

## INTERNATIONAL ELECTION OBSERVATION MISSION

### Presidential Election, Ukraine – 31 October 2004

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#### STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

**Kyiv, 1 November 2004** - The International Election Observation Mission (IEOM) for the 31 October Ukrainian presidential election is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly.

This preliminary statement is issued prior to a full and final analysis of observers' findings, the tabulation and announcement of official election results and before any election day complaints and appeals have been addressed by the courts and election commissions. A complete and final analysis of the election process will be offered in the OSCE/ODIHR Final Report.

#### Preliminary Conclusions

The 31 October presidential election in Ukraine did not meet a considerable number of OSCE, Council of Europe and other European standards for democratic elections. During the pre-election period, the governmental, electoral and other authorities did not create conditions that ensure in practice the free expression of the opinion of electors in their choice of representatives. Consequently, this election process constitutes a step backward from the 2002 elections. Nevertheless, despite these shortcomings, the very high participation of the electorate and civil society in this election process shows encouraging signs for the evolution of Ukrainian democracy.

While the election offered voters a real choice among a plurality of candidates, the campaign was rancorous, divisive and did not permit fair conditions to all candidates to convey their message to the electorate. There existed widespread allegations, some of which were verified by long-term observers, that pressure to support the government candidate was exerted on certain groups of voters, including those whose livelihood depends upon the State, and students. Such pressures were also exerted on citizens to cease their political activity for opposition candidates.

Fundamental freedoms necessary for a meaningful election process were at times infringed upon during the course of the pre-election period. The free movement of opposition candidates or their supporters to campaign events, and citizens' rights to peaceful assembly were not always respected, and freedom of association was challenged on occasions.

Despite the charged pre-election environment, large numbers of citizens voted in a generally calm atmosphere. However, there were an insufficient number of polling stations to ensure an orderly poll, despite previous recommendations to avoid overcrowding. In addition, the provisions of the law that allow all candidates to nominate two members to each election commission resulted in very large Polling Station Commissions (PSCs) and contributed to overcrowding on election day. Observers noted police inside 61% of polling stations, although

their presence is not foreseen by law, and it was unclear why their presence was needed inside polling stations. Observers also noted significant problems with the voter lists, resulting in some citizens being turned away from polling stations. A surprisingly high number of complaints were lodged by PSC members and candidates representatives at PSC level. While observers noted that the vote count was conducted largely in accordance with regulations, they recorded more tension and a lack of transparency during tabulation at the TEC level.

The election process was characterised by significant shortcomings, although there were some positive aspects worthy of note. The most important shortcomings were:

- Numerous reports by long-term observers concerning the fact that the incumbent Prime Minister and candidate Mr Yanukovich's campaign did not make a clear separation between resources owned or managed by incumbent political forces and the State resources;
- Overwhelming bias in favour of Mr Yanukovich, in the State media, and interference in his favour by the State administration;
- The existence of so-called *temnyky* (media guidelines), issued by persons unknown, constrained the public's free access to balanced information;
- Direct observation and reports of disruption or obstruction of some opposition campaign events by the State authorities;
- The dissemination of inflammatory campaign material of anonymous or unclear origin;
- Contrary to OSCE commitments, the Election Law fails to recognise the rights of domestic non-partisan election observers, and discriminates against independent candidates;
- The legal framework and its application did not guarantee the accuracy of voter lists, and confusion in the formation of Polling Station Commissions (PSCs) impeded voters' ability to check their entries;
- On election day, observers noted a large number of errors and/or omissions in the voter lists, that challenged the principle of universality of the vote;
- The Central Election Commission (CEC) did not take a proactive approach in ensuring the uniform application of the law, was ineffective in addressing alleged violations, and was not sufficiently active in conducting voter information programmes;
- Some decisions taken by the CEC on polling abroad were controversial and lacked transparency;
- A significant number of Territorial Election Commissions (TECs) lacked independence, collegiality and transparency, and observers assessed bias in the selection of PSC chairs in some 40% of election districts visited;
- The political balance of TECs and PSCs was significantly affected by the registration of a large number of candidates, many of whom appear to lack broad public recognition or a nationwide party and campaign organization, but who nevertheless had the right to appoint two members each to mid- and lower-level election commissions.

