



Office for Democratic Institutions and Human Rights

UKRAINE

PARLIAMENTARY ELECTIONS

28 OCTOBER 2012

OSCE/ODIHR Election Observation Mission Final Report



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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) on 12 September 2012 deployed an Election Observation Mission (EOM) for the 28 October 2012 parliamentary elections. The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other international standards for democratic elections, as well as with national legislation. For election day, the OSCE/ODIHR EOM joined forces with delegations of the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP), and the NATO Parliamentary Assembly (NATO PA).

The Statement of Preliminary Findings and Conclusions issued by the OSCE/ODIHR, the OSCE PA, PACE, the NATO PA and the EP on 29 October 2012 concluded that while voters had a choice between distinct parties and election day was calm and peaceful overall, certain aspects of the pre-election period constituted a step backwards compared with recent national elections. In particular, these elections were characterized by the lack of a level playing field, caused primarily by the abuse of administrative resources, lack of transparency of campaign and party financing, and the lack of balanced media coverage. While the voting and counting processes on election day were assessed positively overall, the tabulation of results was negatively assessed in nearly half of the electoral districts observed. Post election day, the integrity of the results in some districts appeared to be compromised by instances of manipulation of the results and other irregularities, which were not remedied by the Central Election Commission (CEC) or the courts.

The elections were held under a new electoral law adopted in November 2011, which could provide a sound foundation for the conduct of democratic elections, if implemented properly. The new electoral law contains a number of improvements, but more are required in order to fully comply with OSCE and other international commitments. In particular, improvements could be considered with regard to the full enjoyment of candidacy rights, adequate campaign finance provisions, clear criteria for the delineation of single-mandate electoral districts, and more effective sanctions for serious violations of the law. Implementation of the electoral law was not always consistent and in line with international standards. Many of the shortcomings observed in these elections were due to the reinstated mixed electoral system, which reintroduced deficiencies noted when it was previously used.

The election administration, headed by the CEC, managed the technical aspects of the elections adequately before election day, although the CEC did not always take steps to ensure consistent implementation of the electoral law. The transparency of the CEC's activities was diminished by the fact that it routinely held pre-session meetings behind closed doors and that most of its open sessions lacked substantive discussion.

Most positions on District and Precinct Election Commissions (DECs and PECs) were filled by

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

lottery. As a result, some parties with very few candidates obtained representation on all DEC's, while parties with a high number of candidates throughout the country remained unrepresented. There were claims, some verified by the OSCE/ODIHR EOM, that election commissioners nominated by some small parties were in fact affiliated with other parties, especially the ruling Party of Regions. The high rate of replacements of DEC and PEC members, mainly at the request of the nominating parties, adversely affected the work of DEC's and PEC's, especially as previously trained election commissioners were substituted by untrained ones.

The centralized voter registration system functioned well overall, and stakeholders did not raise serious concerns with regards to voter registration. However, the very high number of late applications for homebound voting in some electoral districts was of concern. Preliminary voter lists were generally available for public scrutiny, although the PEC's' approach with regard to voters' right to inspect the lists was not uniform. To address concerns about potential abuse, the CEC limited the possibility for voters to vote only within the election district they are registered in.

Candidate registration was largely inclusive and resulted in a diverse field of candidates representing a wide variety of political views. However, two prominent opposition politicians, Yulia Tymoshenko and Yuriy Lutsenko, who are currently serving prison sentences following trials criticized by the OSCE PA, the PACE and the EP as unfair, were ineligible to stand. Their inability to stand as a consequence of such trials negatively affected the election process and is in contradiction with the commitments outlined in paragraphs 5.1, 7.5 and 24 of the 1990 OSCE Copenhagen Document. Some 400 prospective candidates were denied registration, mostly on minor technical grounds. Women were underrepresented among candidates. Citizens belonging to national minorities stood as candidates, and some were elected, although the delineation of some electoral districts with compact minority populations may have negatively affected the chances for some minority candidates to be elected.

The election campaign was visible and active overall, and competitive in most of the country. However, cases of harassment, intimidation and abuse of administrative resources were observed in a significant number of electoral districts, which negatively affected the ability of candidates to get their messages to voters and to compete under equal conditions, as provided for by paragraphs 7.6 and 7.7 of the 1990 OSCE Copenhagen Document. The abuse of administrative resources, mainly to the benefit of Party of Regions candidates, demonstrated the absence of a clear distinction between the State and the ruling party in some parts of the country, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document. Campaign finance rules did not provide for sufficient transparency and did not address the extensive use of charitable organizations by candidates to provide voters with material goods or services.

The media environment is characterized by a virtual absence of editorial autonomy on television and limited political pluralism. The new electoral law provides for voters' right to diverse, objective and unbiased information and for balanced coverage, but these provisions remain declarative as the law does not define balanced coverage or establish procedures to monitor and implement the rules. Campaign coverage in the news of the most watched TV stations monitored by the OSCE/ODIHR EOM was limited, with five times as much paid political advertising as news coverage of the campaign. This may have negatively affected voters' access to different political views as well as parties' ability to reach out to voters. The state broadcaster displayed a clear bias in favor of the ruling party.

A high number of citizen and international observers were registered by the CEC and DEC's in an inclusive manner. Their active involvement throughout the electoral process enhanced its overall

transparency. However, the electoral law does not specifically entitle international observers to receive copies of results protocols, which is not in line with good practice.

The electoral dispute-resolution process is complex, with instances of overlapping jurisdiction between election commissions and courts. Election commissions and courts received a high number of complaints and appeals, both before and after election day. While these were generally adjudicated in a timely manner, the CEC often handled them in an overly formalistic and at times contradictory manner, and many of its resolutions lacked sufficient factual information or legal reasoning. Furthermore, a significant number of court decisions displayed an inconsistent approach to the implementation and interpretation of the law. This left aggrieved parties at times without an effective remedy, contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document.

Election day was calm and peaceful overall, with a voter turnout of 57.5 per cent. Voting was orderly and well organized and was assessed positively in 96 per cent of polling stations where it was observed. Newly introduced web cameras were sometime placed in a way that could compromise vote secrecy. Many OSCE/ODIHR EOM interlocutors expressed doubts over their usefulness and questioned whether the resources could have been put to better use. The vote count was assessed negatively in 11 per cent of polling stations observed. While the count was generally transparent and carried out in line with prescribed procedures, some procedural problems were noted, such as the failure of PECs to follow procedures for filling in results protocols, interference of unauthorized people in the count, and obstacles to meaningful observation of the count.

The tabulation of results was assessed negatively in 77 of the 161 DEC observed. Transparency of the tabulation process was limited, especially since access to rooms where results were entered into the computer system was restricted to only a few authorized people. OSCE/ODIHR EOM observers reported cases of tampering with election materials delivered by PECs, errors and omissions in PEC protocols and mistakes in data transmitted to the CEC. Some 25 DEC observed by the OSCE/ODIHR EOM experienced serious problems during tabulation, including cases of manipulation of results, interference in the work of election commissions, DEC changing PEC results, and deadlocks in some DEC. There were two single-mandate districts where changes to the preliminary results posted on the CEC website after 100 per cent of polling stations had been processed resulted in a change of the winning candidate, and one where the invalidation of results from 27 polling stations changed the winner.

On 5 November, the CEC adopted a resolution that the majoritarian election results could not be established in 5 out of 225 electoral districts due to violations and asked the parliament to provide the legal basis for repeat elections in these districts. The next day, the parliament recommended to the CEC to conduct repeat elections in these districts, although the electoral law currently does not provide for repeat elections in these specific cases. The CEC approved the results of 220 majoritarian contests, including the results in several districts where the OSCE/ODIHR EOM observed serious irregularities. The CEC adopted the final results for the proportional elections, with five of its members expressing dissenting opinions. The manner in which some results were adopted appears at odds with paragraph 7.4 of the 1990 OSCE Copenhagen Document, which states that participating States will “ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public”.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following a timely invitation from the Ministry of Foreign Affairs of Ukraine and based on the recommendations of a Needs Assessment Mission conducted from 22 to 25 May 2012, the OSCE

Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 12 September 2012 deployed an Election Observation Mission (EOM) for the 28 October 2012 parliamentary elections. The OSCE/ODIHR EOM was headed by Ambassador Audrey Glover and consisted of 20 experts and 90 long-term observers (LTOs), who were based in Kyiv and 26 locations throughout the country. Core team members and LTOs were drawn from 34 OSCE participating States. On election day, 802 observers from 42 countries were deployed, including 623 long-term and short-term observers deployed by the OSCE/ODIHR.²

For election day, the OSCE/ODIHR EOM joined forces with delegations of the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), European Parliament (EP) and the NATO Parliamentary Assembly (NATO PA). Overall, 802 observers were deployed on election day. In total, there were observers from 42 OSCE participating States and 1 OSCE Partner for Co-operation.

The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other international standards for democratic elections, and national legislation. This final report follows a Statement of Preliminary Findings and Conclusions that was released at a press conference on 29 October 2012.³

The OSCE/ODIHR EOM wishes to thank the Ministry of Foreign Affairs for the invitation to observe the elections and for its assistance, and the Central Election Commission (CEC) for its co-operation and for providing accreditation documents. The OSCE/ODIHR EOM also wishes to express appreciation to other national and local state institutions, election authorities, candidates, political parties and civil society organizations for their co-operation, and to the OSCE Project Coordinator in Ukraine, embassies of OSCE participating States and international organizations accredited in Ukraine for their support.

III. BACKGROUND AND POLITICAL CONTEXT

Since the previous parliamentary elections in 2007, the political landscape has shifted considerably. The Party of Regions candidate Viktor Yanukovich won the 2010 presidential election, and the party subsequently formed a governing coalition with the Communist Party and the Lytvyn Bloc. The Party of Regions was also victorious overall in local elections in October 2010, giving it considerable power at all levels. The main opposition parties in the 2012 elections were United Opposition–*Batkivschyna* (Motherland), and the non-parliamentary parties Ukrainian Democratic Alliance for Reform (UDAR) and *Svoboda* (Freedom). Another non-parliamentary party, Ukraine Forward!, presented itself as between the opposition and the ruling party. Our Ukraine, previously one of the main parties, had lost public support by the start of the election process in July 2012.

The elections were conducted under a re-introduced mixed electoral system, which changed the dynamic of these elections in comparison with the 2007 parliamentary elections. A large number of party-nominated and independent candidates, some of whom were linked to wealthy businesspeople, competed at district level. At the national level, some parties currently represented in parliament did not nominate candidate lists, in part due to the new, increased threshold.

The elections took place against the backdrop of the cases of Yulia Tymoshenko and Yuriy

² The observation also included 94 parliamentarians and staff from the OSCE PA, 41 from the PACE, 25 from the EP and 19 from the NATO PA.

³ The OSCE/ODIHR EOM also published two interim reports and a post-election interim report. All OSCE/ODIHR reports on elections in Ukraine can be found at: <http://www.osce.org/odihr/elections/ukraine>.

Lutsenko, two opposition political leaders who are currently serving prison sentences following trials criticized by the OSCE PA, the PACE and the EP as unfair.⁴

IV. THE LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The primary law regulating the conduct of parliamentary elections is the Law on Election of People's Deputies, adopted in November 2011 (hereinafter, the electoral law). The legal framework is fragmented and comprises, as among others, the Constitution, the Law on the Central Election Commission, the Law on the State Voter Register, the Code of Administrative Procedure, and the Criminal Code. It is complemented by instructions and resolutions issued by the CEC that regulate operational issues. Despite long-standing recommendations by the OSCE/ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission), there has been no consolidation and harmonization of electoral legislation.

Overall, the electoral law could provide a sound foundation for a democratic electoral process, if implemented properly. However, some parts of the law are excessively detailed and complex, while some important issues lack clarity. The implementation of the law was not always consistent and in line with international standards, especially in relation to the full, non-discriminatory enjoyment of fundamental rights such as the freedom of voters to form an opinion and the equality of opportunity for electoral contestants. Some provisions in the new electoral law addressed previous OSCE/ODIHR recommendations, such as the possibility for independent candidates to run for office, the unrestricted access for media to all public election-related events, and the elimination of provisions allowing voters to be added to the voter list on election day.⁵ Nevertheless, some provisions could be improved in order to fully comply with OSCE commitments and other international standards, in particular with regard to candidate registration, boundary delimitation, campaign finance regulations, and establishment of election results.

Consideration should be given to harmonizing the electoral law with other laws relevant to parliamentary elections (mainly the Law on the Central Election Commission, the Criminal Code and the Code of Administrative Procedure) by consolidating all legislation into one code. This should facilitate its application and minimize the use of ad hoc resolutions in future elections. Any amendments should be enacted in an inclusive and transparent process, sufficiently in advance of the next elections to provide all election stakeholders adequate time to familiarize themselves with the rules of the electoral process.

The electoral law provides for equal suffrage and prohibits privileges or restrictions for candidates on grounds of gender, among others. The Law on Ensuring Equal Rights and Opportunities of Women and Men (adopted in 2005) guarantees equal rights and opportunities for women and men in all spheres of social life. It also requires a gender analysis of all legislation and provides for the application of affirmative actions.⁶ However, these provisions are not consistently implemented and efficient enforcement mechanisms are lacking.

⁴ The OSCE PA, PACE and EP statements expressed concern about "numerous shortcomings" that may have "undermined... the possibility for the defendants to obtain a fair trial" and urged their release from prison. The decision of the European Court of Human Rights (ECtHR) in the fair trial case of Yulia Tymoshenko and Yuriy Lutsenko are still pending. In Lutsenko's case against his arrest and pre-trial detention, the ECtHR decided in his favour. The ECtHR stated that "Lutsenko's arrest had been arbitrary; no valid reasons had been given for his detention; and the lawfulness of his arrest and detention had not been properly reviewed."

⁵ At the request of the Minister of Justice of Ukraine, the OSCE/ODIHR and the Venice Commission carried out a joint legal review of the draft law, which is available at <http://www.osce.org/odihr/84126>.

⁶ The provisions of Article 15 of the equality law, regarding equal opportunities of men and women in the electoral process and gender representation on candidate lists, are not reflected in the electoral law.

A gender analysis of all legislation in force and drafts of new legislation could be carried out with a view to harmonizing relevant legal acts, including the electoral law, as stipulated in the equality law and Ministerial Decree 42/5 of 2006.

