

INTERNATIONAL ELECTION OBSERVATION MISSION

Presidential Election (Second Round), Ukraine – 21 November 2004

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Kyiv, 22 November 2004 - The International Election Observation Mission (IEOM) for the second round of the 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 statement should be considered in conjunction with the IEOM's statement released on 1 November 2004, after the first round of voting. It is issued prior to a full and final analysis of observers' findings of the second round election day.

Preliminary Conclusions

As for the first round, the second round of the Ukrainian presidential election did not meet a considerable number of OSCE commitments and Council of Europe and other European standards for democratic elections. Despite a number of serious shortcomings being identified by the IEOM in its statement of 1 November, the authorities failed to take remedial action between the two rounds of voting to redress biased coverage on State media, misuse of State resources, and pressure on certain categories of voters to support the candidacy of Mr. Yanukovich. Overall, State executive authorities and the Central Election Commission (CEC) displayed a lack of will to conduct a genuine democratic election process.

On election day, although voting was conducted in a generally calm manner, overall, observers' assessed election day less favourably, particularly in the central and eastern regions, than 31 October. Observers noted a higher incidence of serious violations, including some isolated incidents of violence, and a pattern of intimidation, including directed towards observers, polling commission members and individual voters. Observers reported that in a significant number of polling stations commissions (PSC) members had been dismissed or ejected. Police were present in a majority of polling stations visited. In some instances, unauthorized persons were interfering in or directing the process, or otherwise attempting to influence voters.

Despite the suspiciously high turnout in some regions (for example 96.31% in Donetsk and 88.41% in Lugansk, according to the preliminary CEC turnout figures), overcrowding was reported by IEOM observers as less of a problem in eastern regions than elsewhere. While far fewer voters were turned away from polling stations due to inaccuracies in the voter list during the second round than in the first, once again there was a regional variation, with fewer voters being turned away in the east.

A high number of voters – approximately 5 per cent - were added to voter lists on election day. Almost all of the added voters used absentee certificates. This is of concern in view of the abuse of these documents noted by long-term observers prior to the election, and of the high number of voters using absentee voting certificates on election day, some being transported by bus in a

number of regions. A regional variation also exists for this phenomenon, with most absentee certificates used in southern regions and fewest in western regions.

The observers' assessment of the ballot counting process was worse than 31 October, including poorer overall organisation, and more questions raised about the accuracy of results reported. Problems included lack of sufficient attention to ballot security and counting procedures. In almost half of polling stations unauthorized persons were present including police and local government officials. In 10% of polling stations, some PSC members did not receive a copy of the protocol and in 18% of polling stations the PSC did not post the protocol publicly as required by law.

Despite serious shortcomings in the process, the second round of the election offered voters a choice between the two candidates and their respective political programmes, despite unequal campaign conditions. However, in Donetsk Oblast, preliminary turnout figures announced by the CEC are so improbable as to cast doubt on whether that choice was always safeguarded. Once again, a vibrant civil society demonstrated a high level of interest and engagement on the part of the citizens of Ukraine and their commitment to a democratic process.

The period between the election rounds was marred by the continued failure of some State structures to respect citizens' rights to make their electoral choices freely and to comply with their legal obligation to maintain political neutrality. After the announcement of official first round election results, observers reported cases of public sector employees and students being pressured to support Mr Yanukovich, and a number of instances in which Mr Yushchenko's campaign activists were harassed by law enforcement bodies.

The second round of voting was compromised by significant shortcomings:

- The abuse of State resources in favour of the Prime Minister demonstrated a widespread disregard for the fundamental distinction between the State and partisan political interests;
- Some citizens, whose livelihood depends directly or indirectly upon the State, were placed under duress to acquire and hand over to their superiors an "absentee voting certificate". Observers reported that these documents were collected in the workplace on an organised basis. Hence these citizens were prevented from exercising their suffrage rights, as the acquisition of a certificate automatically excludes the voter from voting in the polling station where originally registered;
- In other regions, the failure to account properly for the number of "absentee voting certificates" issued and used could have facilitated multiple voting, thereby having a potential impact on the integrity of the results. Concern for this issue was underscored by observations of a high numbers of voters using absentee voting certificates, some being transported by bus in a number of regions;
- A lack of transparency in the tabulation of the first round preliminary election results, and delay in the announcement of final first round election results by the CEC, shortened the period available for the resumption of campaign activity and thus impacted negatively on an already tense political environment;
- The CEC failed to provide information on all first round results at polling station level, thereby undermining confidence in the process. Despite repeated requests by the OSCE/ODIHR EOM prior to both rounds, it failed to provide information on the number of ballot papers issued to each TEC, as well as to polling stations outside Ukraine. Prior to the second round, it failed to provide the OSCE/ODIHR EOM or publicly announce

the number of absentee voting certificates delivered and issued in each territorial election district, as well as the number of voters added to the voter lists in each territorial election district between both rounds. This demonstrated a lack of regard for transparency and accountability;

