

INTERIM REPORT No. 2
14 April–12 May 2014

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I. EXECUTIVE SUMMARY

- The presidential election is taking place in a complex political, economic and security situation, which affects the legal framework, technical preparations and the election campaign. Continued unrest and violence in the east of Ukraine, where anti-government forces have taken over numerous administrative buildings, self-proclaimed local authorities controlling some cities, and the government's conducting an anti-terrorist operation, seriously impact the election process there. Self-proclaimed local 'authorities' staged so-called local 'referenda' on autonomy/independence in some parts of Donetsk and Luhansk *oblasts* (regions) on 11 May. These were not observed by the OSCE/ODIHR EOM to any extent.
- The electoral legal framework continued to be amended during the reporting period. Parliament passed a law on temporarily occupied territories on 15 April, which states that voting will not take place on the Crimean peninsula and that citizens from these territories may register to vote in other parts of Ukraine. Given a shortfall of nominations for Precinct Election Commission (PEC) members, parliament on 6 May amended the presidential election law to reduce the minimum number of PEC members from 12 to 9.
- The Central Election Commission (CEC) continues to make preparations for the election and has demonstrated an efficient, independent and collegial manner of work. The CEC formed all 213 District Election Commissions (DECs) within the legal deadline. Candidates replaced a high proportion of their nominees, which affected many DECs' functioning. Most DECs formed PECs within the legal deadline or with slight delays. The election administration of the eastern *oblasts* of Donetsk and Luhansk is seriously affected by the security situation in these *oblasts*.
- Most OSCE/ODIHR Election Observation Mission (EOM) interlocutors did not voice any concerns regarding the accuracy of the voter register. However, the CEC closed access to the State Voter Register database for 38 Register Maintenance Bodies in Donetsk and Luhansk *oblasts* due to the situation there until 11 May. Consequently, preliminary voter lists for over 1,500 PECs were not printed and distributed within the legal deadline.
- Although a number of candidates intensified their campaign activities, the election campaign remains relatively subdued overall. This is particularly true for the eastern regions. Several campaign-related incidents were reported, including cases of intimidation and attacks and obstruction of campaign activities.
- Freedom of the media remains a major concern, especially in eastern Ukraine where journalists and media have been facing threats and harassment. State-owned media are providing free airtime and space to candidates, in line with the law. The first televised debate among presidential candidates organized by the state-owned *First Channel* was broadcast on 9 May. OSCE/ODIHR EOM media monitoring indicates that most broadcast media are focusing their coverage on a limited number of contestants.

- Most minority communities across the country informed the OSCE/ODIHR EOM that they do not encounter obstacles in the electoral process. Nevertheless, their participation may be adversely affected by the recent instability and unrest. There have been reported incidents of vandalism, hate speech and violence against some national minorities.
- The CEC has only received two complaints thus far, and a limited number were submitted to courts during the reporting period.

II. POLITICAL CONTEXT

The presidential election is taking place in a complex political, economic and particularly security situation, which affects the legal framework, technical preparations and the campaign of candidates.

Numerous administrative buildings in Donetsk and Luhansk *oblasts* remain occupied and some cities continue to be controlled by self-proclaimed local authorities. Incidents of violence and abductions of individuals in the regions are being reported. The start of an anti-terrorist operation was announced by the acting president on 14 April; it is continuing to date.

On 17 April in Geneva, representatives of the European Union, the United States, Ukraine and the Russian Federation agreed on initial steps to de-escalate tensions and restore security for all citizens.¹ However, this agreement has to date not shown visible effects on the ground.

On 2 May in Odessa, 46 people died, most in a fire in the Trade Union building, after violent clashes between pro-Russian and pro-Ukrainian groups. In Mariupol (Donetsk *oblast*), deadly clashes on 9 May left a number of people dead. Self-proclaimed local ‘authorities’ in some parts of Donetsk and Luhansk *oblasts* staged so-called local ‘referenda’ on autonomy/independence on 11 May, which the Ukrainian authorities called illegal and illegitimate.² These ‘referenda’ were not observed by the OSCE/ODIHR Election Observation Mission (EOM) to any extent.