The majority of OSCE/ODIHR EOM interlocutors stressed that the adoption of the Law on the Judiciary and Status of Judges in 2010 negatively impacted the administration of justice.⁷ Furthermore, the Law on Access to Court Decisions, as recently amended, stipulates that the decisions of the courts of general jurisdiction,⁸ which are to be included in the Unified State Register of Court Decisions have to be approved by the Council of Judges of Ukraine, in coordination with the State Court Administration of Ukraine. As a result, not all court decisions are included in the register, which in combination with the far-reaching de-personalization of the decisions,⁹ limits the transparency of the system and public trust in the judiciary.

The right to vote is accorded to all citizens who are 18 years or older on election day and enjoy legal competence. In order to stand, candidates must have the right to vote and be at least 21 years old on election day. The right to be elected is also subject to a five-year residency requirement, which is excessive.¹⁰ The electoral law does not provide a precise definition of the five-year residency requirement and the CEC did not adopt any clarifying instructions. At the beginning of the official campaign period, two cases, where the registration of candidates was challenged by other candidates on the grounds of the residency requirement, received much legal and public attention.¹¹

Citizens who have been convicted of committing a deliberate crime cannot be nominated as candidates or elected, unless their criminal record has been cleared or cancelled prior to the nomination process. Despite previous OSCE/ODIHR and Venice Commission recommendations, this limitation does not take into account the severity of the crime committed, contrary to international standards¹²

The requirement that candidates must have resided in the country for five years prior to parliamentary elections should be amended to ensure that candidacy rights are not unduly restricted. Also, the restriction of the right to stand for election due to a criminal conviction

⁷ In its Resolution 1862 (2012) regarding the Functioning of democratic institutions in Ukraine, PACE noticed “structural deficiencies in the justice system in Ukraine” which “have been long-standing concerns of the Assembly”. The PACE also noted “the bias in favor of the prosecution which is endemic in the Ukrainian justice system”.

⁸ According to Article 17.2 of Law on the Judiciary and Status of Judges, the system of courts of general jurisdiction includes local courts, courts of appeal, higher specialized courts (which include the administrative courts adjudicating election-related lawsuits) and the Supreme Court of Ukraine.

⁹ According to Article 7 of the Law on Access to Court Decisions, data enabling identification of the litigants are not disclosed in the texts of the court decisions published in the register. These data include, *inter alia*: first and last name, place of residence, and the names of the judges who adopted the decision.

¹⁰ The Venice Commission’s Code of Good Practice in Electoral Matters, point I 1.1 c iii-iv: iii. states that “a length of residence requirement may be imposed on nationals solely for local or regional elections; iv. the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities.”

¹¹ In one of these cases, the court held that this requirement does not imply permanent or continuous residency, while also taking into consideration the individual circumstances. In the other, it established that the non-residence of the candidate during the last five years was proven by the State Border Guard Service and cancelled the relevant CEC decision.

¹² See Paragraph 24 of the 1990 OSCE Copenhagen Document which provides that “participating States will ensure that the exercise of all the human rights and fundamental freedoms will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law”. See also the ECtHR *Hirst v. United Kingdom*, no. 74025/01 (6 October 2005), available at www.echr.coe.int.

unless the criminal record has been cleared or cancelled prior to the nomination process should be reconsidered, to ensure the principle of proportionality between the severity of the offense and the protection of suffrage rights.

Parliament is elected for a five-year term. The new electoral law re-introduced the mixed parallel electoral system used in 1998 and 2002. Half of the 450 members of parliament (MPs) are elected under a proportional closed-list system in one single nationwide constituency; the other 225 MPs are elected in as many single-member districts, under a plurality system with one round of voting (first past the post). To participate in the distribution of mandates under the proportional component, political parties must secure at least five per cent of valid votes cast, compared to the three per cent required in the 2007 elections. Most OSCE/ODIHR interlocutors complained about the current electoral system, which re-introduced deficiencies that were noted when it was previously used.

If the majoritarian element of the election system is retained, consideration could be given to devolving the authority for the administration of the majoritarian races to DEC's, including registration of majoritarian candidates and their proxies, provided that the CEC enjoys strong regulatory functions with regard to candidate registration and has a right to overrule unsound DEC decisions. In this case, the appointment mechanism and/or term in office of DEC's will need to be revised.

The CEC determined first the number of single-mandate districts in every administrative region and then the boundaries of each electoral district by two resolutions adopted in April 2012. The CEC met the legal requirement that the number of voters in each electoral district should not deviate more than 12 per cent from the national average. While the delineation of electoral districts was done within the legal deadlines, the main criteria for the delineation had not been formulated in advance and the process lacked transparency, contrary to good electoral practices.¹³ Some stakeholders and non-governmental organizations (NGOs) expressed concerns about some non-contiguous districts and about cases where areas inhabited by compact minority communities were divided among several electoral districts, thus disadvantaging potential minority candidates running in majoritarian districts.

If the current mixed electoral system is retained, the electoral law should be amended to provide for a transparent redistricting process, performed well in advance of the next parliamentary elections and based on clear, publicly announced rules, taking into account the existing administrative divisions, and historical, geographical and demographic factors. In particular, the delimitation of single-mandate district boundaries in areas with high levels of minority settlement needs to ensure respect for the rights of national minorities, and electoral boundaries should not be altered for the purpose of diluting or excluding minority representation.

¹³ Existing Commitments for Democratic Elections in OSCE Participating States, Part I, 3.3 states that: "Redistricting should ... be based on transparent proposals, and allow for public information and participation" (see <http://www.osce.org/odihr/elections/13957>). The Venice Commission's Code of Good Practice in Electoral Matters in point I.2.2 states that delineation "...must be done: impartially; without detriment to national minorities; taking into account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities" (see <http://www.venice.coe.int/docs/2002/CDL-AD%282002%29023-e.pdf>).

V. THE ELECTION ADMINISTRATION

The parliamentary elections were administered by a three-level system of election commissions: the CEC, 225 DEC in as many single-mandate electoral districts, and 33,762 PECs.¹⁴

A. THE CENTRAL ELECTION COMMISSION

The CEC is the only permanent election administration body. It consists of 15 members who were nominated by the president upon consultations with parliamentary fractions and appointed by the parliament for a seven-year term in June 2007. Political parties with registered candidate lists had the right to have one authorized representative at the CEC during the electoral period.¹⁵ Four of the 15 CEC members, including one of the two deputy chairpersons and the secretary, are women.

The electoral law gives wide authority to the CEC. The CEC regulates all technical aspects of the elections, establishes the single-mandate election districts, appoints DECs, registers parties' candidate lists and proxies, accredits international observers, controls the functioning of the state voter register and allocates the electoral budget. In addition, the CEC was tasked with registering all majoritarian candidates and their authorized representatives, authorizing representatives of political parties in single-mandate constituencies, and exercising oversight of majoritarian candidates' campaign financing. The CEC made all technical preparations for the elections within legal deadlines and, for the most part, held sessions on a daily basis. During the election period, the CEC adopted more than 2,000 decisions, most of which were adopted unanimously and posted on the official website within a few days.¹⁶

All CEC sessions were open to parties, candidates, media and observers.¹⁷ Parties' authorized representatives and candidate proxies can participate in discussions on all election-related issues. However, the CEC routinely held pre-session meetings behind closed doors, and most open sessions were held without substantive discussion, decreasing the transparency of its activities.¹⁸ On one occasion, while discussing the dismissal of an entire DEC, the CEC mentioned that another draft decision had been proposed, discussed and rejected during a meeting before the formal CEC session. During the session when the final results for the proportional component of the elections were announced, the CEC chairperson announced a break after some CEC members asked that the session's agenda be amended and a decision on DEC 94 be considered, which changed the results in that electoral district.¹⁹ He invited all CEC members to discuss the issue behind closed doors. After the break, the election results were approved without open discussion of the issue. A draft of one of

¹⁴ Including 116 PECs for out-of-country voting and 1,458 special polling stations, of which 1,220 were in hospitals, 209 in penitentiary institutions, 28 on ships, and 1 at Ukraine's polar station.

¹⁵ In addition, each party with a registered list of candidates was entitled to accredit up to five proxies for the national election district and one proxy for each majoritarian district and for each polling station on election day.

¹⁶ The CEC passed some 550 decisions on registration, denying registration and cancelling the registration of majoritarian candidates, and some 500 decisions on registration and deregistration of representatives of the political parties and candidates in the electoral districts. Some information, including the election results and the data on registration of the candidate lists of political parties and majoritarian candidates, was published in the state newspapers *Uryadovi Kurier* and *Holos Ukrainy*.

¹⁷ The electoral law and the Law on the CEC require that CEC sessions, deliberations and activities be conducted openly and publicly.

¹⁸ The authorized representative of UDAR in the CEC protested several times against the lack of information provided by the CEC before CEC sessions. Candidates, observers and media were not usually provided with any materials or draft decisions, apart from the session agenda.

¹⁹ One of the CEC deputy chairpersons had called to cancel a contentious decision on DEC 94 about the invalidation of the voting results of 27 polling stations.

the most contentious CEC decisions on invalidating the results in five electoral districts was neither presented to political parties and candidates, nor discussed during an open CEC session.²⁰

Although the CEC is the main state body charged with providing uniform implementation of the electoral law, in practice it did not take sufficient steps to regulate crucial aspects of the elections, in particular areas such as ensuring transparency during the tabulation process, enforcing campaign rules, deterring indirect vote-buying, addressing media-related violations, and providing complainants with an efficient remedy. After election day, the CEC failed to terminate the authority of DEC members who delayed or blocked the tabulation process in some DEC for what appeared to be politically motivated reasons (see Section XIV, Post-Election Day Developments).

CEC resolutions offering instructions or clarifications of the law need to be issued in a timely manner so that they can be properly implemented. The CEC should avoid making last-minute changes to procedures in the interest of transparency and accountability.

Voter education was provided mainly through spots that were broadcast on different television channels and covered various aspects of the electoral process, including the change of the election system, voter list verification, and secrecy of the voting.²¹

B. DISTRICT ELECTION COMMISSIONS

DECs are formed for the preparation and conduct of parliamentary elections. The 18 members of each DEC were appointed by the CEC on 26 August, based on party nominations. Five parliamentary groups were guaranteed representation in DECs, while the remaining seats were filled by lottery among 87 political parties participating in the elections. Several stakeholders expressed concerns about the composition of DECs, which resulted from one single lottery performed simultaneously by the CEC for all 225 DECs.²² Some parties with candidates in only a few districts (referred to by many as ‘technical’ parties) obtained positions on all DECs, while other parties that had candidates throughout the country, including UDAR and *Svoboda*, were not officially represented.²³ Some 56 per cent of all members were women. A total of 106 DECs were chaired by women, and there were 114 female deputy chairpersons and 155 secretaries.

DECs in general carried out their preparations in a timely manner, but were adversely affected by replacements of their members following requests from the nominating parties.²⁴ More than 60 per cent of the initially appointed DEC members were replaced during the election period,²⁵ with the majority of replacements requested by six small parties.²⁶ The main duties of DECs were to appoint PEC members and organize their training, register citizen observers and majoritarian candidates’

²⁰ See Section XIV, Post-Election Day Developments.

²¹ The CEC produced voter education spots in co-operation with the OSCE Project Co-ordinator in Ukraine.

²² Representatives of UDAR, *Svoboda*, and the main citizen observer groups Committee of Voters of Ukraine (CVU) and *OPORA* raised concerns about the way in which the lottery for DEC membership was conducted.

²³ For example, 8 political parties with 20 or fewer candidates had representatives in more than 200 DECs (not all of these parties nominated members to all DECs), while 5 political parties with more than 100 registered candidates each were not represented in any DEC. UDAR unofficially obtained representation in DECs via two ‘technical’ parties. Party of Regions had additional *de facto* representation through such ‘technical’ parties.

²⁴ The majority of DECs did not respect the deadline for conducting the lottery for the distribution of PEC positions. Several DECs (61, 138, 159 and 225) failed to adhere to the rules set by the CEC and had to repeat the lottery, while a few DECs (2 and 19) did not manage to establish PECs within the legal deadline.

²⁵ The last replacements of DEC members before election day were approved by the CEC on 27 October, with some replacements made after election day.

²⁶ The parties Union of Anarchists of Ukraine, *Yedyna Rodyna*, *Bratstvo*, *Ruska Yednist* and *Rus Yedyna*, which had a combined total of ten candidates in the elections, replaced almost all their DEC members.

proxies, distribute ballots and other sensitive election materials, receive PEC results protocols and used election materials after the end of the vote count, tabulate the results for the proportional and majoritarian elections, and deliver the tabulation protocols to the CEC.

Two training sessions were provided by the CEC for the operators of the automated information system *Vybory* to test the procedure of transferring polling station election results from DEC to the CEC.²⁷ OSCE/ODIHR EOM LTOs were denied access to such training events in 16 DECs,²⁸ mainly due to the lack of a clear provision in the law specifically providing for such observation.²⁹

The CEC, jointly with the International Foundation for Electoral Systems (IFES), organized training sessions of DEC chairpersons, deputy chairpersons and secretaries, who subsequently trained other DEC members and the leadership of PECs. OSCE/ODIHR EOM LTOs assessed the training sessions they attended as thorough, but noted that attendance of some sessions was low. The large-scale replacement of DEC and PEC members, including people who had already been trained, substantially decreased the effectiveness of these trainings and may in part explain the very high number of mistakes noted during the completion of PEC and DEC results protocols.

C. PRECINCT ELECTION COMMISSIONS

Some 685,000 PEC members implemented voting and counting procedures on election day. Amid widespread concerns about the DEC membership distribution, the CEC changed the procedure for drawing lots for PEC membership and instructed DECs to provide one lottery for all PECs within a single-mandate district, arguing this would reduce the time required for conducting the lottery.³⁰ As a result, the PEC positions were distributed by the DECs among nominees of political parties and majoritarian candidates registered in the respective districts. Overall, 85 political parties and 1,567 majoritarian candidates were represented at PEC level.

Some interlocutors expressed their lack of confidence in the election administration, claiming that election commissioners nominated by ‘technical’ parties were in fact affiliated with other parties, especially with the Party of Regions, which resulted in its predominance within the election administration. Cases of affiliation of small parties with the Party of Regions in DECs and/or PECs in 15 election districts were reported to OSCE/ODIHR EOM LTOs by some opposition parties and candidates. OSCE/ODIHR EOM LTOs were able to confirm instances of Party of Regions members serving on election commissions as nominees of different ‘technical’ parties.³¹ In electoral district 57 in Donetsk oblast (region), 1,667 of the 2,551 PEC members worked in the same enterprise, which was headed by the Party of Regions candidate; thus, 63 per cent of all PEC members in the district were subordinate to the candidate in their normal workplace. Technically, the principle of proportional representation of all contestants at the PEC level was respected, but it was undermined by the presence of a high number of parties and candidates who did not appear to actively contest the elections but obtained seats on election commissions.³²

²⁷ *Vybory* is an automatic system used for data processing by DECs and the CEC, including for the distribution of leadership positions in DECs and PECs, for financial purposes, for the transmission of preliminary election results and for posting the official election results on the CEC website.

