



INTERNATIONAL ELECTION OBSERVATION MISSION Ukraine – Presidential Election, 31 March 2019

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

PRELIMINARY CONCLUSIONS

The 31 March 2019 presidential election in Ukraine was competitive, voters had a broad choice and turned out in high numbers. In the pre-electoral period the law was often not implemented in good faith by many stakeholders, which negatively impacted the trust in the election administration, enforcement of campaign finance rules, and the effectiveness of election dispute resolution. Fundamental freedoms were generally respected. Candidates could campaign freely; yet, numerous and credible indications of misuse of state resources and vote-buying undermined the credibility of the process. The media landscape is diverse, but campaign coverage in the monitored media lacked in-depth analysis and was often biased. Election day was assessed positively overall and paves the way to the second round. Still, some procedural problems were noted during the count, and conditions for tabulation were at times inadequate. The election takes place in the context of ongoing armed conflict and other hostilities in the east of the country and the illegal annexation of the Crimean peninsula by the Russian Federation. As a consequence, the election could not be organized in Crimea and certain parts of Donetsk and Luhansk regions that are controlled by illegal armed groups.

The Constitution guarantees rights and freedoms that underpin democratic elections. The legal framework remains largely unchanged since the 2014 presidential election, despite some inconclusive efforts for electoral reform, and most previous recommendations of ODIHR and the Council of Europe's Venice Commission, including the crucial need to codify the electoral legislation, remain unaddressed. The existing legal framework offers a sound basis for the holding of democratic elections, despite significant shortcomings. Positively, the right of individuals to lodge constitutional complaints, introduced in 2016, allowed citizens and political parties for the first time to challenge election-related legislation.

The Central Election Commission (CEC) operated collegially overall and met all legal deadlines. It held regular open sessions but also systematically conducted preliminary meetings before sessions, a practice which decreased the transparency of its work. Political actors and civil-society representatives criticized the hasty adoption of the amendments to the Law on the CEC, claiming the change was intended to benefit the incumbent. This led to many interlocutors of the International Election Observation Mission (IEOM) voicing a lack of trust in the CEC and questioning its impartiality. The CEC formed District Election Commissions (DECs) based on nominations from registered candidates. Some 39 per cent of DEC members were replaced by those who had nominated them, including many in executive positions. This negatively affected DECs' work, which the ODIHR EOM otherwise assessed as adequate, and diminished the value of the training that members received. Some interlocutors alleged that so-called 'technical' candidates who are in fact affiliated with the leading candidates had registered in part to obtain seats in lower-level commissions. Women were well represented in the election administration.

The State Voter Register (SVR) contains the records of some 35.6 million voters. Despite some concerns about difficulties to adequately capture data on internally displaced persons (IDPs), internal labour migrants, and citizens living abroad, nearly all IEOM interlocutors expressed confidence in the accuracy of the voter lists. The voter lists extracted from the SVR excluded over 5 million voters registered in areas where voting could not take place and voters without a registered address. Citizens who have been declared incapacitated by a court decision do not have the right to vote, which is inconsistent with international obligations and standards.

Candidate registration was largely inclusive. The CEC registered 44 of the 91 applicants; five candidates subsequently withdrew. Only four candidates were women. The CEC rejected 47 applicants, most commonly for non-compliance with the monetary deposit, which at UAH 2.5 million (around EUR 79,000) is substantial and as such represents a restriction on candidacy. The legal requirement that campaign platforms be vetted for compliance with the law, which affected six rejected applications, unnecessarily constrains candidates' freedom of opinion and expression as well as political pluralism. The ten-year residency requirement is unreasonably restrictive and runs counter to international obligations and good practice.

The election campaign was generally peaceful and competitive, and candidates could campaign freely and without undue restrictions. The field of candidates offered voters a choice, but there was lack of genuine political debate among the contestants. The large majority of the 39 candidates did not conduct any campaign activities, casting doubts on their intentions to genuinely compete in the election. Several candidates campaigned actively, holding campaign events around the country. President Petro Poroshenko and Yulia Tymoshenko were most active, with the incumbent touring the country extensively in his official capacity. The incumbent's public appearances blurred the line between his official position and his standing as a candidate, challenging paragraph 5.4 of the 1990 OSCE Copenhagen Document. Volodymyr Zelenskyi did not conduct a single traditional campaign rally, relying instead on his appearances as an actor and comedian.

The use of social assistance programmes, salary increases and bonuses, and other financial incentives as campaign tools was the subject of widespread criticism levelled against the incumbent president. The ODIHR EOM observed and was informed of misuse of state resources at national and local levels by several candidates. A systematic practice of involving public institutions and public servants in the campaign, mostly by the incumbent, was observed by and reported to the IEOM. The ODIHR EOM also observed some indications of vote-buying and received a high number of credible allegations of vote-buying from across the country. More than 80 criminal investigations into alleged vote-buying have been opened, including two investigations launched into nationwide vote-buying schemes by the campaigns of the incumbent and Yulia Tymoshenko.

New campaign finance regulations adopted in 2015 are in line with past ODIHR and the Council of Europe's Venice Commission recommendations to increase transparency and accountability. However, key remaining shortcomings and inadequate oversight limit their effectiveness. There is no limit on campaign spending, but there have been public calls and draft laws for banning or limiting spending for broadcast advertising. Candidates must file interim and final campaign finance reports, but their analysis is purely technical, and sanctions envisaged by the law are insufficient. Widespread claims that campaigns were largely funded outside of the campaign finance framework have some credibility based on ODIHR EOM observations. All candidates submitted interim finance reports by the legal deadline, but the steps by the authorities in response to uncovered violations were insufficient.

The constitution guarantees freedom of expression and prohibits censorship, and the legal framework provides for general media freedom. Yet, to counter threats to national security, the government has introduced a number of restrictive measures affecting the activities of the media and journalists. The media market is diverse but largely divided along political lines. The business and political interests of the owners affect the autonomy of private media outlets and the general trust in them. Journalists' safety remains a major concern. The public broadcaster *UA:PBC* is severely underfunded, which affects its ability to fully perform its public-service role. The media regulatory authority does not have any effective sanctioning powers or mechanisms to enforce legal provisions and to exercise its mandate in a timely manner.

ODIHR EOM media monitoring shows that provisions for balanced and unbiased coverage of the campaign and candidates were frequently violated by the monitored private TV channels. Overall, the campaign news coverage lacked in-depth analysis. Several journalists and hosts showed a clear bias in favour of certain candidates. The incumbent received broad coverage in news programmes, with no clear distinction between his institutional activities and political campaigning. Mr. Zelenskyi was barely covered in his political capacity while he featured extensively in his role as actor and comedian. Paid advertisement was widely used by the main candidates. There was a high number of unmarked promotional materials in the prime-time news

of most monitored private TV channels, a practice that violates the law, misleads voters and does not provide genuine information. Candidates were generally reluctant to participate in televised debates. In line with the law, *UA:PBC* provided all candidates with free airtime.

The right to seek effective legal remedy is guaranteed by law, but jurisdictions of election commissions and administrative courts overlap. The courts offered parties to claims sufficient opportunity to present their cases; however, some judgements lacked sound legal basis, thereby undermining access to effective remedy in practice. Some decisions of the same court conflicted with each other, challenging the principle of legal certainty. The CEC, as a general practice, responded to complaints by private letter prepared by a single CEC member, rather than by determination in open plenary sessions followed by published decisions as required by law. This undermined the transparency and collegiality of the established dispute resolution process. The vast majority of complaints were not considered on the merits, denying effective remedy.

The law provides for election observation by international and citizen observers. However, in light of the designation by parliament of the Russian Federation as an aggressor state, a recent amendment to the election laws effectively prohibited citizens of and persons whose nomination was initiated or submitted by the Russian Federation from observing elections in Ukraine. This is at odds with paragraph 8 of the 1990 OSCE Copenhagen Document.

The CEC registered 139 Ukrainian non-governmental organizations (NGOs) to observe the election, most without previous observation experience. The IEOM noted only a small number of NGOs that were active throughout the country in the pre-election period. Most IEOM interlocutors expressed concerns about the affiliation of some NGOs to particular candidates.