III. THE LEGAL FRAMEWORK

During the reporting period, the electoral legal framework continued to be amended and new legislation proposed to address the conduct of the election in the changing political-security environment. On 15 April, parliament passed the Law on Ensuring the Rights and Freedoms of Citizens and the Legal Order on the Temporary Occupied Territory of Ukraine. In addition to addressing many key legal questions, the law also states that voting will not take place on the Crimean peninsula and relaxes procedures for citizens from these territories to register to vote in other parts of Ukraine. Although not adopted to date, a draft amendment to the Law on the Legal Order of the State of Emergency was submitted for consideration in parliament, to allow presidential elections to be held in the event of a declared state of emergency.

Acknowledging the difficulties in identifying people willing to serve on PECs given the current political context and a lack of nominations from presidential candidates, parliament on 6 May amended the presidential election law to reduce the minimum number of PEC members required to establish a polling station from 12 to 9. These amendments were submitted and adopted immediately prior to the deadline for PEC formation.³

¹ See the full text of the statement at: <http://mfa.gov.ua/en/news-feeds/foreign-offices-news/21822-zhenevskyka-zajava-vid-17-kvitnya-2014-roku>.

² No reliable information is available on the extent to which the so-called ‘referendum’ was actually held.

³ The amendments only came into force upon publication on 7 May, just after the deadline for PEC formation.

On 24 April, parliament voted against including on the agenda proposed amendments to the Criminal Code of Ukraine that would increase criminal liability for election offenses, broaden the scope of those who can be held liable, and further define electoral offenses.

On 22 April, 101 members of parliament submitted a request for clarification to the Constitutional Court on the presidential term, specifically asking whether the term of the president to be elected in this extraordinary election should be five years or whether it should extend only until 2015, the time of the next regularly scheduled election; the Constitutional Court is yet to decide in this case.

IV. THE ELECTION ADMINISTRATION

The Central Election Commission (CEC) continues to hold open sessions on a daily basis, which are attended by media, candidate representatives, and observers. Aside from these public sessions, the CEC holds preliminary meetings, at which the agenda and draft decisions are discussed.⁴

Despite the unstable political situation in parts of the country and the ongoing process of amending electoral legislation, the CEC has demonstrated an efficient, independent and collegial manner of work and has thus far met all legal deadlines.⁵ The CEC has been registering candidate proxies in different regions, including the Autonomous Republic of Crimea and the city of Sevastopol,⁶ and has taken additional measures to ensure the security of the election process in particular regions. Being responsible for clarifying the electoral law, the CEC adopted a number of clarifications, with regards to the election campaign, the rights of international observers, and the activities of District Election Commissions (DECs) and Precinct Election Commissions (PECs). However, some issues have not been addressed by CEC resolutions.⁷

On 14 April, the CEC formed all 213 DECs, based on nominations by the candidates.⁸ A significant minority of DECs had difficulty in achieving the required quorum at their inaugural meetings and OSCE/ODIHR EOM long-term observers (LTOs) reported that 22 DECs were unable to convene before the legal deadline (midnight on 16 April). This was largely due to non-attendance of DEC members.⁹ Eventually, all DECs were able to legally convene, although a few did so only with a considerable delay.¹⁰ Most registered as legal entities by the legal deadline.¹¹ OSCE/ODIHR LTOs reported that, initially, a significant minority of DECs lacked sufficient operational resources,

⁴ The CEC in its Rules of Procedures defined these preliminary meetings as one of the organizational forms of its activity.

⁵ Since 25 February, more than 500 resolutions have been adopted by the CEC (including resolutions with regard to parliamentary by-elections and local elections).

⁶ While the law on temporary occupied territories does not foresee voting in these territories, it does not preclude other electoral activities, including campaigning.