²⁸ DECs 11, 90, 99, 122, 123, 128, 187, 201, 203, 204, 216, 219, 222, 223, 224 and 225.

²⁹ However, Article 77.2 of the electoral law entitles international observers to observe the entire election process.

³⁰ The previous CEC Regulation No. 88 of 17 May 2012 provided for separate drawing of lots for each PEC, but was cancelled a week before the deadline for drawing the lots.

³¹ Such cases were also referred to by a Party of Regions activist while instructing PEC members in Simferopol. An audio recording was available at: <http://f-bit.ru/16617>.

³² In addition, parties that failed to register a nominated candidate, as well as parties and candidates who withdrew before election day, were entitled to keep the seats in election commissions.

Thousands of PEC members were changed, with replacements reaching up to 50 per cent of the membership of some PECs.³³ The reasons given for resignations included the distance of the PEC from members' home, insufficient remuneration and lack of experience; some nominees were not aware that they had been appointed as PEC members. However, most replacements were initiated by the nominating political parties. Some PECs were not fully operational due to a lack of quorum or the absence of the chairperson due to resignation.³⁴

The work of all election commissions should be governed by the principles of transparency, impartiality and independence. All sessions of election commissions should be public and no meetings should be held behind closed doors. In order to enhance the impartiality and independence of the election administration, parliamentary parties and parties that registered a certain number of candidates in the respective electoral district should be represented on election commissions. Measures could be considered to prevent abuse by so-called 'technical' parties.

VI. VOTER REGISTRATION

Voter registration is passive and based on a centralized State Voter Register (SVR), overseen by the CEC. Eligible voters are included in the SVR according to their registered place of residence, defined as their voting address. The data on registration of all voters is provided mainly by the State Migration Agency. The personal information of all voters included in the SVR is reviewed and updated every month by 754 Register Maintenance Bodies (RMBs; one for each local-government unit)³⁵ and 57,917 multiple entries were removed between 1 January and 19 October 2012 by CEC decisions. As provided by the Law on the State Voter Register, the CEC's SVR office provided all nine parliamentary parties with electronic copies of the SVR.³⁶

To further improve the quality of voter lists, the newly created State Migration Agency could consider digitalization of its records, which would allow for faster and easier processing.

Voters away from their place of residence on election day are entitled to request a change of their voting place, without having to change the address under which they are registered to vote. This possibility became politically sensitive with the reintroduction of a majoritarian component in the elections. Unusually high numbers of voters requesting to move their voting place to particular election districts were noted by citizen observers and confirmed by the CEC's SVR office.³⁷ In a positive step, the CEC decided on 22 September that temporary changes would only be allowed within the single-mandate district where the voter was registered.³⁸

³³ More than 30 per cent of the initially appointed members were replaced in some PECs of electoral districts 27, 36, 41, 60, 78, 79, 115, 116, 117, 118, 122, 129, 156, 172, 176, 186, 200, 213, 215, 218 and 221.

³⁴ Some OSCE/ODIHR EOM LTOs reported problems in reaching the quorum of two thirds of appointed commission members who had taken the oath of office so that a PEC may operate; this delayed the start of the work of some PECs in electoral districts 14, 106, 108, 110, 115, 116, 122 and 123.

³⁵ Personal data of voters in the SVR include the voter's name, place and date of birth, address of registration, election precinct and an indication of a voter's continuing inability to move unaided, where applicable.

³⁶ These electronic copies were strictly protected against amendments and unauthorized copying. Under Article 24.5 of the Law on the State Voter Register, parties must return the electronic copies of the SVR within two months of receipt.

³⁷ Such cases were reported from electoral districts 95 (Kyiv oblast), 212, 221 and 222 (Kyiv city).

³⁸ Under this decision, some 5,000 previously issued permissions to vote outside the respective single-mandate district had to be cancelled. However, no specific measures to individually inform affected voters were taken. This decision affected voters who were not in their official district of residence on election day and were thus unable to vote.

If the current mixed electoral system is retained, the electoral law and/or the Law on the State Voter Register could be amended to prohibit temporary changes of the voting place outside a voter's single-mandate district. Since such a restriction would disenfranchise some voters, consideration could be given to entitle voters who are away from their place of residence on election day to vote for the proportional elections.

OSCE/ODIHR EOM LTOs reported that the handover to the PECs of the preliminary voter lists for regular and permanent special polling stations and of the invitations for voting took place in the RMB offices within the legal deadline of 7 October.³⁹ In general, PECs made preliminary voter lists available for review by voters on the day following their receipt. OSCE/ODIHR EOM LTOs observed different approaches with regard to a voter's right to inspect the voter lists.⁴⁰ While some PECs made the entire voter list available for review, others only allowed voters to check their personal record and possibly the data of family members registered at the same address.⁴¹ Voters' requests for changes in the preliminary voter lists were accepted by PECs and RMBs up to five days before election day for regular polling stations (three days for temporary special polling stations established by DEC)s. OSCE/ODIHR EOM LTOs reported that few voters appeared to check the voter lists during the verification period. Those who did mainly requested corrections of misspellings of names.

The corrected voter lists were distributed to regular polling stations within the legal deadline of 25 October. According to the last pre-election SVR update of 26 October, which also reflected changes and amendments requested by voters, 36,163,839 voters were included in the voter lists for these elections, including 424,858 people registered for out-of-country voting.⁴² The number of voters indicated as homebound in the SVR database was 698,342. Following the submission of applications for mobile voting to PECs before election day,⁴³ this number reached 1,065,634 or 2.94 per cent of the electorate.⁴⁴ While the percentage of homebound voters was lower than during the second round of the 2010 presidential election (5.4 per cent), data from the CEC results protocols showed a considerable variation of the number of mobile voters in individual electoral districts, ranging from 0.37 per cent in DEC 213 (Kyiv city) to an extremely high 10.77 per cent in DEC 114 (Luhansk *oblast*) and 10.13 per cent in DEC 147 (Poltava *oblast*).

³⁹ For these elections the names and other information on the invitations were printed by the RMBs, which considerably reduced the workload of PEC members.

⁴⁰ According to Article 40.3 of the electoral law, voters are entitled to "access the preliminary voter list at the premises of the PEC" and to request corrections, "in particular concerning the inclusion or exclusion of the voter or any other person".

⁴¹ In most PECs visited by OSCE/ODIHR EOM LTOs in electoral districts 94, 95, 97, 98 (Kyiv *oblast*) and in Rivne, Chernivtsy and Poltava *oblasts*.

⁴² The number of voters in the SVR database reported on the CEC website as of the end of October 2012 was 36,730,042. The CEC's SVR office explained that the difference was due to a number of voters who were deregistered from their last residence but did not register at a new address; the CEC's SVR office estimated that the number of these voters is usually around 500,000.

⁴³ OSCE/ODIHR EOM LTOs reported that a high number of requests for homebound voting were filed in some electoral districts in the last days before the deadline. There were allegations of organized submission of applications for mobile voting by Party of Regions activists; in electoral districts 14 (Vinnytsia *oblast*), 48 (Donestk *oblast*), 81 (Zaporizhya *oblast*) and 211 (Kyiv city), such requests were reportedly filled in by the same person or were made using pre-printed forms, or had been certified by the same doctor. Some complaints regarding applications for mobile voting were sent to the courts; the Goloseevsky rayon court in Kyiv city satisfied a United Opposition–*Batkivschyna* complaint and denied 54 requests for mobile voting on the grounds that the applications had been falsified.

⁴⁴ According to the CEC results protocol for the nationwide election district.

A welcome change in the electoral law prohibited PECs from introducing changes to the corrected voter lists during the last two days before election day, except by a court decision or notification from the relevant RMB; on election day, PECs were allowed to make changes to voter lists only on the basis of a court decision.⁴⁵ The Code of Administrative Procedure foresees that a voter may submit a lawsuit requesting corrections to the voter list until two days prior to election day; such lawsuit should be considered by the courts within two days, or if filed two days before election day, immediately.⁴⁶ According to information provided by the CEC's SVR office, some courts considered requests for inclusions in the voter lists in the last two days before and on election day, while others refused to do so, referring to the provisions of the Code of Administrative Procedure.

The electoral law provides for a post-election update of the SVR, to be completed no later than three days after the promulgation of the final results. This update was initiated by the RMBs immediately after election day. The OSCE/ODIHR EOM was informed by the CEC's SVR office that as of 14 November, almost 85 per cent of regular PECs had given information about amendments made in the corrected voter lists in the last two days before and on election day. These amendments included 1,507 inclusions and 19,625 exclusions of voters, as well as 73,357 revisions of personal records.

VII. CANDIDATE REGISTRATION

Candidate nomination lasted from 30 July to 13 August. Candidates could be nominated by political parties or through self-nomination. Parties were entitled to put forward an electoral list of no more than 225 candidates for the nationwide election district and one candidate in each single-mandate district. Non-party candidates could nominate themselves in single-mandate districts. A person could be nominated either on a party list or in one single-mandate district, but not both.

For registration of a party's candidate list or candidates in single-mandate districts, the CEC required a variety of documentation⁴⁷ and a deposit of 2,000 minimum salaries (around EUR 213,000) for party lists and 12 minimum salaries (around EUR 1,300) for majoritarian candidates. The deposit was only refunded to parties that passed the five per cent threshold in the proportional election and to candidates elected in single-mandate districts. This is at odds with good practice that if a deposit is required, it must be refunded if a candidate or party receives a certain percentage of votes, which should not be excessively high.⁴⁸ The CEC had to decide on registration within five days of receiving a nomination. This gave them little time to process the more than 6,000 requests.

In line with legal provisions, the CEC denied registration to Yulia Tymoshenko and Yuriy Lutsenko,⁴⁹ two prominent opposition politicians, who are currently serving prison sentences following trials criticized by the OSCE PA, the PACE and the EP as unfair. The CEC decision was upheld on appeal. As a consequence of such trials, their inability to stand is in contradiction with

⁴⁵ Articles 42.1 and 42.2 of the electoral law.

⁴⁶ Article 173.2–4 of the Code of Administrative Procedure.

⁴⁷ Including a decision of the party on the nomination of candidates (for party-nominated candidates only); autobiographies of the candidate(s) with detailed personal information; a statement from each candidate consenting to terminate any activities incompatible with an MP's mandate if elected; a statement of property, income and financial liabilities of the candidate(s); and a document certifying the electoral deposit.

⁴⁸ See point I.1.3 of the Venice Commission's Code of Good Practice in Electoral Matters.

⁴⁹ Yulia Tymoshenko and Yuriy Lutsenko were nominated as number one and number five, respectively, in the United Opposition–*Batkivschyna* list.

the commitments outlined in paragraphs 5.1, 7.5 and 24 of the 1990 OSCE Copenhagen Document.⁵⁰

The CEC considered any nomination document that did not contain all data required by law as not having been filed and rejected candidates for the omission of these documents. Despite its authority to ensure citizens' electoral rights, the CEC did not inform candidates about mistakes and omissions, leaving them unable to correct mistakes.⁵¹ Overall, 441 nominees were not registered, mostly on the grounds that necessary documents had not been provided; many were rejected for minor omissions, which is at odds with paragraph 24 of the 1990 OSCE Copenhagen Document.⁵²

Effective notification mechanisms could be introduced so that prospective candidates are informed by the election administration of cases where mistakes or omissions were found in their nomination documents, enabling them to correct such mistakes.

Nevertheless, candidate registration resulted in a diverse field of candidates representing a wide variety of political views. The CEC registered all 22 submitted party lists (with a total of 2,643 candidates) and 3,130 majoritarian candidates. Among the 85 parties that nominated majoritarian candidates, 26 had a candidate in only one district. Another peculiarity was the registration in several districts of individuals who had names similar or identical to more well-known candidates, in an apparent attempt to confuse voters.

Numerous OSCE/ODIHR EOM interlocutors raised concerns about the lack of interest among parties to promote female candidates and about the limited attention paid to gender equality topics during the campaign. Few women were included in top and other eligible positions on parties' candidate lists. Only two lists were headed by a woman; 3 parties registered 4 female candidates among the top 10 candidates, 2 parties had 3 women among the 10 leading candidates, while 3 had no women among the first 10 candidates.⁵³ While the number of female deputies increased from 36 to 45 (10 per cent), women continue to be underrepresented in the newly elected parliament.⁵⁴

Political parties could be encouraged to promote gender equality and take resolute actions to put forward gender-balanced candidate lists, to increase visibility of female candidates during election campaigns and to integrate gender issues into their platforms. The introduction of a gender requirement for nomination of party lists could be considered as a temporary measure.

⁵⁰ The decisions of the European Court of Human Rights (ECtHR) in the fair trial cases of Yulia Tymoshenko and Yuriy Lutsenko are still pending. In Lutsenko's case against his arrest and pre-trial detention, the ECtHR decided in his favour. The ECtHR stated that "Lutsenko's arrest had been arbitrary; no valid reasons had been given for his detention; and the lawfulness of his arrest and detention had not been properly reviewed. The Court also found that... his right to liberty had been restricted for other reasons than those permissible under Article 5." Press Release of the Registrar of the European Court of Human Rights, ECtHR 285 (2012), 3 July 2012.

⁵¹ Under Article 60.3 of the electoral law, errors and inaccuracies detected in nomination documents are subject to correction and are not to be a reason for refusing to register the candidate.

⁵² Paragraph 24 of the 1990 OSCE Copenhagen Document states that "[any] restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law." Thirty-three candidates were rejected only because of lack of data about their social work, failure to provide a photo or telephone numbers, or other minor technicalities. The only reason for rejecting 85 candidates was the failure to declare their willingness to resign from activities incompatible with an MP's status if elected.

⁵³ The total number of party-nominated female candidates in both the nationwide district and in single-mandate districts was 17.7 per cent.

⁵⁴ Ukraine has committed to achieve a minimum 30 per cent representation by women in the parliament by 2015 under the UN Millennium Development Goals (MDG3, target 3A).

The High Administrative Court received 110 appeals against decisions of the Kyiv Administrative Court of Appeal upholding CEC resolutions that rejected candidates' applications for registration, and overturned some 11 decisions of lower courts.

