



**OSCE Office for Democratic Institutions and Human Rights**  
**Election Observation Mission**  
**Ukraine**  
**Presidential Election 2010**

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**INTERIM REPORT No. 1**  
**24 November – 8 December 2009**

**15 December 2009**

**I. EXECUTIVE SUMMARY**

- The *Verkhovna Rada* (parliament) set the date of the presidential election for 17 January 2010. If no candidate receives more than 50 per cent of the votes in the first round, a second round of voting will be held on 7 February between the top two candidates.
- The legal framework for the election includes the Law on the Election of the President, as amended in August 2009. A joint opinion by the Venice Commission and OSCE/ODIHR concluded that some amendments raised serious concern as they represent a step backward and do not comply with OSCE commitments and other international standards.
- In October the Constitutional Court found several provisions of the amended election law unconstitutional. Its ruling addressed some of the concerns expressed by the joint opinion including the right to challenge election results in the courts. The ruling also affected the requirements for membership in election commissions and for voting abroad.
- The elections will be administered by a three-level election administration: the Central Election Commission (CEC), 225 District Election Commissions (DECs) and some 38,000 Precinct Election Commissions (PECs). The CEC has thus far conducted the process in an efficient manner, but the lack of a state budget for its 2010 activities raises concerns.
- Voter lists will be extracted from the new state voter register (SVR). Data for the SVR are being compiled by 755 register maintenance bodies (RMBs), based on the 2006 and 2007 voter lists. Since its launch, 490,819 duplicate entries have been deleted. As of 8 December the SVR contains 36,282,480 voters. Voters may check and correct their entries in the SVR. However, the recently introduced amendment allowing registration or removal of voters from the voter list on election day raises concern due to insufficient safeguards. It also lowers incentives for voters to check and correct mistakes in the voter list prior to election day.
- Eighteen candidates representing the various political forces in the country have been registered by the CEC. The start of the campaign has been relatively calm. Prevalent campaign techniques include political advertising in the mass media, posters and billboards, campaign tents on sidewalks and leafleting.
- Media provisions grant candidates specified amounts of free airtime and print space on state-owned media. Private mass media outlets are obliged by law to offer paid political advertising on equal conditions and at equal rates. The amount of paid advertising is thus only limited by a candidate's financial resources.
- The OSCE/ODIHR EOM opened its office in Kyiv on 24 November, with a 16-member core team and 60 long-term observers; these are deployed to 24 locations throughout the country. They are drawn from 24 OSCE participating States.

## II. INTRODUCTION

The *Verkhovna Rada* of Ukraine (parliament) set the date of the presidential election for 17 January 2010. Following an invitation by the Ministry of Foreign Affairs of Ukraine and based on findings and conclusions of the Needs Assessment Mission,<sup>1</sup> the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 24 November. The OSCE/ODIHR EOM, led by Ambassador Heidi Tagliavini, consists of a 16-member core team based in Kyiv and 60 long-term observers, deployed to 24 locations throughout Ukraine. The OSCE/ODIHR EOM is drawn from 24 OSCE participating States. The OSCE/ODIHR has requested participating states to second 600 short-term observers to observe voting, counting and tabulation on election day.

## III. POLITICAL CONTEXT

Political instability in the country has been aggravated by the global economic crisis and has undermined the functioning of democratic institutions. Parliament has repeatedly failed to adopt the state budget for 2010 and to pass a set of amendments to the Law on the Election of the President. Consequently the Central Election Commission (CEC) does not have an approved budget for its activities in 2010 and has warned that this may disrupt preparations for the 17 January 2010 election. Eighteen presidential candidates from the main dominant political forces in the country were registered, including ten independent candidates, seven nominated by political parties and one nominated by a party coalition (bloc).

## IV. LEGAL FRAMEWORK AND THE ELECTORAL SYSTEM

The President of Ukraine is elected by the citizens of Ukraine for a five-year term under a majoritarian system. In case no candidate wins more than 50 per cent of the votes in the first round, a second round will take place three weeks after the election day between the two candidates who won the most votes in the first round.