⁷ The CEC did not clarify the mechanism for selection of DEC and PEC members by a higher-level election commission in cases where the number of members nominated by candidates is less than that required by law and did not define the rules for redistribution of executive positions in DECs and PECs.

⁸ No DECs were formed for the 10 election districts located in the Autonomous Republic of Crimea and the 2 election districts located in the city of Sevastopol, where the election will not be conducted.

⁹ A high number of DEC members initially appointed resided far from the district of their appointment e.g. members in DECs in Donetsk, Lviv and Odessa *oblasts* who resided in Kyiv.

¹⁰ OSCE/ODIHR EOM LTOs reported delays in DECs 15 and 16 (Vinnytsia), 44 and 47 (Donetsk), 114 (Luhansk), 131 (Mykolaiv), 178 (Kharkiv) and 202 (Cherkassy).

¹¹ Among other things, registration as a legal entity enables a DEC to receive its financial allocation. The legal deadline was 18 April. Most of the other DECs registered between 19 and 30 April.

although the situation has since improved.¹² A number of DEC members commented on the limited size of their financial allocation.

According to the CEC, some 71 per cent of the initially appointed DEC members had prior election commission experience, less than in previous elections.¹³ Members on almost all DEC members have received training on the legislation and their work, which OSCE/ODIHR LTOs mostly assessed as being of good quality. Men and women are almost equally represented on DEC members,¹⁴ although OSCE/ODIHR LTOs report a higher proportion of women DEC secretaries (some 68 per cent).¹⁵

In the period following the formation of the DEC members, many members resigned and some candidates replaced a high proportion of their nominees, including appointed chairpersons, deputy chairpersons and secretaries (DEC executives).¹⁶ By 8 May, there had been some 1,500 changes in DEC membership, causing the CEC an additional workload and affecting the functioning of many DEC members, partly due to delays in re-appointing members.¹⁷ A few DEC members continue to have problems achieving a meeting quorum.¹⁸ The withdrawal of two candidates by the 1 May deadline¹⁹ necessitated the subsequent reallocation of 56 executive positions. The CEC decided to appoint replacements based on their prior electoral experience, rather than distributing proportionally among the other candidates. As a result, some candidates have a slightly higher proportion of DEC executives than others.²⁰

Almost 40 per cent of DEC members expressed a concern regarding the limited time available to organize the election. Overall, OSCE/ODIHR EOM observers reported that as of 7 May, some 23 per cent of DEC members are experiencing major impediments to their work.²¹ OSCE/ODIHR EOM observers assessed electoral preparations to be poor or very poor in 15 out of the 213 DEC members,²² with serious problems in Donetsk and Luhansk *oblasts*. However, some OSCE/ODIHR EOM observers' ability to directly observe the pre-election situation was limited due to the security situation. The political environment, ongoing anti-terrorist operation and the general lack of security in large parts of these regions is significantly and adversely affecting electoral preparations. Serious problems include: the occupation²³ of or intrusion²⁴ into election commission premises and work areas by unauthorized

¹² Local government is responsible to provide premises and some material resources. On 18 April, OSCE/ODIHR LTOs assessed problems with the resourcing of some 30 per cent of DEC members at the time of their appointment. By 7 May, some 10 per cent of DEC members still had resourcing issues. Almost all DEC members are now connected to the informatics network "Vyborg", which *inter alia* provides secure communication between the CEC and DEC members.

¹³ OSCE/ODIHR LTOs reported that some 52 per cent of DEC chairpersons had previously served on a DEC.

¹⁴ According to the CEC, some 48 per cent of DEC members are women.

¹⁵ DEC secretaries have a key role in ensuring the functioning of election commissions.

¹⁶ In some 72 per cent of DEC members, at least one executive was replaced after their appointment, and as of 7 May, some 10 per cent of DEC members lack at least one of the three executive members.

¹⁷ According to CEC Resolutions No. 297, 330, 331, 339, 352, 372, 395, 409, 441, 468, 475, and 485.

