



INTERNATIONAL ELECTION OBSERVATION MISSION

Ukraine — Presidential Election, 17 January 2010

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

PRELIMINARY CONCLUSIONS

The first round of the 17 January presidential election in Ukraine was of high quality and showed significant progress over previous elections. This election met most OSCE and Council of Europe commitments. Civil and political rights were respected, including freedom of assembly, association and expression. Election day was conducted in an efficient and orderly manner.

This election saw a diverse field of candidates representing alternative political views, offering a genuine choice to the electorate. Candidates were able to campaign freely across the country without impediment. The campaign period was generally calm and orderly. Unsubstantiated allegations of large-scale electoral fraud negatively affected the pre-election atmosphere and voters' confidence. In contradiction with the law, administrative resources were misused by candidates in official positions. More transparent campaign financing is necessary during the pre-election period.

By voting in large numbers and freely expressing their will, Ukrainians have shown the desire to decide on the course of the country. The intertwining of political and economic interests had a negative influence and undermined public confidence in the political process, posing a challenge for Ukraine's leadership.

Election rules have to be set clearly and should not be a permanent subject of discussion. Regrettably, a unified election code has not yet been adopted in Ukraine. The existing election law as amended in August 2009 was a step backward compared to previous legislation. As a result, the legal framework remains unclear and incomplete. Last minute court decisions contributed to a lack of clarity in the procedures. However, if implemented in good faith and in a non-restrictive manner, the legislation could provide a basis for holding democratic elections.

Freedom of expression significantly improved since 2004. Overall, the pluralistic media environment offered voters a variety of information about leading presidential candidates and their platforms. The media was subject to heavy financial pressures and economic interests. The coverage by the electronic media was often not determined on the basis of newsworthiness, but rather as a result of candidates paying to appear in the news or current-affairs programmes.

Despite a delay in funding, the election commissions were generally efficient in meeting tight deadlines while coping with a heavy workload. The Central Election Commission (CEC) mostly operated in a non-partisan and collegial manner, although in a highly polarized political environment. The CEC did not fully address the shortcomings of the law, at times leaving the District Election Commissions (DECs) and Precinct Electoral Commissions (PECs) without proper guidance. Some actions of the CEC lacked the required transparency.

In a positive development, for the first time a State Voter Register was established and the election and state administration made considerable efforts to decrease the number of multiple registrations of voters and to improve the overall quality of voter lists.

Throughout the campaign, candidates rarely used the legal means available to them in the electoral legislation to address their complaints. The administrative courts adjudicated election-related cases in a timely and transparent manner, meeting tight deadlines and providing plaintiffs effective remedies. The CEC did not address complaints in a transparent manner and answered most of them without a formal decision, thus denying access to effective remedies.

The presence of domestic observers significantly increased transparency. Non-governmental organizations monitored the elections despite the fact that they were not permitted by the election law to register their members as observers.

Women were well-represented in the leadership positions of the election administration.

The election day was orderly and calm. Voting and counting was assessed as overwhelmingly positive by observers.

PRELIMINARY FINDINGS

Background

The political landscape in Ukraine is characterized by confrontation between the legislative and executive branches as well as tensions between the president and the prime minister, former “orange coalition” allies. Both the president and the prime minister have publicly blamed each other for causing the political and economic crisis.

A lack of quorum or the opposition hindering parliamentary sessions paralyzed the work of parliament. As a result, important laws were not adopted, including the 2010 state budget. The constitutionality of the date of this election set by the parliament was contested by the president. Following the ruling by the Constitutional Court, the parliament eventually established the date for 17 January 2010.

Election System and Legal Framework

The President of Ukraine is elected for a five-year term. In case no candidate wins more than 50 per cent of votes cast in the first round, a second round takes place three weeks later between the two candidates with the most votes.