The legal framework applicable to the presidential election includes the constitution (adopted in 1996 and amended in 2004) and the Law on the Election of the President of Ukraine (adopted in 2004 and amended in 2009). It provides for universal, equal and direct suffrage by secret ballot. These main documents are supplemented by the Law on the Central Election Commission, the Law on the State Voter Register, the Law on Political Parties, and some provisions of the Code of Administrative Proceedings and the Criminal Code.

The Law on the Election of the President of Ukraine (hereinafter election law) took effect in August 2009, just five months before the scheduled election. The amended election law was reviewed by the Venice Commission and OSCE/ODIHR Joint Opinion, which concluded that although the amendments incorporated a number of their previous recommendations, many of them remained unaddressed. The opinion also found that some amendments raised a number of serious concerns as they represent a step backward and do not comply with OSCE commitments and other international standards.<sup>2</sup>

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<sup>1</sup> OSCE/ODIHR Needs Assessment Mission report at [http://www.osce.org/documents/odihr/2009/10/40541\\_en.pdf](http://www.osce.org/documents/odihr/2009/10/40541_en.pdf).

<sup>2</sup> Venice Commission and OSCE/ODIHR Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine at [http://www.osce.org/documents/odihr/2009/10/40858\\_en.pdf](http://www.osce.org/documents/odihr/2009/10/40858_en.pdf).

In a ruling issued on 19 October, the Constitutional Court found several of the amended provisions unconstitutional.<sup>3</sup> The court's decision addressed some of the concerns expressed in the joint opinion mostly pertaining to limitations on the right to challenge election protocols and results in the courts. The provisions that required all members of District Election Commissions (DECs) and Precinct Election Commissions (PECs) to live within the respective district or precinct and required that citizens residing abroad be listed in the consular registry in order to exercise their right to vote were declared unconstitutional.

As a result, new amendments to the election law were introduced by parliament. The amendments passed in the first reading but on 2 December they failed to pass in the second reading. This means that the legal framework for this election is the current election law as amended in August without those provisions that were declared unconstitutional.

## V. CANDIDATE REGISTRATION

Candidate registration started on 20 October and concluded on 13 November. A Ukrainian citizen is eligible for the presidency if he or she is older than thirty-five, has the right to vote, has not been convicted of an intentional crime that has not been cancelled or removed, has resided in Ukraine for the 10 years prior to election day, has a command of the state language, and is not running for a third consecutive term.

In order to be registered, each presidential candidate had to submit a comprehensive list of documents and forms to the CEC, along with a financial document certifying that a deposit of 2.5 million UAH (approximately 208,000 EUR) was made. The deposit will only be refunded to the two candidates who qualify for the second round of voting.<sup>4</sup>

Candidates can be nominated by parties, electoral blocs and through self-nomination (independent). Within the legal deadlines, the CEC registered 18 candidates: Inna Bohoslovka, independent; Mykhailo Brodskyi, independent; Anatolii Hrytsenko, independent; Yuriy Kostenko, Ukraine People's Party; Volodymyr Lytvyn, People's Party; Oleksandr Moroz, Socialist Party of Ukraine; Oleksandr Pabat, independent; Vasyl Protyvsikh, independent; Serhiy Ratushniak, independent; Oleh Riabokon, independent; Lyudmila Suprun, People's Democratic Party; Petro Symonenko, Bloc of Left and Left of Centre Parties; Oleh Tiahnybok, All-Ukrainian Union – Freedom; Serhiy Tihipko, independent; Yulia Tymoshenko, All-Ukrainian Union – Motherland; Viktor Yanukovich, Party of Regions; Arseniy Yatsenyuk, independent; Viktor Yushchenko, independent.

