of eight daily or weekly newspapers²³, conducting quantitative and qualitative analysis. On 27 August, the OSCE/ODIHR EOM started analyzing newscasts of selected State and private regional TV channels²⁴.

Overall, national media provided broad coverage of the campaign and political developments in a variety of programs, including in the news, current affairs programs, discussions and election debates. Campaign-related coverage was extensive in particular in the last two weeks

²¹ State-owned *UT 1* and private *1+1*, *5 Kanal*, *Inter*, *ICTV*, *NTN*, *STB* and *TRK Ukraina*. Broadcasts between 18:00 and 24:00 hrs were monitored and analyzed.

²² *TV Era* is a private TV station broadcasting on frequencies of State TV at night. The OSCE/ODIHR EOM analyzed broadcasts between 23:00 and 24:00 hrs., including news programs and other political programs.

²³ State newspapers *Golos Ukrainy* and *Uradovy Kurier*, as well as private *Fakty*, *Segodnya*, *Silsky Visty*, *Vechirny Visty*, *Ukraina Moloda* and *Zerkalo Nedeli*.

²⁴ Monitored regional TV channels were as follows: State TV stations in Zakarpattya, Donetsk, Lviv, Zaporizhzhya, Dnipropetrovsk, Kharkiv, and Crimea. The private regional TV channels monitored by the EOM were M-Studio from Zakarpattya, Lviv-based TV Luks, Alex TV from Zaporizhzhya, 11 Kanal from Dnipropetrovsk, S-TET based in Kharkiv, TV Reporter from Odessa and Chornomorska TV based in Crimea.

of the campaign, both in informative programs and in the use of paid airtime by the parties and blocs.

All contestants were given an opportunity to present their platforms in the State-owned broadcast and print media mentioned above, as required by the PEL and according to a schedule drawn up by the CEC on 3 September.

Most national TV channels provided similar coverage of political actors. BYuT, PoR and OU-PSD dominated the news coverage on the majority of TV stations monitored by the OSCE/ODIHR EOM. All monitored TV channels also gave large amounts of coverage to the Government and, to a lesser extent, to the President. The SPU and CPU received portions of airtime in almost all monitored TV channels, but these generally did not exceed 4 per cent per party. Media in general faced difficulties in clearly distinguishing between the different roles of politicians, e.g. when State officials were conducting campaign activities.

State TV devoted 28 per cent of its relevant news coverage to the Government and 20 per cent to the President. The Government received further extensive and largely positive coverage in a number of *UT 1* informative programs. *UT 1*'s main current affairs program *Tochka Zoru* provided fairly equal coverage of the three strongest political parties in the outgoing Parliament; the tone of this coverage was mostly neutral. News programs of State TV gave 13 per cent of coverage to PoR, 13 per cent to BYuT, and 9 per cent to OU-PSD.

PoR received the largest share of news coverage of contestants in the newscasts of private TV channels *Inter*, *TV Era*, *NTN*, *TRK Ukraina*, *5 Kanal* and *STB* (16, 16, 18, 20, 22 and 22 per cent, respectively); BYuT was given the biggest portion of coverage of contestants in the newscasts of *I+I* and *ICTV* (17 and 14 per cent, respectively). Coverage of OU-PSD ranged between 10 and 14 per cent in all monitored TV channels except of *TV Era* and *NTN*, where OU-PSD received 4 and 6 per cent, respectively. The Lytvyn Bloc received 13 per cent of rather positive coverage in news of *TV Era* and 5 per cent on *Inter*. The Party of Free Democrats was given significant portions of coverage in the news of *NTN* and *I+I* – 12 and 7 per cent, respectively, which was exclusively positive or neutral in tone. In general, the tone of the coverage in the monitored TV channels was mainly neutral, and the amount of information with a positive tone prevailed over critical or negative information in almost all media, with *5 Kanal* and *STB* providing a more critical portrayal of political actors than other monitored media.

The OSCE/ODIHR EOM identified a large number of items with features of political advertising in news bulletins and informative programs of monitored TV channels. Private TV channels monitored by the OSCE/ODIHR EOM aired numerous news items of very questionable informative value or relevance for voters which were positive in tone, although paid advertisement is prohibited in news programmes. Newspapers monitored by the OSCE/ODIHR EOM published paid campaign materials in their news sections on a daily basis, without marking them as such.

The Governmental newspaper *Uradovy Kurier* devoted 65 per cent of its coverage to the Government and 23 per cent to the President. Their portrayal was positive. Coverage of political actors in State-owned *Golos Ukrainy* concentrated on the parliamentary parties; overall, the tone of their coverage was neutral. The private press provided the voters with a wide array of portrayals of political opinions.

The private newspaper *Segodnya* complained it received several threatening phone calls, including one on 22 August claiming the premises of the newspaper were wired with explosives. The newspaper alleged that these threats came after it announced its intention to file a lawsuit against a representative of BYuT. In a separate case, a journalist of *Segodnya* was physically assaulted on the sidelines of a BYuT rally in Odessa on 26 August while taking pictures of campaign materials being loaded into an ambulance. BYuT representatives denied that the story happened as described by the journalist and accused the newspaper of “political provocation”.