The Constitution and the Law on the Election of the President of Ukraine (hereinafter election law) provide for universal, equal and direct suffrage by secret ballot.¹ Regrettably, a unified election code has not yet been adopted in Ukraine. The election law, adopted in 2004, as amended in August 2009 represented a step backward. The Council of Europe and OSCE/ODIHR reviewed the law and concluded that although the amendments incorporated a number of previous recommendations, many remained unaddressed. They also noted that some amendments raised serious concern and did

¹ Other relevant legislation include the Law on the CEC, the Law on the State Voter Register, the Law on Political Parties, and some provisions of the Code of Administrative Proceedings and the Criminal Code.

not comply with OSCE and Council of Europe commitments.² Some of the concerns include electoral dispute mechanisms, the possibility to make changes in the voter lists up to one hour before the close of the poll, the mechanism for appointing members of electoral commissions, and campaign finance provisions.

The Constitutional Court ruled several of the amended provisions unconstitutional, thereby addressing some of the concerns raised in the joint opinion related to limitations on the right to challenge result protocols in courts. The Court also nullified provisions *inter alia* requiring all members of District Election Commissions (DECs) and Precinct Election Commissions (PECs) to live within their respective district or precinct and provisions that required citizens residing abroad to be listed in the consular registry in order to exercise their right to vote.

In general, the election legislation included significant shortcomings. Incomplete, inconsistent and ambiguous provisions frequently led to confusion. Nonetheless, if implemented in good faith and in a non-restrictive manner, the legislation could provide an adequate basis for holding democratic elections.

Election Administration

The election administration is comprised of the Central Election Commission (CEC), 225 DECs, and 33,695 PECs. Despite the late disbursement of funds, the election commissions generally worked efficiently and met the deadlines required by the law.

The CEC operated in a non-partisan manner despite the complex political environment. Although the CEC was responsible for clarifying how to apply election-related laws, most CEC clarifications simply repeated the provisions of the law and did not further clarify the inconsistent or incomplete aspects of the law.³ These shortcomings left the DECs and PECs without proper guidance.

The CEC performed its work in a relatively open manner by holding regular sessions open to the media, candidate representatives and observers. However, the CEC members also held closed meetings at which the agenda and draft decisions were discussed so that a coordinated position could be reached and presented. The official sessions therefore became the forum where many decisions were just voted upon, but not debated. These actions were not in conformity with the law and decreased transparency.⁴

Overall, the CEC members worked collegially but the commission became polarized as election day approached. This first surfaced during discussions on numbering candidates on the ballot and continued over the issue of homebound voting and the procedure for amending the voter lists on election day. These controversies were further highlighted by the opposing press statements made by the chair and other members of the CEC.

Despite legal requirements, the CEC did not produce any voter education programs on the rights and obligations of voters, voting procedures, and the complaints and appeals procedures.

² The Council of Europe Venice Commission and OSCE/ODIHR Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine (CDL-AD (2009)040) http://www.osce.org/documents/odihr/2009/10/40858_en.pdf.

³ Such issues include homebound and out of country voting, complaint procedures, making changes to the voter lists on election day and the conduct of mass media.

⁴ Article 28.1 of the election law; articles 2.2, 4.1, 4.3 of the law on the CEC; articles 1.4, 10.1 and 13 of the rules of procedure of the CEC. All concern the requirements that CEC sessions, deliberations and activities be conducted openly.

The DEC and PECs were appointed based on candidate nominations with each candidate having the right to two representatives per commission. Based on the number of nominations, candidates had a right to proportional representation in leadership positions (chairperson, deputy chair and secretary). The proportionality principle at the DEC level was initially respected. However, in the case of subsequent replacements of commissioners, the CEC decided that the proportionality principle did not need to be respected. Upon a court's request, the CEC reconsidered three such replacements, but did not change their initial decision.

The DEC appointed the PECs by the legal deadline using different methods to allocate PEC leadership positions. The CEC data indicated that four candidates were overrepresented nationwide in the PEC leadership positions.⁵ The appointment of PECs was difficult and characterized by a high number of PEC members who resigned and who were moved from one PEC to another. Reasons for resignations included insufficient remuneration and perceived workload, especially for leadership positions. The process was also affected by some candidates nominating the same person to multiple PECs or both as a PEC member and observer.⁶

Due to the late transfer of the 2009 DEC budget funds, the DEC were forced to function based on credit and members' own contributions.⁷ This negatively impacted a few commissions, as they were delayed in delivering provisional voter lists to PECs, in purchasing the PEC stamps, or in printing and publicizing their documents.⁸ Some DEC chairs expressed discontent with the level of operational support and cooperation from the local administration.⁹

Despite difficulties, the DEC were generally efficient in meeting deadlines within a tight timeframe while coping with a heavy workload. The candidates did not always take into account knowledge and experience during the nomination of lower level commissioners, specifically to leadership positions. This combined with the large number of members and the fact that commissions were not regulated by uniform rules of procedures at times led to chaotic sessions.