The noteworthy positive aspects included:

- Political pluralism and competition, which offered voters the potential for a real choice;
- The main candidates, or their supporters, were able to hold a number of campaign events;
- Televised debates between the candidates provided forums for exchange of views;

- A relatively well-developed civil society was active in, and contributed to, the electoral process;
- In the case of violations, the opposition generally sought legal redress rather than disrupting the process;
- The CEC conducted its sessions openly, and in general, the TECs were efficient and familiar with the legal provisions;
- The Supreme Court overturned a highly disputed last minute CEC decision on establishing 41 polling stations in the Russian Federation;
- Co-operation was extended by State structures to the observation mission.

OSCE/ODIHR observers will remain in Ukraine to assess the tabulation of results and the post-election complaints and appeals processes, which will be of critical importance in forming a final assessment of the 31 October election process. The IEOM calls upon the CEC to promptly publish all PSC results on its website to enhance the transparency of this vital stage in the process. Should a second round of voting be required to determine the winner of the election, the IEOM will once again deploy observers and issue a second preliminary statement, which will assess any steps taken by the State authorities to address concerns highlighted in this statement.

## **Preliminary Findings**

### **Background**

The 2004 presidential election is the fourth since Ukraine regained independence in 1991. After receiving a judgement from the Constitutional Court in December 2003 permitting him to run for a third five-year term, incumbent President Leonid Kuchma decided not to stand for re-election. Therefore, this election marks a crucial moment in Ukraine's history, bringing with it aspirations for a second peaceful presidential succession.

The Constitution grants strong powers to the President, and Ukraine is considered "a presidential republic". However, during 2003-4, a number of amendments were proposed to the Constitution that would have re-balanced power in favour of the Parliament. Despite some close parliamentary votes, no amendments were adopted before the 31 October election.

All major political forces contested the elections, either directly or through their support of one of the 24 candidates. President Kuchma endorsed the candidacy of Prime Minister Viktor Yanukovich (nominated by the Party of Regions). His main rivals included former Prime Minister Viktor Yushchenko (self-nominated), who leads the parliament's largest faction, the Our Ukraine bloc, in opposition to the President. Mr Yushchenko was supported by the Yulia Tymoshenko bloc. Other presidential candidates who lead parliamentary blocs included Communist Party leader Petro Symonenko and Socialist Party leader Oleksandr Moroz. Visible candidates were also former Prime Minister Anatoliy Kinakh, Kyiv Mayor Oleksandr Omelchenko, Progressive Socialist Party leader Nataliya Vitrenko, and prominent banker Leonid Chernovetsky.

All pre-election polls indicated that Mr Yushchenko and Mr Yanukovich were the front-running candidates. The Our Ukraine bloc, which is the primary political force supporting Mr Yushchenko, derived much of its support in western Ukraine in the 2002 elections, whereas Mr Yanukovich is thought to enjoy support in eastern regions. Both candidates appeared confident

of securing support in the central and southern regions, with the Yushchenko camp also confident he could attract some voters in the east.

## **Election System**

The election system provides that a candidate requires over 50% of the voter turnout to be elected in the first round. If no candidate passes this threshold, then a second round will be held between the two top-scoring candidates on 21 November. Voters may cast valid votes “against all candidates”. In a second round, the winner requires more valid votes than his or her rival, but does not require an absolute majority, except when there is only one candidate due to the other candidate’s withdrawal. However, on 11 October, a draft amendment was introduced in Parliament proposing that, in the second round, the winner would require more than 50% of the turnout, just as in the first round. Had the amendment been adopted, it would have represented a significant change in the election framework while the election process was at an advanced stage.

## **Legal Framework**

The elections were conducted under the Presidential Election Law, which came into force in April 2004, and the Law on the CEC, which was adopted in June 2004. The Presidential Election Law received significant support in Parliament, with only three MPs voting against its adoption. The law does address a limited number of OSCE/ODIHR recommendations. It specifically increases transparency by granting official observers the right to receive copies of TEC and PSC protocols and requires their public display. Transparency has also been enhanced by allowing observers to accompany mobile ballot boxes.

The new election legislation provides an adequate framework to conduct elections if implemented impartially. However, the law was often applied restrictively by election commissions and lower courts, thereby diminishing its effectiveness. The complexity of some of the provisions of the law may have contributed to problems witnessed as to its implementation. In addition, the law does not provide sufficient detail on key aspects of the election process.

Importantly, the law fails to respect some OSCE commitments and international standards. Specifically, domestic non-partisan organizations are not allowed to observe the election process contrary to paragraph 8 of the OSCE Copenhagen Document. In addition, according to the CEC, international observers would not receive accreditation to observe polling in diplomatic and consular offices outside Ukraine. Furthermore, while candidate observers and international observers are entitled to observe and obtain copies of PSC and TEC protocols, they have no right to obtain copies of other important election documents.

