



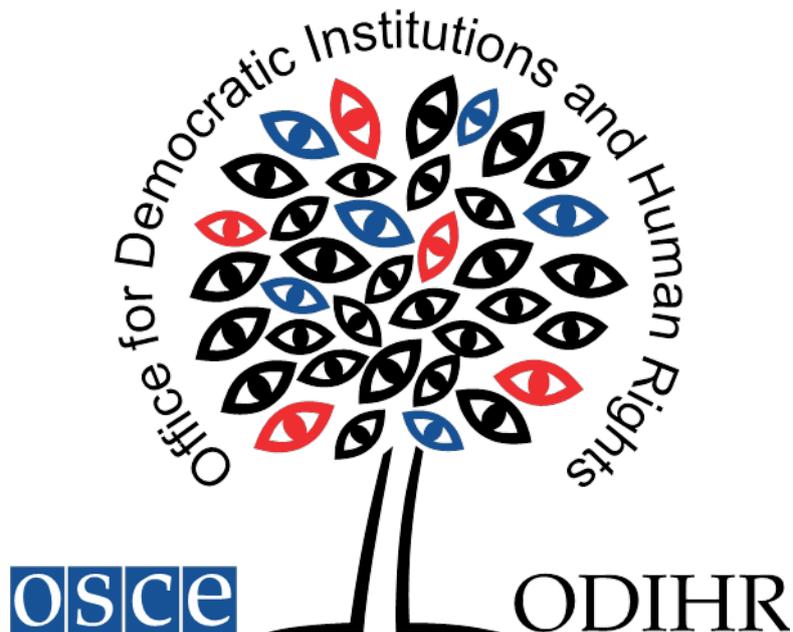
Office for Democratic Institutions and Human Rights

UKRAINE

PARTIAL REPEAT PARLIAMENTARY ELECTIONS

15 December 2013

OSCE/ODIHR Election Expert Team
Final Report



Warsaw
30 January 2014

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	INTRODUCTION AND ACKNOWLEDGEMENTS.....	2
III.	ELECTORAL SYSTEM AND POLITICAL BACKGROUND	3
IV.	LEGAL FRAMEWORK	4
V.	ELECTION ADMINISTRATION.....	5
A.	ELECTION COMMISSIONS.....	5
B.	VOTER REGISTRATION.....	6
VI.	CANDIDATE REGISTRATION.....	6
VII.	ELECTION CAMPAIGN.....	8
VIII.	MEDIA	9
A.	MEDIA ENVIRONMENT	9
B.	MEDIA LEGAL FRAMEWORK	10
IX.	ELECTION OBSERVATION.....	11
X.	ELECTION DAY	11
A.	VOTING	11
B.	COUNTING	12
C.	TABULATION AND ANNOUNCEMENT OF RESULTS	12
XI.	COMPLAINTS AND APPEALS	13
XII.	RECOMMENDATIONS	14
A.	PRIORITY RECOMMENDATIONS	14
B.	OTHER RECOMMENDATIONS	15
	ANNEX: FINAL RESULTS	16
	ABOUT THE OSCE/ODIHR.....	17

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I. EXECUTIVE SUMMARY

Following an invitation from the Ministry of Foreign Affairs of Ukraine, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Expert Team (EET) on 3 December for the 15 December 2013 partial repeat parliamentary elections in five districts. The repeat elections were held in districts where the majoritarian elections were annulled when the Central Election Commission (CEC) decided that it was not possible to determine the results following the 28 October 2012 parliamentary elections. Within the limited scope of the OSCE/ODIHR EET, this report provides the mission's observations and assessments of the conduct of the repeat election, as well as recommendations for further improvement of the electoral process. It should be read in conjunction with the OSCE/ODIHR Election Observation Mission (EOM) final report for the 2012 parliamentary elections, which offers a more comprehensive assessment of the electoral process.

The repeat elections took place for the majoritarian component of Ukraine's mixed electoral system in five districts. The observation of the 2012 parliamentary elections showed that the mixed electoral system re-introduced deficiencies that were noted when it was previously used. The legal framework for the repeat elections was largely unchanged from 2012, meaning that no additional legal measures were taken to safeguard the integrity of the electoral process. For these reasons, some of the problems observed by the OSCE/ODIHR EOM in 2012 were also noted during the repeat elections, particularly in terms of the formation of election commissions, abuse of administrative resources on behalf of some candidates, indications of vote-buying, and lack of transparency during counting. One opposition candidate was de-registered after a court found that he was not in compliance with the residency requirement, which the OSCE/ODIHR has previously recommended to be reconsidered. Nevertheless, some improvements were also observed in the conduct of the repeat elections, notably in the technical procedure of candidate registration, the peaceful conduct of the campaign, and a relatively smooth and secure process of results tabulation.

The CEC and the five District Election Commissions (DECs) appeared to manage the technical arrangements for the elections well. The work of DECs was hampered to some extent by extensive changes of Precinct Election Commissions (PECs) members that appeared to be caused in part by attempts to gain partisan control over these commissions. The high number of candidates registered in districts 94 and 223 was also partly related to attempts to undermine the integrity of PECs.

The campaign environment was peaceful, with campaign activities conducted on a relatively small scale. Candidates were able to freely communicate their messages to voters, although there were credible reports of intimidation, vote-buying, and instances of abuse of administrative resources. The campaign took place against the backdrop of large-scale demonstrations in Kyiv, and these protests dominated the attention of the media. A number of journalists were beaten or detained during their coverage of the protests, and the offices of three opposition media outlets were searched and computer equipment seized.

¹ The English version of this report is the only official document. An unofficial translation is available in Ukrainian.