Coverage of the election campaign and political developments in the regional TV channels monitored by the OSCE/ODIHR EOM varied, but overall, regional TV channels concentrated on local issues, covering the elections less extensively than the national media. Coverage of local authorities and the Government dominated the broadcasts of the state regional media, in particular in the eastern parts of Ukraine. Some private regional media showed a clear support for the local authorities and/or particular parties or blocs. Similarly, as in the state media, the portrayal of political parties and blocs in the regional media was overall positive or neutral.

BYuT, PoR, OU–PSD, SPU and the Lytvyn Bloc conducted a sustained and visible paid campaign in the key media. Negative campaigning and negative messages targeting political opponents were widespread in paid advertisements.

Activities of the CEC were generally well-covered by the media. However, voter education in the media was not extensive, and there were no visible “get-out-the vote” campaigns aired by national TV channels in the run-up to these elections. TV spots aired sporadically by private TV channels during the last week of the campaign urged voters to check whether their names were included in the VL. A few articles to the same effect were published in regional newspapers.

On 27 September, *NTN* aired a 20-minute program on BYuT and Yulia Tymoshenko, which the bloc considered slanderous and challenged in court. The Shevchenko District Court of Kyiv on 28 September upheld the complaint and banned the broadcast. On BYuT’s demand, *NTN* granted the bloc the right to a rebuttal and aired BYuT campaign material on the same evening.

On 15 September, *UT 1* and *UR 1* aired an address by President Yushchenko at a political event organized by OU–PSD in Lviv, in which the President called upon people to support OU–PSD. The State media informed the OSCE/ODIHR EOM that coverage of this event was requested by the President. While the Law on the Procedure of Media Coverage of State Authorities gives State authorities the right to request coverage by the State media, such application of the law arguably gave one political bloc an undue advantage and raised concerns over the use of state resources. On the evening of 29 September, in a televised address to the nation, President Yushchenko urged citizens to go and vote. Arguably in contradiction to the campaign-silence provisions of the PEL, the President told voters that they had the choice to “vote for changes in your life, or your vote will go to those who are trying to split us and live off our country”.

X. PARTICIPATION OF WOMEN

The Constitution of Ukraine provides for equality between women and men. In addition, the Equal Opportunity Law adopted in 2005 guarantees equal rights and opportunities for women

and men in all spheres of social life, including elimination of all forms of gender-based discrimination. Article 15 specifically provides for equal rights and opportunities for women and men in the election process. However, implementation and enforcement mechanisms are not in place yet, and the provisions of the Equality Law on representation of women and men on candidates' lists are not reflected in the corresponding provisions of the PEL.²⁵

Women remain underrepresented in politics, especially in key positions. In the 2006 Parliament, women held 39 seats (8.7 per cent); no ministers in the Government formed after the 2006 elections were female. The 2007 elections returned even fewer women to Parliament; only 37 female deputies (8.2 per cent) were elected (12 for PoR, 12 for BYuT, seven for OU-PSD, five for the CPU, and one for the Lytvyn Bloc). A National Action Plan on Gender Equality was adopted in December 2006. A number of women's organizations are active in promoting gender equality and women's involvement in politics; however, there were no coordinated efforts prior to the 2007 pre-term parliamentary elections.

Parties generally did not put forward gender-balanced lists. Of the 20 political parties registered for these elections, five are led by women, and five candidate lists were headed by women; however, only some 17.8 per cent of all candidates were women. Some civil society organizations that the OSCE/ODIHR EOM met have been critical at the nomination process of parties and blocs. Most political parties did not address gender-equality topics within their electoral platforms, and issues affecting women have not featured prominently as part of the campaign discourse.

Women were quite well represented within the election administration, particularly at the DEC level; on some DECs, the majority of members were women. In polling stations visited by IEOM observers on election day, 67 per cent of PEC chairpersons were female, and overall, women accounted for 74 per cent of PEC members.

XI. PARTICIPATION OF NATIONAL MINORITIES

According to the 2001 census,²⁶ the majority of citizens of Ukraine are ethnic Ukrainians (77.8 per cent), while Russians form the most sizeable minority (17.3 per cent). The remaining five per cent of the population comprises Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles, Jews and many other small minority groups. The proportion of those who declared Ukrainian as their mother tongue in the official census of 2001 totals 67.5 per cent of the population, while the percentage of those whose mother tongue is Russian totals 29.6 per cent; other languages were declared as a mother tongue by 2.9 per cent.

Ukraine has committed itself to guarantee the rights of persons belonging to national minorities to take part in the conduct of public affairs, which includes the rights to vote and stand for office without discrimination. Some minority representatives voiced concern to the OSCE/ODIHR EOM that the current proportional electoral system in one nationwide constituency does not facilitate the representation of the interests of smaller and regionally concentrated minorities.

According to data shared by the CEC, the number of voters to be removed from VLs on the grounds of being registered by the State Border Guard Service as having crossed the borders

²⁵ See Article 15 of the Equality Law, and Article 57.2 of the PEL

²⁶ <http://www.ukrcensus.gov.ua/results/general/nationality/>

of Ukraine after 1 August and not recorded as having returned by 26 September was particularly high in some western regions close to the state border. As Hungarians, Romanians and Poles are concentrated territorially in some of these regions, disenfranchisement is likely to have disproportionately affected the participation of these minorities.