- The reluctance of the CEC to grant relief on complaints, thus impeding legal redress where electoral violations occurred;
- The inability of the local State executive to produce accurate voter lists, for whatever reason, and an evident lack of uniformity in the methods used by Territorial Election Commissions (TECs) and Polling Station Commissions (PSCs) to correct the lists between the election rounds;
- A large number of TECs were unwilling or unable to provide observers with data on the number of voters registered before 21 November election day;
- The last minute dismissals by TECs of hundreds of PSC members appointed by the opposition in Kirovohrad, a key marginal region, and others in Donetsk, Zakarpattiya, Zaporizhia, Kyiv, Khmelnytsky, Odesa, and Volyn, lessened transparency;
- The absence of legal provision recognising the right of non-partisan domestic observers to observe the poll in contradiction with OSCE commitments;
- There was a continuation of inflammatory campaign language exchanged between the two rounds, the large majority of which was targeted towards Mr Yushchenko;
- Overt bias in the State-funded media, which continued to favour the Prime Minister in news presentation and coverage of the campaign, thereby obstructing the opposition candidate's opportunity to convey his campaign message to the electorate on an equal basis; and,
- An overall constraint of the public's free access to balanced information resulting from the issuance, allegedly by the State administration, of so-called *temnyky* (guidelines on the content and presentation of news items).

Some notable encouraging aspects of the electoral process include:

- Citizens in many regions seemed more confident in exercising their basic right of free expression, including by displaying campaign material and symbols;
- The overwhelming imbalance of media coverage in favour of the Prime Minister was redressed to a partial and limited degree through wider coverage of opposition viewpoints, albeit for a short period, in some privately owned media;
- More than 300 journalists openly protested against effective censorship and constraints on freedom of expression represented by the *temnyky* guidelines;
- The first televised debate between the two main presidential candidates for a decade took place on State-owned *UTI* TV. However, the airing of a biased round table discussion immediately after the debate was an abuse of publicly owned resources;
- After the first round of voting, the proceedings of the Supreme Court continued to be open and transparent, and the Court granted relief in many cases that were incorrectly decided by lower courts and the CEC;
- The airing of public information slots produced by the Committee of Voters of Ukraine increased voters' awareness of the electoral provisions;
- Co-operation extended to election observers by national-level and most local-level government structures, including the Ministry of Foreign Affairs and the Inter-Departmental Working Group.

The transparency of the tabulation and announcement of official election results and the effective and impartial resolution of any election day and subsequent complaints and appeals will be of crucial importance in forming a final assessment of the 2004 presidential election.

The IEOM calls upon the CEC to act as a politically neutral administrative body, and re-iterates its appeal to the CEC to post on its website all PSC results for both election rounds. The first round PSC-level results should be posted without delay. The second round preliminary PSC-level results should be posted as soon as they are received by the CEC. All PSC-level results should be posted no later than the announcement of final election results by the CEC. This action would enhance the transparency of the electoral process at its most critical phase and might serve to reassure voters and candidates of the accuracy of the election results.

OSCE/ODIHR observers will remain in Ukraine to assess the tabulation of results at TECs and the CEC as well as the post-election complaints and appeals processes, and the OSCE/ODIHR may issue additional public commentary on the process as necessary. The OSCE/ODIHR will issue a comprehensive Final Report approximately six weeks after completion of the process.

The IEOM wishes to thank the Ministry of Foreign Affairs and the Interdepartmental Working Group of the Cabinet of ministers and other national and local authorities for their assistance and cooperation during the course of the observation. In particular, the IEOM wishes to acknowledge the efforts of those all those election officials throughout Ukraine who attempted to implement the election in accordance with the law and regulations.

Preliminary Findings

Background

The first round of the 2004 Presidential election took place on 31 October 2004. On 10 November, the CEC announced official election results that revealed that none of the 24 candidates had secured a qualified majority of votes cast, and therefore, in accordance with the election law, the CEC scheduled a second round election for 21 November 2004. In this context, the law determines that the winning candidate is only required to receive more votes than his opponent to be elected. The successful candidate is scheduled to take office no later than 8 January 2005.

Tabulation and Announcement of First Round Results

The Election Law grants the CEC 10 days to determine the official election results after the first round (i.e. until 10 November). However, the Election Law does not establish a deadline for TECs and PSCs to complete and submit their results protocols to the CEC. This constitutes a shortcoming in the legal framework.