Certain legal provisions grant candidates nominated by political parties advantages over and exemptions not available to self-nominated candidates. For example, parties nominating candidates do not have to comply with certain restrictions on campaign activities and self-nominated candidates are denied the right to receive campaign contributions from political parties. This discrimination is contrary to paragraph 7.5 of the OSCE Copenhagen Document.

The law also fails to ensure the transparent tabulation of election results as recommended after the 2002 parliamentary election, and does not oblige the CEC to publish TEC-level results, which list all PSC results. These should be published, thereby enabling voters, candidates and observers to verify that the election results were recorded honestly in accordance with paragraph 7.4 of the OSCE Copenhagen Document.

According to law, the membership of TECs and PSCs is based exclusively on candidate nominations. The provisions permit each candidate to appoint two members to each TEC and PSC. Following the registration of 24 candidates, these commissions became very large, and at times, decision making became difficult.

On 28 October, the Cabinet of Ministers adopted a resolution signed by Prime Minister Yanukovich that provided that passports of the former Soviet Union were valid until 1 December 2004. In 2002, the Parliament had terminated the validity of these documents. The resolution was promptly distributed to election commissions prior to election day, thereby increasing the number of documents with which voters could prove their identity, beyond the provisions of the Election Law.

### **Election Administration**

This election was conducted by a three-tiered election administration: the CEC, 225 TECs, and some 33,100 PSCs. The 15-member CEC was selected by the President and approved by the Parliament. The current CEC was installed in February 2004. All but four of its members are new to the post. Presidential candidates may appoint a non-voting representative to the CEC. However, these representatives lack the right to receive relevant documents in advance of CEC sessions.

The CEC conducted its work transparently, and its sessions were open to the media and international observers. The CEC took decisions on a great number of issues, mostly by unanimity. However, the CEC did not take a proactive approach in ensuring the uniform application of the law. In general, its supervisory role over lower-level election commissions was insufficiently fulfilled, and clear guidance on all issues of general application was lacking. Despite repeated requests from the international community following the unfortunate events in Mukacheve earlier in 2004, the CEC failed to clarify the circumstances under which police may enter polling stations on Election Day. In addition, it failed to conduct a comprehensive voter information programme or reassure voters on the secrecy of the ballot. However, about half of the TECs visited did conduct information activities on the need for voters to verify their entries in voter lists.

In a welcome development, the ballot printing process was made transparent as the CEC granted access to media and official observers. On 20 October the CEC Chairman announced that 40 million ballots were printed. However, the CEC stated later that only 38.2 million ballots were printed.

As mentioned above, each candidate may appoint up to two members to each TEC and PSC. However, the ability of a large number of unknown candidates, lacking broad public recognition and party support structures, to secure 500,000 valid supporting signatures and propose

representatives to some 33,100 PSCs, was questionable. Many of these candidates campaigned against Mr Yushchenko rather than in favour of their own political platforms.

The possibility for inflated TECs and PECs led to a number of staffing problems. Many TEC members were unaware of which candidate sponsored their appointment to the commission. In a few cases, the absence of some TEC and PSC members blocked work, as a quorum for valid decisions could not be reached. |

OSCE/ODIHR observers met with all 225 TECs. Most TECs had sufficient material resources to conduct their work, but some 25% lacked sufficient finances. Some 10% had problems achieving a quorum. In 34 TECs, observers received reports that some members could not access the commission's documents and in 69 TECs, observers received allegations of interference, mostly by local government structures, with the commissions' work.

The process of forming PSCs was a challenge for TECs, and several complaints on this issue were filed with the CEC, which found relief in some of these cases. More than half of the TECs experienced serious difficulties in selecting PSC chairpersons. Moreover, in 40% of TECs visited, observers assessed that the selection of chairpersons was biased. The resignation of large numbers of PSC members in some regions created instability early in the process. A variety of reasons were cited for resignations, including pressure from employers. However, as Election Day got closer, the number of resignations seemed to decrease.

On the eve of the election, TECs dismissed a significant number of PSC members appointed by the opposition in at least four election districts. A number of appeals were lodged with the CEC and some local courts, and many PSC members were re-instated. However, the manner in which the TECs' decisions were taken lacked transparency, and their timing was highly questionable. The TECs' actions served to destabilize the PSC composition on election day.