Issues of national minorities and inter-ethnic relations did not play a significant role in the election campaign. The questions of language policy and the constitutional status of the Russian language were addressed by several parties, but tension regarding this issue did not reach the level of previous elections. Anti-Semitism and xenophobia targeted at national minorities remained marginal.

XII. DOMESTIC AND INTERNATIONAL OBSERVERS

Since the 2005 amendments to the PEL, the Ukrainian legal framework provides for the observation of elections by domestic NGOs that have election observation specified in their organizational statutes. International organizations may also be accredited by the CEC to observe. In addition, each party/bloc has the right to nominate representatives to observe the election process.

For this election, the CEC registered election observers from 15 domestic NGOs, 15 international organizations and 12 embassies. Throughout the course of the election process, observation groups were able to perform their work freely. The most extensive domestic observation effort was launched by the Committee of Voters of Ukraine (CVU), who deployed some 4,000 observers (including 60 LTOs), issuing eight public reports prior to election day. CVU was also engaged in raising voter awareness and in the training of PECs. Other domestic and international organizations such as OPORA and ENEMO also observed extensively.

IEOM observers on election day identified domestic non-partisan and foreign observers in 31 per cent of polling stations visited. Although a large number of observers were also accredited by the International Civil Organization to Promote the Development of Election Technologies "For Fair Elections", they were rarely seen in the field by LTOs. Other organizations accounted for 21 per cent of observers. There was a much higher incidence of party representatives in polling stations on election day, and such observers were noted in 99 per cent of polling stations visited.

No observer organizations expressed any concerns regarding their work on election day. However, four exit polling efforts also registered as observers, and in certain limited cases there were reports of election commissioners trying to prevent their work (in Crimea: DEC 1, PEC 139 and DEC 8, PEC 27). The findings of three of the exit polls closely matched the preliminary election results announced by the CEC; the fourth was not publicly disclosed.

XIII. COMPLAINTS AND APPEALS

The PEL and the Code of Administrative Procedures set forth the possible grounds for electoral disputes and complaints. The latest amendments to the PEL have eliminated discrepancies between the PEL and the Administrative Code by stipulating that decisions of

first-instance courts will be reviewed according to the procedures established by the Code.²⁷ The right to appeal decisions, actions or inactions of election commissions or their members is granted to all electoral subjects, who may file a complaint with an election commission, a court, or both. If a complaint is filed with both, the proceedings in the Court take precedence, thus eliminating risks of inconsistent or dual track adjudication of the same case.

The Code of Administrative Procedures has created a new three-tier structure of Administrative Courts, which hear election disputes. The High Administrative Court is the final instance and also has jurisdiction over disputes on election results. Regardless of the mistrust toward the judiciary expressed by many interlocutors, administrative courts played a prominent role during the pre-election period. Complaints filed with the courts not only sought the redress of violations of rights, but also entailed clarifications of some issues which were not addressed thoroughly by the existing legislation.

In total, the administrative court in Kiev rendered more than 73 judgments. The OSCE/ODIHR EOM noted that in general, the Kyiv Administrative Court and the High Administrative Court demonstrated a genuine effort to consider cases brought before them in a timely and transparent manner. However, a few exceptions were noted in Kyiv and elsewhere. In particular, the District Administrative Court in Chernyvtsy gave its judgment in one case with an eight-day delay.²⁸ The Kiev District Administrative Court also failed to meet the deadline when adjudicating the appeal of the CEC on homebound voting.²⁹

The majority of cases adjudicated by the administrative courts concerned the registration of the candidate lists of political parties and blocs, illegal campaigning, or challenged decisions and actions or inactions of election commissions. On 14 August, the CEC lost a suit against BYuT, which had gone to the Kyiv District Administrative Court over the CEC's alleged inaction to register the bloc. The CEC considered information provided by BYuT on the place of residence in candidates' registration documents to be incomplete. BYuT's argument was based on a Constitutional Court ruling from 2002, which provided that the place of residence is the administrative unit and not the building where a person lives. The rapid decision of the CEC to register PORA as a separate contestant in these elections was challenged in the court.³⁰ On 4 September, the Kyiv District Administrative Court overturned this decision and ordered the CEC to strike PORA off the ballot. On 28 August, the same court had ruled in favor of OU-PSD on an appeal against the Ministry of Justice's decision on changes to PORA's statutes. On 4 September, the Administrative Court of Appeal upheld this decision.

Given that the requirement for voters to produce "documents evidencing their physical state" in order to qualify for homebound voting was lifted by the June 2007 amendments, the procedural aspect and implementation of homebound voting became the source of a major dispute during the election process. Article 84.3 of the PEL vests the CEC with the

²⁷ Law on the Election of People's Deputies, Article 111.3.

²⁸ As reported by a court official to the OSCE/ODIHR EOM, the delay was caused by an insufficient number of judges on the panel.

²⁹ The Kyiv District Court forwarded the appeal to the High Administrative Court with a delay.

³⁰ PORA had initially declared its intention to run as part of the OU-PSD bloc, 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 own candidate list. The CEC registered this list as a separate electoral subject by on 28 August, at the same time deregistering PORA as a member of the OU-PSD bloc. The majority-nominated commission members admitted the claim that PORA had held a legitimate national congress on 20 August which had decided that the organization should register independently, contrary to the decisions of a prior congress held on 2 August. The Kyiv Administrative Court decided that the meeting held on 20 August was illegal.

responsibility to determine the form and content of an application to be filled in by homebound voters, as well as its requirements.