¹⁸ A quorum for a 'regular' DEC session is more than half of the appointed members present.

¹⁹ Nataliya Korolevska and Oleh Tsariov, both self-nominated. Candidate Zoryan Shkiryak announced during a televised debate on 10 May he was also withdrawing from the election, nine days after the legal deadline for formal candidate withdrawal.

²⁰ Notably Petro Poroshenko, Mykhaylo Dobkin, Yulia Tymoshenko, and Mr. Shkiryak, whose representation among the executives rose by between 30 to 16 per cent.

²¹ Problems reported to OSCE/ODIHR EOM observers by DEC members include no access to funds, difficulty in hiring DEC support staff, inadequate security and uncooperative local government bodies.

²² The state of preparations in 12 DEC members could not be assessed, due to the security situation.

²³ For example, premises initially assigned to DEC members 47, 51, 53 and 57 are currently illegally occupied. The seat of election district 47 and the location of the DEC have been moved from Slovyansk to Olexandrivka.

²⁴ For example in DEC members 42, 44, 58 (Donetsk *oblast*) and DEC members 108, and 110 (Luhansk *oblast*).

groups, some of whom are armed, and other forms of intimidation of DEC members.²⁵ Some interlocutors associate these illegal actions with the so-called local ‘referenda’ which self-proclaimed local ‘authorities’ staged in some parts of Donetsk and Luhansk *oblasts* on 11 May.

The local and central electoral authorities expressed a strong concern that the lack of security in the two eastern *oblasts*, and possibly elsewhere, could deter people from serving on DEC members and PECs²⁶ and could lower voter turnout. OSCE/ODIHR EOM observers reported that some DEC members expressed fear of serving on an election commission in the current environment. After intrusions by armed groups at DEC 108, 110 (Luhansk *oblast*) and DEC 42 and 43 (Donetsk *oblast*), and the inaction of local law enforcement bodies, on 7 May, the CEC requested the General Prosecutor’s Office, the Ministry of Internal Affairs, the Security Service, and the Donetsk and Luhansk *oblast* authorities to take all measures to ensure the proper functioning of DEC members, PECs and Register Maintenance Bodies (RMBs) in these *oblasts*.²⁷ However, some local branches of some of these bodies are not fully functional. While the feasibility of the electoral authorities to hold the election in some election districts is uncertain, OSCE/ODIHR EOM observers stressed that many election commissions in these regions were continuing with their work in spite of the evident challenges.

The CEC established 32,235 electoral precincts, whose PECs under the law are formed by DEC members on the basis of candidate nominations. OSCE/ODIHR EOM observers reported that over half of DEC members experienced difficulties in appointing PECs by the legal deadline of 6 May, largely due to a shortfall in number of members nominated. Many had to approach local-government bodies to suggest experienced polling officials to ensure PECs met the minimum composition of 12, and following the amendment to the presidential election law of 7 May, 9 members. OSCE/ODIHR EOM observers reported that some 74 per cent of DEC members had formed all PECs by the deadline. In general, the remainder was formed with a slight delay, although some DEC members, particularly in Donetsk and Luhansk *oblasts*, had been unable to form PECs by 7 May.²⁸ Some DEC members expressed concerns that the reduction in the minimum size of PECs could cause operational problems, particularly where local elections are held simultaneously.

V. VOTER REGISTRATION

Most OSCE/ODIHR EOM interlocutors did not voice any significant concerns regarding the accuracy of the voter register. According to the CEC’s State Voter Register (SVR) office, as of 6 May, the total number of registered voters was 35,864,673, of which 19,753,242 (55 per cent) are women. Some 633,500 citizens who are homebound are registered to vote at their place of stay, and 436,157 citizens have registered for out-of-country voting.²⁹ As of 12 May, 15,510 voters had requested to temporarily change their voting address, of which some 1,250 are resident in the Autonomous Republic of Crimea and the city of Sevastopol.³⁰

²⁵ For example, on 29 April some 100 people demanding the DEC halt preparations for the presidential election attempted to intrude into the premises of DEC 116 (Luhansk *oblast*). DEC 108 and 110 (also Luhansk *oblast*) were subject to intimidation on 7 May, which in the former included the demand for the members to resign their posts, and in the latter armed people assaulting PEC members gathered for a training.

