



**OSCE Office for Democratic Institutions and Human Rights
Election Observation Mission
Presidential Election
Ukraine 2004**

Address: VneshExpo Bldg, 25Turhenivska St., Kyiv 01054, Ukraine
Tel: +38 044 537 79 01/02/03/04
Fax: +38 044 537 79 05
E-mail: reception@eom.org.ua
www.osce.org/odihr

**UKRAINE PRESIDENTIAL ELECTION
SECOND ROUND RE-RUN
26 DECEMBER, 2004**

OSCE/ODIHR PRELIMINARY RECOMMENDATIONS

While the OSCE/ODIHR EOM would not make recommendations on an election process before its completion, taking into consideration the current specific circumstances in Ukraine, the OSCE/ODIHR EOM offers the following preliminary recommendations for consideration by the authorities of Ukraine. These are limited to what can feasibly be achieved in advance of the repeat of the second round of the presidential election called for the 26 December, on the basis of the Supreme Court decision annulling the CEC resolution on the declaration of results of the presidential election. A full set of recommendations will be offered in the Final Report of the OSCE/ODIHR EOM, which will be issued once the electoral process is completed.

The most significant factor affecting the conduct of meaningful and genuine democratic elections in line with OSCE commitments and other international standards, depends upon whether a commensurate level of political will is exercised, first and foremost, by the authorities of Ukraine. All perpetrators of electoral fraud should immediately be brought to justice, in order to curtail a widespread trend of impunity for such offences as witnessed during the 31 October and 21 November rounds of voting.

1. Election Administration

It is essential that trust in the election administration is restored to the maximum extent possible in the limited timeframe. Therefore, it is necessary to re-compose the Central Election Commission (CEC), retaining only those members who have the confidence of the major political groupings.

- No single political group should be in a position to control the functioning of the CEC.
- The CEC should use the powers granted to it by law to decide more transparently and effectively on complaints and appeals, and to review the evidence presented in support of formal complaints and legal appeals.
- All members of the CEC, all party proxies and international and domestic observers should be provided with all draft CEC resolutions, certified copies of all CEC and all other election commissions' documents, including results protocols, immediately upon approval.
- All members of the CEC, all party proxies and international and domestic observers should be provided with unlimited and unconditional access to all sources of election information available in the CEC premises or elsewhere.
- As a matter of ultimate urgency, the CEC should develop detailed procedures for production of election materials, distribution of election materials from central level to polling station level, and return of election materials after the vote count from polling station level to central level. These procedures have to include receipts provided to those who deliver from those who receive, with the receipts containing all numeric information, such as numbers of ballots, votes, certificates, etc., reflected both in figures and words.

- Declaration of preliminary results by the CEC should be done only on the basis of hardcopy information from the TECs. It should contain a clear indication about the number of TECs that have delivered results, the number of PSCs involved and the number of votes processed by the time of the report. The CEC should start to report preliminary results within 4 hours after the closure of polls and continue in 3 hour intervals until all TECs have delivered their preliminary results, either by fax or by hand. Reporting on preliminary results by phone should be avoided. Reporting of preliminary results by e-mail would be acceptable only if the printout has all details of the sender, otherwise it should be disregarded. Similar rules should be valid for reporting of preliminary results by the TECs.

The membership of Territorial Election Commissions (TECs) and Polling Station Commissions (PSCs) currently comprise representatives of all 24 candidates contesting the first round of the election. Many TECs and PSCs did not act in a politically impartial manner and some were complicit in manipulating the electoral process or accepted implausible results without scrutiny. These actions make certain persons unsuited to serve within the election administration.

The composition of TECs and PSCs should be modified before a new vote, and such composition should permit TECs and PSCs to operate efficiently and in a strictly independent manner. In view of the numerous instances of expulsions of TEC and PSC members on the eve of both rounds of previous voting, consideration should be given to adopting measures aimed at ensuring the stability of the membership of lower level election commissions, once recomposed.

2. Ballot Printing

- Strict control of ballot printing should be put in place to ensure that all ballots are properly accounted for so that no surplus ballots can be produced;
- A record of the numbers of ballots printed, distributed to the individual TECs, distributed to the individual PSCs, used and unused during voting, should be included in the above mentioned receipts and results protocols, and made public;
- Partisan and non-partisan observers, including international observers, should be entitled to observe the ballot printing and distribution process.

3. Legal Framework

For parliament to amend the election legislation in a more wide-ranging manner, the following recommendations should be considered:

- As recommended by a previous OSCE/ODIHR Election Observation Mission (EOM) to Ukraine (in the context of the 2002 parliamentary elections), the legal requirement that election violations at a polling station must exceed 10% of the voter turnout in order for the election to be annulled in a given polling station (Article 80) should be removed from the statute as it in effect establishes “a tolerance level” for election fraud. TECs and the CEC could have the discretionary authority to call for repeat voting at polling station level.
- The election law should clarify the circumstances in which police may be present inside polling stations and TEC premises and prohibit the presence of unauthorized persons, by listing explicitly those categories of persons who are authorized to be in the premises of each level of election commissions;
- Article 85.9 should be amended such that only valid votes are taken into consideration in determining if a sole candidate has secured sufficient votes to be elected president;

- The legislation on absentee voting certificates should be strengthened to enhance transparency and accountability, in order to strengthen confidence in this special voting procedure.