Election day was peaceful, with a voter turnout of 63.5 per cent announced by the CEC. IEOM observers assessed opening and voting positively in the overwhelming majority of polling stations observed. Voting was well-organized, smooth, transparent and efficient, and procedures were generally adhered to. However, IEOM observers noted problems with the secrecy of the vote and saw persons other than PEC members keeping track of voters who had voted. Some voters were not allowed to vote because they were not on the voter list. IEOM observers noted a few procedural errors and very few serious violations during the vote count. They did, on the other hand, report that the sequence of procedures and basic reconciliation procedures were often not followed. The early stages of tabulation were assessed negatively in about one sixth of DECAs, mainly due to inadequate conditions at DECAs that caused overcrowding and limited transparency, as well as restrictions on observers' access. Throughout election day, candidate and party observers were seen in almost all polling stations, and citizen observers in around one half.

PRELIMINARY FINDINGS

Background and Political Context

On 26 November 2018 and in line with constitutional provisions, the parliament of Ukraine (*Verkhovna Rada*) scheduled the presidential election for 31 March 2019. This presidential election is perceived as an important test for the country's democracy and its ongoing reform and modernization efforts, but also as part of a larger electoral process culminating in parliamentary elections to be held later in 2019.

The election takes place in a challenging political, economic and security environment, against the backdrop of continuous challenges to Ukraine's territorial integrity. The overall context is characterized by ongoing armed conflict and other hostilities in the east of the country and the illegal annexation of the Crimean peninsula by the Russian Federation, resulting in the continued control of certain parts of Donetsk and Luhansk regions by illegal armed groups. As in 2014 and 2015, the election could not be held in these territories. Although a nominal ceasefire has been in effect for four years, the situation in conflict-affected parts of eastern Ukraine remains tense and volatile and is characterized by persistent attacks on fundamental freedoms and a deteriorating humanitarian situation.

Widespread concerns about interference in the election by the Russian Federation, including claims of cyber-attacks on critical infrastructure and disinformation campaigns in social networks, were publicly raised by the authorities.

In the last presidential election held in May 2014, Mr. Poroshenko won in the first round with 54.7 per cent. Following the 2014 early parliamentary elections, eight political parties entered parliament, and the Petro Poroshenko Bloc (PPB, 135 seats), People's Front (PF, 81), Self-Reliance (*Samopomich*, 25), the Radical Party of Oleh Lyashko (RP, 21) and Fatherland (*Batkivshchyna*, 20) formed a coalition government.¹ The coalition fell apart in 2016, leaving only the PPB and PF supporting the government.

Legal Framework and Electoral System

The Constitution guarantees rights and freedoms that underpin democratic elections. The elections were further regulated by the Law on Presidential Elections ('election law'), the Law on the Central Election Commission (CEC), the Law on the State Voter Register (SVR), and the Law on Political Parties.² CEC regulations and decisions supplemented the legislation.³

The legal framework for presidential elections remains largely unchanged since the last presidential election, despite attempts of electoral reform that did not move beyond the initial vote in the *Verkhovna Rada* and subsequent prolonged and inconclusive work in the parliamentary committee.⁴ The legal framework offers a sound basis for the holding of democratic elections, despite significant shortcomings. It was, however, not fully implemented in good faith by all stakeholders.

Most previous ODIHR and Council of Europe's European Commission for Democracy through Law (Venice Commission) recommendations that would bring the legal framework further in line with international obligations and standards, as well as good practice, including for the adoption of an election code that would consolidate and harmonize the various election laws, remain unaddressed.⁵ As part of a broader anti-corruption initiative, new campaign finance regulations were adopted in 2015, in line with past ODIHR and Venice Commission recommendations to increase transparency and accountability.

The Law "On the condemnation of communist and national-socialist (Nazi) totalitarian regimes and prohibition of propaganda of their symbols" was adopted in 2015, and the election law was amended to ban candidate nominations by political parties falling under provisions of the law.⁶ This law was earlier assessed by ODIHR and the Venice Commission as not being fully in line with regional and international human rights instruments.⁷

¹ The remaining seats are distributed among the Opposition Bloc (43 mandates), Revival (24), People's Will (19) and non-affiliated members of parliament (60).

² Provisions of the Code of Administrative Procedure, the Criminal Code and Code of Administrative Offenses are also applicable.

³ Four regulations adopted by the CEC were unsuccessfully challenged in court; one case argued that a legal measure to counter vote-buying which prohibits payments to campaigners was eroded by the CEC's regulation which permitted candidates to reimburse campaigners for expenses.

⁴ A draft unified election code underwent its first reading in November 2017. Other pending bills include one to establish a broader definition of vote buying and new election crimes, strengthen sanctions, and increase law-enforcement capacity to investigate election offences; one that aims to facilitate the realization of electoral rights of persons with disabilities; one that aims to facilitate voting rights of internally displaced persons (IDPs) and labour migrants; and another to ease restrictions on identity documents for all voters.

⁵ Other legal framework recommendations related to candidate eligibility and registration, voter registration, appointment of election commissions, the complaints and appeals process, and electoral offences.

⁶ Constitutional challenges to this law were lodged in 2016 by the banned Communist Party of Ukraine and in 2017 by a group of members of parliament (MPs); despite a six-month adjudication deadline, both are pending.

⁷ See [the Venice Commission and ODIHR Interim Joint Opinion on the Law of Ukraine "On condemnation of communist and national socialist \(Nazi\) regimes and prohibition of propaganda of their symbols"](#).

In a positive development, the right of individuals to dispute the constitutionality of legislation in the Constitutional Court was introduced in 2016, allowing citizens and political parties for the first time to challenge election-related laws.⁸ Applying an overly formalistic approach, the Constitutional Court returned or ruled inadmissible five cases lodged by rejected nominees that challenged the constitutionality of the candidate deposit or its amount.⁹

The president of Ukraine is elected by popular vote for a five-year term; the same person may not serve more than two consecutive terms, but there is no overall term limit. If no candidate wins the absolute majority of valid votes cast, a second round takes place three weeks later, between the two frontrunners.

Election Administration

The election was administered by the CEC, 199 District Election Commissions (DECs), and 29,989 Precinct Election Commissions (PECs). No election bodies could be formed in the Autonomous Republic of Crimea and the City of Sevastopol as well as in the parts of Donetsk and Luhansk *oblasts* beyond the government's control.¹⁰ Voters abroad could vote at 101 polling stations established in diplomatic and consular representations in 72 countries. Polling stations in the Russian Federation were abolished by the CEC based on a request by the Ukrainian Ministry of Foreign Affairs, on grounds of the presence of risks and threats to elections there and the need to guarantee the security of Ukrainian citizens; four claimants unsuccessfully challenged this in the court. Voters residing in the Russian Federation were offered the opportunity to vote in Finland, Georgia and Kazakhstan.

The CEC is a permanent body, responsible for the overall planning and conduct of national elections. Its current composition was increased from 15 to 17 members and renewed by parliament in September 2018, following political negotiations and subsequent amendments to the Law on the CEC; one seat is currently vacant.¹¹ Political actors and civil-society representatives criticized the hasty adoption of the amendments and the circumvention of parliamentary rules of procedure, claiming the change was intended to benefit the incumbent president and the ruling coalition. This led to many IEOM interlocutors voicing a lack of trust in the CEC and questioning its impartiality.

Overall, the CEC operated collegially and met all legal deadlines. It held regular open sessions attended by media, candidate representatives and observers.¹² Most CEC decisions were adopted unanimously, and all

⁸ These cases can be lodged to the Constitutional Court after the ordinary courts issue a final judgement that affects the applicant's rights.

⁹ One case was ruled inadmissible as the claimant argued in the lawsuit that the disputed legal provision did not comply with certain constitutional articles but had not explicitly requested the court to verify whether that legal provision complied with those articles.

¹⁰ On 12 February, in line with the laws concerning the [temporarily occupied territories](#) and the [rights and freedoms of citizens residing on those territories](#), and [Presidential Decree 32/2019](#) on the temporarily occupied territories and based on [a list of territories](#) provided by the military-civilian administrations of Luhansk and Donetsk *oblasts*, the CEC decided to organize voting in 12 out of 21 election districts in Donetsk *oblast* and in 6 out of 11 districts in Luhansk *oblast*.