On 14 August, following the decision of the CEC on this application,³¹ BYuT, together with OU-PSD challenged the CEC decision to the Kyiv Administrative Court. On 20 August, the court ruled in favor of the plaintiffs, who argued that the CEC must define the procedures for proving a voter's inability to vote in the polling station. The High Administrative Court upheld the ruling on 25 August and ordered the CEC to adopt a new decision, which would oblige PEC members to verify the accuracy of applications for homebound voting. Nevertheless, the CEC delayed the adoption of a new decision and only acted upon this issue on 20 September, following a three-day deadline reminder from the High Administrative Court.

As of 15 October, the CEC had received 149 complaints from different electoral subjects, most of which were dismissed on procedural grounds without consideration. Only 31 complaints were considered on their merits, but subsequently were also rejected. One of the five complaints that the CEC upheld was filed by the SPU, which alleged illegal campaigning by the President during a rally of OU-PSD in Lviv. The CEC ruled that calling on citizens to vote for a particular party was incompatible with the President's mandate. This decision was overturned by the Kyiv District Administrative Court on 28 September. On 18 September the District Administrative Court in Kiev also satisfied the claim of OU-PSD, which alleged illegal campaigning by a candidate of the SPU in his capacity as Minister of Interior. The Administrative Court of Appeal, however, overturned this decision on 22 September.

Some of the amendments adopted in June 2007 were challenged in the Constitutional Court. Regrettably, the Constitutional Court was not able to render any judgment within a reasonable timeframe. On 27 August, the President asked the Constitutional Court to rule on the constitutionality of Article 102, especially regarding the Border Guards' role in the compilation of VLs. Fifty-four MPs from PoR filed a similar suit on 4 September, additionally challenging Articles 43–47 of the PEL. The Constitutional Court heard the cases on 18 and 19 September but did not issue a ruling before election day. Earlier, on 14 September, the Kyiv Administrative Court ruled that it was not mandatory for Ukrainian citizens to fill in registration cards when crossing the State border, as provided for by a Government instruction issued in early August. This decision was denounced as illegal by interlocutors from PoR, who argued that the court ruling amounted to changing the law, which was beyond the court's competence.

The office of the Prosecutor General was involved to some extent in the electoral process. Since the beginning of the process, it received some 375 complaints, most of which were rejected or forwarded to the relevant institutions. Only five cases of criminal offences were initiated. One of these concerned DEC 146 in Poltava, in which the DEC secretary allegedly demanded money from the DEC chairperson in return for participating in the DEC's decision making. Two cases concerned vote buying. Both were opened against the SPU, one in Kirovograd for allegedly bribing students, and the second one in DEC 209, PEC 68 in Chernyvtisy, where villagers were allegedly given 40 UAH each to vote for the SPU. One case was brought against an individual in Zaporizhzhya for damaging a VL, and one against a group of people for setting the building where DEC 112 was located in Lviv on fire.

The results of the elections were challenged in a number of polling stations, mainly in the east and south of the country, and in the Kyiv region. In particular, on 3 October, the SPU filed a

³¹ CEC Decision No. 100, dated 13 August 2007.

suit with the Kharkiv Administrative Court, challenging the results in a number of polling stations in DEC 141, 174 and 181; these complaints were subsequently rejected. Following a complaint by BYuT filed on 4 October, the election results of PECs 56 and 104 were invalidated by DEC 8 in Crimea. However, similar requests were rejected on 8–10 October by the Krasnohvardiysky district Court for PECs 1, 2, 32, 33, 58, 64, 66, 68, 97, 102, 113, 124, 128, 131 and 147. Some of these decisions were upheld by the Court of Appeal. Complaints by BYuT requesting the invalidation of election results in DEC 1 (PEC 64), DEC 2 (PECs 33, 41, 56 and 57), DEC 3 (PEC 94), and DEC 6 (PEC 81) were rejected by the respective administrative courts on 6 and 8 October.

On 12 October, the SPU addressed the High Administrative Court, requesting the recount of all 225 DEC 1s and asking the court to stop the CEC from publishing the final election results. On 14 October, the claim was dismissed without consideration. On 23 October, the Court satisfied a motion by the SPU to order the Prosecutor's Office to investigate alleged fraud by CEC members. On 17 October, shortly after the CEC officially announced the election results, the CPU and four other parties that did not pass the threshold challenged the election results in the High Administrative Court. The Court rejected the five-party challenge on 25 October.

XIV. VOTING AND COUNTING

Election day was calm and overall, voting was conducted in an orderly and transparent manner throughout the country. Voter turnout reached 62 per cent according to official CEC data.

A. POLLING PROCEDURES

IEOM observers assessed opening procedures as good or very good in 97 per cent of the 264 polling stations where opening was observed. Almost all polling stations opened at 07:00 hours as required by the PEL. Observers reported only a few isolated procedural problems, including ballot boxes not being properly sealed (4 cases), the control slips not being inserted in every ballot box (4 cases) and the unauthorized presence of police and or security personnel (three cases). In seven polling stations, the PEC had not received all the required election material (less ballot boxes than the number required by law had been received, or non-essential material was missing).