## **Voter Lists**

Ukraine does not have a central system of voter registration. Civil data is managed by local government authorities and is consolidated into lists of voters shortly before an election. In almost 40% of election districts, observers received reports from TECs and PSCs on a variety of inaccuracies in the voter lists, including the listing of deceased people, and multiple entries of the same voter. In addition, errors appeared to be made in the spelling of names or addresses and transliteration of data from Russian into Ukrainian, and a few examples of omissions of all voters living in the same apartment building.

In many cases, voter lists were displayed late, mainly because of problems in forming the PSCs. Consequently, voters had less time to check for their inclusion in the list or request corrections. Legal provisions require voters to actively seek correction of omissions and inaccuracies. However, where PSCs were operational, observers reported voters were not active in checking their entries. Some PSCs took a proactive approach through door-to-door checks.

## **Out-of-Country Vote**

The law provides that polling stations may be created in “diplomatic and other official representations and consular offices of Ukraine abroad, and in military units located outside the boundaries of Ukraine”. The law does not provide for any other polling venues abroad. The Ministry of Foreign Affairs (MFA) submits to the CEC proposals on creating polling stations abroad. The CEC established 113 such polling stations. When requested, neither the MFA nor the CEC could provide the EOM with preliminary data on the number of voters registered at these polling stations. Furthermore, the CEC informed the OSCE/ODIHR EOM that international observers are not entitled to observe polling abroad as accreditation is only valid in Ukraine.

The law provides that in an exceptional situation, a new polling station, including abroad, may be created no later than 23 October. However, candidates had to nominate PSC members by 16 September. CEC Resolution 415 provided that exceptional polling stations can be created outside of diplomatic offices and military units abroad, if certain preconditions are met. On 18 October, the CEC approved 10 exceptional polling stations abroad. On 23-24 October, the CEC considered a proposal to create 420 exceptional polling stations in the Russian Federation. The high number of polling stations provoked heated discussions as little information on this issue had been available previously. The CEC, which serves as the TEC for out-of-country voting, did not appear to have considered the validity of the supporting documentation, despite claiming to have received the documents before the legal deadline, some five days previously. Due to the insistence of opposition MPs, access was granted access to scrutinize the large number of documents. Although the time permitted for scrutiny was limited to a few hours, brief examination revealed that 379 of the 420 proposed polling stations did not meet the requirements of CEC Resolution 415.

The apparent willingness of the CEC to allow the creation of a large number of exceptional polling stations abroad, without considering if the supporting documents were in order, was inconsistent with its legal obligations. The CEC’s handling of the issue served to fuel existing tensions, leading to disturbing scenes involving opposition parliamentarians inside the CEC, while violent incidents occurred outside. In the early hours of 24 October, the CEC unanimously voted to establish 41 exceptional polling stations in the Russian Federation. The manner in which this decision was taken was controversial and lacked transparency. However, the Supreme Court overturned the decision on 28 October.

## **Candidate Registration**

Initially, the CEC registered 26 candidates, each of whom had paid an election deposit of 500,000 UAH (approximately € 80,000). In addition to a number of well-known candidates, the registration of many candidates lacking broad public recognition or a nationwide party and campaign structure led many Ukrainians to allege that these candidates were running for the purpose of nominating members of the election commissions in order to assist better-known candidates in forming a majority bloc on these bodies. All candidates were required to deposit not less than 500,000 signatures supporting their nomination with the CEC. The ability of some candidates to secure this number of signatures led to allegations that they received assistance from the State apparatus, in contravention of the law.

In addition, election observers received credible allegations that citizens were compelled to sign in favour of some candidates, e.g. in Poltava Region where a hospital employee lodged an official complaint that she had been threatened with dismissal if she refused to sign for Mr Yanukovich. Similar allegations were received in Khmel'nytsky, where observers confirmed three instances. The victims alleged that they signed under duress from their public-sector work supervisors.

The task of verifying some 13,000,000 signatures presented the CEC with a considerable challenge. The CEC's verification was limited to confirming that each candidate had in excess of 500,000 signatures and the superficial check by 40 CEC staff members of the signatures. Verification was made manually on a randomly selected sample. In practice, there was only a very limited possibility to check for multiple entries. One prospective candidate withdrew from the contest before his signatures were verified and one other failed to secure the number required. Thus, 24 candidates contested the election.

### **The Campaign**

The rivalry between the two main candidates and their supporters took on a regional dimension and the tone of the campaign increasingly polarised political discourse. The pre-election atmosphere was not conducive to a fair competition in which all candidates could equally convey their message to the electorate. At times, campaign rhetoric was inflammatory and fuelled public apprehension of potential civil unrest related to the electoral process.