Some PECs were not fully operational by the deadline, due to a lack of quorum or a resignation of the chairperson.¹⁰ Others were hampered by poor working conditions.¹¹ This was of concern, as these PECs were late in providing public access to the provisional voter lists.

The OSCE Project Co-ordinator in Ukraine together with the CEC trained DEC and PEC members.¹² In addition some candidates organized trainings for their own PEC members.

⁵ For 222 out of 225 DEC, as of 16 January; Mr. Yanukovich was over-represented by 13 per cent, Ms. Tymoshenko by 12 per cent, Mr. Yatsenyuk by 9 per cent and Mr. Yushchenko by 5 per cent. With similar number of nominations, Ms. Suprun was under-represented by 9 per cent

⁶ As observed in DEC 4, 37, 39, 69 and 158. In DEC 95 and 169 the same person was nominated by different candidates.

⁷ For example, DEC 24 to 29, 36, 38, 39, 146, 147, 152, 172, 175 and 176.

⁸ For instance problems delivering preliminary voter lists at DEC 96, 149, 150, 160, purchasing PEC stamps at DEC 9, 91, 163 and 164 and document production at DEC 4.

⁹ DEC 1, 4, 29, 57, 59, 91, 149, 180, 206 and 225.

¹⁰ Lack of quorum affected 44 PECs of 176 in DEC 125; 10 PECs of 83 in DEC 176; 4 PECs of 78 in DEC 106. No chairperson in function at 13 PECs of 229 in DEC 86.

¹¹ A lack of heating or electricity affected PECs in DEC 4, 120, 197 and 210.

¹² Approximately 2,600 DEC and 80,000 PEC chairpersons, deputy chairpersons and secretaries were trained and 5,000 DEC and 100,000 PEC official manuals were distributed.

Voter Registration

Previously, voter lists were created anew for every election. For the first time a State Voter Register (SVR) was established and voter lists were extracted from the SVR. The SVR was compiled on the basis of voter lists used in the 2006 and 2007 elections. In September 2009, initial verification took place and voters were sent a personal notification with a request to report back on any inaccuracies.

The SVR contains 36,302,473 voters.¹³ Since the SVR was created, over eight million inclusions, exclusions and corrections were made, of which one million directly addressed citizens' requests. A total of 651,975 duplicates have been removed, while 103,254 entries remain unresolved. From 27 December, the preliminary voter lists were made accessible for public scrutiny.¹⁴ The final voter lists were delivered to the PECs by 14 January as required by law.

The procedures to add voters on the voter lists on election day and the documents required to apply for homebound voting created controversy. The Kyiv Administrative Court of Appeals (KACA) decision clarified these two issues in conformity with the law and the High Administrative Court of Appeals (HAC) confirmed the decisions. On the eve of the election, the KACA reversed their initial decisions. They reintroduced the requirement that only voters with a medical certificate could be listed as homebound. They also upheld the decision of one DEC that instructed PECs not to make changes to the voter lists on election day but to refer these citizens to the court. Both decisions cannot be appealed.¹⁵ On election day, the CEC communicated to the PECs that its decisions would govern the process on election day, because new court decisions were not in conformity with the election law.

Candidate Registration

Candidate registration was inclusive and resulted in a diverse field of candidates representing alternative political views and offering a genuine choice to voters. In order to be registered each presidential candidate had to submit a comprehensive list of documents and forms to the CEC, along with a financial deposit of 2.5 million UAH (approximately 208,000 EUR).¹⁶ The CEC registered 18 candidates who were nominated by parties, electoral blocs and through self-nomination (independent).¹⁷ The CEC rejected 40 applications based on various grounds. Eighteen nominees challenged their denial of registration. The appeals were rejected by the KACA.