IEOM observers assessed the voting process as good or very good in 98 per cent of polling stations visited throughout election day, while PECs' understanding of procedures was assessed positively in 95 per cent. No significant regional variations were noted with regards to the actual conduct of polling. Voting was conducted in a transparent manner in 98 per cent of polling stations visited. In only 2 per cent of visits, not all phases of the process were visible, and only 2 per cent of reports noted that IEOM observers did not receive full cooperation from the PEC.

However, problems connected with the quality and accuracy of VLs did display regional variations. In 26 per cent of their visits, IEOM observers witnessed voters turned away because their names were not on the VL. Such problems appeared to be more widespread in the east (33 per cent) than in the west of the country (19 per cent) and affected voters in urban centers more than those in rural areas. IEOM observers reported that in general, the number of voters affected during their visits appeared to be rather low, but some reports did indicate that

a significant number of voters were turned away because their names could not be found on the VL. In addition, voters were denied the right to vote for inappropriate reasons in 16 polling stations visited.

There was no consistency with regards to the handling of lists sent to DEC's by the Border Guard Service. Many PECs throughout the country had not received the lists at all, others had been told not to use them, while others were instructed to put a mark beside the name or to cross out the names of voters on these lists, rather than removing them altogether. Many observers reported from all parts of Ukraine that where the names of these voters had a mark beside them or had been crossed out, they were nonetheless allowed to vote if they showed up at the polling station, sometimes upon presentation of their international passport. It is unclear how many voters were ultimately affected. Originally, the State Border Guard Service (SBGS) had sent the names of 570,914 citizens for their removal from the lists. The CEC gave a rough estimate according to which more than half of the PECs removed names from VLs based on this data provided by the SBGS.

Circumstances in and around polling stations were rated very positively. Only 6 per cent of polling stations visited were assessed as difficult to access for voters with disabilities, and just 2 per cent were reported as being overcrowded. Very few reports were received of large number of voters waiting to vote (1 per cent), campaign activities (1 per cent), tension or unrest (less than 1 per cent) and intimidation or attempts to influence voters (0 and 1 per cent, respectively). Few PECs (3 per cent) had not received all required election material.

Legal procedures were generally adhered to. In virtually all polling stations where voting was observed, voters signed the VL, while PEC members signed the ballots and the counterfoils. In 97 per cent, the PEC always checked voters' identity documents before issuing them with ballots.

Only a small number of minor procedural problems and irregularities were observed. In 5 per cent of polling stations visited, not all voters marked their ballots in secret; however, frequent problems with the secrecy of the vote were reported in less than 1 per cent of polling stations visited. In 6 per cent of polling stations visited, cases of group (family) voting were observed. Observers reported few cases of proxy voting or one person "assisting" numerous voters (1 per cent each), seemingly identical signatures on the VL (2 per cent), or ballot boxes not being properly sealed (3 per cent). Only two cases of voting with pre-marked ballots were reported, as were five cases of possible or actual ballot-box stuffing.

While the presence of unauthorized persons (mostly police) was noted in 4 per cent of polling stations visited, only seven reports of such persons directing or interfering in the work of the PEC were received. Domestic non-partisan observers and international observers from other organizations were identified in 32 per cent of polling stations, and observers from parties/blocs in 99 per cent. Observers reported lack of full co-operation from PECs in 2 per cent of polling stations.

B. COUNTING PROCEDURES

The vote count was assessed as good or very good in 90 per cent of reports. There were no regional or urban-rural variations in this assessment. PECs' understanding of the counting procedures was assessed as good or very good in 93 per cent of observations, and their performance was also assessed as good or very good in 95 per cent. The transparency of the

vote count was assessed as good or very good in 98 per cent of counts observed. Where voters were waiting in line to vote at 22:00 hours, they were allowed to do so.

In some polling stations, not all procedures were followed during the count. Occasionally, the number of signatures on the VLs was not entered in the protocol, unused ballots were not counted and cancelled, counterfoils were not counted, or voters' choices on the ballots were not announced aloud. In one of five counts observed, the sequence of steps in the procedures was not strictly adhered to. However, only two reports were received of falsification of VL entries, results or protocols. With very few exceptions, PECs determined ballot validity in a reasonable and consistent manner.

In 97 per cent of counts observed, PEC members agreed on the results protocol. IEOM observers reported that in 13 per cent of the counts the PEC had problems filling in the results protocol. In the vast majority of polling stations, copies of the results protocol were posted for public familiarization, and copies were given to observers and other persons entitled to receive them. Unauthorized persons, usually police officers, were seen in only seven polling stations where the count was observed. IEOM observers reported no serious problems during the transfer of protocols to the DEC.

C. HANDOVER OF ELECTION MATERIAL AND TABULATION PROCEDURES

Reconciliation and tabulation procedures at the DEC level were mostly evaluated positively, with 79 per cent of reports assessing them as good or very good. However, a significant minority of observers reported bad or very bad circumstances at the DEC premises (14 per cent), bad or very bad organization of the handover and reconciliation process by the DEC (17 per cent), or indicated that they had limited confidence in the accuracy of the results as tabulated by the DEC (12 per cent). Six per cent of IEOM observer teams who followed a PEC to the DEC were prevented from following the handover process, and 13 per cent of teams present at a DEC rated the transparency of the process as bad or very bad.