Just prior to the 16 October deadline for candidate withdrawal, United Opposition-*Batkivschyna* and UDAR reached agreement to support each other's candidates in some single-mandate districts and withdrew 28 and 40 majoritarian candidates, respectively. An additional 407 majoritarian candidates withdrew after registration. The *Sobor* party withdrew its proportional list in favour of other opposition parties. Ultimately, 21 political parties contested the proportional race with 2,554 candidates standing. In total, 1,502 party-nominated and 1,151 self-nominated candidates ran in the single-mandate districts.

VIII. THE CAMPAIGN ENVIRONMENT AND FINANCE

A. THE CAMPAIGN ENVIRONMENT

Parties and candidates were formally permitted to begin campaigning as soon as the CEC issued a decision on their registration. During the official campaign period, the law requires that equal conditions be provided to all contestants, including access to campaign venues, billboards and other means of political advertising. The use of administrative resources for campaign purposes is strictly prohibited, as is giving gifts to voters, which is considered "indirect bribing of voters."⁵⁵

In practice, many parties and potential candidates began informal outreach to citizens during the summer, including through political advertising in the media. According to OSCE/ODIHR EOM interlocutors, there were widespread instances of potential candidates providing gifts of food and other goods to voters, making charitable donations to schools and hospitals, and organizing road repair and other assistance to local communities.

The campaign was visible and active overall. Parties held rallies with heads of lists in major cities, while majoritarian candidates tended to organize smaller meetings with voters. Other popular methods of campaigning included banners, posters, advertising in local media, and erecting tents to distribute campaign materials. At the national level, parties campaigned extensively through the use of paid advertising on television.

OSCE/ODIHR EOM LTOs reported that candidates discussed policy issues with voters only to a limited degree overall, tending to concentrate on the material advantages or assistance they had provided or could provide to voters. In some rural areas and in districts in which one majoritarian candidate appeared to have a significant advantage, there was almost no evidence of campaigning.

The campaign was competitive in most of the country, with voters having a choice between a wide range of parties and candidates. However, the ability of candidates to get their messages to voters and to compete under equal conditions, in accordance with paragraphs 7.6 and 7.7 of the 1990 OSCE Copenhagen Document, was negatively affected in a significant number of electoral districts due to violence, intimidation and the abuse of administrative resources. The campaign environment was assessed as not fair overall by 22 of the 45 OSCE/ODIHR EOM LTO teams.

Campaign events proceeded peacefully, and police provided security for events in an unobtrusive manner. However, throughout the campaign period there were incidents of violence and

⁵⁵ Electoral law, Article 74.13. Distribution of minimal value campaign materials (around EUR 3) is permitted.

intimidation against candidates and campaign workers. A candidate and a candidate proxy were stabbed in Kyiv in separate incidents. Two United Opposition–*Batkivschyna* candidates had green dye thrown on them in Lviv and Kharkiv; one of these, a female candidate, also had her telephone number posted on an escort service website. Candidates or campaign workers were beaten in Kyiv, Poltava, Odesa, and Ternopil *oblasts*; in Cherkasy *oblast* there were two instances of candidates' homes being attacked with explosive devices. In Donetsk *oblast*, a female candidate and her husband were assaulted by a gunman, and the husband was wounded by gunshots. As of the end of the OSCE/ODIHR EOM's deployment, no information was received that anyone had been detained in connection with these cases. At least three campaign offices were broken into or damaged, in Lviv, Sumy and Volyn *oblasts*, and campaign tents were vandalized or destroyed and campaign workers harassed in several cities.

Thirteen candidates informed OSCE/ODIHR EOM LTOs that they had received serious threats, with some having relocated their families. Ten opposition candidates reported having criminal charges or tax investigations brought against them during the election period, with two campaigning in a clandestine manner in order to avoid arrest.

The abuse of administrative resources at regional or local level on behalf of a party or candidates was observed or verified in over 70 instances in 15 *oblasts*, in most cases benefiting the Party of Regions or occasionally self-nominated candidates. There were also a few instances in which opposition candidates benefited from the support of local government bodies. Abuse of administrative resources took several forms: the use of official events, meetings, or public works to promote the party or its candidates;⁵⁶ the active participation of local or regional officials in candidate meetings during working hours;⁵⁷ public workers being required to attend meetings with candidates;⁵⁸ newspapers or websites of regional or local authorities containing materials in support of candidates or attacking the opposition;⁵⁹ and planned rallies or meetings of opposing candidates being denied, cancelled or otherwise obstructed without a justifiable reason.⁶⁰ A few illustrative examples of abuse of administrative resources included the following:

- At an officially organized fair to celebrate the anniversary of Zaporizhzhya city, there were numerous Party of Regions tents distributing campaign materials, although UDAR had been denied permission to set up a tent and a *Svoboda* tent had been removed.
- In Dnipropetrovsk, the closing Party of Regions rally was held in the city's main square, which had previously been denied to United Opposition–*Batkivschyna* as a campaign venue.
- In Chernihiv *oblast*, teachers informed OSCE/ODIHR EOM LTOs that they had been required

⁵⁶ Flags, campaign tents or other materials of the Party of Regions were present and/or its candidates figured prominently at official city and *oblast* celebrations and other public events; inaugurations of public works; and working visits of high-ranking state officials. Such cases were observed or verified by OSCE/ODIHR EOM LTOs in Chernihiv, Donetsk, Kharkiv, Kyiv, Luhansk, Odesa, Poltava, Zaporizhzhya, and Zhytomyr *oblasts* and in the Autonomous Republic of Crimea. In addition (and not included in the statistics), campaign posters, flags or banners were observed on municipal buildings in many regions.

⁵⁷ OSCE/ODIHR EOM LTOs observed instances of local officials speaking or working on behalf of candidates at campaign events in Dnipropetrovsk, Donetsk, Kirovohrad, Luhansk, Odesa, Poltava, and Vinnytsia *oblasts*.

⁵⁸ OSCE/ODIHR EOM LTOs observed that teachers, hospital staff or other public employees were required to attend meetings with candidates in Chernihiv, Donetsk, Kharkiv, Poltava and Vinnytsia *oblasts* and in the Autonomous Republic of Crimea.

⁵⁹ Observed in Kharkiv, Kyiv and Luhansk *oblasts* and in the Autonomous Republic of Crimea.

⁶⁰ In Chernihiv and Kharkiv, United Opposition–*Batkivschyna* rallies were initially not allowed by local authorities and district courts. These decisions were overturned on appeal. In Zaporizhzhya *oblast*, OSCE/ODIHR EOM LTOs verified that five requests for campaign events by United Opposition–*Batkivschyna* and UDAR were formally denied by local authorities, and that campaign events planned by Ukraine Forward! were cancelled by the authorities. In at least four additional cases, attempts by local authorities to prohibit campaign events were rejected by district courts.

by the management to attend the campaign meeting of a Party of Regions majoritarian candidate.

- At a ceremony in Slavyansk (Donetsk *oblast*), the governor donated six ambulances to a clinic; the donation was credited to a charity linked to a Party of Regions majoritarian candidate. The candidate spoke at the event, and party flags and symbols were visible.
- In Kirovohrad *oblast*, two local administration employees were observed assisting a Party of Regions majoritarian candidate at a meeting with voters during working hours by taking complaints that the candidate promised to have resolved.
- In Ternopil *oblast*, *Svoboda* symbols were observed at some municipality-sponsored cultural and sports events.

The authorities and political parties should take steps to ensure that no pressure is applied on public-sector employees or other citizens to attend campaign events, to desist from political activities, or to vote in a particular way. Any cases of pressure, intimidation or violence should be investigated, and the perpetrators brought to justice in accordance with the law.

Of the 45 OSCE/ODIHR EOM LTO teams, 33 assessed that the abuse of administrative resources negatively affected the campaign environment. The abuse of administrative resources demonstrated the absence in practice of a clear distinction between the State and the ruling party in some regions, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document.⁶¹

Party of Regions billboards were overwhelmingly dominating in several regions. In some cities and electoral districts, opposition parties, the Communist Party and self-nominated candidates alleged that advertising companies refused to sell them space or broke existing contracts due to political pressure. Such instances were confirmed by a private company in Odesa *oblast*. In addition, some parties and candidates were affected by systematic destruction of billboards or posters in some electoral districts.⁶²

The extensive use of charitable organizations by candidates to provide voters with goods or services was another negative feature of the campaign environment. OSCE/ODIHR EOM LTOs observed candidates or their associated charities donating playgrounds, medical equipment, food parcels, appliances, construction materials, medical care, eyeglasses, school materials, discount coupons and other items in an apparent effort to skirt campaign rules against indirect voter bribery. OSCE/ODIHR EOM LTOs also reported widespread use of ‘black PR’, with fake newspapers, fliers, posters or other materials printed seemingly on behalf of a party or candidate as provocation.

Despite widespread evidence of intimidation, abuse of administrative resources, pressure on public employees, and indirect vote-buying, the authorities took few effective steps to address such violations of the law.

Institutional mechanisms could be strengthened for monitoring possible abuse of administrative resources for campaign purposes, including the use of official events for campaigning, and holding accountable those responsible.

⁶¹ See Paragraph 5.4 of the 1990 OSCE Copenhagen Document where participating States declare that for ensuring equal rights the following should be respected “a clear separation between the State and political parties; in particular, political parties will not be merged with the State”.

⁶² This was observed, for example, in Sevastopol city, and Zaporizhzhya, Donetsk, and Kyiv *oblasts*.

B. CAMPAIGN FINANCE

Campaign finance is regulated by the electoral law. Following registration, parties and candidates are obliged to open special bank accounts and to pay for all campaign activities from these accounts.⁶³ Despite this legal requirement, some 500 majoritarian candidates never opened a bank account; the law does not provide any sanctions. Cash transactions are prohibited and the law establishes limits on donations from citizens, prohibiting donations from legal persons, anonymous sources, and foreign citizens. There are no limits on the use of a party's or candidate's own funds. The law does not provide for checking the source of the funds that a party or candidate contributes to their own campaign fund. There are no limitations on the amount of campaign expenditures.

The CEC co-ordinated with the National Bank of Ukraine to ensure that banks sent weekly reports on each bank account for checking by the CEC. The CEC informed the OSCE/ODIHR EOM that the new electoral system created some difficulties in this respect, given the large number of candidates and the small number of staff and resources available. The CEC could only check the bank account reports; complaints alleging spending made through other means, including public resources, were turned over to law enforcement bodies. The law does not provide for publication of any kind of campaign finance reporting prior to election day. Under instructions developed by the CEC, DEC's received weekly summaries of bank transactions for the respective majoritarian candidates. DEC's appeared not to have the capacity to check these summaries, nor does the law assign the DEC's any role in the process.

Parties and candidates are required to file financial reports with the CEC no later than 15 days after election day. Although all 21 parties submitting lists of candidates filed such reports, only one-third of the majoritarian candidates had filed a report by the deadline; the law does not provide any penalties for non-compliance. A report for each party submitting a list of candidates was posted on the CEC website, but these contained only the overall amounts of income and expenditure for the party's campaign. It was therefore not possible for domestic stakeholders or independent observers to review the accuracy and completeness of the reports, thereby reducing the transparency.⁶⁴

The political finance system was assessed by the Council of Europe's Group of States against Corruption (GRECO) as falling short of international standards.⁶⁵ The law does not sufficiently provide for transparency of party funding, for full disclosure of sources and amounts of campaign expenditure, or for proportionate and dissuasive sanctions for violations of campaign funding provisions. In addition, the absence of public campaign financing⁶⁶ and the lack of spending limits caused many contestants to rely on the support of wealthy individuals or business interests.

The legislation and system of regulation of party and campaign financing could be reviewed so as to increase transparency and accountability, and to create more equitable conditions for

⁶³ The CEC informed the OSCE/ODIHR EOM that some banks refused to open accounts for candidates, despite legal obligations. Also, the law requires candidates to open accounts in the district in which they are running, but does not state what should be done when this is not possible for technical reasons..

⁶⁴ The law does not require the publication of the financial reports of majoritarian candidates.

⁶⁵ Standards as defined by "Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns", available at: [www.coe.int/t/dghl/monitoring/greco/general/Rec\(2003\)4_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)4_EN.pdf). See "Evaluation Report on Ukraine: Transparency of Party Funding", 21 October 2011, available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)1_Ukraine_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)1_Ukraine_Two_EN.pdf). The legislation also falls short on recommendations put forward by the OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation, clauses 161, 162, and 169.

⁶⁶ Except for limited amounts of free time/space in the media and a limited amount of free informational posters, which are provided by State funds.

campaigning. Full disclosure, before and after elections, of sources and amounts of contributions and the types and amounts of campaign expenditure could be considered. More effective monitoring and oversight of the funding of electoral campaigns could be provided with proportionate and dissuasive sanctions for violations of campaign funding provisions in place.

Consideration could be given to introducing a reasonable campaign spending limit. Public funding for parties could also be considered, subject to obtaining a certain threshold of support.

IX. THE MEDIA

A. LEGAL FRAMEWORK

The Constitution guarantees freedom of speech and prohibits censorship. The media legal framework, including the 2011 Law on Access to Public Information and amendments to the Law on Information in the part of the protection of journalists' sources, lacks implementation.

In 2001, Ukraine was among the first countries in the OSCE region to decriminalize defamation, and in 2009, the Supreme Court instructed judges to follow the practice of the European Court of Human Rights that granted lower levels of protection from criticism to public officials and clearly distinguished between value judgments and factual information. However, on 18 September 2012, parliament adopted an amendment to the Criminal Code in a first reading, reintroducing the crime of libel with penalties of up to three years of imprisonment. After public protests by the media community and international organizations, the draft law was voted down in the second reading.⁶⁷

The legal framework does not sufficiently provide for political pluralism between elections. The Law on Television and Radio Broadcasting relies solely on self-regulation by stipulating that broadcasters' editorial statutes should include provisions on impartial and balanced information.

The media legal framework should be amended to provide for political pluralism between elections, since the only existing provision, based on self-regulation, does not sufficiently provide for it. Amendments could take into account Council of Europe recommendations on media pluralism and diversity of media content.

Provisions in the electoral law acknowledging voters' rights to "access to diverse, objective and unbiased information necessary for making deliberate, informed and free choices" and for unbiased and balanced coverage of contestants in the elections are an important step forward. However, they remain declarative since the law does not provide any definition of balanced coverage, and it does not define procedures and the body to monitor compliance with rules. The CEC, the implementing body for media-related provisions, did not consider media-related violations or complaints.⁶⁸ Moreover, the National Television and Radio Broadcasting Council, legally bound to oversee broadcast media during the campaign, did not monitor broadcasters' compliance with provisions on balanced coverage.⁶⁹ Although suits against media can be filed with local general courts, the non-

⁶⁷ Statement by the OSCE Representative on Freedom of the Media, available at <http://www.osce.org/fom/93840>.