¹¹ CEC members are appointed for renewable seven-year terms by parliament, on the basis of presidential nominations that are to take into consideration proposals by the parliamentary factions. Eight of the new CEC members were proposed by the current ruling coalition (five by PPB and three by PF). *Batkivshchyna*, Revival, RP, *Samopomich* and People's Will each proposed one member. One member was not proposed by a party. The two members remaining from the previous composition had been proposed by the Ukrainian Democratic Alliance for Reforms (UDAR, now part of PPB) and the Freedom (*Svoboda*) party (no longer represented in parliament). The Opposition Bloc, which argues that it is entitled to two seats on the CEC, is not represented in the current composition; its proposals were not put forward by the president to parliament.

¹² Under the election law, citizen observers are only entitled to attend DEC and PEC sessions but not CEC sessions, unless the CEC is acting as the DEC for out-of-country voting. However, a representative of the main citizen observer organization OPORA attended all CEC sessions observed by the ODIHR EOM.

were posted on its official website, enhancing transparency.¹³ However, the CEC systematically held preliminary meetings before its sessions to discuss its draft decisions, while limiting public sessions to formal voting, a practice which decreased the transparency of its work.¹⁴

The CEC formed DEC members based on nominations from registered candidates.¹⁵ Since the initial appointments on 18 February, the CEC replaced 39 per cent of DEC members, including 375 chairpersons, deputy chairpersons and secretaries (executive positions).¹⁶ By law, there is no deadline for replacements, and nominating subjects are free to recall their nominees from commissions at any time; a practice which ODIHR has previously recommended should be reviewed. Replacements occurred in all DEC members and continued up until election day. Some interlocutors alleged that so-called ‘technical’ candidates who are in fact affiliated with the leading candidates had registered in part to obtain seats in lower-level commissions, which undermined the principle of equal representation as well as the purpose of the proportional allocation of executive positions. The withdrawal of five presidential candidates necessitated the reallocation of executive positions. The CEC appointed new executives from among the members based on their prior electoral experience, rather than redistributing them proportionally.¹⁷

Overall, DEC members formed PECs by the legal deadline of 12 March, but the process proved cumbersome for many DEC members.¹⁸ This was primarily due to the poor quality of nomination documents submitted by candidates to the DEC members and the shortfall of nominees. Further, data processing problems with the CEC’s analytical system *Vybory*, mistrust among DEC members towards each other or the process itself, as well as over-involvement of candidate proxies when allocating executive positions in some cases negatively affected the process. Altogether, this led to an increased workload for DEC members, protracted the process and made it vulnerable to human error.¹⁹ In addition, some DEC decisions on PEC formation were challenged in the CEC and courts.²⁰

Shortly after the formation of PECs, the DEC members replaced a significant number of PEC members, many of whom were not aware that they had been appointed as members. Many appointed in executive positions refused to assume their posts, which increased the burden on DEC members and delayed the process as many PECs could not convene on time and hold their inaugural session. Moreover, DEC members faced difficulties to maintain

¹³ However, some CEC decisions did not provide sufficiently detailed grounds, limiting to some extent its transparency and undermining the right to appeal. DEC decisions are posted on the CEC’s website. However, not all DEC members sent decisions to the CEC or posted decisions on their noticeboards in a timely manner, as required by law.

¹⁴ The CEC, in its Rules of Procedure, defined these preliminary meetings as one of the organizational forms of its activity. Interested parties may attend only upon the CEC’s permission or invitation.

¹⁵ Each candidate is entitled to a proportionate share of chairpersons, deputy chairpersons and secretaries. A candidate’s specific ‘entitlement’ for his or her nominees to be appointed to DEC executive positions is determined by a formula established by the CEC, taking into consideration the number of appointed members of each candidate relative to the total number of appointed members of all candidates. ODIHR has previously recommended to reconsider this mechanism.

¹⁶ The ODIHR EOM noted that some DEC members were not aware of which candidate they represented or even that they had been appointed as members at all.

¹⁷ The CEC claimed that it was not required by law to ensure proportionality in case of withdrawal of candidates. The redistribution was unsuccessfully challenged in court by Ms. Tymoshenko. While the court ruled that the redistribution must be proportionate, it decided without sound legal basis that the adherence to proportionality should be determined only a day before election day, after all replacements are completed.

¹⁸ DEC members 24, 106, 113, 114, 134, 138 and 161 formed PECs significantly after the legal deadline.

¹⁹ The procedure for forming PECs is similar to that for DEC members. Candidates were to submit nominations in hard copy and electronically to allow DEC members to screen nomination documents more easily and to automatically allocate proportional shares of executives in PECs via technological means. Nomination documents often contained duplicate entries, the data on hard and electronic copies did not match, or the same people were nominated for multiple commissions or by more than one candidate.

²⁰ The CEC, after being informed by the chairperson of DEC 163, dismissed the DEC for disregarding the principle of proportional allocation when assigning executive positions in PECs. DEC 179 similarly violated the principle of proportionality, but the CEC took an inconsistent decision and waited until the DEC cancelled its own decision on the PEC formation, thereby avoiding dissolution of the DEC shortly before election day. Court cases concerning the disproportionate allocation of PEC executive positions or other irregularities in the formation of PECs were filed against DEC members 25, 46, 48, 57, 78, 128, 137 and 139.

proportionally allocated quotas in view of the high number of replacements. Some applications were submitted with falsified signatures or copies of IDs without the nominee's prior consent. All this raises serious concerns regarding the PEC formation process.

The ODIHR EOM met with 192 DEC's, in many cases more than once. Overall, ODIHR EOM long-term observers assessed electoral preparations by DEC's as adequate. Some DEC's lacked operational resources or adequate office premises, and in some cases their work was negatively affected by mutual mistrust and obstructive behavior of members, rendering these commissions dysfunctional at times. The biggest impact on the DEC's' work was nevertheless caused by incessant replacements of DEC members, especially of executives, which diminished the value of the training received.

Women are well-represented at DEC's, accounting for 57 per cent of all members. As of 30 March, 91 of 199 DEC's were chaired by women, while there were 111 female deputy chairpersons and 126 secretaries. Some 72 per cent of PEC's where voting was observed were chaired by women. Nine of 16 CEC members are women, including the chairperson and the secretary.

The CEC informed the IEOM that it considered several initiatives to facilitate voting by persons with disabilities, most of which would only be launched in the run-up to the parliamentary elections. For this election, the government, on the initiative of the CEC, asked local administrations to ensure independent access to polling stations of voters with disabilities, and the CEC has encouraged lower-level commissions to ensure that at least one voting booth is adapted for use by voters using wheelchairs.

While the law only provides for the production of official election material in Ukrainian, minority communities or Russian-speaking citizens did not report to the IEOM that any language barrier compromised their understanding of the ballot paper and other election materials.

The CEC, with the support of international donors, upgraded its information technology infrastructure to address a range of cybersecurity threats that it expected to face on election day.²¹

Voter Registration

A citizen who is 18 years by election day has the right to vote, except if declared incapacitated by a court decision. Deprivation of the right to vote on the basis of intellectual disability is inconsistent with international obligations and standards.²² Voter registration is passive and continuous. It is based on the centralized SVR administered by the CEC and updated monthly by Register Maintenance Bodies (RMBs).²³ The vast majority of RMBs met by the ODIHR EOM were highly experienced and professional.

According to the SVR office, as of 28 February there were 35,560,427 registered voters, including 530,123 registered abroad.²⁴ Despite some concerns about difficulties to adequately capture data on internally displaced persons (IDPs), internal labour migrants, and citizens living abroad, including for the reasons of them not registering their residence addresses, nearly all IEOM interlocutors expressed confidence in the accuracy of the voter lists.

²¹ A regulation adopted by the CEC to include the State Security Service in working groups at DEC levels to ensure security of the *Vybory* system was unsuccessfully challenged in court by a candidate, reflecting the mistrust connected to the involvement of the security services in the election administration.

²² According to Articles 12 and 29 of the [UN Convention on the Rights of Persons with Disabilities](#) (CRPD), "State Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life" and ensure their "right and opportunity [...] to vote and be elected".