The speed at which TECs finalised their election results (protocols) appeared to vary between regions. In some central regions, where preliminary results indicated relatively narrow margins between the two leading candidates, a significant number of complaints on the voting and counting process were filed. The tabulation process encountered serious difficulties in at least 15 TECs across the country and delays in finalising their results were noted. Observers are aware of 10 TECs in which at least one PSC result was invalidated. The law fails to specifically provide for repeat voting in polling stations where results are invalidated.

Observers have documentary evidence that the results from four PSCs in one TEC (in Sumy region) were incorrectly entered in the TEC protocol of results, with hundreds of votes being shifted from Mr Yushchenko to Mr Yanukovych. Other similar cases were noted in Khmelnytskyi region.

Senior members of the Yanukovych campaign informed the OSCE/ODIHR EOM that electoral fraud had occurred in western Ukraine. Specifically, it was alleged that between 1.25 and 2 million illegal votes had been cast on behalf of voters resident abroad. In addition, it was claimed that 1.1 million votes for Yanukovych had been set aside by pro-Yushchenko PSCs. Upon further enquiry into both of these serious allegations, the OSCE/ODIHR EOM found no evidence to support them.

At CEC level, problems with the computerised tabulation of preliminary results became evident. On 2 November, the system stopped tabulating additional PSC results, with 97.6% of the results processed. At that time, Mr Yanukovych held a lead over Mr Yushchenko, although his margin was clearly narrowing. According to the CEC, the stoppage was caused by a technical malfunction. The opposition claimed that the failure to provide complete information on the election results was a ploy to deny Mr Yushchenko the leading position.

On 10 November, the CEC announced the results of the 31 October election. In contrast to unofficial preliminary results, the official results indicated that Mr Yushchenko was the leading candidate with 39.87% of the vote compared to Mr Yanukovych's 39.32%. The only other candidates who scored over 1% were: Mr Moroz (5.81%), Mr Symonenko (4.97%) and Ms Vitrenko (1.53%). According to the final election results, the sum of votes cast for the 16 least scoring candidates was less than 500,000; whereas these candidates claimed to have provided the CEC with a combined total of over 10,000,000 signatures supporting their registration as candidates.

On 9 November, the CEC dismissed all members of TEC 100 (in Kirovohrad Region), on the basis that they had not fulfilled their legally prescribed duties. On 10 November, the CEC decided not to consider as valid the results from this district, arguing that the TEC protocol was "not produced in accordance with law". Results from TEC 100 were excluded from the official national-level results. The Supreme Court's ruling, which overturned the CEC's decision to invalidate the results of TEC100, requires the CEC to tabulate the PSC protocols in this district and to amend the official results. To date the CEC has not acted on this issue, which slightly increases the margin between the two leading candidates.

After the first round, results data from all TECs was made public by the CEC some 10 days after the election, but the absence of publicly available data below TEC level prevents an adequate insight into the accuracy of tabulating the election results. The CEC did not comply with its often-stated intention to publish all PSC-level results, significantly lessening the transparency of the results tabulation process at the CEC, and further preventing an examination of the accuracy of the calculation of the results by candidates and civil society.

Election Administration

Despite two written requests prior to the first round, the CEC did not provide the OSCE/ODIHR EOM with information, including on the number of ballots printed and distributed to TECs and outside the borders of Ukraine. During the process of tabulating the first round results, the CEC modified its records on the number of ballots issued to TECs to coincide with the number of

ballots reported as having been received by TECs in their protocols. This raised serious concern for the CEC's ability to regulate ballot production and distribution securely and accurately.

The opposition alleged that legal provisions enabling "absentee voting" were abused during the first round and that, as a result, large-scale multiple voting occurred. The CEC responded by changing the paper on which the absentee certificates were printed, but did not take any steps to improve the accounting of these sensitive documents, for example, by keeping records of the number of absentee certificates distributed, issued and used. If misused, these documents could have the potential to impact upon the integrity of the election.

On 15 November, the OSCE/ODIHR EOM wrote to the CEC requesting information on the number of ballots and the number of absentee certificates printed and delivered to each TEC. The CEC did not publicly announce, or inform the OSCE/ODIHR EOM, of the number of ballots printed and delivered to each TEC. However, on 17 November, the CEC did announce that approximately 1.5 million absentee certificates were printed for the second round. On 17 November, the OSCE/ODIHR EOM wrote to the CEC requesting data on the number of absentee certificates issued to voters in each TEC. On 20 November, the Observation Mission requested information from the CEC on the number of additional voters registered in each TEC after the first round. The failure to provide all the information requested lessened the overall level of transparency at the highest level of the election administration and impeded the OSCE/ODIHR's observation efforts.