4. Transparency and Accountability in Voter Registration

- TECs should be required to announce the number of voters registered in each polling station immediately before Election Day.
- Amending CEC Resolution 1177, such that PSCs are no longer entitled to make corrections to voter lists on election day.
- The number of voters added to voter lists on election day (excluding those added by virtue of possessing an absentee certificate) should be recorded on the PSC protocol, to enhance transparency and accountability.

5. Polling Procedures

5.1. Steps are necessary to prevent multiple voting. Mechanisms to prevent this phenomenon include:

- Identification documents to evidence the act of voting. Voters should only be allowed to vote with the identification documents expressly listed in the law, and clearly conveyed to the electorate;

5.2. If provisions on voting outside the polling station (mobile voting) are retained:

- The CEC should be required to develop a standard form to be completed by voters that request to vote outside the polling station. The form should include enough information to clearly identify the voter including the voter's identity card number and a statement of why the voter requires to vote outside the polling station. The statement should be witnessed by a second person and signed by the voter;
- The mobile ballot box should be accompanied by representatives of the two candidates;
- As voters casting ballots in this way are asked to sign a voter list of those who are voting outside the polling station, all PSC members and observers should have the right to compare signatures on this list with the original request forms;
- The number of voters voting outside the polling station should be recorded in the PSC, TEC and CEC protocols.

5.3. Improving the secrecy of the vote:

- Voters should be required to fold their ballot papers twice to preserve secrecy.

5.4. In view of the massive and organised abuse of absentee voting certificates, and in case absentee voting certificates (AVCs) are retained in law, a strict control is required to prevent their abuse. Measures include:

On the printing and distribution of AVCs to TECs and PSCs:

- Drastically reducing the total number of AVCs printed;
- More effective control during the printing phase to ensure that no more than the approved number of AVCs are printed;
- The inclusion of TEC and PSC codes on each AVC printed in addition to serial number to make its origin easily identifiable;

- The CEC should be required to keep records on the number of absentee certificates printed for each TEC and distributed to each TEC. This data should be announced publicly;
- TECs should be required to keep records of the number of absentee voting certificates distributed by TECs to PSCs. The CEC should make such records accessible.

On the issuing of AVCs to voters:

- Requiring a citizen's identity card number to be recorded on each AVC issued;
- PSCs should be required to keep records of the serial numbers of each AVC issued and the identity card numbers of all citizens receiving an AVC;
- A deadline before election day should be established after which AVC may not be issued to citizens;
- At the deadline, PSCs should be required to reconcile the number of AVCs used and unused and inform the TEC, which in turn should inform the CEC. This would enhance the transparency of the issuing process; then, all unused AVCs should be invalidated by PSCs and forwarded to the TECs;
- Requiring the CEC to publish the number of AVCs issued to citizens and the number of unused AVCs in each territorial election district;

On the use of AVCs on election day:

- On election day, PSCs should be required to verify that the identity card number entered on an AVC matches the identity card number of the voter;
- Requiring PSCs to record the serial numbers of AVCs used on election day and the identity card numbers of citizens using AVCs on a separate list;
- Amending the PSC protocol such that the number of voters using AVCs is recorded. The number of voters using AVCs in a territorial election district should be recorded on the TEC protocol. The CEC should announce, as part of its protocol, the total number of AVCs used by voters on election day.

6. Tabulation of Results

- Strict compliance with the legal provision regulating the transfer of election materials to PSCs (Art.73) and from PSCs (art.81) should be strictly observed. This was a problem recognised by the Supreme Court when it reversed the CEC's resolution determining the final results.
- PSCs should be required to deliver their results protocols to the TEC by a given deadline. Upon delivery, the TEC should verify the consistency of the PSC protocol and provide the PSC with a receipt, containing all numeric information of the protocol, written in figures and words. Upon return, the PSC should display this receipt next to the PSC protocol, already displayed in the PSC premise.
- The TECs should be required to establish the results in the election district by a deadline compatible with the deadline for PSCs to deliver their protocols to TECs and with the deadline for the CEC to determine the final results. TECs should also be given sufficient time to examine and rule on all complaints prior to establishing the final results at TEC level.
- The CEC should be required by law to post on its website all PSC results when determining the final election results. This would enable interested parties to audit and verify the accuracy of the tabulation of official results and compare PSC results with copies of protocols given to their representatives on PSCs on election night.

7. Election Observation

- In view of the limited timeframe in the run-up to repeat elections, international observers should be permitted to apply to the CEC for accreditation no later than five days before the election. As a transitional provision, Article 70.1 of the election law could be amended accordingly and Article 70.2 amended so that the CEC must take a decision on accrediting observers no later than 4 days prior to the election;
- Official observers should have the right to observe the election process until the day of the installation of the new President;
- Official observers should be granted the right to observe all aspects of the election process, receive documents relevant to their work from the CEC and TECs, including decisions, and have the right to observe all aspects of the vote tabulation process at TECs and the CEC;
- The law should be amended to allow for observation of the election process by Ukrainian civil society organisations in accordance with Ukraine's commitments as an OSCE participating State.