Campaign Environment

The campaign was low-key and took place in a generally calm environment. It was visible across the country with billboards and posters, public rallies, leafleting, concerts, campaign tents and door-

¹³ Data as of 10 January.

¹⁴ One or two day delays delivering the preliminary voter lists to PECs occurred in DEC 37, 102, 151 and 160 due to logistical or financial problems.

¹⁵ According to Article 177.4 of the administrative procedure code, decisions taken between midnight and 6 am on election day cannot be appealed.

¹⁶ The deposit will only be refunded to the two candidates who qualify for the second round of voting.

¹⁷ The CEC registered: Inna Bohoslovska, independent; Mykhailo Brodskyi, independent; Anatoliy Hrytsenko, independent; Yuriy Kostenko, Ukraine People's Party; Volodymyr Lytvyn, People's Party; Oleksandr Moroz, Socialist Party of Ukraine; Oleksandr Pabat, independent; Vasyl Protyvsikh, independent; Serhiy Ratushniak, independent; Oleh Riabokon, independent; Lyudmila Suprun, People's Democratic Party; Petro Symonenko, Bloc of Leftist Parties; Oleh Tiahnybok, All-Ukrainian Union - Freedom; Serhiy Tihipko, independent; Yulia Tymoshenko, All-Ukrainian Union - Motherland; Viktor Yanukovich, Party of Regions; Arseniy Yatsenyuk, independent; Viktor Yushchenko, independent.

to-door canvassing. All presidential candidates were able to campaign freely and without impediment. Levels and types of campaign activities of candidates differed considerably. Unsubstantiated allegations of large-scale electoral fraud negatively affected the pre-election atmosphere and voters' confidence.

The OSCE/ODIHR Election Observation Mission (EOM) noted that some presidential candidates abused their official positions and misused administrative resources for campaign purposes, which contradicts the election law. This offered them an undue advantage over their opponents. Both Ms. Tymoshenko and Mr. Yushchenko were warned by the CEC for campaigning during official working visits.¹⁸

In a clear case of violation of the campaign regulations, the governmental Pension Fund of Ukraine sent official letters to all pensioners, explaining that the law sponsored by the opposition Party of Regions would not raise pensions to the extent they claimed. The letter then explained that the current government was able to preserve the increase even during the economic crisis and promises further increases in 2010. There was also a letter sent to depositors of Rodovid Bank, recently nationalized, which contained campaigning on behalf of Ms. Tymoshenko. This blurs the distinction between state and political party that is prescribed by paragraph 5.4 of OSCE Copenhagen Document.

The cabinet of ministers, under the direction of the prime minister, ordered that the PECs who accept homebound voting applications without a medical certificate¹⁹ would not be paid and threatened them with criminal liability. She has also ordered the Ministry of Interior to verify all applications concerning homebound voting. This directly involved the government in the election process which is against the law. On the eve of election day these actions were declared illegal.

Other isolated incidents occurred, including arson and burglary of campaign premises, destruction of billboards or dissemination of anonymous inflammatory campaign material.²⁰ A few incidents resulted in complaints or criminal investigations. Candidate Mr. Ratushniak frequently used nationalist, xenophobic and anti-Semitic rhetoric in his election campaign.²¹

Participation of Women

The Constitution provides for equality between women and men in public and political life. In addition, the Law on Equal Opportunities for Women and Men specifically provides for equal rights and opportunities in the election process. There were three women among the 18 registered presidential candidates, including the incumbent prime minister. Within the CEC, 4 out of 15 members are women, including one of the two deputy chairpersons and the secretary. Women chaired 98 of the 225 DEC's (43.6 per cent) and two thirds of the polling stations visited.

¹⁸ Ms. Tymoshenko's warning was cancelled by the court, however the court did not address the substance of the CEC decision and the warning was cancelled on technical grounds. The KACA cancelled the warning against Mr. Yushchenko on the grounds that he was not personally informed of the session at which the warning was issued and that the CEC produced no evidence of which administrative resources the president allegedly used for campaigning.

¹⁹ It is not required by the law.