The CEC rejected 40 applications for registration based on a combination of various grounds: 38 did not pay the financial deposit; 9 did not provide correct personal data, 11 submitted inaccurate documents, 8 submitted their application after the deadline, and 1 was under age. Of those, 18 challenged their rejections in the Kyiv Administrative Court of Appeal; all complaints were denied.

## VI. ELECTION ADMINISTRATION

The election is administered by a three-level election administration: the CEC, 225 DECs and some 38,000 PECs. Since the beginning of the electoral period, the CEC has adopted decisions as

<sup>3</sup> The amendments were challenged by the President and 48 deputies of the parliament.

<sup>4</sup> The law is silent about the return of deposits should a second round of voting not be required.

provided for by the election law, including the registration of candidates, voter register updates, the establishment of the electoral districts, campaign and campaign finance regulations, appointment of DEC, registration of observers, the allocation of the 2009 election budget,<sup>5</sup> and others.

The CEC has publicly stated that funding for the electoral process is insufficient due to the lack of an approved 2010 state budget.

So far, the CEC has organized the process in an efficient manner. In general, the CEC holds regular sessions that are attended by the media. Most decisions are adopted unanimously and are posted on the official website a few days after adoption. The Law on the Central Election Commission stipulates that the CEC must act in an open and public manner. However, the same law does not allow NGO representatives to attend sessions; in order to attend, NGO representatives seek accreditation as journalists.<sup>6</sup>

The election law provides the right for candidates to nominate up to two members for each DEC. On 27 November, the CEC appointed 7,414 members for the 225 DEC, an average of 412 nominations per candidate (maximum of 450) and 33 members per commission (maximum of 36). Nine candidates have the maximum number of appointees, with another six close to the maximum. At the time of the initial appointment, proportionality rules for leadership positions within the DEC were respected at both national and regional levels.<sup>7</sup>

The CEC, jointly with the OSCE Project Co-ordinator in Ukraine, is currently preparing to provide training to over 2,500 DEC and 80,000 PEC members. PECs are to be appointed by 19 December.

## VII. VOTER REGISTRATION

For this election, voter lists will be extracted from the recently completed state voter register (SVR).<sup>8</sup> Previously, voter lists were created anew for every election.

The CEC is responsible for the register's content and maintenance. The SVR department of the CEC manages the software, technical support and security of the information on the register, while 755 register maintenance bodies (RMBs) throughout the country enter the data.<sup>9</sup> Individual citizens may request inclusions, deletions or updates to any record at RMBs. Regional branches of seven state agencies supply data updates to RMBs regularly.<sup>10</sup> RMBs remove duplicate records within their administrative territory; however, amendments involving multiple RMBs require a CEC decision.

The SVR database was compiled between February and June 2009 on the basis of voter lists used in the 2006 and 2007 elections. Since activating the automated system, over 5.5 million

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<sup>5</sup> The 2009 budget represents some 60 per cent of the total required for the election.

<sup>6</sup> According to the law proxies, authorized representatives of candidates, international observers and representatives of mass media have the right to be present at CEC sessions.

<sup>7</sup> Article 23.8 of the election law requires such proportionality, though without indicating to which territorial administrative level it should apply.

<sup>8</sup> The establishment of a permanent voter register was a long-standing OSCE/ODIHR recommendation.

<sup>9</sup> The SVR contains data on the voters' name, place and date of birth, address of registration, election precinct and an indication of those who are homebound.

<sup>10</sup> The regional departments of the Ministry of Interior and of the Ministry of Justice report information on the general population, while other authorities report separately on groups such as military personnel, those incarcerated, the incapacitated and the homeless.

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modifications have been made, of which 490,819 are deletions of confirmed duplicate entries.<sup>11</sup> As of 8 December, the SVR contains 36,282,480 names.

Voters have the right to file a challenge with a RMB, local court, DEC or PEC regarding voter list inaccuracies up to one hour before the closing of polls. The provision allows for the registration and even deletion of voters from voter lists on election day. This may lower the incentive for voters to check and correct their entries in the voter lists prior to election day. Furthermore, as stated in the joint opinion, it "...creates increased opportunities for fraud... [and] should be reconsidered". The lack of clear procedures and safeguards for adding voters to the voter lists on election day raises concerns.