On election day, the OSCE/ODIHR EET visited a limited number of polling stations in the five districts. The conduct of voting in the locations visited was in line with legal provisions. The length of the ballot in districts 94 and 223 made it difficult for some voters to find their preferred candidates. The team observed indications of possible vote-buying in district 94. The voter lists in regular polling stations appeared to be in generally good order. By law, citizens in hospitals and prisons in any of the five districts where elections were held were eligible to vote, even if they were not registered in the district. In some of these special polling stations, the winning candidate in the district obtained a very high number of votes in comparison to other candidates.

Counting was observed in three polling stations in three districts. In the two polling stations in districts 132 and 194, the process was assessed positively, but in the polling station in district 223 the counting was not transparent, and there were clear violations of the electoral law. In all three counts, PEC chairpersons did not seem to know the rules regarding provision of protocols to observers.

The tabulation of results was at times chaotic and tense in some districts, but overall the process was smoother than it was in the same districts in 2012. DEC premises were too small to accommodate the number of people entitled to be present, but effective security prevented external disruptions. Preliminary results were posted on the CEC website broken down by polling station. Results were declared within one week of election day.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Ministry of Foreign Affairs of Ukraine to observe the 15 December partial repeat parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Expert Team (EET) on 3 December. The OSCE/ODIHR EET was headed by Jonathan Stonestreet and consisted of seven election experts drawn from seven OSCE participating States. The OSCE/ODIHR EET did not include long-term or short-term observers.

The findings of this report cover all five districts where repeat elections were held. The OSCE/ODIHR EET considered several aspects of the electoral process, in particular the legal framework, the election administration, media, and complaints and appeals. Although team members visited a limited number of polling stations in each district and followed the tabulation of results in three districts, the OSCE/ODIHR EET did not undertake a comprehensive and systematic observation of election day proceedings. The assessments and recommendations in this report are made on the basis of OSCE commitments for democratic elections, other international standards and Ukrainian legislation. This report should be read in conjunction with the OSCE/ODIHR Election Observation Mission (EOM) final report for the 28 October 2012 parliamentary elections, which offers a more comprehensive assessment of the electoral process.²

The OSCE/ODIHR EET wishes to thank the Ministry of Foreign Affairs of Ukraine for the invitation to observe the elections, and the Central Election Commission (CEC) for its co-operation and for providing accreditation documents. The OSCE/ODIHR also wishes to express appreciation to other state and local authorities, political parties, and civil society for their assistance and co-operation, as well as to diplomatic representations of OSCE participating States and international

² All previous OSCE/ODIHR election-related reports concerning Ukraine can be found at: www.osce.org/odihr/elections/ukraine.

organizations for their co-operation throughout the course of the EET's work. The OSCE/ODIHR is thankful to the OSCE Project Co-ordinator in Ukraine for its continuous support.

III. ELECTORAL SYSTEM AND POLITICAL BACKGROUND

The 450-member unicameral parliament (*Verkhovna Rada*) is elected for a five year term under a mixed electoral system. Half of the deputies are elected under a closed-list proportional system in one single nationwide constituency with a five per cent threshold; the other 225 deputies are elected in single-mandate election districts under a majoritarian, first-past-the-post system. This mixed electoral system was re-introduced prior to the 28 October 2012 parliamentary elections; the 2006 and 2007 elections had been conducted under a proportional system.

The partial repeat parliamentary elections were held to fill majoritarian seats in five districts that had been left vacant following the annulment of the elections in those districts in the 2012 parliamentary elections. As a result of the 2012 elections, the pro-presidential Party of Regions increased its representation in parliament and secured a majority with the support of deputies who were elected as self-nominated candidates. At the time of the repeat elections, the Party of Regions faction in parliament had 207 members. Other large parties that were represented in parliamentary factions as of December 2013 were the three parties forming the United Opposition – *Batkivschyna* (90 seats), Ukrainian Democratic Alliance for Reform (UDAR, 42 seats), and *Svoboda* (36 seats) – as well as the Communist party (32 seats). Non-affiliated deputies, mostly elected as self-nominated candidates, had 35 seats. The re-introduction of the majoritarian component in the electoral system for the 2012 elections altered the political landscape, reinforcing the Party of Regions' majority.

The majoritarian component of the system also contributed to an increase in electoral violence, fraud, and other violations of electoral law in 2012. The OSCE/ODIHR EOM final report on the 2012 Parliamentary Elections in Ukraine noted that “cases of harassment, intimidation and abuse of administrative resources were observed in a significant number of electoral districts”, contrary to the paragraphs 5.4, 7.6, and 7.7 of the Copenhagen Document. The tabulation of the election results took two weeks and was marked by serious irregularities in 25 districts observed. On 5 November 2012, the CEC adopted a resolution which effectively annulled the majoritarian elections in five districts (94 – Kyiv *oblast*, 132 – Mykolaev *oblast*, 194 – Cherkassy *oblast*, 197 – Cherkassy *oblast*, and 223 – Kyiv city), stating that “it was impossible to establish the true results” as these elections were not held in accordance with the Constitution and the electoral law. The opposition parties stated that polling station results protocols indicated that their candidates had in fact won in all five districts.

As the electoral law does not clearly provide for repeat elections in this case, repeat elections for these districts could not be conducted until parliament established a legal basis for them. For these reasons, the repeat elections in the five districts were not held for over a year after the 2012 elections.³ On 5 September 2013, the parliament adopted a special law on repeat majoritarian elections for districts number 94, 132, 194, 197, and 223, and called the repeat elections for 15 December 2013.

Consideration should be given to amending the electoral law to provide for repeat elections in cases when violations of law could affect the results and to provide for a deadline specifying when repeat elections should be held.