President Kuchma did not campaign for any candidate, but he did comment on the pre-election situation and elections on several occasions, including an address to Ministry of Interior special forces where he informed them that the instigation of social tensions that might threaten public order would not be tolerated. He stated on other occasions that the campaign techniques employed were "outside the bounds of human decency", and that "law enforcement agencies should stay out of politics and not intervene in the election campaign". In addition, he disapproved of the establishment of exceptional polling stations in the Russian Federation. Some major opposition candidates frequently vilified President Kuchma.

The alleged poisoning of Mr Yushchenko and his accusations that the authorities were responsible caused considerable controversy prior to the election. His ill health lessened his ability to campaign effectively for four weeks. On 24 September, Viktor Yanukovich was struck by an egg, thrown from a crowd in western Ukraine, resulting in his hospitalisation for some hours. Observers reported that in half of the regions, politically motivated or election-related violent incidents occurred during the pre-election campaign.

Despite the large number of registered candidates, the media focused on the competition between two candidates: Mr Yanukovich and Mr Yushchenko. The competition between these two candidates was intense. While a number of campaigns had visibility, including those of Mr Yushchenko, Mr Moroz, Mr Symonenko, Mr Chernovetsky, Mr Kinakh and others, Mr Yanukovich's campaign material, particularly billboards, was observed to be dominant. Many campaigns' staff complained that they had difficulty procuring public advertising space, while campaign material for Mr Yanukovich was noted prominently displayed on public buildings in 21 of the 27 regions.

The emergence late in the campaign of negative campaign material, often purporting to be representing one candidate but designed to discredit him, was also a source of complaint from many campaign headquarters, most notably Mr Yushchenko's. Negative campaign material was aimed at both major candidates, but mostly against Mr Yushchenko. Some of the latter type of material was inflammatory and produced in large quantities as well as being in apparent contravention of the legal provisions. The campaign also included inflammatory anti-Semitic rhetoric by Volodymyr Nechyporuk, a candidate who lacked broad public recognition.

During the pre-election period, the governmental and electoral authorities failed to create conditions that ensured in practice the free expression of the opinion of electors in their choice of representatives and the campaign opportunities were unequal. Incidents included the use of law enforcement officers to impede the free movement throughout the country to opposition campaign events. Observers in 15 regions reported varying degrees of obstruction of opposition campaign events, sometimes on numerous occasions. Mr Yushchenko's airplane was refused permission to land in six cities, preventing him from campaigning there.

State authorities and administrative structures at all levels were observed to have provided substantial support to the Yanukovych campaign, at times putting at his campaign's disposal so-called administrative resources. In 19 regions, observers received allegations that state resources were being used during the campaign. In 24 regions observers reported that local government executive structures were campaigning in favour of one of the candidates. In 22 regions they campaigned in favour of Mr Yanukovych.

The campaign was also characterized by the harassment of pro-opposition campaigners and opposition supporters, sometimes by State officials. Of greatest concern were persistent and widespread reports that electors, employees, students, and election commission members were compelled to support Mr Yanukovych's candidate registration or campaign, or face possible retribution. Such pressures were also exerted on citizens to cease their political activity for opposition candidates. Long-term observers confirmed many of these reports as accurate or credible. These events clearly violate paragraph 7.7 of the OSCE Copenhagen Document that campaigning be "conducted in a fair and free atmosphere in which neither administrative action, violence, nor intimidation, bars the ... candidates from freely presenting their views and qualifications, or prevents the voters ... casting their vote free of fear of retribution."

In addition, from 16 October a series of searches, detentions and legal proceedings that were initiated against some civil society groups, raised questions about the respect for freedom of association. Alleging that these groups were involved in terrorism, the security services inspected their offices and homes for weapons and explosives. Some of the NGOs concerned were involved in election-related activities. In cases in which explosives or other illegal material were allegedly found on the premises, the organisations in question claimed they were planted. Some publicly re-iterated their commitment to non-violence in pursuit of their activity.

### **The Media**

Despite a pluralistic media environment, that includes State and private broadcasters and print media, domestic interlocutors such as journalists, civil society groups, political parties, as well as the OSCE Representative on the Freedom of the Media and respected international NGOs, all raised questions over the freedom of the media in Ukraine. The media in general should have

been able to offer the electorate a more balanced coverage, in order for the voters to have been able to make a more fully informed choice in the polling booth.