## VIII. ELECTION CAMPAIGN

The start of campaign has been relatively calm, prior to the launch of the official election process on 19 October. By early December, the main contenders had presented their election platforms and started their campaigning. The candidates most visible in the campaign, to date, include Volodymyr Lytvyn, Petro Symonenko, Serhiy Tihipko, Yulia Tymoshenko, Viktor Yanukovich, Arseniy Yatsenyuk and Viktor Yushchenko. Thus far, prevalent campaign techniques include political advertising in the mass media, posters and billboards, campaign tents on sidewalks and leafleting. A few candidates have held campaign rallies in the regions. Prominent issues have included proposed changes to the election law, foreign policy orientation, measures against the H1N1 influenza threat and the failure of the parliament to adopt a state budget for 2010.

Campaign financing provisions stipulate that a presidential candidate must create a designated campaign bank account. To ensure transparency, all expenditures must be made by bank transfer. Contributions may only be sourced from the candidate's private funds, funds from the nominating party or bloc or donations from individuals. A party may contribute only to its own candidate and these contributions are unlimited. Only individual donors face a contribution limit, set at 400 minimum salaries (some 22,000 EUR). Donations from anonymous sources, foreign citizens and legal entities are not permitted. The CEC is to publish candidate finance reports no later than 18 days after election day. Recent amendments to campaign finance provisions dispense the limits for campaign spending.

## IX. MEDIA

The media environment is characterized by a high number of electronic and print media outlets operating in a limited and shrinking advertising market. TV stations rely on subsidies from business interests, sometimes aligned with candidates. Economic pressure and low ethical and professional standards contribute to hidden political advertising in news programmes. According to OSCE/ODIHR EOM interlocutors, this is a widespread practice. The absence of labour agreements for journalists and the threat of defamation suits are factors in journalists' self-censorship. Public service broadcasting has not been established that could provide a forum for wide-ranging public debate and innovative programming not driven by market forces.

The election law regulates the coverage of the campaign, the start of the official campaign period and the electoral silence period. Article 58.5 stipulates that campaign expenses funded from budgeted state allocations shall be carried out in compliance with the principle of equal conditions

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<sup>11</sup> According to the SVR department, approximately 80 per cent were minor changes to names and birthdates and the like, while 10 per cent were duplicate entries and the other 10 per cent address changes.

providing the candidates with the same print space in print media and air time on radio and TV. However, further articles in the election law provide candidates with the right to specified amounts of free airtime and print space on state-owned national and municipal radio, television and newspapers.<sup>12</sup>

The election law does not require balanced coverage in news and current affairs programmes. Private mass media outlets are obliged by law to offer paid political advertising on equal conditions and at equal rates. There are no limitations on paid advertising; it is only constrained by the candidate's financial resources. The National Television and Radio Broadcasting Council, which monitors the electronic media's compliance with campaign regulations has not been vested with enforcement provisions to sanction or fine broadcasters.

In order to assess the conduct and coverage of the campaign in the media, the OSCE/ODIHR EOM is conducting media monitoring of five television stations with national coverage, selected regional broadcasters and five daily national newspapers.<sup>13</sup>

## X. COMPLAINTS AND APPEALS

The right to appeal decisions, actions or inactions of election commissions and other actors involved in the electoral process is granted to all electoral subjects.<sup>14</sup> The complaint can be filed with a DEC, the CEC or a court at the complainant's discretion.<sup>15</sup>

Decisions, actions or inactions of a PEC are contested in a DEC or in the administrative court in the locality of the PEC. Decisions, actions or inactions of the DEC are contested to the CEC or in the district administrative court in the locality of the DEC. Decisions, actions or inactions of the CEC are contested in the Kyiv Administrative Court of Appeal (KACA). All disputes concerning final election results are contested in the High Administrative Court (HAC) and its decisions are final.<sup>16</sup> In the event that the same complaint is filed with both an election commission and the courts, the election commission suspends consideration until the court decision comes into force.