²³ Out of 761 RMBs, 82 located in the Autonomous Republic of Crimea, the City of Sevastopol as well as those parts of Donetsk and Luhansk *oblasts* beyond the government's control are currently not functioning.

²⁴ According to the [UN Migration Report 2017](#), the estimated number of Ukrainian migrants is 5.9 million.

Voter lists are extracted from the SVR. They excluded over 5 million voters registered in areas where voting could not take place and voters without a registered address.²⁵ Voters could request to temporarily change their polling station without changing their voting address.²⁶ The need to justify and renew such requests unnecessarily constrains voters, particularly in presidential elections with a single constituency. While the CEC simplified the procedure for IDPs, fewer than 100,000 registered such a request.²⁷ In addition, improper application of this procedure occurred in some instances.²⁸ The procedure for a temporary transfer of the voting address was particularly cumbersome for voters residing in territories outside government control, who had to repeatedly cross checkpoints to register and to vote. While the CEC and SVR websites provide comprehensive voter information, voter education in general appeared insufficient, including for IDPs and persons with disabilities.

By law, candidates and parties have the right to receive an electronic copy of the SVR. However, the CEC decided to restrict access to the SVR to its premises. Voters could check their records online, and at their respective RMB and PEC. The printing and display of the preliminary voter lists started nearly a week ahead of the legal deadline in all districts.²⁹ This allowed voters more time to review their records and request corrections.³⁰

Candidate Registration

The right to stand for president is granted to eligible voters older than 35 years, who have resided in Ukraine for the past 10 years, do not hold multiple citizenship, and have command of the state language.³¹ The residency requirement is unreasonably restrictive and runs counter to international obligations and good practice.³² Prospective candidates must submit a set of documents, including a property and income statement, and pay a deposit of UAH 2.5 million (around EUR 79,000). The deposit is substantial and as such represents a restriction on candidacy, and there is no reasonable threshold of votes for its return.³³ The requirement that campaign platforms be vetted as part of the candidate registration unnecessarily constrains candidates'

²⁵ As of 28 February, 993,181 voters had deregistered from their voting address and not yet registered a new one. The number of voters without a registered address has increased by 34 per cent since 2014.

²⁶ Requests must be filed no later than five days before election day. A new request must be submitted in case of a second round, even if the temporary voting location remains unchanged. This also applies to voters who will be temporarily abroad on election day. Voters without a registered address may not apply.

²⁷ According to the SVR website, as of 28 February 2.9 million voters were affected by closed polling stations in Donetsk and Luhansk *oblasts*, and 1.8 million from the Autonomous Republic of Crimea and the city of Sevastopol. According to the [Ministry of Social Policy](#), 1.3 million IDPs were registered as of 11 March.

²⁸ While persons with a registered address in areas where voting will not take place need to present only an internal passport or national ID card, ODIHR EOM interlocutors reported that some RMBs also requested IDP certificates and individual tax numbers.

²⁹ Preliminary voter lists must be transferred to PECs at regular polling stations no later than eight days before election day, and to special polling stations no later than 15 days before (or 7 days for in-patient facilities).

³⁰ Voters can request corrections to their records to RMBs and PECs up to five days before election day, and to local courts of general jurisdiction up to two days before election day.

³¹ The law does not elaborate how a candidate's command of the state language is assessed, and the CEC did not define any objective criteria for doing so.

³² Concerning residency, paragraph 15 of the [UN Human Rights Committee \(CCPR\) General Comment 25](#) to Article 25 of the ICCPR states that persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. See also sections I.1.1.c.iii-iv-v of the [Venice Commission Code of Good Practice in Electoral Matters](#). See also paragraph 7.3 of the 1990 OSCE Copenhagen Document.

³³ The electoral deposit is returned to rejected applicants, the elected candidate or his/her nominating party, and candidates competing in a second round. At the start of registration, EUR 1 was around 31.7 Ukrainian hryvnia (UAH). See paragraph 17 of the [ODIHR and Venice Commission Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine adopted by the Verkhovna Rada on 24 July 2009](#), and paragraph 16 of the CCPR GC 25.

freedom of opinion and expression as well as political pluralism. In addition, there are no objective or transparent criteria for the vetting.³⁴

Candidate registration was conducted in a largely inclusive manner. The CEC considered applications from 91 candidates and registered 44 of them.³⁵ Nominees were given the opportunity to correct procedural or technical deficiencies in their registration documents. The CEC rejected 47 applicants, most of them based on multiple grounds, the most common being non-compliance with the monetary deposit.³⁶ Six applications were denied on grounds related to the campaign platform.³⁷ After five candidates withdrew by the legal deadline of 8 March, 39 candidates appeared on the ballot, among them 4 women; 20 were self-nominated, including the incumbent, and 19 party-nominated.³⁸

Campaign Environment

Candidates can officially launch their campaign once the CEC issues a decision on their registration. The campaign ended at midnight on 29 March. It took place against a backdrop of a lack of trust in state institutions and the justice system, due to perceived widespread corruption and the poor economic situation. Powerful economic interests of wealthy businessmen (known as ‘oligarchs’) continue to impact on political and decision-making processes, and had a strong bearing on the dynamics of this election.

Overall, the campaign was largely peaceful and competitive, and candidates were generally able to campaign freely and without undue restrictions. The field of candidates offered voters a choice, but there was limited debate among the contestants on policies. The large majority of the 39 candidates did not conduct any campaign activities, casting doubts on their intentions to genuinely compete in the election.³⁹

Most candidates focused their platforms on the economy and social protection, army and defense, the fight against corruption, and resolution of the conflict in the east. Future relations with the Russian Federation, the EU and NATO also featured in the campaign. The recent establishment of the independent Orthodox Church of Ukraine featured prominently in the incumbent’s campaign, being presented as one of the key achievements of his presidency. Still, the campaign was focused on personalities of candidates rather than their platforms.

Campaign activities started slowly but increased during the last two weeks, especially in the central and western parts of the country. In the east, by contrast, the campaign remained subdued. The IEOM noted interference by third-party actors, in some cases violent, in campaign activities.⁴⁰ The campaign was mainly

³⁴ According to Article 52.2 of the election law, platforms must not, for example, aim at violating the sovereignty and territorial integrity of the state, incite ethnic, racial and religious hostility, or infringe on human rights and freedoms. Denied platforms are not published on the CEC website. One CEC decision (No [185](#) of 1 February) does not quote the parts of the applicant’s platform that in the CEC’s view violated the election law.

³⁵ All 20 court cases lodged by nominees against the CEC’s decisions denying them registration were dismissed, including 7 on the unconstitutionality of the candidate deposit or of its amount.

³⁶ One candidate was rejected in part on grounds that his deposit was transferred by other persons.

³⁷ One denied platform, referring to negotiations with the “self-proclaimed republics”, was ultimately accepted after revision. Another one was denied for referring to the areas controlled by illegal armed groups as the “LPR” (‘Luhansk People’s Republic’) and “DPR” (‘Donetsk People’s Republic’) in the context of facilitating voting rights of citizens from these areas. One applicant was rejected as he was nominated by the Communist Party of Ukraine, which was banned by a court under the 2015 law prohibiting Soviet-communist ideology.

³⁸ Women remain strongly under-represented in public life. Women hold five of 24 ministerial portfolios in the current government, and their representation in the parliament stands at 12.3 per cent (52 members). Only one of the 24 *oblast* governors is a woman.

³⁹ One candidate and MP, Yuriy Tymoshenko, was widely referred to as a ‘clone’ candidate solely running to take votes from Yulia Tymoshenko; the latter unsuccessfully lodged two court cases on the matter aiming to avoid confusion between the two candidates.

⁴⁰ For example, the National Corps violently interfered in a rally of Mr. Poroshenko in Cherkasy on 9 March and attempted to disrupt a campaign event of Oleksandr Vilkul (Opposition Bloc) in Kharkiv on 1 March. Additionally, the Ministry of Internal Affairs launched some 100 investigations into various types of crimes against persons and property in the campaign process.

conducted on television, in online media and social networks, as well as through billboards and posters, and campaign tents. Door-to-door canvassing was also observed, mostly in rural areas. Several candidates held campaign rallies or closed meetings.⁴¹ The number of instances of negative campaigning increased significantly in the last two weeks prior to election day. In the days before campaign silence, new billboards appeared featuring words associated with candidates' key messages. They remained in place during the silence period, effectively breaching campaign silence.