⁶⁸ The CEC advised that Article 108 of the electoral law requires media-related complaints to be forwarded to the courts. The law, however, also requires the CEC to implement media-related provisions. Thus, there exists either a contradiction in the law or in its interpretation and application by the CEC.

⁶⁹ According to the council, the Law on Television and Radio Broadcasting prohibits interference by public authorities in the activities of broadcasters, which prevents it from taking any measures to ensure balanced coverage. A 'working group' within the council considered violations and complaints regarding other campaign provisions. According to the National Broadcasting Council's final report, 7 out of 37 received

consideration of monitored violations or complaints by the CEC or the Broadcasting Council leaves political parties or candidates disadvantaged by imbalanced media coverage without timely remedy.

Provisions in the electoral law acknowledging voters' rights to "access to diverse, objective and unbiased information necessary for making deliberate, informed and free choices" and for unbiased and balanced coverage of contestants in the elections could contain a precise definition of "balanced coverage" and a definition of the procedures and the body to monitor compliance with these rules. Due to a lack of independence of the National Broadcasting Council, consideration could be given to using media monitoring results provided by NGOs financed by independent donors.

The electoral law grants political parties and candidates the right to purchase an unlimited amount of advertising time and space.⁷⁰ The resulting extensive use of paid advertising amplified the advantage of contestants with sizable campaign funds. In addition, parties and candidates are entitled to free airtime and space on state-owned nationwide and regional TV and radio stations and newspapers.⁷¹ OSCE/ODIHR EOM media monitoring confirmed that all political parties contesting the elections used the free airtime provision on the nationwide television station *Pershyi Natsionalnyi* and OSCE/ODIHR EOM LTOs reported on the extensive use of free airtime on the 28 state-owned regional TV stations.

Consideration could be given to introducing a limit on the amount of paid political advertising parties and candidates can purchase in the media, in line with Council of Europe recommendations on measures concerning media coverage of election campaigns.

B. MEDIA ENVIRONMENT

The media environment is characterized by a virtual absence of editorial autonomy on television. The politicization of TV by businesspeople and the dependence of state-owned TV and radio on the state budget significantly limit political pluralism in favor of the ruling powers. *TVi*, the only nationwide TV station broadcasting investigative programs critical of the authorities, faces serious restrictions.⁷² The direct access of media owners and political actors to news content, the latter through envelope payments – so-called '*jeansa*' – to journalists, hinders investigative journalism and ultimately undermines the media's crucial role as the watchdog for political power and business. Paid content disguised as news leaves citizens unable to distinguish between editorial and paid-for coverage that is *de facto* (political) advertising. Poor professional standards and the current economic crisis leave journalists even more vulnerable to corruption.

Due to lack of political will, the transformation of the National Television Company of Ukraine from a state into a public-service broadcaster has not progressed; two laws on the reform of the state broadcaster are pending in the parliament. Although the law obliges both commercial and state broadcasters to have an editorial statute and an editorial board, the state television and radio

complaints were forwarded to courts after the elections. Report available at: <http://www.nrada.gov.ua/ua/zvitnainformacia/zvitprovory/17461.html>.

⁷⁰ The Law on Advertising limits the amount of political advertising to 20 per cent per broadcast hour and to 20 per cent of printed space.

⁷¹ 60 minutes and 20 minutes respectively on nationwide and regional TV and radio stations.

⁷² In 2010, *TVi*'s terrestrial broadcasting frequency was withdrawn by court order as a result of an action brought by Inter Media Group. In 2011, *TVi* was denied a license as part of Ukraine's digital switchover in 2015. Being broadcast by satellite and cable only, several cable providers have recently excluded *TVi* from their packages. On 12 September, the Kyiv District Administrative Court ordered *TVi* to pay UAH 4.1 million (around EUR 400,000) following a criminal case for tax evasion. According to *TVi*, UAH 2 million were made available by United Opposition–*Batkivschyna*.

company has neither. Sixteen OSCE/ODIHR EOM LTO teams reported abuse of regional state-owned broadcasters or newspapers in favor of the Party of Regions, in particular through obvious political advertising not declared as such.

The state-owned National Television Company should be transformed into an independent public-service broadcaster. In this context, consideration could be given to reducing the high number of 28 regional TV and radio stations and to privatize state-owned newspapers.

Internet access is unrestricted, which provides room for investigative journalism and contributes to pluralism in the public sphere, despite limited penetration.⁷³

C. OSCE/ODIHR EOM MEDIA MONITORING



OSCE/ODIHR EOM media monitoring results⁷⁴ show that the amount of campaign coverage in news and current affairs programs, in particular on the most watched TV stations, was limited, which may have negatively affected voters' access to different political views.⁷⁵ The fact that five times as much paid political advertising as news on the campaign was broadcast on the four main commercial TV stations indicates that in order to reach out to voters through the most popular TV stations, political parties required significant financial means.⁷⁶ Moreover, the above-mentioned TV stations did not increase the amount of discussion programs during the campaign period.⁷⁷ Only one televised debate was organized among the national leaders of the party lists, on *Inter*, and a few debates among candidates in majoritarian districts took place. Monitoring results show a slight increase of campaign coverage on the four noted TV stations during the last ten days of the campaign.⁷⁸ Ultimately, the media, and in particular the leading TV stations, failed to provide a forum for a robust debate on electoral issues and political alternatives.

OSCE/ODIHR EOM media monitoring results showed that state-owned *Pershyi Natsionalnyi* displayed a clear bias in favor of the Party of Regions, devoting 48 per cent of its campaign coverage, excluding coverage of institutional events, to that party, while devoting only 13 per cent to United Opposition–*Batkivschyna*. Some 97 per cent of the Party of Region's coverage was in a positive tone while 17 per cent of United Opposition–*Batkivschyna*'s was negative. *5 Kanal*, *Inter* and *TVi* devoted more time to United Opposition–*Batkivschyna* (42, 35 and 50 per cent, respectively) than to the Party of Regions (26, 25 and 25 per cent, respectively), and the tone on 5

⁷³ Media professionals also expressed their concern over an amendment to Article 52.g of the Law on Copyright and Related Right, pending in the parliament, which might restrict Internet access. The amendment is available at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=37985.

⁷⁴ The OSCE/ODIHR EOM conducted media monitoring from 16 September until the start of the electoral silence on 27 October. The monitored broadcasters included state-owned *Pershyi Natsionalnyi* and the commercial broadcasters *I+I*, *5 kanal*, *ICTV*, *Inter*, *TRK Ukraina* and *TVi*. Due to limited availability of *TVi* on cable providers, monitoring of *TVi* started on 22 September.

⁷⁵ Out of a combined total of 75 hours of coverage of the campaign of competing parties broadcast in news and current affairs programs in the seven monitored broadcast media, the four leading channels *I+I*, *TRK Ukraina*, *Inter* and *ICTV* accounted for only 12 hours. For audience shares of the main TV channels see: http://www.mediabusiness.com.ua/component/option.com_rating/Itemid.55/lang.ru/.

⁷⁶ More than 60 per cent of all paid airtime was purchased by the Party of Regions, Our Ukraine and United Opposition–*Batkivschyna*.

⁷⁷ The electoral law does not provide for discussion programs on state-owned media outlets.

⁷⁸ On 15 October, Ukrainian media reported on a statement by the Ministry of Foreign Affairs that respective measures have been taken in response to the OSCE/ODIHR EOM's first Interim Report and that "objective coverage of the election campaign has been ensured."

Kanal and *TVi* confirmed a clear bias in favor of United Opposition–*Batkivschyna*.⁷⁹ *Inter* displayed a more balanced approach.⁸⁰ While *ICTV* and *TRK Ukraina* devoted more time to the Party of Regions (38 and 36 per cent, respectively) than to United Opposition–*Batkivschyna* (21 per cent, respectively), the tone on *TRK Ukraina* confirmed bias in favor of the Party of Regions. *ICTV* showed a more balanced coverage.⁸¹ *I+I* displayed a balanced approach by devoting 31 per cent both to the Party of Regions and United Opposition–*Batkivschyna*.⁸²

Rules on the coverage of candidates in their institutional roles in the news should prevent broadcasters from giving them privileged treatment.

Some 17 per cent of candidates and other politicians affiliated with political parties who featured in campaign coverage in news and current affairs programs were women; the share of media coverage of women politicians varied significantly among the main parties.⁸³

Newspapers, which are also obliged by the electoral law to provide balanced coverage, displayed a biased approach in covering the campaign.⁸⁴

X. PARTICIPATION OF NATIONAL MINORITIES

According to the latest census (conducted in 2001), 77.8 per cent of citizens are ethnic Ukrainians, while ethnic Russians form the most sizeable minority (17.3 per cent). The remaining five per cent of the population comprises Belarusians, Bulgarians, Crimean Tatars, Jews, Hungarians, Moldovans, Poles, Roma, Romanians, and other small minority groups. Those who declared Ukrainian as their mother tongue totaled 67.5 per cent of the population, while the percentage of those who declared their mother tongue as Russian totaled 29.6 per cent.

During the campaign, OSCE/ODIHR EOM LTOs reported isolated cases of anti-Semitic and xenophobic statements, targeted at minorities. OSCE/ODIHR EOM interlocutors also mentioned cases of manipulation and disenfranchisement of Roma voters, with vote-buying and lack of identification and/or registration documents highlighted as the most pressing concerns.

While national minority issues *per se* did not feature prominently in the campaign, the issue of language policy proved divisive. The platforms of the Party of Regions, the Communist Party and the Russian Bloc listed making Russian a second state language as one of their top priorities, whereas United Opposition–*Batkivschyna*, UDAR, *Svoboda* and Our Ukraine pledged to oppose such moves. The polarizing debate on this issue took place in context of the adoption of a controversial new language law over the summer. This sparked concern among parts of Ukraine's

⁷⁹ On *5 kanal*, 29 per cent of the Party of Regions' coverage was in a negative tone, as opposed to only 7 per cent of United Opposition–*Batkivschyna*'s coverage. On *TVi*, 62 per cent of the Party of Regions' coverage was in a negative tone, in contrast to only 2 per cent of United Opposition–*Batkivschyna*'s coverage.

⁸⁰ Some 25 per cent of *Inter*'s coverage of both the Party of Regions and United Opposition–*Batkivschyna* was in a negative tone.

⁸¹ On *ICTV*, 17 per cent and 31 per cent, respectively, of United Opposition–*Batkivschyna*'s and the Party of Regions' coverage was in a negative tone; however, on *TRK Ukraina* 19 per cent of United Opposition–*Batkivschyna*'s coverage was in a negative tone, as opposed to only 1 per cent for the Party of Regions.

⁸² However, 39 per cent of the coverage of the Party of Regions' was negative in tone, as opposed to only 18 per cent of coverage of United Opposition–*Batkivschyna*.

⁸³ Women accounted for 24 per cent of *Batkivschyna*'s campaign coverage in news and current affairs programs, compared to 3 per cent for the Party of Regions, 22 per cent for UDAR and 62 per cent for Ukraine Forward!, which is led by a woman, Nataliya Korolevska, who also headed the party's proportional candidate list.

⁸⁴ For monitoring results please see attachment.

population regarding both its substance and the manner in which it was adopted, leading to some protests in several of the country's regions. The law's provisions relating to parliamentary elections specify that official election materials must be in Ukrainian only,⁸⁵ which may have prevented a full understanding of such materials by some minority voters as well as election officials. At the same time, some party and self-nominated candidates in many parts of the country produced campaign materials in Russian, and in other minority languages in areas of compact minority settlement, including in the Autonomous Republic of Crimea and Chernivtsy and Zakarpattya *oblasts*.⁸⁶

To improve minority participation in, and understanding of, the electoral process, language legislation could be amended to extend to nationwide elections the possibility of displaying official electoral information in minority languages in areas where these are widely spoken.

Although the authorities were not able to provide the OSCE/ODIHR EOM with official figures on the composition of electoral bodies disaggregated by ethnicity, national minorities appear to have been represented in election commissions at all levels, particularly in areas of compact minority settlement. The new parliament appears to be representative of Ukraine's ethnic diversity to some degree. MPs belonging to smaller national minorities were elected, with very few exceptions, from parties' proportional lists. The Crimean Tatar, Hungarian, Romanian and other minorities were not able to win seats through majoritarian elections in their respective regions of settlement, despite fielding candidates. In this context, some minority groups raised concerns about the impact of the changed electoral system on the chances of most minority candidates to get elected. In particular, several OSCE/ODIHR EOM interlocutors expressed disappointment that the delimitation of single-mandate districts in some areas of concentrated minority settlement was done arbitrarily, without clear criteria or consultations with the minorities concerned.⁸⁷

The authorities could consider the introduction of special mechanisms that would encourage greater participation and representation of national minority in public and political life.

XI. CITIZEN AND INTERNATIONAL OBSERVERS

The electoral law provides for international and citizen election observation. Observers from foreign states or international organizations are registered by the CEC,⁸⁸ while citizen observers are accredited by DEC's. Non-party citizen observers can be nominated by NGOs whose involvement in the election process and its monitoring is stipulated in their charter and who have been registered by the CEC. In an overall inclusive registration process, the CEC granted 68 NGOs permission to accredit observers.⁸⁹

Over 370,000 citizen observers were registered for these elections.⁹⁰ Some political parties

⁸⁵ See Article 12 of the Law on the Foundations of State Language Policy (language law).

⁸⁶ Article 12.5 of the language law allows candidates to conduct their campaign in Ukrainian or in regional languages, at their discretion.

⁸⁷ Prior to the start of the election campaign, the Party of Hungarians of Ukraine lodged official protests with the authorities regarding the delimitation of single-mandate districts around Beregovo (Zakarpattya *oblast*), the area of Ukraine where ethnic Hungarians are most compactly settled. Whereas during previous majoritarian elections candidates belonging to the ethnic Hungarian minority were elected to parliament, this election saw the electoral boundaries of the area altered in a way that they felt made it impossible for ethnic Hungarian candidates to secure a majoritarian mandate.

⁸⁸ The CEC registered 3,797 international observers by the legal deadline of 20 October.

⁸⁹ The CEC rejected the applications of 19 NGOs that did not present the required registration documents or did not include election-related activities in their charter.