A dispute arose between the KACA and the HAC as to the number of judges that should hear election disputes in the KACA. The dispute concerns the interpretation of Articles 23 and 24 of the Administrative Procedure Code. The HAC took the position that election disputes must be heard by a panel of three judges in the first instance, the KACA took the position that only one judge needs to hear election disputes. The ongoing dispute caused confusion and resulted in several KACA decisions being annulled by the HAC due to only one judge hearing the cases.<sup>17</sup>

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<sup>12</sup> Article 61.4 of the election law provides the candidates with no less than 30 minutes on the state TV channel and 45 minutes on national radio channels, as well as 20 minutes on regional TV and radio channels for the entire duration of the campaign.

<sup>13</sup> The monitored TV stations are the state-owned *UTI* and the privately owned *Inter*, *Ukraina TV*, *Channel 5* and *ICTV*. The monitored daily newspapers are the state-owned *Uryadoviy Kuryer* and the private *Segodnya*, *Den*, *Fakty i Komentarii* and *Ukraina Moloda*.

<sup>14</sup> Presidential candidates, parties (blocs) that are subject of election process, election commissions, as well as voters whose rights were violated can file complaints.

<sup>15</sup> See Articles 91 - 95 of the election law.

<sup>16</sup> Even though the law stipulates that a decision of the HAC on election results is final and cannot be appealed, the constitutional court can still hear complaints concerning election results if it concerns a constitutional issue or the interpretation of the law.

<sup>17</sup> The judges have now reached an agreement that only one judge needs to hear disputes in the KACA and a panel of three judges will hear the cases in the HAC.

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To date, the KACA has considered 47 election disputes and the HAC, 39.<sup>18</sup> Of those decided by the HAC, eight overturned KACA decisions because only one judge sat on the case in the KACA. Thirty-five complaints have been filed with the CEC. The CEC has issued decisions on five complaints; all have been rejected on technical or jurisdictional grounds. The other thirty complaints were rejected by letter, with no formal decision, also on technical or jurisdictional grounds.

## **XI. DOMESTIC AND INTERNATIONAL OBSERVERS**

Domestic non-partisan organizations are not permitted by law to register their members as election observers, contrary to paragraph 8 of the OSCE Copenhagen Document. Nevertheless, as in past presidential elections, such observers apply for accreditation as journalists to cover the electoral process. Journalists, however, have fewer rights to access the electoral process than observers and for example, they cannot obtain copies of result protocols. As of December 7, the CEC accredited 89 domestic journalists and 110 international observers. Domestic organizations have issued a number of public reports in which they've stated that there have been no obstacles in covering the electoral process.

## **XII. OSCE/ODIHR EOM ACTIVITIES**

The OSCE/ODIHR EOM opened its office in Kyiv on 24 November 2009. Ambassador Heidi Tagliavini, Head of the OSCE/ODIHR EOM, has met the Deputy Minister of Foreign Affairs, the CEC, the Constitutional Court, the HAC, the KACA and a few candidates (or campaign managers). The Head of Mission also met with the OSCE Project Co-ordinator in Ukraine, diplomatic representations of OSCE participating States and international organizations active in Ukraine. The OSCE/ODIHR EOM has established working contacts with the Ministry of Foreign Affairs, the CEC, candidates' campaign headquarters, civil society, and the media. Long-term observers are meeting election stakeholders in the regions. The incoming OSCE Chairman-in-Office, Kazakhstan has appointed Mr. Joao Soares, President of the OSCE Parliamentary Assembly, to lead the OSCE short-term observer mission. The European Parliament, the Council of Europe and NATO Parliamentary assemblies will also dispatch observer delegations for election day observation.

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<sup>18</sup> Most of the complaints were regarding the registration of the candidates and/or of technical nature.