Mr. Poroshenko and Ms. Tymoshenko campaigned most actively, with the incumbent touring the country extensively in his official capacity.⁴² The incumbent's public appearances blurred the line between his official position and his standing as a candidate, challenging paragraph 5.4 of the 1990 OSCE Copenhagen Document.⁴³ Volodymyr Zelenskyi did not conduct a single traditional campaign rally, relying instead on his appearances as a comedian and actor on television and in his concerts as well as on his extensive presence on and use of social media.⁴⁴ By choosing this way of campaigning Mr. Zelenskyi distanced himself from the political establishment, building his support on people's fatigue and disillusionment.

The use of social assistance programmes, salary increases and bonuses, and other financial incentives as campaign tools was the subject of widespread criticism levelled against the incumbent.⁴⁵ Misuse of state resources at national and local levels by several candidates was observed by and reported to the ODIHR EOM.⁴⁶ A systematic practice of involving public institutions and public servants in the campaign, mostly by the incumbent, was noted by the ODIHR EOM.⁴⁷ The ODIHR EOM also observed several instances of civil servants and voters being instructed or induced to attend campaign events.⁴⁸

⁴¹ ODIHR EOM observers attended and reported on 126 campaign events conducted by 16 candidates, as well as 8 shows by Mr. Zelenskyi.

⁴² Meetings of the Regional Development Council, an advisory agency established by President Poroshenko in 2015 that includes key government officials, regional governors and city mayors and whose role is to promote co-operation between central institutions and local self-government bodies in the processes of decentralization and regional development, were used as a campaign platform for the incumbent, as observed in Mykolayiv, Rivne, Sumy, Vinnytsya and Zaporizhia *oblasts*. The incumbent conducted a high number of official working visits during the campaign period, frequently using them to campaign. Examples include his participation in the All-Ukrainian Forum "Open Dialogue" on 9 February, a working visit to Kharkiv for the celebration of the 85th anniversary of the stock company "Turboatom" on 14 February, as well as working visits to Donetsk (1 March) and Odesa *oblasts* (2 March).

⁴³ Paragraph 5.4 of the 1990 OSCE Copenhagen Document states that there should be "a clear separation between the State and political parties; in particular, political parties will not be merged with the State". See also ODIHR/Venice Commission [Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes](#).

⁴⁴ Out of two performances Mr. Zelenskyi normally had in each location, one was free of charge and for a public consisting mainly of vulnerable groups of the population and children.

⁴⁵ For example, the monetization of subsidies, indexation of pensions, an extraordinary one-time payment to pensioners (to be paid in two installments in March and April), and monetary support of several categories of soldiers (mostly those serving on the frontline) and other programmes were launched between late December 2018 and March 2019.

⁴⁶ Mr. Vilkul's campaign in Kryvyi Rih (where his father is mayor) was conducted in public schools; In Mariupol, he held campaign events in buildings belonging to the city council. Mr. Poroshenko's campaign used official venues in Dnipro, Lviv and Odesa; in Lviv *oblast*, Mr. Poroshenko's leaflets were distributed jointly with material on future regional projects produced by the Council for Regional Development. An Irpin city official was found liable by a court for storing the incumbent's campaign materials at the city hall. The prosecutor's office interfered in a police investigation into alleged voting buying by the incumbent's campaign, accusing the police of misusing their powers and ordering two suspects to be released.

⁴⁷ For example, in Kharkiv and Dnipropetrovsk *oblasts*, the directors of public institutions informed their subordinates about upcoming campaign events of the incumbent. One mayor informed ODIHR EOM observers that there was pressure on local government employees.

⁴⁸ For example, the participants of the incumbent's campaign events in Zaporizhia on 27 February were advised to attend the event, and in Mariupol, campaign staff kept record of attendees. During three campaign events of Mr. Vilkul in Mariupol, prizes for a lottery organized by a local newspaper were drawn. In Donetsk *oblast*, ODIHR EOM observers overheard participants stating that they have been paid to attend gatherings in favour of and against Mr. Poroshenko.

The ODIHR EOM observed some indications of vote-buying and received a high number of allegations of vote-buying from across the country.⁴⁹ Hundreds of complaints related to vote-buying were lodged with law-enforcement agencies, resulting in more than 80 criminal investigations being opened. Two investigations were launched into nationwide vote-buying schemes by the campaigns of the incumbent and Ms. Tymoshenko.⁵⁰ The ODIHR EOM also received several reports that charitable activities were organized across the country, and used as a campaign tool, by several charities and foundations affiliated with different candidates and their proxies, or directly by political parties.⁵¹

The direct involvement of the prosecutor general in support of the incumbent, contrary to the law, raised concerns. According to ODIHR EOM interlocutors and media reports, he appeared at the incumbent's campaign kickoff event and made a number of statements, including on his personal *Facebook* page, that cast doubts on his office's independence. In addition, several candidates are the subject of ongoing criminal investigations, with at least three investigations launched after they announced their candidacy.⁵²

Campaign Finance

The new framework on campaign finance increases transparency but remaining shortcomings limit its effectiveness to regulate the role of money in campaigns.⁵³ The CEC and the recently established National Agency for Prevention of Corruption (NAPC) did not sufficiently co-ordinate their overlapping oversight authority.⁵⁴ Insufficient independence, capacity and resources of these bodies are a serious concern.

Candidates and nominating parties can contribute to campaign funds without limit.⁵⁵ Citizens can donate up to the amount equal to 400 times the minimum salary (around EUR 56,000), and legal entities double that amount.⁵⁶ There is no limit on campaign spending. Due to the excessive amount of money in campaigns, public calls and draft laws for banning or limiting spending for broadcast advertising have ensued.⁵⁷

All campaign donations and expenditures must pass through dedicated bank accounts which are opened after candidate registration. Interim campaign finance reports are to be filed not less than five days before election

⁴⁹ A video file allegedly proving vote-buying, which featured people signing documents and receiving envelopes with money in exchange, was received by ODIHR EOM observers in Odesa. ODIHR EOM observers received widespread allegations that Mr. Poroshenko's campaign staff in Kryvyi Rih was signing agreements with voters under which voters would receive UAH 500 before and another UAH 500 after election day upon producing evidence of how they voted. A police official explained to ODIHR EOM observers that vote-buying is "organized like a *volka* (Christmas tree). Let's say the starting point is 100,000 Hryvnia. Five other people will receive 20,000 each. They give 5,000 each to four others, and each of those four pays five voters 1,000 Hryvnia. The end result is that 100 votes are bought".

⁵⁰ The Ministry of Internal Affairs launched the investigation against the incumbent's campaign, and the State Security Service, together with the Prosecutor General's Office and the State Bureau of Investigation, initiated the investigation against Ms. Tymoshenko's campaign.

⁵¹ A mayor informed the ODIHR EOM that parties were distributing money and sugar to the poor. ODIHR EOM observers noted bags with gifts being handed out to participants at campaign rallies. ODIHR EOM observers noted stacks of documents, each with a passport copy as a front page, in Mr. Lyashko's campaign office in Mariupol. They were told that the documents were individual requests of citizens mostly related to various communal issues.

⁵² The investigations of candidates Volodymyr Petrov, Yuriy Tymoshenko and Mr. Vilkul were launched after they announced their intention to run.

⁵³ See [Council of Europe's Group of States Against Corruption \(GRECO\) Third Evaluation Round. Addendum to the Second Compliance Report on Ukraine, "Transparency of Party Funding"](#).

⁵⁴ By law, campaign finance reports are to be analyzed by the CEC and the NAPC who informed the ODIHR EOM that they conducted parallel reviews, but issued joint reports.

⁵⁵ State funding of parties, introduced in 2015, cannot be used for campaigns. An investigation was launched into allegedly fraudulent reporting on donations by *Batkivshchyna* in 2016 and 2017.

⁵⁶ In January 2019, the minimum salary was UAH 4,173 (EUR 141). Foreign, anonymous, and some other types of donors are prohibited.