²⁶ OSCE/ODIHR EOM observers report that members of some DEC members and PECs have resigned their positions or are considering resigning, due to the pressure of holding these posts in the current security environment.

²⁷ The request was adopted as CEC Resolution No. 505.

²⁸ The CEC informed the OSCE/ODIHR EOM that DEC 47, 49, 53, 58 and 59 (all in Donetsk *oblast*) had not been able to appoint PECs. Observers reported that DEC 42 (also Donetsk *oblast*) had also not managed to form PECs by 7 May.

²⁹ According to CEC Resolution No. 484 of 6 May, a total of 114 out-of-country PECs were created in 75 countries.

³⁰ On 29 April, the CEC adopted Resolution No. 415 which allows 725 RMBs to enter changes to the voter registration records of residents of the Autonomous Republic of Crimea and the city of Sevastopol where RMBs are not functioning, thus enabling these citizens to temporarily change their voting address.

Preliminary voter lists and voter invitation cards are transferred by RMBs to the respective PECs no later than 16 days before election day. Almost without exception, OSCE/ODIHR EOM observers reported that apart from Donetsk and Luhansk *oblasts*, PECs received preliminary voter lists and the invitations within the legal deadlines.³¹

The CEC and the SVR office have posted information on their websites to raise awareness among residents in the Autonomous Republic of Crimea and the city of Sevastopol regarding the provision, which could enable their participation in the election.³² According to OSCE/ODIHR EOM observers, very few voters requested a temporary change of the voting address in the five RMBs adjacent to the Crimean peninsula. The CEC is exploring additional measures to inform these citizens, despite the limited time available.

Due to the situation in eastern Ukraine, the CEC temporarily closed access to the SVR database for 33 RMBs in Donetsk and 5 in Luhansk *oblasts* until 11 May.³³ According to the SVR office, there are 5,044,072 registered voters in these two *oblasts*, of whom 2,048,234 reside within the territory covered by these 38 RMBs. Consequently, the preliminary voter lists of some 1,500 PECs were not printed and distributed within the legal deadline.³⁴ On 12 May, the CEC reopened access to the SVR for the previously blocked RMBs, apart from six in Donetsk *oblast* because the buildings in which they are housed continue to be occupied.³⁵

VI. CAMPAIGN ENVIRONMENT

Campaign activities of varying intensity are taking place in different parts of the country, but the campaign remains relatively subdued overall. OSCE/ODIHR EOM observers have not observed any significant campaign activities of candidates in Kharkiv, Luhansk and Donetsk *oblasts*.

During the reporting period, a number of contestants intensified their campaign activities, while others remain less visible. The OSCE/ODIHR EOM has to date observed 70 rallies.³⁶ The campaign messages of candidates continue to center around security, stability and unity of the country, decentralization, constitutional reform, economic growth, reform of the armed forces, the fight against corruption and oligarchy, as well as relations with the European Union, NATO and the Russian Federation.

The OSCE/ODIHR EOM has thus far met 17 of the 21 presidential candidates, their campaign managers or proxies.³⁷ While they said that the challenging security situation had a negative impact on their ability to campaign, all interlocutors stressed the need for presidential election to take place to stabilize the country. No concerns regarding potential large-scale election fraud were raised.

³¹ The handover of voter lists in the two eastern *oblasts* could not be observed by OSCE/ODIHR observers due to the security situation.

³² Information is available on the websites of the CEC (http://www.cvk.gov.ua/vp_2014/zmina_adresy/) and the SVR (https://www.dr.gov.ua/portal/cm_core.cm_index?option=ext_static_page&ppg_id=108&pmn_id=98).

³³ The number of blocked RMBs varies from day to day due to the changing situation in eastern Ukraine.