The weakest part of the work of many DEC was the organization of the handover of PEC results protocols after the end of the count. Shortcomings in the organization of the process at the DEC, the lack of proper premises and organizational skills, as well as sometimes intentional disruptions of the process prolonged the handover until Tuesday, 2 October. Such cases were noted in DEC 1 (Simferopol, Crimea), 29 (Dnipropetrovsk), 137 (Odesa region) and 219 (Kyiv City), among others. Although this did not impact on the outcome of the elections, it incurred unnecessary distress and human effort for a large number of DEC and PEC members, who frequently had to wait for hours before being processed by the DEC, often in chaotic and unsuitable circumstances.

In almost one half of DEC where IEOM observers were present, they were not given access to the room where the results were entered into a computer for transmission to the CEC. In addition, some teams reported that they were restricted in their observation of the process, and not provided with the requested information. The presence of unauthorized persons was noted in 7 per cent of DEC, and in 8 per cent, non-DEC members were interfering in or directing the work of the DEC.

In the majority of DEC observed, PECs were asked to correct mistakes in the results protocols. While the number of PECs affected was low in most DEC, several DEC ordered a significant number of PECs to amend the results protocols. In DEC 29 (Dnipropetrovsk), for example, some 60 per cent of all PECs had to amend their results protocols.

A review of rejected PEC results protocols³² indicates that no consistent set of criteria was applied throughout Ukraine for approval or rejection of PEC results protocols. In the majority of cases, protocols were initially rejected on technical grounds (e.g., where leading zeros were missing or dashes had been used instead of zeros), rather than mathematical inconsistencies.³³ There were also examples of systematic errors being made in particular districts, indicating lack of or insufficient training of PEC members (e.g., DEC 139 in Odesa region and DEC 197 in Khmelnytsky region).³⁴ It would appear that some DEC members worked slowly and inefficiently. In DEC 1, members nominated by BYuT and OU-PSD walked out of the DEC session, but returned later.

Few DEC members observed had to conduct recounts in order to establish polling station results. Where this was the case, usually only one or two PECs were concerned. Similarly, few DEC members invalidated results of individual polling stations under their jurisdiction, and if they did, the number of PECs affected was almost always very low.

Where PEC protocols had to be amended due to technical errors or mathematical inconsistencies, it often proved difficult to assemble all PEC members for a PEC session, as required by the law. This was often due to the fact that PEC members returned to their regular places of work and because, in some cases, members lived outside the area where they served as election administrators.

At 03:30 hours on 3 October, offices located next to the premises of DEC 91 (Kyiv region) were set on fire. There were also news reports that DEC 112 (Lviv region) had also been set alight on 5 October at 05:25 hours. The election material from those DEC members does not seem to have been damaged and has been accordingly processed.

XV. ANNOUNCEMENT OF ELECTION RESULTS

On 5 October, the CEC announced the preliminary election results, and on 15 October the final results of the elections (See annex). After all complaints and appeals were adjudicated, the final results were published in the state newspaper *Golos Ukrainy* on 27 October.

From the day of the elections and until the announcement of preliminary results on 5 October, the CEC was in permanent session, receiving election results and materials from DEC members. All PEC protocols were uploaded to the CEC website (www.cvk.gov.ua), as entered in the DEC results spreadsheets. The process of submitting election results to the CEC was efficiently handled overall, throughout most of the country. As of 1 October, the CEC had already posted over one half of all PEC results and by the end of 2 October, the CEC website showed 99.25 per cent of PEC protocols as having been processed. Later, the rate of DEC results submission slowed down considerably. Some DEC members experienced significant delays in the processing of PEC results protocols. These included DEC 1 (Simferopol, Crimea), 29 (Dnipropetrovsk),

³² The EOM followed the handover and reconciliation process closely, deploying stationary observer teams to 82 DEC members. These teams were instructed to take a copy of the rejected original and amended copy of PEC protocols where possible.

³³ For example, in DEC 193 (Krasiliv), at least 68 out of 164 PEC results protocols were initially rejected. Of those, only 13 contained one or more figures which differed from the ones entered in the CEC database. Other DEC members where PEC results protocols were rejected on formal grounds included DEC 109 (Severodonetsk), 207 (Chernivtsi), 202 (Zolotonosha), 29 (Dnipropetrovsk), and others.

³⁴ In DEC 197, 36 PEC results protocols out of a total of 146 were recorded as initially rejected; 33 of these contained various entries which differed from the figures ultimately entered in the CEC database.

137 (Odesa region) and 219 (Kyiv City). By the end of 4 October, eight PEC protocols from DEC 1 had still not been submitted. Only in the evening of 5 October did the CEC receive the last outstanding PEC results protocols. The law does not specify deadlines for PECs to report their results to the respective DECs, or for DECs to report to the CEC; however, the CEC had to announce the election results by 15 October, according to the PEL.