³ A by-election was conducted in district 224 in Sevastopol on 7 July 2013.

The repeat elections took place against the background of large-scale protests which followed the decision of the Ukrainian government not to sign an Association Agreement with the European Union. The demonstrations increased in size following a violent attempt by the police to clear protestors from a central square in Kyiv on the night of 30 November 2013. Opposition parties joined the demonstration, and the Party of Regions eventually organized a counter-demonstration. Despite the continuous presence of tens of thousands of demonstrators, the protests were generally peaceful during the election period.

The leader of the opposition party *Batkivshchyna*, Ms. Yulia Tymoshenko, continues to serve a prison sentence following a trial criticized as unfair by the OSCE Parliamentary Assembly and the Parliamentary Assembly of the Council of Europe. Mr. Yuriy Lutsenko, another opposition leader who was serving a prison sentence during the 2012 elections, was pardoned in April 2013.

IV. LEGAL FRAMEWORK

The legal framework governing these elections included the Constitution, the Law on Election of People's Deputies of 2011 (hereinafter, the electoral law), the Law on the Central Election Commission, and the Law on the State Voter Register (SVR). Provisions of other laws, including the Code of Administrative Court Procedure and the Criminal Code, are also applicable. Except for the special law establishing the repeat elections in the five districts,⁴ the legislation regulating the repeat elections remained mostly unchanged from that applicable to the 2012 parliamentary elections.⁵ Instructions and resolutions issued by the CEC that supplemented the legal framework in 2012 also remained in force. Amendments to electoral legislation regulating parliamentary elections were adopted by parliament in November 2013 and were signed into law by President Viktor Yanukovich on 20 December, but they will not enter into force until February 2014.

New rules for these elections incorporated by the special law on repeat elections and by a decree issued by the CEC on 3 October 2013 that modified by-laws of 2012, consisted of shortened deadlines and relatively minor procedural changes. Certain aspects were improved from 2012, including the introduction of the right of international observers to receive copies of protocols from election commissions and some modifications to the system to nominate and select district and precinct election commission members. However, the process was affected by legal shortcomings identified in the OSCE/ODIHR EOM final report on the 2012 parliamentary elections, as well as in joint OSCE/ODIHR and the Council of Europe's European Commission for Democracy through Law (hereinafter, Venice Commission) legal reviews, which remained unaddressed for the repeat elections. In particular, these issues were related to the registration of candidates, the appointment of election administration officials, the lack of enforcement of campaign and media rules, and the complaints and appeals system.

The role of the judiciary in the process is limited to resolving electoral disputes. Due to general mistrust in the judiciary, and the inconsistency of some of its decisions, the courts were perceived as lacking independence by many OSCE/ODIHR EET interlocutors.

⁴ The law "On Elections of People's Deputies of Ukraine's single-mandate districts № 94, 132, 194, 197, 223" was only in force for these elections.

⁵ For instance, the law that provided for web cameras in polling stations applied only to the 2012 elections; it was not applicable for the repeat elections.

V. ELECTION ADMINISTRATION

A. ELECTION COMMISSIONS

As in the 2012 parliamentary elections, the repeat elections in five districts were conducted by the CEC, District Election Commissions (DECs), and Precinct Election Commissions (PECs). Since the 2012 elections, the CEC has a new chairperson. Political parties generally expressed confidence in the technical conduct of the elections, but the opposition parties felt that the CEC's overall credibility had been undermined by its post-election day decisions in 2012. They also expressed concern about the CEC's future composition, as most of its members' terms end in May 2014 and the Law on the CEC does not clearly define the composition of membership of the CEC.

The nomination mechanism for CEC members should be reviewed and made more precise, and the parliament should try to reach broad agreement regarding the future composition of the CEC in order to ensure that this institution has the confidence of Ukraine's political parties and of voters.

The five DECs were formed based on party nominations; five parliamentary groups were guaranteed representation in the DECs and the remaining seats were filled by lottery among parties and candidates participating in the elections. For the repeat elections, separate lotteries for each DEC were conducted. A notable feature was that in three districts, 132, 194, and 223, DECs were partly composed by members who had worked together in other districts in 2012: in DEC 132, four members had been members of DEC 129; in DEC 194, five members had been members of DEC 222; and in DEC 223, four members had been members of DEC 94.⁶ For the most part, these members were nominated by different parties for the 2013 elections than in 2012. It is unclear how ostensibly separate parties could have coordinated an *en masse* shift of DEC members from one district to another.

DECs conducted election preparations within the shortened deadlines, although formation of PECs within the legal deadline was problematic in at least one district. Within each district, all PECs had members nominated by parties with a faction in the parliament. The remaining members of each PEC were selected by lottery from nominees of candidates competing in the district and of parties which had nominated candidates competing in the district.

Many candidates and parties participating in the lottery to choose PEC members nominated people who were later withdrawn. In some cases, it was reported that PEC members were not even aware that they had been nominated, and that names and personal data were often simply copied from databases. The withdrawals were so extensive that a member of DEC 223 informed the OSCE/ODIHR EET that some PECs had not had been able to form a quorum for their initial meeting and had falsified the signatures of some absent PEC members; the DEC accepted this in order to ensure that the election process could move forward. The work of DECs was also made complex by the extensive withdrawal and re-nomination of PEC members up to election day.

The transfer of blocs of DEC members from one constituency to another, the nomination of "technical" candidates for the purpose of entering the lottery to select PEC members, and the extensive withdrawal of PEC members all indicate that the nomination of DEC and PEC members was manipulated by some parties for political advantage and that many of the smaller parties are used for obtaining additional representation on the commissions. This circumvents the purpose of

⁶ These figures are consolidated from information on the CEC website at www.cvk.gov.ua/vnd_2012_en/.

the law, which is to provide for balanced political representation on election commissions, and undermines public confidence in the integrity of the management of the elections.