The main electronic media failed to serve as fora for discussion, where opinions might be shared and exchanged freely. Few TV stations provided the opposition with airtime to challenge the political opinions of office holders, and generalized political debate was rare. Moreover, most media outlets monitored failed to provide impartial and fair coverage of the main candidates' election campaigns. Consequently, while there was basic information about all the contestants in the elections, the public was not sufficiently informed on their political programmes and the issues at stake in the election.

The control over the political content of news coverage on the main TV channels through the issuing of "guidelines" (so-called *temnyky*) was particularly problematic. These instruct editors to cover only certain points of view on political themes, events and issues while omitting others. The IEOM conducted a detailed analysis of prime time news items devoted to domestic news items on *UTI*, *Inter* and *1+1*. Almost 43% of these were presented in a conspicuously similar manner raising questions over the editorial freedom of the three channels. On 28 October, more than 40 journalists of *Inter*, *ICTV*, *Novy Kanal* and *NTN* TV channels issued a statement against censorship on their TV stations, accusing the authorities and some of the owners and managers of "ignoring important events or twisting the facts". Seven journalists from the *1+1* TV's newsroom resigned for similar reasons.

The OSCE/ODIHR EOM monitored eight TV channels and nine daily and weekly newspapers together with TV channels broadcasting at regional level.<sup>1</sup> The State-funded television *UTI* complied with its legal obligation to allocate free airtime to all candidates, and, in a positive development, regular televised debates took place on *UTI*, albeit their significance was diminished by Mr Yushchenko's and Mr Yanukovych's decisions not to participate.

In news and current affairs programmes, the State-funded media failed to provide impartial and fair coverage of the main candidates and thus did not meet its legal obligations or commitments under paragraph 7.8 of the OSCE Copenhagen Document. Outside the free campaign airtime and debates, *UTI* openly promoted the incumbent Prime Minister and reported critically on his main rival Mr Yushchenko. As recipients of public funds, State-controlled media should have a duty to provide balanced political information to the public. By displaying clear bias in favour of the incumbent Prime Minister, *UTI* comprehensively failed to meet this legal obligation to provide balanced treatment to all candidates during the election process.

However, no legal sanctions have been imposed on *UTI*. At local level, the EOM was informed of the temporary suspension of a local State funded newspaper, by a court, for publishing an article critical of Petro Symonenko. Yet, the same court only issued a warning to another local State funded newspaper which wrote a number of articles promoting Mr Yanukovych and several articles criticising three other candidates.

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<sup>1</sup> Television: State-funded *UTI*, Private *Inter*, *1+1*, *ICTV*, *STB*, *Novy Kanal*, *TRK Ukraina* and *Channel 5*. Newspapers: State *Uriadovy Kurier*, *Golos Ukrainy*, Private *Facty I Komentarii*, *Segodnia*, *Den*, *Silski Visty*, *Ukraina Moloda*, *Zerkalo Tyzhna* and *Vechirni Visti*.

In the eight weeks preceding the election, *UTI* provided Mr Yanukovich with 64% of its political and election prime time news coverage, of which 99% was considered by the EOM as positive or neutral in tone. In contrast, during the same period, Mr Yushchenko received only 21% of similar airtime, of which 54% had negative connotations. The major TV channels tended to present the election as a two-candidate contest and failed to devote a significant amount of coverage to either Mr Moroz or Mr Symonenko.

The OSCE/ODIHR EOM's analysis revealed that the "big two" private TV channels, *I+I* and *Inter*, also focused their political coverage on the activities of Mr Yanukovich, mostly in his capacity as Prime Minister. *Inter* allocated 50% of its political and election prime time news coverage to the Prime Minister, of an overwhelmingly positive tone. Conversely, during the same period, Mr Yushchenko received 26% of similar airtime, which was mostly negative in tone. *ICTV* also favoured Mr Yanukovich whereas *STB* and *Novy kanal* covered a wider range of political views and opinions.

*Channel 5* was the only significant TV channel to offer coverage favourable to Mr Yushchenko. However, the channel's current audience was much smaller than that of the other main stations. Moreover, this channel experienced and reported administrative difficulties in reaching its audience, including:

- Broadcasting problems in several regions, where the majority of viewers could only receive its transmissions via satellite;
- Claims by the channel that cable operators, acting under pressure from the local state authorities, were partially or fully removing *Channel 5* from their media packages;
- Claims by the channel that the denial of their applications for broadcasting licenses to expand coverage in various regions was politically motivated. However, the state bodies issuing licenses and frequencies denied such allegations;
- The freezing of the Channel's bank account by an order of a Kyiv district court from 15 to 27 October; and
- A decision by the Economic Court of Appeal to invalidate its license in Kyiv city. On 25 October, the employees of *Channel 5* went on hunger strike, demanding the authorities to stop harassment of their channel, and for the courts to reverse their decision. On 27 October these demands were met partially when the bank accounts of the channel were unfrozen.