⁹⁰ DEC's registered 181,308 party observers, 150,840 candidate observers, and 40,017 non-party observers.

provided training for their observers and distributed manuals describing the main election-day procedures.⁹¹ The main citizen observer NGOs *OPORA* and *CVU* conducted long-term observation and published a series of reports which identified problems in the preparations of the elections. Both organizations also deployed large numbers of observers on election day. *OPORA* observed all polling stations in ten highly contested districts and undertook a parallel vote tabulation (PVT) exercise.⁹² By contrast, some NGOs, considered to be close to the ruling party, registered thousands of observers shortly before the deadline, but their observers were rarely encountered by OSCE/ODIHR EOM STOs on election day.⁹³ This and the fact that these organizations did not present or publish any observation report raised questions about the real purpose of their registration.⁹⁴

The active involvement of a large number of citizen observers throughout the entire electoral process enhanced its overall transparency. However, it is problematic that the electoral law does not specifically entitle international observers to receive copies of results protocols, which is not in line with good electoral practices.⁹⁵ The CEC did not address this shortcoming.⁹⁶

The electoral law could be amended to specifically entitle all observers to receive copies of results protocols at all levels of the election administration.

XII. COMPLAINTS AND APPEALS

A. OVERVIEW

The electoral law provides for two channels for addressing election-related disputes: the election commissions and the courts. In accordance with the electoral law, complaints against decisions, actions or inactions of commissions or their members, political parties that are electoral subjects or candidates can be filed with DEC and the CEC.⁹⁷ Those entitled to file complaints include political parties with registered electoral lists or their authorized representatives, candidates or their proxies, party, candidate and non-party observers, election commissions or voters whose electoral rights or legally protected electoral interests were violated. Parties' authorized representatives, candidate proxies and citizen observers may also lodge complaints with PECs on violations during voting.

Furthermore, all electoral subjects apart from election commissions may challenge DEC before district administrative courts and PEC before local general courts. The CEC or its members can be challenged before the Kyiv Administrative Court of Appeal at the first instance and the High

⁹¹ Party of Regions, United Opposition–*Batkivshyna*, Communist Party.

⁹² The PVT could not be released as scheduled because *OPORA*'s server was attacked and blocked for 24 hours on election day, which made it impossible to collect and process the data from 2,000 polling stations. The PVT results were eventually published on 31 October, <http://oporaua.org/en/news/3415-rezultaty-statystychnogo-pidrahunku-golosiv-opory>.

⁹³ For example *Beregynya Svitlu* (6,798 accredited observers), which is headed by a former Party of Regions MP, *KONTINENT* (6,198 accredited observers), and "Youth! Community! Power!" (5,168 accredited observers).

⁹⁴ As of 8 December, none of these NGOs had published reports on the elections on their websites.

⁹⁵ The Venice Commission's Code of Good Practice in Electoral Matters states that "...the presence of national or international observers should be authorized. These persons must be allowed to be present in all circumstances. There must be enough copies of the record of the proceedings to distribute to ensure that all the aforementioned persons receive one".

⁹⁶ Despite not being specifically entitled to receive copies of results protocols, some two thirds of the international observers deployed by the OSCE/ODIHR EOM and its parliamentary partners received official copies of PEC results protocols after the end of the vote count.

⁹⁷ Complaints against parties may be filed with the CEC or the DEC, depending on whether the party nominated candidates in the nationwide election district or in a single-mandate district.

Administrative Court on appeal. Complaints against candidates or their proxies, parties and their officials or proxies, as well as official observers, may be filed with the district administrative courts.

As a general rule, complaints may be filed within five days of the event or incident. An expedited procedure is provided for, and should take place within two days. Law enforcement agencies also play a part in the process, as they should be notified in case of electoral offences foreseen in the Criminal Code. Overall, the electoral dispute resolution process is complicated, with instances of overlapping jurisdiction between election commissions and administrative courts. Although the electoral law provides for precedence of the court in case the same suit has been filed with the commission, the elimination of dual jurisdiction has been a long-standing OSCE/ODIHR and Venice Commission recommendation. A significant number of complaints were rejected on procedural grounds, such as being filed with the wrong body, which testifies to this shortcoming.

The electoral dispute resolution process should be simplified. Consideration could be given that complaints are filed at first instance either with the courts or the election administration; the ability of lower-level election commissions to resolve minor disputes at the local level could be facilitated and promoted to address the issue of voluminous litigation. The dual jurisdiction of courts and election commissions regarding some types of complaints needs to be removed.

B. PRE-ELECTION DAY COMPLAINTS AND APPEALS

From the beginning of the electoral process until election day, the CEC issued 94 resolutions with regard to 106 complaints. These were related to rejections of applications for candidate registration, DEC events, campaign violations, appearances of public officials at campaign events and indirect vote-buying. The majority of the complaints filed were returned to the complainants for corrections, as foreseen by the law. A large number of complaints was dismissed due to lack of evidence. At the same time, 79 were forwarded to law enforcement agencies, as they alleged electoral offences punishable under the Criminal Code;⁹⁸ the CEC issued 24 warnings to parties and candidates following court decisions.⁹⁹ Overall, the CEC processed complaints in a timely manner but with limited or no debate during its official sessions, which negatively affected the transparency of the process. Furthermore, the limited factual information or legal reasoning of many resolutions put into question their justification, while a formalistic and at times contradictory approach left the aggrieved parties without due consideration of their claims, contrary to OSCE commitments.¹⁰⁰ Most importantly, the absence in the law of effective measures for the CEC to restore the violated rights weakened its role in ensuring the integrity of the process. A small number of complaints were also filed with DEC, which mostly rejected them on formal grounds, demonstrating in general an excessively formalistic approach.¹⁰¹

Despite the general lack of trust in the independence and impartiality of the judiciary by the majority of political parties and candidates, recourse to the courts was widely used. According to official information provided by the Prosecutor General's Office, before and after election day the courts received 5,373 lawsuits on electoral issues, 2,136 (39.8 per cent) of which, mainly related to

⁹⁸ There were some cases when a complaint was initially filed to the Prosecutor General's Office, which forwarded it to the District Prosecutor's Office, which in turn forwarded it to the CEC, and the CEC by a resolution forwarded the complaint to the Prosecutor General's Office again.

⁹⁹ The majority of complaints that were dismissed or partially satisfied were at the same time forwarded by the CEC to the law enforcement agencies for investigation of the allegations made.

¹⁰⁰ Paragraph 5.10 of the 1990 OSCE Copenhagen Document establishes the right to "effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".

¹⁰¹ For instance, rejecting complaints for not indicating the complete name of the complainant or misspelling of the DEC.

clarifications of voter lists, were satisfied. The judiciary successfully managed to adjudicate them within the tight legal deadlines. Approximately half of the lawsuits analyzed by the OSCE/ODIHR EOM alleged illegal decisions or actions of DEC's regarding the formation of PECs; a small number of these were partially satisfied by the courts, which in those cases established the unlawfulness and cancelled the relevant DEC decisions. However, there was no possibility to conduct repeat lotteries and re-appoint PEC members.¹⁰² A large number of court decisions analyzed were related to campaign violations and indirect vote-buying;¹⁰³ fewer alleged involvement of state or local officials in the campaign and violations of the prohibition to campaign by state or local authorities.

The majority of lawsuits examined by the OSCE/ODIHR EOM were rejected by the courts on formal grounds or for lack of evidence. A significant number of decisions demonstrated inconsistent, unsound or narrow interpretations of the law,¹⁰⁴ while lawsuits were dismissed on sometimes questionable grounds of lack of evidence or inadmissible evidence,¹⁰⁵ due to the strict requirements in the Code of Administrative Procedure for the admissibility of evidence. Most importantly, while Article 71.2 of the Code provides for the reversal of the burden of proof in cases challenging the lawfulness of decisions, actions or inactions of the public administration, the courts selectively applied this principle, which led to the rejection of some lawsuits as unfounded.¹⁰⁶ Furthermore, the absence in the law of effective measures compromised the right to an effective remedy and accountability for violations of electoral rights.

Consideration could be given to provide courts and/or the CEC with more possibilities to sanction serious violations of campaign regulations, proportional to the severity of the violation. However, the provision that candidates cannot be de-registered for violating campaign rules should be maintained.

According to the official information of the Ministry of Interior, law enforcement agencies considered 4,396 complaints regarding infringement of the electoral law during the electoral process. Throughout, the District Prosecutor's Offices received 1,346 complaints on electoral

¹⁰² Notably, one court ordered a DEC to conduct a repeat lottery but issued an additional ruling stressing the impossibility to implement its decision, as the deadline for forming PECs had expired. Another court, which partially satisfied a similar complaint, referred to Recommendation #R(80)2 of the Committee of Ministers of the Council of Europe and ruled that it could not order a repeat lottery since this constituted interference in the discretion of the DEC as a public authority and exceeded the framework of administrative justice.

¹⁰³ For instance, two appeal courts ruled that the distribution of discount coupons with a candidate's picture in a supermarket and of school uniforms to children with the participation of the candidate were campaign violations.

¹⁰⁴ A court established that the appearance of the head of the *oblast* administration together with a Party of Regions candidate, who is also the deputy head of the *oblast* administration, in a political advertisement on TV was not a violation of the electoral law, as long as the head of the *oblast* administration did not urge voters to support this candidate and did not make reference to his official position. By contrast, another court ruled that the presence of the head of a *rayon* (district) administration in a campaign event is an obvious fact of favoring one of the electoral contestants.

¹⁰⁵ A court dismissed a complaint of the Party of Regions against a candidate, on the grounds that the photos submitted as evidence and the testimonies by third parties did not prove that campaign materials distributed at a campaign tent of the candidate had been ordered or distributed by him. While the courts generally dismissed photos or video as evidence, there were some lawsuits filed by the ruling party where such evidence was accepted. In another example, a court did not consider as evidence a dissenting opinion of a DEC member supporting a complaint and subsequently rejected the complaint, on the grounds of late submission to the DEC of the dissenting opinion, although the complainant claimed that the DEC was closed for the two previous days.

¹⁰⁶ It is noteworthy that a court rejected two complaints against actions of DEC's and one against a city council, filed by United Opposition–*Batkivschyna*, on the grounds that the complainants' allegations were not proven, without referring to the shift of the burden of proof, while in two other cases filed by the Party of Regions the court explicitly referred to the burden of proof lying on the public authority (DEC).

violations; 769 of them were not related to the competences of the prosecution authorities and were forwarded to the relevant authorities, while in 309 of them the court process was explained to the complainants. According to the prosecution authorities, they resolved 251 complaints, on which 9 criminal cases were initiated, related to vote-buying and injuries against police officers, while 242 complaints could not be substantiated.

The law should ensure that the complaints system is transparent and accountable. Consolidated records of complaints, responses and decisions could be made available by the CEC for public scrutiny.

XIII. ELECTION DAY

Election day was calm and peaceful overall. Voter turnout was 57.5 per cent. Opening procedures were assessed positively in 96 per cent of polling stations observed, although isolated problems with the sealing of ballot boxes were noted. Several international observer teams¹⁰⁷ were not allowed into polling stations before the opening of the polls, contrary to the law.¹⁰⁸

A. VOTING

The voting process was assessed positively in 96 per cent of polling stations observed. No significant regional variations were noted with regards to the actual conduct of polling, although the assessment was somewhat less positive in Chernivtsy and Zhytomyr *oblasts*. Voting was generally orderly and well organized. In polling stations observed, 73 per cent of PEC chairpersons and 72 per cent of PEC members were women. International observers reported tension or unrest in 2 per cent of polling stations observed, as well as isolated cases of intimidation of voters.

International observers reported only isolated instances of serious violations such as proxy voting, multiple voting, or series of seemingly identical signatures on voter lists. However, group voting was reported from 5 per cent of polling stations observed,¹⁰⁹ and in 2 per cent ballot boxes were not properly sealed at the time of observation.¹¹⁰ Not all voters marked their ballots in secret (6 per cent).¹¹¹ Voters were turned away because their names were not on the voter list in 5 per cent of polling stations observed.¹¹² On election day, international observers were informed of vote-buying in several regions of the country, and directly observed two cases in two different electoral districts, in Dnipropetrovsk and Luhansk *oblasts*.

Party or candidate observers were present in 96 per cent of polling stations visited, and non-party observers in 44 per cent, which enhanced the transparency of the process. However, in 4 per cent of polling stations visited, not all observers had a clear view of the process, and in 6 per cent, international observers were restricted in their observation.¹¹³ International observers also noted or

¹⁰⁷ All references to “international observers” in this section refer to observers of the OSCE/ODIHR EOM, OSCE PA, PACE, EP, and NATO PA.

¹⁰⁸ In Kyiv and Zhytomyr *oblasts* and in Sevastopol city.

¹⁰⁹ Cases when family members were voting together in the voting booths were observed in the Autonomous Republic of Crimea and in Vinnytsia, Chernihiv, Donetsk, Kharkiv and Zaporizhzhya *oblasts*.

¹¹⁰ In Chernihiv, Donetsk, Kirovohrad, Kyiv, Poltava and Zakarpattia *oblasts* and Kyiv city.

¹¹¹ Cases when voters were voting outside the voting booths or their choice could be disclosed because of improper placement of the voting booths were observed in the Autonomous Republic of Crimea, in Chernihiv, Dnipropetrovsk, Donetsk, Kirovohrad, Kyiv and Sumy *oblasts*, and in Kyiv city.

¹¹² In Kyiv, Mykolaiv, Odesa, Poltava, Volyn and Zhytomyr *oblasts* and in Kyiv city.

¹¹³ Observers were restricted in their free movement within the voting premises in Donetsk, Luhansk, Odesa, Poltava and Volyn *oblasts*.

were informed of intimidation of citizen non-party observers, and there were cases when such observers had their accreditation cancelled without apparent grounds. Unauthorized persons were noted in 5 per cent of polling stations visited, at times together with observers and proxies of parties and candidates interfering in or directing the work of PECs.¹¹⁴

Regular polling stations were equipped with web cameras for recording the voting and counting process. During voting hours, footage from the web cameras was recorded and streamed on the internet, while the vote count was only recorded.¹¹⁵ In 12 per cent of polling stations observed, web cameras were placed in such a way that they could compromise the secrecy of the vote.¹¹⁶ Many OSCE/ODIHR EOM interlocutors expressed doubts with regard to the usefulness of web cameras. They raised questions as to whether the resources spent were proportional to the envisaged benefits and whether these resources could have been put to better use, for instance for the training of election administration.¹¹⁷

B. COUNTING

The vote count was assessed positively in 89 per cent of the 292 polling stations where it was observed. A negative assessment was provided on 32 polling stations (11 per cent), including 11 from Kyiv city. The counting process was generally transparent and was nearly always attended by observers.¹¹⁸ PECs generally followed prescribed procedures, although there were some procedural problems. In 5 per cent of polling stations observed, the voter list was not closed and signed, and in 8 per cent, the number of voters who had signed the voter list was not announced before opening the ballot boxes, thus undermining procedural guarantees against possible manipulations with the voter list during the count. Moreover, PECs did not count and cancel unused ballots in 3 per cent of counts observed; the number of unused ballots was not announced in 4 per cent, and voter lists, unused ballots and ballot counterfoils were not packed in line with procedures in 3 per cent of polling stations observed before counting the votes, which left possible room for manipulation with unused ballots. Very few minor procedural mistakes were reported during the vote count itself.