Most parties and candidates met with by the OSCE/ODIHR EET were satisfied with the conduct of the lotteries for DEC and PEC members. Nevertheless, many expressed frustration over many candidates appearing to be nominated primarily in order to participate in the lotteries to obtain membership in PECs. If selected, these PEC members would in practice be changed and replaced by people representing major candidates.

Consideration should be given to providing for greater stability in the membership of DECs and PECs in order to build public confidence in the administration of elections.

B. VOTER REGISTRATION

Procedures of preparing and updating voter lists are provided for in the electoral law and the Law on SVR. SVR maintenance bodies respected legal deadlines for distributing preliminary and corrected voter lists. A total of 760,248 voters were included in the preliminary voter lists in the five districts;⁷ the corrected voter lists used on election day contained entries for 756,008 voters, including 11,446 voters in 44 special polling stations.⁸ A total of 156 requests for updates of preliminary voter lists were filed with administrative courts.⁹

Invitations indicating voters' polling stations were distributed by PECs on time. Citizens were able to check the preliminary lists and request inclusion or correction of their data. However, an inconsistent approach with regard to a voter's right to inspect the voter list, as noted in the 2012 EOM final report, was also observed in these repeat elections. In some polling stations, voters could inspect the entire voter list, in others they were only permitted to check their personal record and data for family members.

As per a 2012 CEC decision, voters could request a temporary change of voting address within the district in which they were registered. Voters could not request a temporary change of address in another district. However, as in 2012, citizens in hospitals and prisons in a district on election day were included on the voter list of the special polling station for the respective institution, even if they were registered in another district. This creates a loophole allowing citizens who do not live in a district to vote in that district even if they are only coincidentally present.

In order to ensure equal treatment and equality of the vote, it is recommended that for repeat and by-elections, citizens temporarily in institutions should be included in the voter list for the corresponding special polling station only if they are already registered to vote in that district.

VI. CANDIDATE REGISTRATION

A total of 151 candidates competed in the five single-mandate elections: 38 in district 94, 11 in district 132, 16 in district 194 and in 197, and 70 in district 223. Of these, 43 were nominated by political parties, and 108 were self-nominated. Only 22 candidates were women (14.5 per cent).

⁷ According to information received from the CEC on 9 December 2013.

⁸ As per the CEC on 18 December 2013.

⁹ Reported by the CEC on 13 December 2013.

Article 76 of the Constitution stipulates that parliamentary candidates must be citizens with the right to vote who are at least 21 years old, and who have resided in Ukraine for the previous five years. It also states that citizens convicted of committing intentional crimes cannot be elected unless the record has been ‘nullified’.

A candidate can be nominated by a political party or be self-nominated. *Batkivschyna*, UDAR and *Svoboda* reached an agreement that only one of them would nominate a candidate in a given district and that they would support each other’s candidates. For the repeat elections, the five opposition candidates who ran in 2012 were re-nominated in the respective districts (four from *Batkivschyna* and one from *Svoboda*). The Party of Regions did not nominate any candidates, although prominent party members ran in some districts as self-nominated candidates. The Communist Party nominated candidates in all five districts.

The registration process was inclusive and applicants were offered the opportunity to correct and complete their applications, even when some information was missing which represents an improvement. From 16 October to 14 November, the CEC received 268 applications; 57 of them were rejected because the applicants failed to submit all documents required for registration, and one applicant withdrew. Seven rejections were challenged before the court, which upheld the CEC decisions in all instances. By 19 November, the deadline for finalizing candidate registration, the CEC registered 210 candidates.

The electoral law allows candidates to withdraw from the race until twelve days before election day, which is after the deadline set for candidates to nominate members to PECs and DEC’s.¹⁰ By 2 December, 58 candidates withdrew their candidacy. OSCE/ODIHR EET interlocutors alleged that most of these candidates had registered only to participate in the lottery for representation in PECs. In addition, the large number of candidates in districts 94 and 223, and the registration of candidates with the same or similar names as leading candidates or other political figures (so-called ‘clone’ candidates), was an attempt to confuse voters.

The registration of six candidates was challenged by individual citizens in court, which confirmed the CEC decisions on registration in five instances.¹¹ The candidacy of Mr. Romaniuk, *Batkivschyna*’s nominee in district 94, was cancelled after the High Administrative Court upheld the decision of the Kyiv Administrative Court of Appeal, ordering the CEC to de-register him.¹² The court ruled that the CEC had not investigated information that Mr. Romaniuk did not comply with the five-year residency requirement.¹³ The different approach of the courts in dealing with cases brought on similar grounds was perceived by many OSCE/ODIHR EET interlocutors as partisan or arbitrary.

The CEC informed the OSCE/ODIHR EET that the various court decisions regarding residency in the repeat elections and in previous elections did not provide clear guidance on applying the

¹⁰ The deadline for nomination to PECs was 17 days before election day (27 November).

¹¹ Candidates Bulatetskyi, Poplavskyi and Radutskyi, (194); Osypenko (94) and Kornatskyi (132).

¹² In Bulatetskyi’s case, his compliance with the residency requirement was challenged; in Kornatskyi’s case, his citizenship was challenged. Both complaints were rejected by the court on the grounds that they were submitted after the 5 day deadline to challenge CEC decisions. In Romaniuk’s case, however, the complaint was accepted, as the plaintiff alleged that the CEC had not acted to investigate allegations that Romaniuk did not meet the five year residency requirement and that the CEC had thereby violated article 61.4 of the electoral law. The court ruled on the merits of the case and ordered the CEC to cancel his registration.