²⁰ Cases of arson targeting local Yanukovich campaign premises have been reported in Zaporizhzhia, Ivano-Frankivsk and Poltava. A burglary of a Tymoshenko campaign office took place in Dnipropetrovsk. The OSCE/ODIHR EOM LTOs reported on alleged inflammatory campaign material from Chernihiv, Dnipropetrovsk, Khmelnytsky, Lutsk, Lviv, Rivne, Odesa and Poltava.

²¹ For instance the distribution of materials against candidate Mr. Yatsenyuk.

Participation of Minorities

The majority of citizens are ethnic Ukrainians (77.8 per cent), while Russians form the most sizeable minority (17.3 per cent). The remaining five per cent of the population are Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles, Jews and Roma.²² Ukraine ratified the Council of Europe “Framework Convention for the Protection of National Minorities” (1998) as well as the “European Charter for Regional or Minority Languages” (2006). Official voter information and election material was available only in Ukrainian.²³ Some candidates, however, produced campaign materials in minority languages in a direct attempt to reach out to these communities.

The Media

Media coverage of the election campaign is mainly regulated by the election law that provides candidates with direct access to media through paid and free air time. Only a few articles refer to the editorial coverage of the campaign, not providing journalists with rules requiring fair, balanced and impartial coverage in news and current affairs programs on television.²⁴ The election law prohibits only state and municipal media from showing preference to any candidates. Some aspects of the law remain unclear and there is no requirement for relevant guidelines to be issued. This allowed candidates to interpret the law to their benefit.

Freedom of expression significantly improved since 2004. Overall, the pluralistic media environment offered voters a variety of information about leading presidential candidates and their platforms. The media was subject to heavy financial pressures and economic interests. Most private media broadcasters, however, showed editorial bias reflecting political views of their ownership. The coverage by the electronic media was often not determined on the basis of newsworthiness, but rather as a result of candidates paying to appear in the news or current-affairs programmes.²⁵ Journalists informed the OSCE/ODIHR EOM observers that as a result of this they were not always able to work according to the highest professional standards.

Media monitoring results of campaign coverage within newscasts have revealed different approaches in how TV stations determined when a candidate was acting in an official capacity or as a candidate. This had a significant impact on the total amount of air time devoted to campaign coverage in newscasts for candidates with official positions on different TV channels.²⁶

All five nationwide TV stations monitored by the OSCE/ODIHR EOM clearly favoured various main candidates in their newscasts. This can be seen both in terms of the amount of airtime devoted to covering their campaign and the tone of coverage.²⁷ The state-owned TV station *UTI*, that has low viewership, provided free air time and debates to all presidential candidates, as required by

²² 2001 census; Information of the State Committee of Statistics of Ukraine
<http://www.ukrcensus.gov.ua/eng/results/general/nationality>.

²³ See General Comment No. 25 adopted by the UN Human Rights Committee (1996) on para. 25 of the UN International Covenant on Civil and Political Rights: “Information and materials about voting should be available in minority languages.”

²⁴ As stipulated by the Council of Europe’s Recommendation no. R (99) 15 on Measures Concerning Media Coverage of Election Campaigns.

²⁵ Editors in chief reported this practice as widespread which applies to other formats such as current affairs programs and political debates as well.

²⁶ Article 58.3 states that official notices during the election process (which are not of a campaign nature) about the activities of candidates carrying out their official duties shall not be considered part of the pre-election campaign. The law does not define “campaign nature”.

²⁷ The monitored TV stations are *Channel 5*, *ICTV*, *Inter*, *Ukraina TV* and *UTI*.

law.²⁸ This channel also broadcast ample information about the candidates through political talk-shows. However, its news coverage was biased in favour of the incumbent prime minister and president.²⁹ Presidential debates would have enhanced a voters' ability to compare platforms.

While *Channel 5* displayed a bias in favour of Ms. Tymoshenko and Mr. Yushchenko,³⁰ other private TV stations *Ukraina TV*, *ICTV* and *Inter* favoured Mr. Yanukovich in tone and time devoted to his campaign coverage.³¹ Out of 18 candidates, 11 received less than 1 per cent coverage in newscasts on the monitored TV stations. Regional media monitoring results also showed a bias for particular candidates.³²

The National Broadcasting Council (NBC), the supervisory body vested with the resources and mandate to oversee the electronic media, is not empowered to provide effective remedies or impose sanctions when media-related violations occur during the electoral period. The CEC, the body resolving issues related to media issues, instead of considering media-related complaints as required by the law, referred them to the courts. Furthermore, the NBC which monitors the broadcast media does not report to the CEC on a regular basis, which would enable the CEC to act when the NBC records a violation, regardless of whether the CEC has received any complaints.