The negative assessment of the vote count was largely due to failure of PECs to follow the procedures for filling in the results protocols,¹¹⁹ interference of unauthorized people in the work of PECs,¹²⁰ and obstruction to meaningful observation of the vote count.¹²¹

The lack of transparency of counting procedures at some polling stations also contributed to negative assessments. Thus, in 4 per cent of polling stations observed, there was no clear view of

¹¹⁴ Cases of undue interference in the work of PECs were reported from Cherkasy, Vinnitsya, Luhansk and Zaporizhzhya *oblasts* and from Kyiv city.

¹¹⁵ According to the Law on Specifics of Providing Openness, Transparency and Democracy to the Parliamentary Elections, the records from polling stations are to be kept by the CEC for one year after the official publication of election results and to be provided to courts and law enforcement bodies during this period. Parties and candidates are entitled to receive the records only during 15 days after the official publication of results.

¹¹⁶ The cameras were covering the voting booths in some polling stations in Dnipropetrovsk, Donetsk, Kirovohrad, Khmelnytsky, Rivne and Zhytomyr *oblasts*.

¹¹⁷ Some EUR 100 million was spent to equip polling stations with web cameras.

¹¹⁸ Party or candidate observers were present in every polling station where the vote count was observed. Non-party observers were noted in one third of counts observed.

¹¹⁹ Observers noted that procedural steps were not performed in the prescribed sequence in 54 polling stations, protocol forms were pre-signed by PEC members in 24 stations, 45 PECs had difficulties completing the protocols, and 43 revised figures they had entered previously. Protocols were not posted for public familiarization at the end of 44 counts observed.

¹²⁰ Cases of interference (mainly by observers and proxies) in the work of election administration during counting process were reported from a considerable 6 per cent of polling stations observed.

¹²¹ Cases of restriction of observers' rights were reported from Kyiv and Sumy *oblasts* and from Kyiv city.

the vote count, which restricted the rights of observers and others. In 3 per cent, international observers did not enjoy the full co-operation of PECs. In 9 per cent, the web cameras were not recording the counting process.

Consideration could be given to reducing the number of PEC members to a number required for the effective administration of the voting and counting process.

XIV. POST-ELECTION DAY DEVELOPMENTS

A. TABULATION AND ANNOUNCEMENT OF RESULTS

The tabulation of results took two weeks. A few DEC members were processing PEC results protocols for ten days, and more than one third of DEC members had to correct errors identified by the CEC.

The tabulation process was assessed negatively in 77 of the 161 DEC members where it was observed by the OSCE/ODIHR EOM. The main problems reported immediately after election day included DEC premises with insufficient space, overcrowding and tension. OSCE/ODIHR EOM observers reported tampering with election materials submitted by PECs in 59 DEC members, incomplete PEC protocols (170 reports from 113 DEC members), and figures in PEC protocols not reconciling (244 reports from 138 DEC members). Transparency during tabulation was limited, with international observers reporting that they were restricted in their observation or not given full co-operation in 71 DEC members. The CEC had previously restricted access to the room in which the election results were processed and entered into the computer system for transmission to the CEC. As a rule, the data entry process was not accessible to most DEC members or to proxies, citizen and international observers. OSCE/ODIHR EOM LTOs, representatives of political parties, candidates and DEC members reported numerous mistakes in the data transmitted to the CEC, including discrepancies in the number of votes indicated in official copies of protocols and those posted on the CEC website.

The OSCE/ODIHR EOM checked 372 official copies of proportional and majoritarian PEC results protocols obtained at polling stations or at DEC members against data posted on the CEC website and found 45 protocols with technical mistakes and inaccuracies,¹²² some minor changes of election results,¹²³ and some strong indications of manipulation of results in favour of certain contestants.¹²⁴ The scale of mistakes shows the insufficient training provided to PEC members with regard to the completion of results protocols.

The lengthy process of PEC results tabulation was exacerbated by long breaks announced by some DEC members,¹²⁵ and by the very high number of PECs that were obliged to compile corrected protocols

¹²² Such inaccuracies included wrong numbers of registered voters (which were often equal to the number of voters who received ballots), wrong order of contestants, or not all fields having been filled in.

¹²³ Minor changes to the election results were noted in the results protocols of PECs 680953 (Khmelnitsky *oblast*) for the nationwide election district; 631545 (Kharkiv *oblast*), 260755 (Ivano-Frankivsk *oblast*), 650181 (Kherson *oblast*), 260155 (Sumy *oblast*), 180113 (Zhytomyr *oblast*), and 350684 (Kirovohrad *oblast*) for the single-mandate electoral districts.

¹²⁴ Changes of results in favour of certain contestants were noted in the protocols of PECs 320633, 320634, 320635, 320636 (Kyiv *oblast*) and 710896 (Cherkasy *oblast*) for the nationwide electoral district; and in the protocols of PECs 320095, 320697, 320698, 320700, 320701, 320702, 320705, 320711, 320721, 320727, 320728, 320729, 320731 for single-mandate electoral district 93 (Kyiv *oblast*).

¹²⁵ For example, DEC members 11 (Vinnytsia *oblast*), 58 (Donetsk *oblast*), 94, 95 (Kyiv *oblast*), 194, 197 (Cherkasy *oblast*), 211, 215, 216, 222, 223 (Kyiv city), and 225 (Sevastopol city).

because of minor mistakes or because the figures in their protocols could not be reconciled.¹²⁶

Some 25 DEC members observed by the OSCE/ODIHR EOM experienced serious difficulties in tabulating the results in single-mandate districts, due to irregularities in the process or other problems. Irregularities included intimidation of DEC and PEC members and interference in the work of DEC members, often by candidates, proxies, observers or others.¹²⁷ Cases of DEC members reconvening and changing results were observed, as well as power cuts at some DEC premises while tabulation was ongoing. OSCE/ODIHR EOM LTOs observed the presence of special security forces outside or inside seven DEC members, in some cases blocking access to the premises. In Mykolaiv *oblast*, special forces entered DEC 132 and seized PEC protocols, following a court order to deliver them to the court. While DEC members 11 (Vinnytsia *oblast*), 189 (Khmelnysky *oblast*), 197 (Cherkasy *oblast*) and 223 (Kyiv city) were deadlocked because of lack of a quorum as the majority of DEC members were absent during the tabulation session, the CEC took no effective measures to resolve the situation by replacing DEC members.¹²⁸

Vague provisions of the electoral law led to numerous recounts, which were decided by DEC members based on contestants' complaints and court decisions and often following cases where packages with election materials had illegally been unsealed after delivery to the DEC.¹²⁹ In three cases, DEC members established during the recount of majoritarian PEC results that a large number of ballots initially counted in favour of leading candidates were found to be marked for more than one candidate and were therefore invalid; these ballots had apparently been tampered with at the DEC premises.¹³⁰

The provision of the electoral law on the invalidation of PEC results in case of non-admission of observers or candidates should be reviewed, in combination with the obligation of DEC members to establish district-level election results regardless of the number of polling stations where voting is declared invalid, as it led to abuse by parties and candidates. Also, the 10 per cent violation threshold established by Article 92.1 of the electoral law is arbitrary and should be removed; invalidation of election results should be possible in any case where electoral violations make it impossible to determine the results at a PEC. The electoral law should provide clear guidelines on the circumstances in which ballots should be recounted and the procedures to be applied in such cases.

In a positive step, the CEC posted the election results by polling station on its website; however, some essential data from PEC protocols, such as the number of invalid votes or the number of voters who received ballots, were not included, which reduced the usefulness of the data provided.

The electoral law could be amended to provide clear deadlines for the delivery of election results from PECs to DEC members and from DEC members to the CEC. To enhance transparency of the electoral

¹²⁶ OSCE/ODIHR EOM LTOs reported cases where DEC members were requesting PEC members to return to polling stations and recompile protocols if the names of political parties were not written in full or the figure '0' was written as '-'.
¹²⁷ OSCE/ODIHR EOM LTOs reported such irregularities from DEC members 11 (Vinnytsia *oblast*), 71 (Zakarpatya *oblast*), 95 (Kyiv *oblast*), 132 (Mykolaiv *oblast*), 194 (Cherkasy *oblast*), 211, 214, 215 and 223 (all four in Kyiv city). In some cases, individuals who were accredited as observers or journalists appeared to be participating in organized disruption of the tabulation process.

¹²⁸ Under Article 37.1 of the electoral law, the CEC has the authority to terminate the office of DEC members.
¹²⁹ Article 94.5 of the electoral law provides for the possibility to recount PEC results only if the election materials were unsealed before being handed over to the DEC, or if complaints about irregularities during the count or the transfer of election materials were filed not later than during the handover of materials to the DEC. Article 94.10 obliges DEC members to conduct a recount if there is any indication that the packs with election materials have been opened, even after the materials were packed properly at the time of receipt by the DEC.

¹³⁰ DEC members 11, 14 (both in Vinnytsia *oblast*) and 223 (Kyiv city).

process, the law could include provisions for the publication of detailed preliminary election results by the CEC on its website, broken down by polling station, prior to the determination of the final election results. The posted results should include all data from PEC protocols.

The OSCE/ODIHR EOM noted two cases where changes in the preliminary results posted on the CEC website after 100 per cent of polling stations had been processed resulted in the candidate who had initially come in second winning the seat. This occurred in electoral districts 14 (Vynnytsia *oblast*)¹³¹ and 132 (Mykolaiv *oblast*).¹³² According to the CEC, this was due to DEC's changing the results after they had already been entered into the system.

In electoral district 94 (Kyiv *oblast*), the DEC invalidated the election results in 27 polling stations where a total of 31,205 votes had been cast for the nationwide as well as the single-mandate district. The grounds for cancelling the election results at each of these polling stations was the restriction of a Party of Regions candidate observers' rights during the vote count.¹³³ As a result, the United Opposition–*Batkivshchyna* candidate lost some 6,500 votes and the leading position in the electoral district, to the benefit of the Party of Regions candidate.

On 5 November, the leaders of the opposition parties United Opposition–*Batkivshchyna*, *Svoboda* and UDAR sent a joint appeal to the CEC alleging serious violations in the tabulation process in 13 electoral districts. The same day, the CEC unanimously adopted a resolution, which effectively cancelled the majoritarian elections in five of these districts (94, 132, 194, 197 and 223). The resolution stated that it was “impossible to establish the true results” in these districts as these elections were not held in accordance with the Constitution and the electoral law. Since the law does not specifically provide for the invalidation of results in single-mandate districts by the CEC, the decision was based on the principles of the rule of law and other constitutional provisions guaranteeing suffrage rights and on the general authority of the CEC.¹³⁴ Following the adoption of the resolution, the CEC asked the parliament to provide the legal basis for repeat elections in these five constituencies.

The parliament on 6 November decided to recommend that the CEC conduct repeat elections in these districts, although the grounds for repeat election listed in Article 104 of the electoral law do not apply in this situation. The parliament also established a temporary commission of inquiry to investigate the tabulation process in some districts. Some participants of the electoral process voiced the opinion that the CEC decision and the subsequent recommendation of the parliament are not in line with the law and exceed their competence. As of the time of publication of this report, no date for the repeat elections had been set.

¹³¹ The OSCE/ODIHR EOM verified that the results of PECs 050004, 051085 and 051598 were changed after they were posted on the CEC website, which resulted in a change of the winning candidate.

¹³² The OSCE/ODIHR EOM made screenshots of the webpage showing the preliminary results for electoral district 132 on the CEC website, with 100 per cent of polling stations processed. According to a screenshot with data as of 12:41 hours on 30 October, Arkadiy Kornatskyi (United Opposition–*Batkivshchyna*) won with 29,678 votes. A screenshot of the same webpage, with results as of 20:37 hours on 30 October, showed Vitaliy Travyanko (Party of Regions) as the winner, with 29,910 votes. On the two screenshots, the number of votes cast for Mr. Kornatskyi and for the candidate of UDAR remained unchanged, while it had changed for the other five candidates in the district.

¹³³ The courts later rejected complaints against the DEC decision on invalidation of the election results, stating that under the law, the fact that an observer's rights had been restricted was sufficient ground to invalidate the election results at the polling station.

¹³⁴ The CEC based its decision on the general authority to control compliance with and uniform implementation of the law, as provided by Article 30.2.1 of the electoral law and Articles 17.2 and 17.3 of the Law on the Central Election Commission.

Despite numerous claims of candidates and parties, statements of election officials, and appeals filed to the CEC and the courts indicating serious violations in the tabulation process in some other DEC, the CEC was not consistent and did not invalidate the results in other electoral districts.¹³⁵

The CEC announced the final results of the proportional component of the elections on 10 November and approved the election results of 220 majoritarian contests up to 11 November. Both deputy heads of the CEC and three more CEC members expressed their dissenting opinions on the proportional results protocols, mentioning *inter alia* threats and pressure on voters, vote-buying, predominance of the ruling party in the election administration, failure to conduct free elections, lack of free choice, lack of correspondence of the official results to the real will of the voters and groundless invalidation of a high number of votes. The final results were published in *Holos Ukrainy* and *Uryadovyi Kurier* on 13 November. The manner in which some results were adopted appears at odds with paragraph 7.4 of the 1990 OSCE Copenhagen Document, which states that participating States will “ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public”.

Tabulation procedures could be simplified. DEC (especially those with a large number of PECs) need to be provided with suitable premises for processing the protocols. Consideration could be given to providing for several teams, each composed of DEC members representing different political options, to process PEC results protocols. The number of computers and operators who enter the election results at the DEC could be increased. DEC and the CEC could be authorized to amend results protocols submitted to them, in order to correct evident mistakes and inaccuracies, except for material mistakes detected in the part of the protocol, which establishes the election results.

B. POST-ELECTION COMPLAINTS AND APPEALS

A large number of complaints and lawsuits were filed by parties and candidates after election day, alleging irregularities on election day or challenging the results at precinct and district levels.¹³⁶ The majority of lawsuits that the OSCE/ODIHR EOM analyzed requested the courts to recognize as illegal the actions of some PECs that allegedly did not allow candidates or their proxies, authorized party representatives and observers to enter polling stations during voting hours and especially after the beginning of the vote count.¹³⁷ Other complaints requested that courts cancel DEC decisions establishing election results on the grounds of falsification of PEC results protocols, or alleged violations committed by DEC during the tabulation, such as a failure of DEC to recount ballots where packages with election materials from PECs had been damaged. A large number of complaints were also lodged with DEC, mainly challenging the high number of applications for homebound voting or alleging that many applications had been written by the same person, the large number of voters in some special polling stations, or violations of ballot box integrity.