¹³ Mr. Romaniuk, one of the two leading candidates when the election in district 94 was cancelled in 2012, left Ukraine in February 2013, after a criminal case was filed against him.

residency requirement to candidates in a consistent manner and that it might seek guidance from the Constitutional Court.

In addition to discrepancies in the interpretation and application of the constitutional and legal five-year residency requirement by the courts, the OSCE/ODIHR EET recalls that the OSCE/ODIHR and the Venice Commission have stated that the five-year residency requirement for candidacy in national-level elections is not in line with principles for democratic elections, based on paragraph 7 of the OSCE Copenhagen Document,¹⁴ paragraph 15 of General Comment 25 of the UN Human Rights Committee, and paragraph I.1.1.c of the Code of Good Practice in Electoral Matters of the Venice Commission.

The OSCE/ODIHR EET reiterates the long-standing recommendation that the residency requirement for candidacy in national-level elections should be reconsidered and made consistent with international commitments and good practice.

VII. ELECTION CAMPAIGN

The overall campaign atmosphere was calm, with campaign activities conducted on a relatively small scale overshadowed by the protests that took place in Kyiv. Most of the opposition candidates chose to take part in the protests, which limited their campaigning activities. In contrast to 2012, no violent incidents related to the elections were reported. In general, candidates were able to campaign freely and communicate their messages to voters. However, on 9 December, special police forces raided the national headquarters of the *Batkivschyna* party and confiscated computer servers. In two districts, the opposition candidates alleged police pressure on campaign staff.¹⁵

Candidates held small scale meetings with voters and erected tents for distribution of campaign materials. Billboards and posters were visible in all districts, and to some extent candidates campaigned in local media. The distribution of “black PR” campaign materials – materials seemingly printed on behalf of a candidate but containing negative or false information about the candidate – again appeared to be relatively common.

There was little action taken to investigate or deter violations of law, including numerous allegations of vote-buying, some instances of abuse of administrative resources and pressure on public employees. This affected the fairness of the election campaign. The citizen observer organizations OPORA and Committee of Voters of Ukraine (CVU) publicly reported on observed cases of vote-buying during the campaign in districts 194 and 233. OPORA informed the OSCE/ODIHR EET that it had provided video evidence of vote-buying in these districts to the authorities.

Credible reports of occasional abuse of administrative resources were received from OPORA and CVU in districts 94 and 132, where regional officials were running as candidates, particularly the appearances of public officials at campaign events. The OSCE/ODIHR EET found that in district

¹⁴ Paragraph 7 of the 1990 OSCE Copenhagen Document states “To ensure that the will of the people serves as the basis of the authority of government, the participating States will [...] (7.5) respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”.

¹⁵ In DEC 197, the OSCE/ODIHR EET was provided with video material purporting to show police intimidation of campaign staff from the opposition candidate. In DEC 132, the opposition candidate alleged pressure by the police on employees from his company.

94, at least one official city newspaper, *Dniprovskiy Prospekt* of Ukrainka city, regularly featured Mr. Badayev, a Party of Regions representative in the regional council, without providing equitable coverage to other candidates. The website of Vasylkiv Rayon State Administration in district 94 also featured campaign information for this candidate. In district 132, on 9 December, a candidate (the regional governor, who was on leave for the election period) held a meeting with voters that teachers were asked by the village school director to attend. A public employee in the same district told the OSCE/ODIHR EET that the chief of the city administration pressured this person to resign due to support of family members for the opposition candidate. Such instances indicated that local administrations were often unable to remain impartial in the election process as required by law.

Action should be taken against candidates and officials who violate rules on the abuse of administrative resources. Such abuse could be addressed by administrative sanctions for the responsible officials and through campaign finance sanctions for candidates.

VIII. MEDIA

A. MEDIA ENVIRONMENT

Despite the wide range of media outlets operating in Ukraine,¹⁶ the lack of autonomy of the media system from political or corporate interests and the increasing concentration of ownership by a few media holdings foster a political polarisation of media reporting. The state-owned National Television and Radio Company, which includes regional and municipal channels, has not yet been transformed into a public service broadcaster and thus remains under the influence of the government. Television is still the primary source of information for citizens, but media research shows that internet is increasing its penetration and offers a wide range of views.¹⁷

Since the beginning of the demonstrations in Kyiv, the media mainly focused on the protest and the response of the government, and only limited news coverage was devoted to the election campaign. However, election programmes were aired by state-owned local TV channels. In Cherkassy region, for instance, the OSCE/ODIHR EET noted that 17 candidates attended a TV programme to present their platforms. Indications of hidden political advertising veiled as news content, noted in previous elections were also reported to the OSCE/ODIHR EET.

Many OSCE/ODIHR EET interlocutors raised concerns with the scale of violence and intimidation against journalists in 2013. In line with OSCE commitments, OSCE participating States are to condemn attacks against freedom of expression, identify measures of protection, and ensure that those responsible of such attacks are held accountable, and that crimes are subject to independent, speedy and effective investigations.¹⁸

¹⁶ According to official data of the National Broadcasting Council, there are 30 TV channels and 15 Radio stations with a nationwide license, 76 local TV channels, and 57 local radio stations. "Report of the National Broadcasting Council on TV and Radio for 2012," available at: <http://nrada.gov.ua/userfiles/file/2013/Zvitna%20informacia/zvit2012.pdf>.

¹⁷ According to a survey of 19 February 2013 conducted by Internews, television is the most popular source of information for 87 per cent of Ukrainians. Internet is an additional source for 42 per cent, and print media for 40 per cent, www.umedial.kiev.ua/english/media-research/444-internews-survey-reveals-the-internet-is-a-key-source-of-news-for-nearly-half-of-ukrainians.html#.Uqq5MZqIrIU.