The print media provided a plurality of views but mainly supported specific candidates. Consequently, voters could form an objective view of the campaign only if they read several publications. The State-funded newspaper *Uriadovy Kurier* met its legal obligation to distribute free space equally among the candidates. However, outside this space, the paper demonstrated clear support to Mr Yanukovich by granting him 99% of its political and election reporting which was mostly positive in tone. In almost all of this coverage, Mr Yanukovich was presented in his capacity as Prime Minister. Another State-funded newspaper, *Golos Ukrainy*, offered its readers a more balanced picture of the campaign.

Out of 16 regional television stations monitored by the OSCE/ODIHR EOM, 10 gave clear support to Mr Yanukovich. For example in Zaporizhzhya, the State-funded TV allocated 100 % of its political and election prime time news coverage to the incumbent Prime Minister, with an exclusively positive or neutral tone. Conversely, the State-funded broadcaster in

Ivano-Frankivsk, TV *Galichina*, provided 63% of exclusively positive or neutral coverage to Mr Yushchenko.

In a positive step, the State Tax Administration announced that they would not conduct any tax investigations against media outlets until after the election period. However, election observers received credible reports that journalists and the media, especially in the regions, faced a number of obstacles to the expression of independent views, including problems with printing and distribution, or serious intimidation.

In 16 regions, observers received allegations that some candidates could not secure access to local media outlets. In 11 regions, allegations were made that opposition-leaning media was obstructed by the local State authorities. In 21 regions allegations were made that the local media was biased against the opposition and favoured Mr Yanukovych. Only one case of local media bias in favour of Mr Yushchenko was verified.

### **Election Disputes**

The majority of election complaints were filed with the CEC. Most complaints were rejected on procedural grounds without consideration of the merits. For example, a large number of complaints were filed with the CEC as the body responsible to pursue violations of “restrictions ... on the pre-election campaign committed by all-national media”. The CEC assumed that all coverage of Mr Yanukovych related to his position as Prime Minister, ignoring the possibility that some coverage could be considered campaigning. The CEC also failed to pursue action against the main State run channel, *UTI*. Some of these complaints caused heated debate in the CEC. In one case, the CEC refused to view video evidence supporting the complaint. Some CEC members were unable to convince the majority that the CEC has a duty to look at evidence submitted supporting a complaint in order to make an informed decision.

Although the CEC has the power to act on its own initiative when it obtains knowledge about a violation of the law to ensure the implementation and protection of electoral rights and adherence to principles of electoral legislation, the CEC did not take a proactive role in this regard. Moreover, while over 350 complaints were filed with the CEC, the EOM is only aware of 16 cases where it granted relief, thereby denying candidates and voters an effective means of legal redress.

However, as the CEC declined a request for OSCE/ODIHR observers to receive copies of complaints and decisions, the exact number of complaints filed with the CEC is not known. The EOM is aware of 30 cases where, although rejecting the complaint, the CEC referred the case to law enforcement bodies, including 23 where complaints were made against the Yushchenko campaign. The EOM is not aware of a complaint against the Yanukovych campaign that has been referred to law enforcement bodies.

In general, the Supreme Court was more active in addressing legal violations and overturned some decisions of the CEC. Some complaints were rejected on procedural grounds because the Supreme Court decided that a candidate proxy could not file a complaint for media violations or illegal campaigning. However, a candidate nominated by a political party or bloc could rely on the party or bloc to file such complaints. These decisions disadvantaged self-nominated

candidates, including Mr Yushchenko. After rejection of these complaints, they could not be re-filed by candidates due to expired deadlines.

### **Gender Issues**

Women were well represented and active participants in electoral structures, both at the TEC and PSC level. However, when in TEC executive positions, women were far more often in the role of TEC Secretary than of Chair or Deputy Chair. At PSC level the majority of Chairs were women. In a number of leading campaign offices, the EOM observed women in influential positions. However, only one of the 24 candidates, Nataliya Vitrenko, is a woman, and women are underrepresented in the governing structures of Ukraine at the leadership level.