³⁴ There are a total of 3,907 PECs in these two *oblasts*.

³⁵ The six RMBs, which still do not have access to the SVR, are responsible for 288,143 voters served by 242 PECs.

³⁶ The OSCE/ODIHR EOM has observed rallies by Olha Bohomolets, Mykhailo Dobkin, Anatoliy Hrytsenko, Oleksandr Klymenko, Oleh Lyashko, Petro Poroshenko, Oleh Tyahnybok and Yulia Tymoshenko, mainly in the central and western regions.

³⁷ The OSCE/ODIHR EOM also met with the two candidates who withdrew, while they were still registered.

Candidates have started putting up billboards and posters, as well as tents with campaign materials, newspapers and leaflets.³⁸ Some candidates explained to the OSCE/ODIHR EOM that they would not use commercial billboards and posters due to limited financial resources and the situation in the country.³⁹ They opt for rallies, debates in the media, door-to-door campaigning, distribution of campaign materials and smaller meetings with voters.

A number of violent incidents have been reported so far. Campaign billboards and posters of some candidates were damaged in different regions.⁴⁰ Several cases of intimidation and attacks on political party and campaign offices across the country have been reported by OSCE/ODIHR EOM LTOs.⁴¹ OSCE/ODIHR EOM LTOs reported that three candidates were obstructed in their campaign.⁴² In Luhansk *oblast*, campaign tents and staff of some candidates have been attacked or threatened.⁴³ Mykhailo Dobkin's proxy informed the OSCE/ODIHR EOM that two appeals had been submitted to the Prosecutor General over several such cases.

VII. THE MEDIA

On 17 April, parliament adopted the long-awaited Law on Public Television and Radio Broadcasting of Ukraine, which transforms the state-owned broadcaster into a public service broadcaster.⁴⁴ However, due to transitory provisions, the law is not likely to come into force until 2015.

Freedom of the media remains a major concern. Journalists and media operating in the south and east of Ukraine have been facing threats and harassment, including abductions and short detentions, from anti-government forces on a daily basis, which hampers their capacity to properly cover developments in the region.⁴⁵ A temporary ban on Russian television (TV) channels is still in force.⁴⁶ However, it is not uniformly respected by regional cable operators and some regional state TV which resumed or started broadcasting Russian TV channels under pressure from anti-government forces.⁴⁷

³⁸ Most posters are by Mykhailo Dobkin and Petro Poroshenko, followed by Serhiy Tihipko, Anatoliy Hrytsenko, Oleh Lyashko and Valery Konovalyuk. Renat Kuzmin put up billboards in Donetsk and Odessa, and some posters by Volodymyr Saranov are in evidence in Kyiv.

³⁹ Yulia Tymoshenko has decided not to use billboards in her campaign, saying she considered it inappropriate in the current political and security situation. Olha Bohomolets, Vasyl Kuybida, Mykola Malomuzh and Vasyl Tsushko quoted limited financial resources.

⁴⁰ Mykhailo Dobkin in Kyiv and Odessa, Petro Poroshenko in Ivano-Frankivsk.

⁴¹ Communist Party offices in Kyiv, as well as in Rivne, Zakarpattia, Vinnytsia, Dnipropetrovsk and Ternopil *oblasts*; Party of Regions offices in Chernivtsi and Chernihiv *oblasts*. *Batkivshchyna* reported attacks or threats in Kyiv *oblast*, Lviv and Odessa *oblasts*; campaign offices of Petro Poroshenko were attacked in Donetsk and Cherkassy *oblasts*.

⁴² Mr. Dobkin in Dnipropetrovsk, Kyiv and Kherson *oblasts*; Mr. Hrytsenko in Poltava *oblast*; Mr. Tihipko in Luhansk *oblast*.

⁴³ Mr. Hrytsenko, Mr. Poroshenko, and Ms. Tymoshenko, according to reports by OSCE/ODIHR EOM LTOs.