¹⁸ As stated in the 1994 Budapest Concluding Document and in the 2000, 2002, 2006, 2009, 2010, and 2012 Joint Declarations of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression.

During the period from 29 November to 1 December, prior to the arrival of the OSCE/ODIHR EET, over 50 national and international journalists were physically assaulted and injured while covering the public protests in Kyiv. On 2 December, the OSCE Representative on Freedom of the Media expressed concern for the magnitude of violence against journalists.¹⁹ A joint statement by 40 local and international media watchdogs also condemned the attacks on representatives of the media during public demonstrations in Kyiv.²⁰ Some journalists have been detained, allegedly for rioting offences.²¹ On 9 December, three opposition media outlets based in Kyiv²² were raided by police special forces and their computer equipment was confiscated without providing explanations.²³

Competent authorities should take all necessary measures to protect journalists and media outlets from attacks and to ensure that crimes committed against them are properly investigated.

B. MEDIA LEGAL FRAMEWORK

The media legislation concerning the repeat elections remained the same as for the 2012 parliamentary elections. The Constitution provides for freedom of expression without censorship. The media laws generally provide a sound framework for freedom of the media, though OSCE/ODIHR EET interlocutors raised the issue of a lack of uniform implementation.²⁴

The electoral law stipulates that media coverage of the candidates should be equal and unbiased and that voters shall be provided with diverse, objective and unbiased information. By law, state-owned electronic and print media are to provide free airtime to all candidates. The CEC instructed to allocate 20 minutes to each candidate on state-owned regional television and radio channels, and to publish the election programs in state-owned print media.²⁵ Nevertheless, the OSCE/ODIHR EET was informed that a number of candidates did not accept the offer, which raised questions over their genuine interest to contest the elections. Paid airtime is allowed on the basis of equal opportunities without any limitation of time.

The electoral law does not clearly stipulate the body responsible for overseeing the media during elections. At the time of this report, the National Council on Television and Radio Broadcasting, the media supervisory body, did not release reports on the election media coverage. An effective media monitoring and a mechanism to guarantee candidates with prompt remedies when violations take place have not been implemented. However, political parties and candidates did not file complaints on the media coverage to the CEC nor to the National Council on Television and Radio Broadcasting.

The electoral law should identify the body responsible for supervising media coverage during

¹⁹ See the statement: “OSCE Representative concerned by magnitude of violence against journalists in Ukraine”, www.osce.org/fom/109108.

²⁰ “Worldwide condemnation for brutal attacks on over 50 journalists in Ukraine”, www.ifex.org/ukraine/2013/12/10/attacks_condemned/.

²¹ On 10 December, Oleh Panas, a photographer from Lviv, was sentenced to two months in prison by the Kyiv district court of Pechersk for alleged involvement in riots. Under a similar accusation, on 10 December, Georgian journalists of TV channel *Tabula* received an order to leave the country within three days.

²² The newspaper *Vechernie Vesti*, the web television *INTV* and the website *Cenzor.net*.

²³ According to the Ministry of Internal Affairs, the investigation was ordered by the district court of Kyiv.

²⁴ The media are mainly regulated by the Law on Information, the Law on Access to Public Information, the Law on State Support of Mass Media and Social Protection of Journalists, the Law on Television and Radio Broadcasting, the Law on National Council of Ukraine on Television and Radio Broadcasting, the Law on Print Media, and the Law on News Agencies.

²⁵ The CEC Decision No. 361 of 26 November 2013 approved the schedule of appearance of the candidates.

elections, specifying its tasks and duties, and ensure that effective and timely remedies are imposed when violations take place.

IX. ELECTION OBSERVATION

The electoral law allows both citizen and international observers to observe the entire election process. NGOs whose involvement in the election process and its observation is stipulated in its statute and who have been registered with the CEC can nominate citizen observers, who should be accredited by the DEC. In addition, each candidate in single-mandate electoral districts has the right to nominate proxies and observers to represent the candidate and observe the election process.

The accreditation of observers was inclusive. For the repeat elections, the DEC accredited 2,962 citizen observers representing 14 domestic NGOs. The CEC accredited 385 international observers. Candidates in five single-mandate electoral districts nominated a total of 249 proxies and 6,145 observers to be present at polling stations on election day.

The largest citizen observer organizations, the Civil Network OPORA and the CVU conducted long-term observation and fielded more than 1,000 short-term observers on election day. OPORA carried out a parallel vote tabulation (PVT) exercise in three of the five electoral districts.²⁶ The PVT generally matched the official results. CVU was additionally engaged in the training of PECs and raising the awareness of voters about the electoral process, protection of the secrecy of the vote, and prevention of vote-buying.

The special law establishing the repeat elections in the five districts provided for the right of all observers to receive copies of all protocols. This was a welcome step to enhance the transparency of the process and addressed a recommendation of the OSCE/ODIHR final report on the 2012 parliamentary elections. In practice, the distribution of copies of result protocols to all observers was not always implemented (see Election Day section).

X. ELECTION DAY

A. VOTING

On election day, the OSCE/ODIHR EET visited 27 polling stations in the five districts (out of a total of 649 polling stations) during the voting process and was present for three vote counting processes. This limited sample is not statistically representative and does not allow for a full assessment of the election day process.

For the most part, voting was conducted in accordance with the electoral law in polling stations visited. PEC chairpersons reported that all necessary materials had been received in most cases.²⁷ Voter lists appeared to be accurate in most polling stations visited, in that there were few reports of voters being turned away. In all regular polling stations there was a strong presence of domestic observers, both candidate observers and from civil society groups. However, there were sometimes groups of people standing in or around polling station premises, apparently on behalf of parties or

²⁶ The PVT results were based on data collected from 100 per cent of polling stations in districts 132, 194 and 223 and were published on 19 December, <http://oporaua.org/en/news/4376-pidsumky-golosuvannja>.