⁵⁷ Consideration of spending limits is one of the key recommendations of GRECO to the Ukrainian government, intended to prevent excessive funding of election campaigns.

day and published within one day with analyses. Final reports are due within 15 days after election day, and the analyses are to be published within 30 days of the election.⁵⁸

Numerous claims that campaigns were largely funded outside the campaign finance framework have some credibility based on ODIHR EOM observations.⁵⁹ However, both oversight bodies refrain from accepting a mandate to determine any circumvention of transparency rules, including a misuse of state resources, nor do they have investigatory powers. Analysis of the finance reports is mainly technical according to established procedures, and sanctions for any violations are insufficient.⁶⁰

All candidates submitted interim finance reports by the legal deadline. The CEC and NAPC analyses revealed that 15 candidates received donations from unauthorized persons, but the police was requested to investigate only Mr. Zelenskyi and Mr. Hrytsenko.⁶¹ The data in reports of two other candidates did not correspond to campaign bank account records, but no action was taken. Three reports included more expenditures than donations, which, despite a legal provision that only allows for expenses to be financed from donations, was not considered by the authorities as a violation. Notably, six candidates reported no campaign expenditures. The reports filed by the three candidates widely considered the frontrunners indicate that, on average, 70 per cent of their expenditures was allocated to media advertising, with the incumbent spending more than UAH 250 million (some EUR 8.2 million) on media alone.

Media

The media landscape is characterized by a wide range of outlets at national and regional levels. The main source of political information remains television, despite the significant growth of news websites and social networks. The media market is largely divided along political lines, and ownership is highly concentrated. The editorial policy and political agenda promoted by private media outlets exclusively serve the economic interests of their owners, undermining media autonomy and public trust.⁶² The Ukrainian Public Broadcasting Company (*UA:PBC*), established in 2017, is severely underfunded, which affects its ability to fully perform its public-service role.⁶³

Media compliance with legal requirements is monitored by the National Council of Television and Radio Broadcasting (NCTRB). The legislation does not give the regulator any effective sanctioning powers to perform its mandate in a timely manner during an election period, and specific mechanisms for dealing with media-related complaints are not exercised, despite previous ODIHR recommendations. Furthermore, the council's independence and impartiality are questionable since its members are political appointees and often vote along the political lines. Unlike in previous electoral cycles, parliament did not adopt a moratorium on

⁵⁸ Campaign finance reporting templates included places for entering the source and amount of each donation and a detailed breakdown of expenditures.

⁵⁹ For example, supporters donated campaign offices, paid for fuel, printed campaign materials, and funded giveaways. In Mariupol, the BPP had a clandestine campaign office on behalf of the incumbent. The widespread occurrences of campaign materials missing required information on the issuer, publisher and circulation was also indicative of third-party financing. The CEC informed the ODIHR EOM that some candidates were not paying for their *YouTube* ads from campaign accounts. In addition, some candidates organized free concerts not advertised as campaign events, compensated their DEC and PEC nominees off the books, and paid media for showing their unmarked promotional material.

⁶⁰ For instance, failure to submit a finance report is subject to a fine of UAH 5,100–6,800 (EUR 170–230).

⁶¹ In all cases, unauthorized donations were from persons with tax debts. For example, Mr. Hrytsenko accepted over UAH 10 million in unauthorized donations, Mr. Taruta over UAH 6.8 million, Mr. Vilkul over UAH 5 million, and Mr. Zelenskyi over UAH 3.7 million.

⁶² The four major media groups (*Star Light Media*, *1+1 Media*, *Inter Media*, and *Media Group Ukraine*) have a combined audience share of 76 per cent.

⁶³ The current state budget envisages only around half of the required funding for the public service broadcaster, which contradicts the law on public television and radio broadcasting that guarantees a fixed amount of 0.2 per cent of the previous year's state budget expenditure.

media inspections to ensure freedom of expression and uninterrupted coverage of election-related events by media outlets.

The constitution guarantees freedom of expression and prohibits censorship, and the legal framework provides for general media freedom. Yet, to counter threats to national security, the government introduced a number of severe measures affecting media and journalists. Since 2017, presidential decrees have imposed economic sanctions against a number of television channels, social networks and search engines from the Russian Federation. In addition, around 200 websites considered to be anti-Ukrainian have been blocked by the authorities, with legislative proposals for further restrictions pending.⁶⁴ On the same grounds, foreign journalists face temporary bans on entering Ukraine if violations of procedures for entry and exit from occupied territories are suspected.⁶⁵ On 4 October 2018, parliament requested the National Security and Defense Council to sanction two national television channels, *News One* and *112 Ukraina*, saying they were tools for spreading disinformation and Russian propaganda. During the election period, NCTRB sanctioned *News One* for hate speech and anti-Ukrainian reporting. On 21 February, an inspection of *112 Ukraina* was initiated under similar accusations.

A high number of violations against journalists' rights have been recorded by national and international human rights organizations. Journalists' safety remains a major concern as they face the threat of violence and intimidation, especially during the electoral process.⁶⁶ Although the law guarantees the protection of sources, a number of investigative journalists have been ordered by courts to provide access to their email and mobile phone correspondence.⁶⁷ Additionally, the case of the disclosure of personal data of thousands of Ukrainian and foreign journalists by the nationalist website *Myrotvorets*, which labelled them as supporters of terrorist groups, remains unaddressed since 2014.

ODIHR EOM media monitoring results show that the campaign was covered through various formats including talk shows, current-event programmes, political debates as well as free and paid airtime.⁶⁸ Candidates often used these platforms to discredit their opponents rather than informing voters on their political views. Moreover, legal provisions for balanced and unbiased coverage were frequently violated by the monitored private TV channels. Overall, the campaign news coverage lacked in-depth analysis. Most candidates were reluctant to participate in televised debates. Several journalists and hosts showed a clear bias towards certain candidates through favourable invitees, partisan declarations, as well as voicing results of opinion polls that did not disclose the methodology as required by the election law.

In the monitored TV channels, campaign coverage focused mainly on seven candidates.⁶⁹ However, in the news programmes, broad coverage was given to President Poroshenko, with no clear distinction between his institutional activities and political campaigning. Private channels favoured certain candidates in terms of both amount and tone of editorial coverage. *Inter* and *112 Ukraina* favoured Mr. Boyko. *5 Channel* and *Ukraina* gave most coverage to Mr. Poroshenko. Mr. Zelenskyi dominated the coverage on *I+I*. While *5 Channel* often covered Mr. Zelenskyi negatively, *I+I* showed the same approach to Mr. Poroshenko.⁷⁰ *ICTV* allocated 85 per cent of its election coverage to four candidates, often through unmarked promotional materials, and

⁶⁴ Draft laws that seek to introduce measures on countering national security threats in the information space are pending in parliament.

⁶⁵ Most recently, an Austrian and an Italian journalists have been banned from entering Ukraine. See statements of the OSCE Representative on Freedom of the Media (RFoM) from [8 March](#) and [25 March 2019](#).

⁶⁶ See Paragraph 11 of the [24th Report](#) of the United Nations High Commissioner for Human Rights (OHCHR).

⁶⁷ See also the [statement of the OSCE RFoM](#) from 20 February 2019 on the news website *Novoe Vremya*.

⁶⁸ On 18 February, the ODIHR EOM commenced its media monitoring of the prime-time broadcasts of seven TV channels: public *UA:Pershyi* and private *Ukraina*, *I+I*, *INTER*, *ICTV*, *112 Ukraina*, and *5 Channel*. The ODIHR EOM also follows election-related content in the online media and on social networks.

⁶⁹ Mr. Poroshenko, Mr. Zelenskyi, Ms. Tymoshenko, Mr. Boyko, Mr. Lyashko, Mr. Vilkul, and Anatoliy Hrytsenko.

⁷⁰ On *Inter* and *112 Ukraina*, Mr. Boyko received 45 and 28 per cent, respectively, often positive in tone, while Mr. Poroshenko and Ms. Tymoshenko received 33 and 11, and 10 and 3 per cent, respectively. On *5 Channel* and *Ukraina*, Mr. Poroshenko received 42 and 33 per cent, respectively, while Mr. Zelenskyi and Ms. Tymoshenko received 10 and 6 and 16 and 3 per cent, respectively, often negative in tone.

notably giving little coverage to Mr. Zelenskyi.⁷¹ Mr. Zelenskyi was barely covered in his political capacity, while *I+I* featured him extensively during entertainment programmes in his capacity as an actor. The media coverage of Mr. Zelenskyi's way of political campaigning is currently not regulated by existing legislation.⁷² During the campaign silence period, *I+I* aired several TV entertainment programmes featuring Mr. Zelenskyi.