Complaints and Appeals

The majority of the decisions on election-related complaints were made by the administrative courts. They adjudicated cases in a timely, efficient and transparent manner. Courts were able to adhere to the two-day timeframe for deciding cases even facing a lack of resources and the holiday period. Most of these complaints were challenges to CEC decisions on procedural or administrative matters. Very few dealt with alleged campaign violations by the candidates. The KACA and HAC were transparent and provided access to all required documents.

The CEC made formal decisions only on a small number of the complaints filed. They did not deal with the substance of most complaints, rejecting them either because the complainant did not comply with the technical requirements in filing them or because they were submitted late.

The CEC's strict interpretation of the requirements for filing complaints was problematic and led to many complainants not being heard. In general, the CEC did not address complaints in a transparent manner and answered most of them without a formal decision, thus denying access to effective

²⁸ The election law does not set limitations on the amount of paid political advertising; it is only constrained by the candidate's financial resources. During the monitored period from 4 December – 15 January, 10 of 18 candidates purchased air time for political advertising on monitored TV stations with nation-wide coverage.

²⁹ The state-owned *UTI* devoted 30 per cent of the total campaign coverage in newscasts to Ms. Tymoshenko and 28 per cent to Mr. Yushchenko respectively. Mr. Yanukovich received 8 per cent of the campaign coverage in newscasts on *UTI*. These figures exclude coverage of a candidate's institutional role.

³⁰ *Channel 5* devoted 25 per cent to Ms. Tymoshenko and 25 per cent to Mr. Yushchenko respectively, while Mr. Yanukovich received 12 per cent of the total air time devoted to campaign coverage within newscasts.

³¹ On *Ukraina TV* 37 per cent of the campaign coverage was devoted to Mr. Yanukovich, while *ICTV* devoted 35 per cent to this candidate. *Inter* favoured Mr. Yanukovich to a lesser extent with 29 per cent of campaign coverage devoted. Other candidates received less than 21 per cent of the campaign coverage on the mentioned TV stations. These figures exclude coverage of a candidate's institutional role.

³² The monitored state and privately owned regional TV stations are Donetsk *ODTRK* and Channel 27 in Donetsk, Odesa *ODTRK*, Lviv *ODTRK* and *UT3* Zakhid in Lviv, and *DTRK* Krym and *TRK* Chernomorskaya in Crimea.

remedies.³³ There also appeared to be a practice by the CEC and some DEC's to place administrative hurdles in the way of complaints being heard.³⁴

Domestic and International Observers

The presence of domestic observers significantly increased transparency. Candidates were active in nominating observers to follow the electoral process. In addition, non-governmental organizations monitored the election despite the fact that the law does not allow them to register as observers, contrary to paragraph 8 of the OSCE Copenhagen Document. As in past presidential elections, such observers applied for accreditation as journalists, who have fewer rights to access the electoral process than observers. They for example cannot obtain copies of result protocols. Domestic observers stated that they were unhindered in their work.

Election Day

Election day was calm and voting was conducted in an orderly and transparent manner. IEOM observers assessed the voting process as good or very good in 97 per cent of polling stations visited. The CEC reported voter turnout at some 67 per cent based on preliminary data.

Most polling stations opened on time or with minor delays due to protracted opening procedures.³⁵ Significant delays of four or five hours were noted in Sumy oblast where polling stations waited for a new supply of ballots following the unauthorized use of "withdrawn" stamps, as well as a lack of quorum in some polling stations in Kyiv oblast.³⁶

A last minute court decision rejected by the CEC led to different procedures being applied for voters who were not in the voter lists. In most cases, the PECs referred such voters to the court, the DEC's or the Register Maintenance Bodies for inclusion into the voter list. In contrast, the IEOM received significantly fewer reports of PECs which decided to include such voters on the list based on their own decision, as instructed by the CEC.