⁴⁴ This was a long-standing OSCE/ODIHR recommendation.

⁴⁵ See the statement of the OSCE Representative on Freedom of the Media of 9 May 2014, at: <http://www.osce.org/fom/118407>.

⁴⁶ The decision of the Kyiv District Administrative Court on the temporary cessation of four Russian TV channels remains in force until a final decision of the court on the merits (Decision No. 824/3456/14, 25 March 2014).

⁴⁷ According to the National Television and Radio Broadcasting Council, as of 6 May, 81 out of 118 cable providers in Donetsk *oblast* and 33 out of 57 in Luhansk *oblast* resumed broadcasts of Russian TV channels.

The National Television and Radio Broadcasting Council (NTRBC) created an internal working group to supervise media compliance with existing laws during the election campaign.⁴⁸ The CEC acknowledged to the OSCE/ODIHR EOM that it has been notified by the NTRBC about minor violations, which it does not deem necessary to be pursued. Furthermore, the CEC is not responsible for dealing with media-related violations.

State national television and radio are abiding by the presidential election law and CEC Resolution No. 293 by offering free airtime to all contestants on prime time.⁴⁹ Candidates availed themselves of this opportunity, so far. Two special editions of the state-owned newspapers *Holos Ukrainy* and *Uryadovyi Kurier* granting free space for the presentation of the candidates' platforms were published on 30 April.

OSCE/ODIHR EOM media monitoring data for the period from 1 April to 12 May show that after a slow start of the campaign, the coverage devoted to the candidates is gradually increasing. Nevertheless, the overall political discourse in the media was dominated by the crisis in the southern and eastern regions, including when candidates were directly covered. The first of seven "national debates" organized by the state-owned *First Channel*, each with the participation of three presidential candidates, took place on 9 May. Broadcast media are focusing their coverage on a limited number of contestants. Also, the number of candidates purchasing paid advertisement is limited: thus far, four candidates purchased 94 per cent of all total paid advertisement in the TV channels monitored, with Petro Poroshenko alone having purchased 48 per cent.⁵⁰

VIII. PARTICIPATION OF NATIONAL MINORITIES

Most minority communities across the country informed the OSCE/ODIHR EOM that they consider Ukraine to be an open and tolerant society overall, do not encounter obstacles in the election process, expect their members to vote, and may endorse a candidate.⁵¹

Nonetheless, the participation of minorities may be adversely affected by the recent instability and unrest. There have been reported incidents of vandalism, hate speech and violence against Jewish and Roma communities in eastern Ukraine, and Crimean Tatars in Crimea, as well as one involving the Russian community in central Ukraine.⁵² Crimean Tatars must cross into a neighboring *oblast* to vote since polling stations will not be opened in Crimea; however, concerns were expressed whether potential restrictions on their freedom of movement will allow them to vote. In addition, over half of Ukraine's native Russian-speakers live in the eastern *oblasts* where instability may hamper the organization of the election and impact on their ability to exercise their voting rights.

⁴⁸ This is in compliance with Article 13 of the Law on the National Television and Radio Broadcasting Council. The NTRBC working group started to work on 17 April. The NTRBC notifies broadcasting companies and the CEC on detected violations. A public report will be issued only after the election.

⁴⁹ As provided for by Article 61.2 of the presidential election law, the airtime is provided to the contestants at the expense of funds allocated from the state budget for the preparation and conduct of elections. On 17 April, the CEC organized a lottery to establish the order of candidates' appearance on national TV and radio. Candidates have been granted two slots of 15 minutes on prime time from 22 April to 22 May on *First Channel*, and from 7 to 23 May on *Ukrainian Radio 1*.

⁵⁰ Mr. Poroshenko 48 per cent, Ms. Tymoshenko 17 per cent, Mr. Tihipko 15 per cent and Mr. Dobkin 14 per cent.

⁵¹ The OSCE/ODIHR EOM has interviewed 64 representatives across the country from 15 ethnic minority groups and 7 religious communities, as well as 5 consultative bodies representing minorities.