According to the election law, paid campaign advertising is allowed on public and private media but has to be clearly marked. Through the course of the campaign, paid advertisement was widely used by those perceived to be the main candidates. President Poroshenko was the only candidate who purchased airtime in all monitored media outlets. Contrary to the election law, a high number of unmarked promotional materials (known as '*jeansa*') was noted in the prime-time news of most of the monitored private TV channels. Representatives of regional and local media informed IEOM observers that it is widespread practice for media to publish political content in exchange for payment. This practice misleads voters and does not provide genuine information on political platforms.

In line with legal requirements, *UA:PBC* provided all presidential candidates with free airtime during prime time. All candidates used this opportunity. The public broadcaster abstained from covering candidate activities in the news, focusing instead on current-event programmes and debates with presidential candidates. In doing so, *UA:PBC* strived to achieve balance. Among the leading candidates, only Ms. Tymoshenko and Mr. Hrytsenko were willing to participate in debates organized by the public broadcaster. This limited voters' opportunity to directly compare candidates in an interactive format.

Complaints and Appeals

The right to seek effective legal remedy is guaranteed by the election law. Participants in the electoral process can challenge the decisions and (in)actions of election commissions, candidates, and other electoral actors.⁷³ Most types of disputes can be filed with the election administration and/or administrative courts, at the complainants' discretion; such overlapping jurisdiction is not in line with international good practice.⁷⁴ Limiting the opportunity to seek effective redress are provisions that allow for the rejection of complaints due to minor technical deficiencies and a CEC procedure amended in December 2018 that deems complaints submitted by email inadmissible.⁷⁵

The courts adhered to the two-day deadline for review of cases and offered parties to the claim sufficient opportunity to present their cases.⁷⁶ However, some court judgements lacked a sound legal basis, thereby

⁷¹ On *ICTV*, Ms. Tymoshenko, Mr. Poroshenko, Mr. Hrytsenko, Mr. Vilkul, and Mr. Zelenskyi received 35, 29, 26, 20 and 15 per cent, respectively, mostly in neutral tone.

⁷² For example, the first two seasons of the TV show "Servant of the People", released in 2015 and 2017, respectively, in which Mr. Zelenskyi plays a high school teacher who becomes president, were aired by *I+I* throughout the campaign period, with a considerable increase in the number of broadcasts observed in the last weeks. The new, third season started on 27 March. The series accounts for 43 per cent of the total coverage devoted to Mr. Zelenskyi on monitored channels. On 23 March, *I+I* broadcast a BBC documentary on the US president Ronald Reagan's life in which Mr. Reagan was dubbed by Mr. Zelenskyi. Prior to the broadcast, *I+I* regularly aired teasers featuring Mr. Reagan's announcement of candidacy and his inauguration, with Mr. Zelenskyi's voice-over. The documentary was re-broadcast on 30 March, during the campaign silence period.

⁷³ However, voters are only eligible to lodge complaints on violation of their personal voting rights, and civil society organizations do not have standing if not accredited to observe. For example, a case that challenged the closure of polling stations in the Russian Federation was deemed inadmissible as the claimant could not prove he would be there on election day. A case lodged by an anti-corruption NGO against a CEC decision on a DEC's composition was denied consideration as it was not an accredited observer organization.

⁷⁴ See the Venice Commission's Code of Good Practice in Electoral Matters, p.II.3.3.C.c.

⁷⁵ Many complaints were deemed inadmissible by the CEC and courts due to technical deficiencies; the Supreme Court ruled in one appeal that the lower court had applied the admissibility rules too strictly.

⁷⁶ More than 80 cases were submitted in the first instance to the Sixth Administrative Court of Appeal, most challenging the CEC and several against candidates; a significant number were ruled inadmissible due to missing the five-day submission deadline. In several appeals, the Supreme Court overturned first-instance court decisions.

limiting access to effective remedies for violations of electoral rights and casting doubts on the independence of the judiciary. This included several unsuccessful cases against the incumbent on misuse of official position and state resources by mixing official events with campaigning, and one case against Mr. Zelenskyi on bypassing campaign finance rules by directly campaigning in his professional performances. In addition, some decisions of the same court conflicted with each other, undermining the principle of legal certainty.⁷⁷

The CEC informed the IEOM that it received more than 130 complaints. As a general practice, the CEC responded to these complaints by private letter prepared by a single CEC member, rather than by determination in open plenary sessions followed by published decisions as required by law.⁷⁸ This undermined the transparency and collegiality of the established dispute resolution process. The courts failed to remedy the CEC's handling of complaints outside sessions by dismissing several cases on the matter.⁷⁹ In addition, the CEC refused to consider the merits of the vast majority of complaints rejecting them on technical grounds. Thus, claimants were denied by courts and the CEC effective remedy against administrative actions, contrary to OSCE commitments.⁸⁰

The Supreme Court has jurisdiction over cases challenging the election results. On 20 March, the High Council of Justice appointed ten Supreme Court judges who had been earlier vetoed by the Public Integrity Council for violations of ethics standards.

Citizen and International Observers

The law provides for observation of the electoral process by international observers and citizen observers nominated by non-governmental organizations (NGOs) whose statute includes election observation.⁸¹ However, in light of the designation by parliament of the Russian Federation as an aggressor state, a recent amendment to the election laws effectively prohibited citizens of the Russian Federation from observing elections in Ukraine.⁸² This is at odds with paragraph 8 of the 1990 OSCE Copenhagen Document.⁸³

The CEC registered 139 NGOs, including 132 that applied to observe nationwide.⁸⁴ Most of these NGOs had no previous election observation experience. The ODIHR EOM noted only a small number of NGOs that were active throughout the country in the pre-election period, most notably OPORA, and, to a lesser extent, the Committee of Voters of Ukraine and the Leading Legal Initiatives. Most IEOM interlocutors expressed

⁷⁷ For instance, the overturning of a lower-level decision by the Supreme Court eliminated a direct conflict between two decisions of the same court about the same CEC regulation, in which one panel had upheld the regulation and the other quashed it.

⁷⁸ Articles 14 and 15 of the Law on the CEC provide that any submission that alleges violations of election laws and claims realization and protection of electoral rights should be considered in open CEC sessions. However, some 10 per cent of complaints received by the CEC were handled in line with this legal requirement. The ODIHR EOM was not given access to complaints or response letters on grounds of private data protection and, therefore, was unable to systematically review the substance of these documents.

⁷⁹ With complete disregard for the law, the Supreme Court ruled that the CEC has full discretion to decide whether to consider complaints in sessions. This decision conflicted, in part, with an earlier decision of the same court.

⁸⁰ Paragraph 5.10 of the 1990 OSCE Copenhagen Document requires that “everybody will have effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.”

⁸¹ Domestic observers are registered by DEC, while international observers are registered by the CEC.

⁸² The amended legislation bans “participation of the nominees or citizens of the aggressor state or the occupying power, as determined by the *Verkhovna Rada*”. The Director of ODIHR in a [statement](#) of 7 February expressed her regret over this decision, as did the OSCE Chairperson-in-Office in a [statement](#) of 8 February.

⁸³ Paragraph 8 of the 1990 OSCE Copenhagen Document states that “participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process...” ODIHR EOM request for accreditation included long-term and short-term observers seconded by the Russian Federation, but they were not accredited by the authorities.

⁸⁴ Fourteen applications were ultimately rejected, all in relation to their statute. Two NGOs were ultimately registered; one based on a second application and the other based on a Supreme Court decision invalidating the CEC decision based on inconsistency with a previous decision to register the same NGO for the observation of the 2018 local elections. Two other NGOs lodged unsuccessful complaints in court.

concerns about the affiliation of some NGOs to particular candidates.⁸⁵ The credibility of some NGOs appears questionable.⁸⁶ According to the CEC website, a total of 82 NGOs registered over 93,000 citizen observers. Domestic observers are not clearly permitted by law to attend CEC sessions.⁸⁷ The CEC registered over 2,300 international observers from 36 organizations or foreign states.