The secrecy of the vote was largely respected, though group voting was observed in 4 per cent of the polling stations visited. IEOM observers noted three cases of voters taking a photo of their ballot inside the voting booth, which could potentially indicate a vote buying scheme.³⁷ Circumstances in and around polling stations were rated very positively.

IEOM observers noted a number of crowded polling stations (7 per cent), mainly due to small premises and the presence of a large number of PEC members and domestic observers. The transparency of the process was assessed as good or very good in 96 per cent of the cases. Civil society representatives were present in 18 per cent of the polling stations observed, while observers representing candidates were present in nearly all polling stations visited (98 per cent).

The counting process was assessed as good or very good in 95 per cent of reports, without regional variations. Although some procedural errors were observed during the count, these did not appear to

³³ See Paragraph 5.10 of the OSCE Copenhagen Document "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity."

³⁴ For example delaying the publication of decisions, the provision of documents necessary for filing complaints, and delaying the response to the complainant until the last day of the deadline.

³⁵ IEOM observers noted 20 delays in opening and 4 early openings out of 203 polling stations visited.

³⁶ IEOM reports from DEC 91. According to press reports, 22 polling stations in DEC 91 opened after 12:00 hrs.

³⁷ Kyiv DEC 221# PEC #24 and DEC 217 PEC # 16 and Dnipropetrovsk DEC 36 PEC #13.

have an impact on the process. Contrary to the law, the results protocols were not displayed in about 10 per cent of polling stations visited.

Reconciliation and tabulation procedures at DEC's were rated positively in 98 per cent of reports. However, in 48 DEC's observers were not given access to the room where preliminary results were entered into a computer for transmission to the CEC. Transparency was noted as a problem in every sixth DEC. The reconciliation of PEC protocols was generally correct and only resulted in a few recounts.

*This statement is also available in Ukrainian.
However, the English version remains the only official document.*

MISSION INFORMATION & ACKNOWLEDGEMENTS

Kyiv, 18 January 2010 –The assessment was made to determine whether the election complied with the OSCE and Council of Europe commitments for democratic elections, as well as with Ukrainian legislation. This statement of preliminary findings and conclusions is delivered prior to the completion of the election process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the election process, including the tabulation and announcement of results and the handling of possible post-election day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The delegation of the PACE will present its report at the next plenary session of the Assembly in Strasbourg from 25-29 January.

The OSCE/ODIHR Election Observation Mission opened in Kyiv on 24 November 2009 with 16 experts in the capital and 60 long-term observers deployed throughout Ukraine. The OSCE Parliamentary Assembly (OSCE PA) conducted a pre-election visit on 1-4 November, and the Parliamentary Assembly of the Council of Europe (PACE) conducted a pre-election visit on 24-27 November 2009. On election day, over 800 short-term observers were deployed in an International Election Observation Mission (IEOM), including a 117-member delegation from the OSCE PA, a 45-member delegation from the PACE, a 30-member delegation from the EP and a 10-member delegation from the NATO PA. In total, there were observers from 47 OSCE participating States. The IEOM observed voting in over 2,100 polling stations out of a total of 33,695, counting in 134 polling stations and tabulation in 157 DEC's.

Mr. Joao Soares (Portugal), President of the OSCE Parliamentary Assembly and Head of the OSCE PA delegation, was appointed by the OSCE Chairperson-in-Office as Special Coordinator to lead the short-term OSCE observer mission. Mr. Mátyás Eorsi (Hungary) headed the delegation of the PACE, Mr. Pawel Kowal (Poland) headed the EP delegation, and Mr. Assen Agov (Bulgaria) headed the delegation of the NATO PA. Ambassador Heidi Tagliavini (Switzerland) is the Head of the OSCE/ODIHR Election Observation Mission.

The IEOM wishes to thank the authorities of Ukraine for the invitations to observe the elections, the Central Election Commission for its co-operation and for providing accreditation documents, and the Ministry of Foreign Affairs and other authorities for their assistance and co-operation. The IEOM also wishes to express appreciation to the OSCE Project Co-ordinator in Ukraine and other international institutions for their co-operation and support.

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