### **Election Day, Vote Count and Tabulation**

Despite the charged pre-election environment, large numbers of citizens voted in a generally calm atmosphere. Although unrest was reported in some 5% of polling stations visited, there were almost no violent incidents reported. Concerns expressed by some interlocutors prior to election day that polling would be disrupted by PSC members not appearing for work or leaving their posts during election day were not realized. Indeed, in most PSCs, members co-operated with each other and worked diligently to conduct polling.

A very large majority of polling stations had sufficient election material to conduct polling adequately. In general, correct polling procedures were applied by PSCs, and the secrecy of the vote improved compared to the 2002 parliamentary election, although it was not assured in all polling stations visited. Group voting, where voters mark ballots in a polling booth simultaneously, remain a problem.

Nevertheless, despite their overall positive assessment, observers noted several problems, some of which were potentially serious. Some 10% of polling stations were inadequate to conduct polling, and overcrowding was noted in almost 12% of polling stations visited. Some citizens were turned away from polling stations because their names did not appear on the voter lists; in a few cases, the number of such citizens was relatively large. This problem was noted much more frequently than during previous elections. Approximately 20% of observers assessed the accuracy of voter lists as bad or very bad. A surprisingly high number of complaints were lodged by PSC members or candidate observers (some 16%), with little variation in the number between the regions. However, only a few serious violations were observed. These included ballot stuffing (four cases), the use of pre-marked ballots (three cases), and series of apparently identical signatures on the list (six cases).

Overall, observers assessed that the vote count was conducted generally in line with procedures. Of 139 vote counts observed, only eight were assessed negatively. Organization and understanding of procedures by the PSC were assessed as bad or very bad in 14 of 139 polling stations. Counting was largely conducted in a calm atmosphere; however, the presence of police officers or other unauthorized persons was observed in 40% of polling stations. Tension and a lack of transparency were recorded as being more evident during tabulation at the TEC level.

## **Election Observers**

Candidates and parties nominating candidates have, according to the law, the right to appoint up to two observers to each polling station. More than 117,000 candidate and party observers were appointed for the election. However, as already noted, domestic non-partisan observers are not permitted by law to observe the process, contrary to OSCE commitments. Nevertheless, some 10,000 observers from the Committee of Voters of Ukraine (CVU) were deployed on election day and were accredited as journalists, who do have the right to be present in polling stations. The CVU conducted a parallel vote tabulation based on a sample, which was made public at 10:00 a.m. on 1 November.

The CEC accredited some 4,000 international observers from a wide variety of international organizations and international NGOs.

The OSCE/ODIHR Election Observation Mission will remain in Ukraine to follow the final tabulation of results, and in the event of a second round contest on 21 November, the IEOM will again deploy its observers. The IEOM calls upon the authorities, and all participants in the election process, to consider the issues raised in this statement, and address the shortcomings.

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

## **Mission Information & Acknowledgements**

Mr. Bruce George, President Emeritus of the OSCE Parliamentary Assembly (PA), Special Coordinator appointed by the OSCE Chairman-in-Office, led the OSCE short term observers. Mr Doros Christodoulides, Member of Parliament of Cyprus, led the Parliamentary Assembly of the Council of Europe (PACE) delegation, Mrs Jane Cordy, Canadian Senator, led the delegation of the NATO Parliamentary Assembly (NATO PA), and Mr Marek Siwiec, Member of the European Parliament led the European Parliament (EP) delegation. Ambassador Geert-Hinrich Ahrens headed the OSCE/ODIHR Election Observation Mission.

The OSCE/ODIHR Election Observation Mission (EOM) opened in Kyiv on 31 August with 57 experts and long-term observers deployed in the capital and twenty regional centres. On election day, the IEOM deployed 636 short-term observers from 33 OSCE participating States, including 47 parliamentarians from the OSCE PA, 46 from the PACE, 25 from the NATO PA and 15 from the European Parliament. 438 observers were accredited as OSCE/ODIHR observers. The IEOM observed the polling and vote count in over 2050 polling stations throughout the country and at 208 TECs after polling stations were closed, to observe the tabulation of results.

The OSCE/ODIHR will issue a comprehensive report on these elections approximately one month after the completion of the process.

The IEOM wishes to thank the Ministry of Foreign Affairs, the Central Election Commission and other national and local authorities for their assistance and cooperation during the course of the observation. The IEOM also wishes to express appreciation to the OSCE Project Coordinator in Ukraine and embassies accredited in Kyiv for their support throughout the duration of the mission.

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