⁵² OSCE/ODIHR EOM LTOs interviewed minority representatives who confirmed these incidents, which were also reported in the local and national media. The Mejlis of the Crimean Tatar People called attention to the incidents in Crimea during a press conference on 5 May, and a Kyiv-based NGO also raised it with the OSCE/ODIHR EOM.

Language policy continues to be an important campaign issue. Leading candidates campaigning in regions with large minority populations indicate a more flexible position on language policy; while most candidates do not support Russian as a second state language, they state they would increase the status of the language or at least maintain the 2012 language law.

IX. COMPLAINTS AND APPEALS

To date, two complaints were submitted to the CEC. Candidate Vadym Rabinovych challenged the presidential decrees to provide state security for six of the candidates, arguing that this violated his right to equal opportunity as a candidate. The CEC rejected the complaint for lack of jurisdiction over the actions of the president.⁵³ A limited number of complaints were submitted to courts.

During the reporting period, the Kyiv Administrative Court of Appeals heard an appeal of the CEC resolution on the re-allocation of some of the DEC executive positions following the withdrawal of two presidential candidates. The appellant argued that the CEC did not guarantee the proportional allocation of positions by candidate when filling the vacated posts. The appeal was rejected as the court could not determine if the CEC maintained the proportional allocation based on one resolution. However, the court noted that legal obligation to ensure proportional allocation applies when filling vacated posts and not only upon formation of the DEC.⁵⁴

Presidential candidate Petro Symonenko filed two complaints alleging the spreading of deliberately false information by presidential candidates Lyashko and Shkiryak through the media outlets “Profi-News” and TV News Channel 24. The courts did not address the truthfulness of the statements about Mr. Symonenko and his party in either case, but did order “Profi-News” to issue a correction. In the opinion of the courts, candidates can either request the opportunity to respond through the media outlet or file a civil claim for defamation.

On 10 April, the Supreme Court admitted for consideration the appeal of the High Administrative Court decision in which the court rejected consideration of the challenge to the appointment of the acting president and the call for the presidential election on 25 May. The High Administrative Court had said that the challenge raised constitutional questions not within its jurisdiction.

X. CITIZEN AND INTERNATIONAL OBSERVERS

The CEC has thus far registered around 750 international observers from a number of states and international organizations.⁵⁵ Of the ten non-governmental organizations (NGOs) which have been granted permission to observe the election, only OPORA has actively started the actual accreditation of observers in DEC. The highest number of candidate observers has been registered by Ms. Tymoshenko. Candidates Shkiryak, Tyahnibok, Malomuzh, Klymenko, Dobkin and Tihipko have observers in a few regions only.⁵⁶

⁵³ The second complaint regarding the activities of one DEC, was rejected without consideration by the CEC. The CEC responded by letter to the complainant stating that the complaint did not comply with the format required.

⁵⁴ Both the CEC and Mr. Hrytsenko appealed the Court of Appeals decision to the High Administrative Court. On 10 May, the court upheld the decision in its entirety.

⁵⁵ These include the OSCE/ODIHR EOM, the OSCE Parliamentary Assembly, the Ukrainian Congress Committee of America, the Canadian Election Observation Mission (CANEOM), the EOM of the European Network of Election Monitoring Organizations (ENEMO) and the Ukrainian World Congress.

⁵⁶ There have been isolated cases where DEC. rejected requests to register candidate observers due to errors in the submitted documentation or missing documents.

XI. OSCE/ODIHR EOM ACTIVITIES

During the reporting period, the OSCE/ODIHR EOM continued its regular activities, meeting state officials, candidates, party representatives, the election administration, court officials, media and civil society representatives, and diplomatic missions. OSCE/ODIHR EOM LTOs deployed throughout the country continue to observe electoral preparations and the campaign in the regions and are preparing for the deployment of short-term observers. A briefing for members of the diplomatic community and international organizations accredited in Ukraine was held on 22 April.