The courts made efforts to consider the lawsuits in a timely manner by conducting hearings on a 24-hour basis. However, the 48-hour time limit to issue a decision was not always respected, as some hearings were repeatedly postponed. At first instance, the courts satisfied most complaints on denial of entry into polling stations during voting and mostly after the beginning of the vote count that had

¹³⁵ Some CEC members, as well as candidates and party representatives raised serious concerns about the possibility to establish the true election results in electoral districts 11, 14, 20, 90 and 184.

¹³⁶ The OSCE/ODIHR EOM analyzed 107 court decisions issued after election day and received information of some 200 complaints filed with DEC.

¹³⁷ Refusal to allow authorized people from entering a PEC can be a ground for invalidation of the election results in this precinct by the DEC.

been filed by candidates, mainly of the Party of Regions.¹³⁸ On a positive note, some of these decisions were overturned by appeal courts, which ruled that the rights of the electoral subjects to be present in a polling station should be exercised in accordance with Article 85.12 of the electoral law, which foresees that the doors of the polling stations should be locked for counting. Similar lawsuits filed by observers or proxies were only upheld where the complainants claimed not to have been allowed into a polling station before the beginning of the vote count, thus demonstrating a different approach when the complainant was a proxy or observer and not a candidate. The provision of the law on invalidation of PEC results if access to authorized people was denied, in combination with the provision that DEC's establish the district-level election results irrespective of the number of PEC results invalidated, was abused by some parties and candidates as a tool to invalidate PEC results or disrupt the process of tabulation by DEC's. As invalidation of PEC results is at the discretion and not an obligation of DEC's, some DEC's proceeded with the invalidation following court decisions, while others did not. The OSCE/ODIHR EOM again noted conflicting interpretations of the law.¹³⁹ Notably, some courts ruled that denial of entry into a polling station did not have an impact on the outcome of voting, while some others ruled that this influenced the "objectivity of the electoral process".

Between election day and 13 November 2012, the CEC issued 9 resolutions on 79 complaints received, while the remainder were returned to the complainants for corrections of errors or inaccuracies.¹⁴⁰ The Prosecutor General's Office initiated a criminal case on falsification of voting results in electoral district 223.

Five lawsuits were submitted against CEC resolution Nr. 1931 on the impossibility to establish the results in five single-mandate districts. All were rejected by the Kyiv Administrative Court of Appeal, on the grounds that the CEC resolution did not infringe on the complainants' rights and interests, as it did not contain any decision ordering repeat elections. The ruling on one of the cancelled districts, electoral district 132, was appealed to the High Administrative Court, which upheld the decision of the first-instance court.

XV. RECOMMENDATIONS

The following recommendations are offered for consideration by the authorities, political parties and civil society of Ukraine, in further support of their efforts to conduct elections in line with OSCE commitments and other standards for democratic elections. These recommendations should be read in conjunction with other recommendations offered previously by the OSCE/ODIHR and with the recommendations contained in the joint opinion on the draft electoral law by the OSCE/ODIHR and the Venice Commission. The OSCE/ODIHR stands ready to assist the authorities and civil society of Ukraine to further improve the electoral process.

A. PRIORITY RECOMMENDATIONS

1. Consideration should be given to harmonizing the electoral law with other laws relevant to parliamentary elections (mainly the Law on the Central Election Commission, the Criminal Code and the Code of Administrative Procedure) by consolidating all legislation into one

¹³⁸ Such lawsuits were filed in electoral districts 94, (Kyiv *oblast*), 99 (Kirovohrad *oblast*), 132 (Mykolaiv *oblast*), 211 and 223 (both in Kyiv city).

¹³⁹ One court ruled that it could not order the DEC to take certain actions, such as preparing a new tabulation protocol, as the DEC is a legal entity and an independent authority, while another decision of the same court ruled that the DEC was obliged to conduct a recount.

¹⁴⁰ Six of these complaints were received on election day and 73 afterwards.

code. This should facilitate its application and minimize the use of ad hoc resolutions in future elections. Any amendments should be enacted in an inclusive and transparent process, sufficiently in advance of the next elections to provide all election stakeholders adequate time to familiarize themselves with the rules of the electoral process.

2. The work of all election commissions should be governed by the principles of transparency, impartiality and independence. All sessions of election commissions should be public and no meetings should be held behind closed doors. In order to enhance the impartiality and independence of the election administration, parliamentary parties and parties that registered a certain number of candidates in the respective electoral district should be represented on election commissions. Measures could be considered to prevent abuse by so-called 'technical' parties.
3. If the majoritarian element of the election system is retained, consideration could be given to devolving the authority for the administration of the majoritarian races to DEC's, including registration of majoritarian candidates and their proxies, provided that the CEC enjoys strong regulatory functions with regard to candidate registration and has a right to overrule unsound DEC decisions. In this case, the appointment mechanism and/or term in office of DEC's will need to be revised.
4. Institutional mechanisms could be strengthened for monitoring possible abuse of administrative resources for campaign purposes, including the use of official events for campaigning, and holding accountable those responsible.
5. The electoral dispute resolution process should be simplified. Consideration could be given that complaints are filed at first instance either with the courts or the election administration; the ability of lower-level election commissions to resolve minor disputes at the local level could be facilitated and promoted to address the issue of voluminous litigation. The dual jurisdiction of courts and election commissions regarding some types of complaints needs to be removed.
6. The state-owned National Television Company should be transformed into an independent public-service broadcaster. In this context, consideration could be given to reducing the high number of 28 regional TV and radio stations and to privatize state-owned newspapers.
7. Provisions in the electoral law acknowledging voters' rights to "access to diverse, objective and unbiased information necessary for making deliberate, informed and free choices" and for unbiased and balanced coverage of contestants in the elections could contain a precise definition of "balanced coverage" and a definition of the procedures and the body to monitor compliance with these rules. Due to a lack of independence of the National Broadcasting Council, consideration could be given to using media monitoring results provided by NGOs financed by independent donors.
8. The legislation and system of regulation of party and campaign financing could be reviewed so as to increase transparency and accountability, and to create more equitable conditions for campaigning. Full disclosure, before and after elections, of sources and amounts of contributions and the types and amounts of campaign expenditure could be considered. More effective monitoring and oversight of the funding of electoral campaigns could be provided with proportionate and dissuasive sanctions for violations of campaign funding provisions in place.

B. OTHER RECOMMENDATIONS

LEGAL FRAMEWORK

9. The requirement that candidates must have resided in the country for five years prior to parliamentary elections should be amended to ensure that candidacy rights are not unduly restricted. Also, the restriction of the right to stand for election due to a criminal conviction unless the criminal record has been cleared or cancelled prior to the nomination process should be reconsidered, to ensure the principle of proportionality between the severity of the offense and the protection of suffrage rights.
10. If the current mixed electoral system is retained, the electoral law should be amended to provide for a transparent redistricting process, performed well in advance of the next parliamentary elections and based on clear, publicly announced rules, taking into account the existing administrative divisions, and historical, geographical and demographic factors. In particular, the delimitation of single-mandate district boundaries in areas with high levels of minority settlement needs to ensure respect for the rights of national minorities, and electoral boundaries should not be altered for the purpose of diluting or excluding minority representation.
11. The provision of the electoral law on the invalidation of PEC results in case of non-admission of observers or candidates should be reviewed, in combination with the obligation of DEC's to establish district-level election results regardless of the number of polling stations where voting is declared invalid, as it led to abuse by parties and candidates. Also, the 10 per cent violation threshold established by Article 92.1 of the electoral law is arbitrary and should be removed; invalidation of election results should be possible in any case where electoral violations make it impossible to determine the results at a PEC. The electoral law should provide clear guidelines on the circumstances in which ballots should be recounted and the procedures to be applied in such cases.

ELECTION ADMINISTRATION

12. CEC resolutions offering instructions or clarifications of the law need to be issued in a timely manner so that they can be properly implemented. The CEC should avoid making last-minute changes to procedures in the interest of transparency and accountability.
13. Consideration could be given to reducing the number of PEC members to a number required for the effective administration of the voting and counting process.
14. The electoral law could be amended to provide clear deadlines for the delivery of election results from PECs to DEC's and from DEC's to the CEC. To enhance transparency of the electoral process, the law could include provisions for the publication of detailed preliminary election results by the CEC on its website, broken down by polling station, prior to the determination of the final election results. The posted results should include all data from PEC protocols.
15. Tabulation procedures could be simplified. DEC's (especially those with a large number of PECs) need to be provided with suitable premises for processing the protocols. Consideration could be given to providing for several teams, each composed of DEC members representing different political options, to process PEC results protocols. The

number of computers and operators who enter the election results at the DEC's could be increased. DEC's and the CEC could be authorized to amend results protocols submitted to them, in order to correct evident mistakes and inaccuracies, except for material mistakes detected in the part of the protocol, which establishes the election results.

16. Effective notification mechanisms could be introduced so that prospective candidates are informed by the election administration of cases where mistakes or omissions were found in their nomination documents, enabling them to correct such mistakes.

VOTER REGISTRATION

17. If the current mixed electoral system is retained, the electoral law and/or the Law on the State Voter Register could be amended to prohibit temporary changes of the voting place outside a voter's single-mandate district. Since such a restriction would disenfranchise some voters, consideration could be given to entitle voters who are away from their place of residence on election day to vote for the proportional elections.
18. To further improve the quality of voter lists, the newly created State Migration Agency could consider digitalization of its records, which would allow for faster and easier processing.

ELECTION CAMPAIGN AND CAMPAIGN FINANCE

19. The authorities and political parties should take steps to ensure that no pressure is applied on public-sector employees or other citizens to attend campaign events, to desist from political activities, or to vote in a particular way. Any cases of pressure, intimidation or violence should be investigated, and the perpetrators brought to justice in accordance with the law.
20. Consideration could be given to introducing a reasonable campaign spending limit. Public funding for parties could also be considered, subject to obtaining a certain threshold of support.

ADJUDICATION OF ELECTION DISPUTES

21. Consideration could be given to provide courts and/or the CEC with more possibilities to sanction serious violations of campaign regulations, proportional to the severity of the violation. However, the provision that candidates cannot be de-registered for violating campaign rules should be maintained.
22. The law should ensure that the complaints system is transparent and accountable. Consolidated records of complaints, responses and decisions could be made available by the CEC for public scrutiny.

MEDIA

23. The media legal framework should be amended to provide for political pluralism between elections, since the only existing provision, based on self-regulation, does not sufficiently provide for it. Amendments could take into account Council of Europe recommendations on media pluralism and diversity of media content.
24. Rules on the coverage of candidates in their institutional roles in the news should prevent

broadcasters from giving them privileged treatment

25. Consideration could be given to introducing a limit on the amount of paid political advertising parties and candidates can purchase in the media, in line with Council of Europe recommendations on measures concerning media coverage of election campaigns.

PARTICIPATION OF WOMEN

26. A gender analysis of all legislation in force and drafts of new legislation could be carried out with a view to harmonizing relevant legal acts, including the electoral law, as stipulated in the equality law and Ministerial Decree 42/5 of 2006.
27. Political parties could be encouraged to promote gender equality and take resolute actions to put forward gender-balanced candidate lists, to increase visibility of female candidates during election campaigns and to integrate gender issues into their platforms. The introduction of a gender requirement for nomination of party lists could be considered as a temporary measure.

PARTICIPATION OF NATIONAL MINORITIES

28. The authorities could consider the introduction of special mechanisms that would encourage greater participation and representation of national minority in public and political life.
29. To improve minority participation in, and understanding of, the electoral process, language legislation could be amended to extend to nationwide elections the possibility of displaying official electoral information in minority languages in areas where these are widely spoken.

CITIZEN AND INTERNATIONAL OBSERVERS

30. The electoral law could be amended to specifically entitle all observers to receive copies of results protocols at all levels of the election administration.

ANNEX: ELECTION RESULTS

Point in CEC Results Protocol		Total in the nationwide multi-mandate district	In out-of-country polling stations
8	Number of voters included in the voter lists	36,213,010	424,536
9	Number of voters in the extracts for mobile voting	1,065,634	
10	Number of voters who received ballots in the polling station premises	19,878,314	20,570
12	Number of voters who received ballots for mobile voting	952,840	
13	Total number of voters who received ballots	20,831,193	20,570
14	Number of voters who participated in the proportional elections in the polling station premises (ballots found in the stationary ballot boxes)	19,729,774	20,570
15	Number of voters who participated in the proportional elections using the mobile ballot box (ballots found in the mobile ballot boxes)	949,417	
16	Total number of voters who participated in the proportional elections	20,797,206	20,570
17	Number of invalid ballots	409,068	148
18	Number of votes for the candidate list of each party (the table below)		

Party	Number of Votes	% of Votes	Number of Prop. Seats	Number of Maj. Seats	Total Seats
Party of Regions	6,116,746	30.00	72	113	185
United Opposition– <i>Batkivshchyna</i>	5,209,090	25.54	62	39	101
UDAR	2,847,979	13.96	34	6	40
Communist Party of Ukraine	2,687,269	13.18	32		32
<i>Svoboda</i>	2,129,933	10.44	25	12	37
Ukraine Forward!	322,198	1.58			
Our Ukraine	226,492	1.11			
Radical Party of Oleh Lyashko	221,144	1.08		1	1
Pensioners' Party	114,206	0.56			
Socialist Party of Ukraine	93,071	0.45			
Party of Greens	70,261	0.34			
Green Planet	70,106	0.34			
Russian Bloc party	63,532	0.31			
The Greens party	51,369	0.25			
Ukraine of the Future	37,909	0.18			
<i>Ridna Vitchyzna</i>	32,701	0.16			
Labor party	22,854	0.11			
New Politics	21,030	0.10			
<i>Hromada</i>	17,667	0.08			
Ukrainian National Assembly	16,913	0.08			
Liberal Party of Ukraine	15,549	0.07			
<i>Yedynyi Tsentr</i>	n/a			3	3
<i>Narodna Partiya</i>	n/a			2	2
<i>Soyuz</i>	n/a			1	1
Self-nominated	n/a			43	43
Total	20,388,019		225	220	445

Source: CEC website; http://www.cvk.gov.ua/info/zbvo_2012.pdf

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).