²⁷ Ballot boxes were sealed with improvised seals in one PEC in district 194. The PEC chairperson said that an insufficient number of seals had been provided.

candidates. One PEC chairperson in district 94 informed team members that she had been intimidated by such a group.

In districts 94 and 223, the ballot papers were very long in order to accommodate the large number of candidates and the accompanying biographical information.²⁸ PECs in these districts reported that voters often had difficulty in finding their preferred candidate on the ballot. Many voters in these two districts folded their ballots in a way that did not provide for a secret vote, and PEC members generally did not instruct voters on folding the ballot. In both districts, PEC members and candidate representatives in some polling stations were looking at the ballots as they were put in the transparent ballot box. In one polling station in district 94, candidate representatives were photographing marked ballots, and a voter was observed photographing her ballot. Both practices are possible indicators of vote-buying.

Two special polling stations were visited, both located in hospitals in district 194. In one case patients were brought in groups of 25 to vote, and some left without voting as they were unable to wait for the PEC to process the voters ahead of them. One patient at this hospital filed a complaint with the PEC alleging that vote-buying had been organized by hospital staff in favour of one of the candidates. In another polling station, OSCE/ODIHR EET saw that four patients were turned away because they had not been included on the voter list.²⁹

B. COUNTING

Counting proceeded correctly, albeit with minor procedural errors, in two polling stations visited in districts 132 and 194. In the polling station in district 223 where counting was observed however the process was not transparent and there were violations of the electoral law. By decision of the PEC, observers were kept at a distance from the counting table and were therefore not able to see the content of ballot papers. The chairperson did not show each ballot paper to PEC members as required by law. When some PEC members requested a recount of ballots after sorting, the PEC chairperson called for a vote and the request was denied, despite the legal provision for a recount at the request of any PEC member.

In all three polling stations where counting was observed, PEC chairpersons did not seem familiar with rules regarding the public posting of results protocols and the distribution of protocols to all PEC members and observers. In each case, the PEC initially refused to provide protocols to observers and only did so after protests by some observers. In the PECs in district 132 and 194, the results protocol was not posted for public viewing.

C. TABULATION AND ANNOUNCEMENT OF RESULTS

The OSCE/ODIHR EET followed the tabulation of results in districts 132, 194, 197 and 223. Despite crowds of people outside some of the DECs, a significant police presence ensured that there were no external disruptions. Although the DEC premises were too small to accommodate the large number of PEC members, observers, candidates and media, the process was overall orderly and materials were properly secured. The processing of results in district 132 was assessed as somewhat chaotic, with disruptions by observers and obvious tension among DEC members.

²⁸ The ballot for district 223 was over one meter long.

²⁹ The PEC said that the hospital had not submitted an updated list of voters. When visited before election day, this PEC was not open, apparently due to lack of space, and patients were not able to check the voter list.

DECs should be provided with suitable premises for receiving election materials from PECs and processing the result protocols.

In a significant improvement, results protocols were pre-printed with the names of candidates, saving time and eliminating one source of error when PECs drew up results protocols. Nevertheless, numerous PECs were obliged to correct their protocols due to technical errors. In district 194, a DEC member claimed that three PEC chairpersons corrected the protocols at the DEC instead of returning to the polling station as required by law.

As in 2012, the room in each DEC where results were entered into the computerized system for transmission to the CEC was closed to all observers and media.

To increase transparency, the CEC could consider measures to allow all observers and media to follow the process of entering results into the computer system.

Preliminary results were posted on the CEC website as they were sent by the DEC, with the results made available by polling station. The CEC also took the step of making an English version of the website to facilitate access to results by international observers. The results were finalized by 26 December for all districts.

The results of voting in four prisons in three districts showed anomalous results. In these facilities, inmates voted for the ultimately winning candidate in the district by a disproportionately large margin.³⁰ Similarly lopsided results were announced for some PECs located in hospitals in the five districts. While such results are not proof of coercion or fraud, they do raise the question of the integrity of the vote in these facilities, as prisoners and patients can be particularly vulnerable to pressure or vote-buying. This is particularly important in single-mandate elections, when a few votes may change the outcome of elections.

Consideration should be given to ensuring that the integrity of the vote is adequately ensured for prisoners and for patients at medical facilities.

XI. COMPLAINTS AND APPEALS

The right to redress is granted to all participants; voters, candidates, proxies, political parties, observers and election officials can lodge a complaint with election commissions and the courts. While the law is clear that courts have precedence over election commissions, lower-level courts and each of the three level-election commissions have the authority to receive and process first instance administrative claims, making it possible for claimants to bring the same complaint before several fora.

Decisions taken by lower election commissions can be challenged before a higher commission or a court. CEC decisions can be appealed before the Kyiv Administrative Court of Appeal, which is also the second instance body for lower courts. The High Administrative Court resolves appeals

³⁰ In district 132, candidate Kruhlov obtained 812 votes (82 per cent of the votes cast) in PEC 480027, while his principal opponent Kornatskyi obtained 54 votes (5 per cent). In district 194, candidate Poplavskyi obtained 412 votes (77 per cent) in PEC 000001, while candidate Bulatetskyi obtained 24 votes (4 per cent); in the same district, Poplavskyi obtained 1121 votes (93 per cent) in PEC 711029, and Bulatetskyi obtained 30 votes (2 per cent). In district 223, candidate Pylypyshyn obtained 1227 votes (63 per cent) in PEC 000002, and his principal opponent Levchenko obtained 189 votes (9 per cent).

against decisions of the Kyiv Administrative Court of Appeal and has sole jurisdiction over petitions against election results. In the case of a criminal offence, the complaint has to be lodged with law enforcement agencies. The electoral law, the Law on Administrative Court Procedures and the Criminal Code each regulate different aspects of the electoral dispute process, which in addition to the number of different bodies to which a complaint can be lodged makes the process overly complex. The ability of the system to resolve electoral matters and the effectiveness of the complaints mechanism is also jeopardized by the absence of tools to enforce compliance with the rules, the apparent inconsistency of some court rulings,³¹ and the general mistrust in the judiciary expressed by many stakeholders met by the OSCE/ODIHR EET.