According to PEC results protocols, as posted on the CEC website, in a number of polling stations and DECs (in particular DECs 48 and 49 in Mariupol, Donetsk region), the SPU achieved high results in comparison with their overall nationwide showing. In Mariupol, which is the stronghold of a prominent SPU candidate, the SPU more than doubled its share of the vote compared to 2006. It emerged as the strongest party in one of the city's two DECs (DEC 48), and as the runner-up in the other. The SPU also did particularly well in two DECs north of Mariupol (54 and 55), scoring as much as 95 per cent in DEC 54, PEC 131.

XVI. RECOMMENDATIONS

The following recommendations are offered for consideration by the authorities, political parties and civil society of Ukraine, in further support of their efforts to conduct elections in line with OSCE commitments and other international standards for democratic elections. A number of these recommendations have already been offered in previous OSCE/ODIHR final reports but remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities and civil society of Ukraine to further improve the electoral process.

A. LEGAL FRAMEWORK

1. Consideration could be given to consolidating the separate election laws currently in force into one unified Election Code.
2. The Parliamentary Election Law should allow for individual candidate nominations, in line with OSCE Commitments.
3. The 50 per-cent turnout requirement for parliamentary elections should be abolished.
4. Provision in the PEL giving voters the possibility to vote "against all" should be eliminated.

B. ELECTION ADMINISTRATION

5. The rules for nominations of PEC members by political parties and blocs should be simplified, and the CEC should approve a simple standard and binding procedure. Restrictions on the conditions under which parties/factions can replace PEC members should be introduced.
6. The position of PEC members should be adequately compensated, in order to enhance election administrators' qualification, and lessen the reliance on parties paying their nominees from the party budget.
7. Rules concerning the duties of PEC members should be established in a timely manner so that they can be included in the PEC manual.

8. Training of PEC members should be intensified and made mandatory for all PEC members. Training should be more interactive and focused on practical issues of election-day procedures, with particular attention to more complicated procedures, especially the vote count and the completion of results protocols.
9. Provided the necessary safeguards are in place to prevent abuse, absentee voting certificates should be provided for as a valid balloting option for all elections, in order to avoid disenfranchisement of particular categories of voters.
10. Voter education programs should be considered an integral part of electoral preparations.
11. The Parliamentary Election Law should establish clear deadlines for the delivery of election results from PECs to DEC's and from DEC's to the CEC.
12. The provision in the PEL which allows DEC's, as well as the CEC, to establish the election results regardless of the number of polling stations where voting was declared invalid should be amended, as it opens the possibility for the selective invalidation of results in individual polling stations.

C. VOTER REGISTRATION

13. Following the entry into force on 1 October 2007 of the new Law on the State Register of Voters of Ukraine, and as a long standing OSCE/ODIHR recommendation, the authorities are encouraged to adopt a unified and centralized Voter Register system. Efforts should be made to have the new register in place in time for the next nationwide electoral process.
14. The compilation of the VLs should be made on the basis of a fully functional state population/civil register, which remains to be established. In this regard, a long term commitment and demonstrated political will is needed in order to establish a fully functional state population register. To this end, Ukrainian stakeholders need to agree on the structure of the system, and clearly define institutional responsibility
15. One single software program should be used for preparing a unified state register of voters and for compiling VLs, in order to avoid compatibility problems which might compromise the quality of VLs.
16. Information provided by State agencies contributing to the preparation of VLs or to the creation of a unified voter register should be well coordinated. This work should not be impeded by a lack of clear allocation of responsibility between relevant State institutions. Such information should be digitalized, including information coming from the State Department on Citizenship, Immigration and Registration of Persons of the Ministry of Interior.
17. Questions of data integrity, privacy and the terms of introduction of the new system should be carefully agreed on by all stakeholders. It must be noted that Ukraine has not yet ratified the Council of Europe *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (ETS 108).

18. The suffrage rights of citizens, as guaranteed by the Constitution and the PEL, must be respected. Voters should not be disenfranchised for residing or traveling abroad. The State Border Guard Service should not be given a role in the election process.

D. ELECTION CAMPAIGN

19. As in past elections, the efforts to reduce misuse of state administrative resources in elections should be strengthened and continued (including training for civil servants). In addition, the legal framework could be clarified in a manner than reconciles the right to freedom of expression with locally elected office. The law should also clarify the role of the President in an election campaign. The use of various 'social initiatives' should also be discouraged as bad practice during the course of a campaign.
20. Consideration should be given to amending the PEL to make it a legal obligation for electoral subjects to publicly disclose their campaign revenues and expenditures. This could be done directly by the CEC disclosing the parties'/blocs' campaign expenditure returns or through their publication in the media.

E. MEDIA

21. The State authorities should move ahead promptly with the further transformation of State-funded broadcast media into fully independent public service broadcasters. An independent media council with a clear mandate to oversee and control free, equal and fair access to the public broadcasters should be established.
22. The independence and powers of the National Council for TV and Radio Broadcasting should be further strengthened to increase the capacity of this body to supervise the broadcast media in an impartial manner.
23. Transparency of media ownership should be further increased. Consideration could be given to introducing an obligation of physical and/or legal persons applying for a license to disclose all owners and structures that have legal connections to it.
24. A number of media-related amendments should be made to the PEL, including a clear definition of the concept of 'election campaigning' and its forms in relation to media coverage of the election campaign. A wider range of sanctions in the case of violation of the law by the media, including fines, could be established; the 15-day blackout period for the publication of results of opinion polls could be shortened.
25. Consideration should be given to reassess the relevance of the principles established in the Law on the Procedure of Coverage of Activities of the State and Local Authorities by the Mass Media, which obliges State-funded media to cover activities of these authorities.