Election Day

Election day was peaceful, with a voter turnout of 63.5 per cent announced by the CEC. The CEC started posting on its website detailed preliminary election results by polling station at around 23:00 on election day.

Opening procedures were assessed positively in 246 of the 265 polling stations observed. With few exceptions, established procedures were followed. However, IEOM observers noted the presence of unauthorized persons in 26 polling stations, and interference by candidate and party observers in 10 polling stations. About a quarter of the polling stations observed opened with slight delays.

Voting was assessed positively in 99 per cent of polling stations observed. IEOM observers characterized the process as well-organized, smooth, transparent and efficient, with a high level of adherence to established procedures. The few negative assessments were mainly due to overcrowding and ballot boxes that had not been sealed properly (5 per cent of observations), often due to poor quality of the seals.

Procedures such as ID checks and the signing of voter lists and ballot counterfoils were adhered to, with few exceptions. Similarly, IEOM observers reported only few cases of serious violations such as attempts to influence voters (less than 1 per cent), series of seemingly identical signatures on voter lists (1 per cent), and group (2 per cent), proxy or multiple voting (less than 1 per cent each). IEOM observers noted problems with the secrecy of the vote, including not all voters folding their ballots to preserve the secrecy of their vote (6 per cent of polling stations observed), voters showing their marked ballots to others present (8 per cent), or indications of voters taking pictures of their ballots (2 per cent). All this could reflect concerns expressed in the pre-election period with regard to possible vote-buying. In 7 per cent of polling stations observed, IEOM observers saw persons other than PEC members keeping track of voters who had voted.

In 18 per cent of polling station observed, one or more voters were not allowed to vote. In about half of such cases, this was because they were not on the voter list, but there were also numerous cases where voters had come to the wrong polling station or could not produce a valid ID. IEOM observers noted in 35 polling stations that voters without a valid ID were nonetheless allowed to vote.

Candidate and party observers were present in 95 per cent of polling station observed, and citizen observers in 57 per cent. Given the high number of citizen observers accredited, this is a surprisingly low presence. They also often could not say which organization they represented. IEOM observers noted the presence of unauthorized persons, in particular police, in 7 per cent of polling stations observed. In 51 polling station observed, persons other than PEC members interfered in or directed the process; in 27 cases, they were candidate or party observers. Written complaints were filed in 9 per cent of polling stations where voting was observed.

Some 58 per cent of polling stations were not accessible for persons with physical disabilities, and in 23 per cent, the layout was not suitable for them. IEOM observers reported overcrowding from 5 per cent of polling stations observed.

⁸⁵ The names, slogans and symbols of some NGOs directly relate to candidates' campaigns or nominating parties. Moreover, the youth branches of some parties were registered as NGOs to observe.

⁸⁶ The Ukrainian Center for Democratic Society, which registered nearly 32,000 observers, was founded in December 2018, has no website, and a single post on its Facebook page with 14 likes and 17 subscribers (as of 29 March). On election day, several observers from this NGO openly stated the organization was affiliated to the incumbent.

⁸⁷ The representative of the accredited NGO OPORA was allowed to observe CEC sessions only as a media representative, not as an official observer. This was unsuccessfully challenged in court.

The vote count was assessed positively in 279 of the 331 polling stations where it was observed. Counting was transparent, and candidate and party observers were present at almost all counts observed, and citizen observers at over one half. Isolated cases of unauthorized persons or undue interference in the count were noted, usually by candidate or party observers.

IEOM observers noted a few significant procedural errors and only few serious violations during the vote count. They did, however, report that basic reconciliation procedures were often not followed, including the PEC announcing the number of voters on the voter list (39 cases), the number of voters' signatures on the main and homebound voter lists (67 and 65 cases, respectively), or of used ballot counterfoils (41 cases). In 57 counts observed, the figures established during reconciliation were not entered into the protocol before the ballot boxes were opened. Counting procedures were followed overall, although IEOM observers reported that 50 counts were not performed in the prescribed sequence. This failure by PECs to follow basic reconciliation procedures or to perform the count in the prescribed order were main reasons for negative evaluations by IEOM observers.

During 42 counts, the validity of contested ballots was not determined by voting. IEOM observers also noted 24 cases where the results protocol had been pre-signed by PEC members, but saw no attempt to deliberately falsify the results. Forty-five PECs observed had problems completing the results protocol.

The initial stages of the tabulation process were assessed negatively in 47 of 259 observations. This was mainly due to inadequate conditions at DEC's that caused overcrowding and limited transparency. In 67 cases, conditions were inadequate for the tabulation of results, mainly due to insufficient space and poor organization. Forty-five DEC's were so overcrowded that it negatively affected the process, and in 57 there was tension or unrest. In 85 cases, IEOM observers could not fully observe the data entry of results, which limited transparency. In 42 cases, not everyone present had a clear view of procedures, and in 47 cases, IEOM observers were restricted in their observation. More often than not, those entitled did not receive copies of the intermediate tabulation protocols. IEOM observers reported cases of PEC results protocols that had not been completely filled in (12 cases) or did not reconcile (20 cases). They also reported from 39 DEC's that PEC or DEC members were changing protocol figures at the DEC, in violation of the law. Citizen and candidate or party observers were present in the large majority of DEC's. Ten of the twelve observed cases of interference in the work of DEC's were by such observers.

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

MISSION INFORMATION & ACKNOWLEDGEMENTS

Kyiv, 1 April 2019 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly (NATO PA). The assessment was made to determine whether the election complied with OSCE commitments, Council of Europe's and other international obligations and standards for democratic elections and with national legislation.

Mr. Ilkka Kanerva was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and to lead the OSCE short-term observer mission. Ms. Doris Barnett headed the OSCE PA delegation. Ms. Angela Smith headed the PACE delegation. Mr. Dariusz Rosati headed the EP delegation. Mr. Michał Szczerba headed the NATO PA delegation. Ambassador Peter Tejler is the Head of the ODIHR EOM, deployed from 6 February.

ODIHR, OSCE PA, PACE and the EP have endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the

completion of the electoral process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, the handling of possible post-election day complaints or appeals, and the conduct of the second round. The ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process. The OSCE PA will present its report at its Annual Session in Luxembourg in early July 2019. The PACE will present its report at its Standing Committee in Paris on 24 May. The EP will present its report at a forthcoming meeting of its Committee for Foreign Affairs. The NATO PA will present its report at its Standing Committee in Bratislava on 31 May.

The ODIHR EOM includes 21 experts in the capital and 90 long-term observers deployed throughout the country. On election day, 967 observers from 45 countries were deployed, including 797 long-term and short-term observers deployed by the ODIHR, as well as a 107-member delegation from the OSCE PA, a 32-member delegation from the PACE, a 12-member delegation from the EP, and a 19-member delegation from the NATO PA. Opening was observed in 265 polling stations and voting was observed in more than 3,300 polling stations across the country. Counting was observed in 331 polling stations, and the tabulation in 153 DECes.

The IEOM wishes to thank the authorities for their invitation to observe the election, and the Central Election Commission and the Ministry of Foreign Affairs for the assistance. They also express their appreciation to other state institutions, political parties, media and civil society organizations, and international community representatives for their co-operation.

For further information, please contact:

- Ambassador Peter Tejler, Head of the ODIHR EOM, in Kyiv (+380 44 256 3231);
- Thomas Rymer, ODIHR Spokesperson (+380 50 302 8446 or +48 609 522 266), or Ulvi Akhundlu, ODIHR Election Adviser, in Warsaw (+48 695 808 813);
- Nat Parry, OSCE PA Spokesperson (+45 601 081 77);
- Bogdan Torcătoriu, PACE (+33 650 392940);
- Karl Minaire, EP (+380 97 918 38 35);
- Henrik Bliddal, NATO PA (+32 477 85 45 78)

ODIHR EOM Address:

President Hotel, 2nd floor

12 Hospitalna Street, 01601 Kyiv

tel.: +380-44-256 3231; fax: +380-44-256 3886; email: office@odihr.org.ua