Over the entire electoral period a relatively small number of complaints were submitted. Prior to election day, the CEC received 26 complaints, including 17 alleged violations of campaign regulations and one complaint regarding vote-buying. The vote-buying complaint was forwarded to the police, who responded that no grounds for prosecution could be established. The CEC cannot issue sanctions on campaign-related violations, only warnings, and that only after a court has established a breach of the law. The CEC did not issue any warnings during the campaign period. The CEC received only one complaint regarding alleged irregularities on election day, lodged by a candidate's proxy against the election commission of district 132.

A total of 23 cases against CEC decisions, actions or inactions were lodged before the Kyiv Administrative Court of Appeal. CEC decisions were upheld in all instances but one (the case of Mr. Romaniuk's eligibility to be a candidate). Nineteen of the judgments of the Kyiv Administrative Court of Appeal, all concerning candidate registration, were appealed to the High Administrative Court that upheld the decisions.

XII. 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 fully in line with OSCE commitments and other standards for democratic elections. These recommendations are based on assessments made in the course of the repeat elections and are not comprehensive. They should be read in conjunction with past OSCE/ODIHR recommendations, especially those contained in the OSCE/ODIHR EOM final report on the 2012 parliamentary elections. The OSCE/ODIHR stands ready to assist the authorities of Ukraine to further improve the electoral process and in following up on the recommendations contained in this and previous reports.

A. PRIORITY RECOMMENDATIONS

1. The OSCE/ODIHR EET reiterates the long-standing recommendation that the residence requirement for candidacy in national-level elections should be reconsidered and made consistent with international commitments and good practice.
2. The nomination mechanism for CEC members should be reviewed and made more precise, and the parliament should try to reach broad agreement regarding the future composition of the CEC, in order to ensure that this institution has the confidence of Ukraine's political parties and of voters.

³¹ See the section on candidate registration.

3. Actions should be taken against candidates and officials who violate rules on the abuse of administrative resources. Such abuse could be addressed by administrative sanctions for the responsible officials and through campaign finance sanctions for candidates.
4. The electoral law should identify the body responsible for supervising media coverage during elections, specifying its tasks and duties, and ensure that effective and timely remedies are imposed when violations take place.

B. OTHER RECOMMENDATIONS

Legal Framework

5. Consideration should be given to amending the electoral law to provide for repeat elections in cases when violations of law could affect the results and to provide for a deadline specifying when repeat elections should be held.
6. Consideration should be given to ensuring that the integrity of the vote is adequately ensured for prisoners and for patients at medical facilities.

Election Administration

7. DEC's should be provided with suitable premises for receiving election materials from PEC's and processing the result protocols.
8. To increase transparency, the CEC could consider measures to allow all observers and media to follow the process of entering results into the computer system.
9. Consideration should be given to providing for greater stability in the membership of DEC's and PEC's in order to build public confidence in the administration of elections.

Voter Registration

10. In order to ensure equal treatment and equality of the vote, it is recommended that for repeat and by-elections citizens temporarily in institutions should be included in the voter list for the corresponding special polling station only if they are already registered to vote in that district.

Media

11. Competent authorities should take all necessary measures to protect journalists and media outlets from attacks and to ensure that crimes committed against them are properly investigated.

ANNEX: FINAL RESULTS

These abridged results list the top three candidates in each of the five districts. The full results are available on the CEC website at www.cvk.gov.ua/pls/vnd2012/wp039e?PT001F01=903.

District 94 (Kyiv oblast)	Percentage	Total Votes
Badaiev Ruslan, self-nominated	58.25	53,363
Lozovoi Andrii, Radical Party of Oleh Liashko	21.91	20,080
Karmazin Yurii, self-nominated	15.28	14,000
Other candidates	4.55	4,167
District 132 (Mykolaev oblast)		
Kruhlov Mykola, self-nominated	47.85	32,947
Kornatskyi Arkadii, All-Ukrainian Union "Batkivshchyna"	45.31	31,198
Romaniuk Anatolii, Communist Party of Ukraine	3.10	2,140
Other candidates	3.71	2,557
District 194 (Cherkassy)		
Poplavskyi Mykhailo, self-nominated	53.54	37,331
Bulatetskyi Mykola, All-Ukrainian Union "Batkivshchyna"	35.87	25,014
Radutskyi Oleksandr, self-nominated	2.77	1,936
Other candidates	7.80	5,437
District 197 (Cherkassy oblast)		
Datsenko Leonid, All-Ukrainian Union "Batkivshchyna"	63.51	33,372
Chervonopyskyi Serhii, self-nominated	23.30	12,243
Roienko Viktor, Communist Party of Ukraine	3.01	1,584
Other candidates	10.16	5,340
District 223 (Kyiv)		
Pylypshyn Viktor, self-nominated	44.89	34,684
Levchenko Yurii, Svoboda party	40.58	31,358
Montian Tetiana, self-nominated	3.29	2,543
Other candidates	11.23	8,679

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).