F. COMPLAINTS AND APPEALS

26. Amendments to the Law on the Constitutional Court should be considered to enable parties to present their argumentation and evidence in public hearings. This would further contribute to the transparency and functioning of the Constitutional Court. Reducing the deadline for consideration of cases should also be considered, especially if a case has a direct bearing on an upcoming election.

27. The role of courts prior to and on election day should be clearly regulated by the PEL.

G. VOTING, COUNTING AND TABULATION AND ANNOUNCEMENT OF RESULTS

28. Consideration should be given to lowering the maximum number of registered voters per polling station from the current 2,500.

29. The current system of reception of election material and checking of PEC results protocols by DEC members should be overhauled, with a view to avoiding unnecessary delays. Relevant rules and procedures could be included in the election law or in a mandatory CEC instruction. Consideration could be given to establishing reception teams composed of DEC members nominated by different political camps, which would perform a preliminary check of results protocols. Premises for the reception of election material should be such that the process can be observed properly.

30. Results protocols should be revised, and possibly simplified, in order to limit the possibility of technical mistakes. They should be accompanied by a comprehensive instruction on how to fill them in properly.

31. Consideration could be given to not sending PEC members back to the polling station in order to have the whole PEC amend a PEC results protocol for clearly clerical mistakes, e.g. if leading zeros are missing or if dashes rather than zeros have been entered in the protocol. Possible new procedures and arrangements could include: (a) entering in the publicly available polling station result protocols database both the original and the amended copy; (b) appointment of a counting group or team to help and support the work of the DEC members; (c) establishment in the PEL or through a CEC decision of clear and strict criteria as to when the protocol shall be rewritten; (d) posting the amended copy next to the original copy at the PEC premises.

32. Carbon copies could be used for completing copies of results protocols which will be given to party/bloc representatives and accredited observers. For authentication purposes, it could still be required that these copies bear original signatures of the PEC members and the original PEC stamp.

33. All figures from PEC results protocols should be entered in the CEC database and be made available on the CEC website, rather than just a partial set of data.

H. PARTICIPATION OF WOMEN

34. Significant efforts should be undertaken to effectively enhance participation of women as candidates, and increase the representation of women in Parliament and Government.

35. Provisions of the PEL and the Law on Political Parties should be in line with the Equal Opportunity Law.

I. PARTICIPATION OF NATIONAL MINORITIES

36. When amending electoral legislation, authorities are encouraged to consult with national minorities on issues which concern them. The Lund Recommendations on the

Effective Participation of National Minorities in Public Life of the OSCE High Commissioner on National Minorities and the OSCE/ODIHR Guidelines to Assist National Minority Participation in the Electoral Process should be taken into account in order to secure effective representation of national minorities in elected bodies.

ANNEX: ELECTION RESULTS

	Number	Percentage
Number of registered voters	37,588,040	
<i>of these, number of voters who applied for homebound voting</i>	1,119,971	2.98%
Number of ballots cast	23,315,257	
<i>of these, number of mobile ballots cast</i>	1,014,971	4.35%
<i>of these, number of ballots cast “against all”</i>	637,185	2.73%
Number of invalid ballots	379,658	1.63%
Voter turnout		62.03%

Electoral Contestant	Votes		Mandates	
	Number	Percentage	Number	Percentage
Party of Regions (PoR)	8,013,895	34.37%	175	38.89%
Bloc of Yulia Tymoshenko (BYuT)	7,162,193	30.71%	156	34.67%
Our Ukraine – People’s Self Defense Bloc (OU–PSD)	3,301,282	14.15%	72	16.00%
Communist Party of Ukraine (CPU)	1,257,291	5.39%	27	6.00%
Lytvyn Bloc	924,538	3.96%	20	4.44%
Socialist Party of Ukraine (SPU)	668,234	2.86%		
Progressive Socialist Party of Ukraine (PSPU)	309,008	1.32%		
All-Ukrainian Union “Svoboda”	178,660	0.76%		
Party of Greens of Ukraine	94,505	0.40%		
Election Bloc of Lyudmyla Suprun – Ukrainian Regional Asset	80,944	0.34%		
Communist Party of Ukraine (Renewed)	68,602	0.29%		
Party of Free Democrats	50,852	0.21%		
Bloc of Parties of Pensioners of Ukraine	34,845	0.14%		
Party of National Economic Development of Ukraine	33,489	0.14%		
Ukrainian People’s Bloc	28,414	0.12%		
Peasants’ Bloc “Agricultural Ukraine”	25,675	0.11%		
Bloc “Christian Bloc”	24,597	0.10%		
Election Bloc of Political Parties "KUCHMA" (Constitution – Ukraine – Honour – Peace – Antifascism)	23,676	0.10%		
Bloc “All-Ukrainian Hromada”	12,327	0.05%		
All-Ukrainian Party of People’s Trust	5,342	0.02%		
Total	22,298,369	100.00%	450	100.00%

[Source: CEC Website: <http://www.cvk.gov.ua>]

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance and non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).