On 10 November the CEC adopted a document addressing some problems encountered during the first round of voting. For example, it clarified that PSCs could correct minor errors on voter lists, such as the clear misspelling of names, thereby enabling these citizens to exercise their rights without the need for a TEC or Court decision. Additionally, it clarified the circumstances in which PSC members can be relieved of their duties due to their non-attendance at PSC sessions. Previously, this provision had been seriously abused by some TECs on the eve of the first round election. Indeed, prior to the CEC's Clarification, 27 PSC Chairs were dismissed in Poltava on questionable grounds. However, the document failed to remind the PSCs to ensure that ballot papers should be validated by placing the mark of the PSC stamp and a signature of a PSC member prior to handing the ballot paper to a voter. A few observers reported this as a problem on 31 October.

In general, the composition of the lower level election commissions remained stable between the election rounds. Members of TECs and PSCs appointed by all first round candidates retain the right to remain on these bodies for the second round. However, once again, legal provisions were misused to dismiss members from a number of PSCs, for example in Kirovohrad region, where a large number of opposition members were excluded from the election process. This also occurred in Donetsk, Zakarpattiya, Zaporizhia, Kyiv, Khmelnytsky, Odesa, and Volyn oblasts.

Voter Lists

The law requires local State executive authorities to prepare voter lists based on data available to them from a variety of sources: passport offices, housing committees, tax offices, local branches of the Ministry of Interior, etc. Local authorities were required to prepare the updated Voter Lists by 1 July 2004. Ultimately, the local Government executive is responsible for the production of voter lists. Prior to first round the lists were delivered to PSCs through TECs.

In addition, the law requires that PSCs make the voters list "available for general familiarisation". However, most PSCs did not interpret this as a duty to display voter lists at

polling stations, although usually they were available upon request to voters. This factor may have hidden the full scale of inaccuracies in the voter lists from public notice.

On the 31 October election day, IEOM observers noted a large number of errors and/or omissions in the voter lists that challenged the principle of universality of the vote. Almost all TECs visited since the first election day informed observers that inaccurate voter lists constituted the main technical shortcoming.

In accordance with the law, TECs must prepare new voter lists for the second round by 11 November. However, the TECs should only begin this work after the announcement of the second round by the CEC. These two deadlines coincided. Hence, TECs had no time to comply with their obligations. Nevertheless, in a few election districts TECs, PSCs and local government bodies started to update the lists on their own initiative prior to the announcement of the second round (TECs in Kharkiv, Zaporizhia, Poltava, Donetsk, Ivano-Frankivsk and Uzhgorod).

The new lists should have included the names and data of those persons who were added to the voters lists during the first round, according to the decision of the respective election commissions and courts, as well as voters who came of age. The new lists were to be distributed to the PSCs by 13 November. PSCs were to make these available for public inspection and make changes to correct voters' entries including changes of residence. However, it is evident that the law envisages only making minimal changes to the voter lists during this period. Wide-ranging revision of the list is not foreseen.

On 3 November, the Prime Minister issued an instruction to government authorities to ensure that correct information concerning the places of citizens' residence be supplied to election commissions during the process of correcting the voter list. However, the OSCE/ODIHR EOM assessed that local State administrative bodies were primarily responsible for inaccuracies in the original draft voter lists. Observers noted that many TECs and PSCs worked hard to correct the voter lists, but the time available before the second round was limited, and some PSCs, in 18% of all territorial election districts, lacked adequate resources. Some regional variation was apparent however, and observers in Odessa and Zaporizhia questioned the commitment of the local election administration to produce accurate voter lists.

In Donetsk, observers visited one PSC, where persons were working on what appeared to be a typed voter list. When asked if they were members of the PSC, they replied that they were Yanukovich campaign workers and that the PSC would begin its work the next day.

While the CEC had issued Resolutions #155 and #1177 dealing with the updating of voter lists, observers reported an evident lack of uniformity in the manner in which TECs, PSCs and the local government executive addressed the problems of inaccurate voter lists after the first round. In general, there existed confusion and uncertainty in the intermediate and lower level election administration on procedures to correct the lists. In addition, in many instances observers noticed that a variety of "working lists" were being used simultaneously within the same electoral unit. In general, observers reported that citizens were not very active in visiting PSCs to check their voter list entries or adding their names to the voter lists, despite a number of public information programmes conducted at local level by TECs. However, in the majority of territorial election districts, PSCs went door-to door to check the lists.

As previously mentioned, the CEC issued a document clarifying a variety of issues that had proved problematic on 31 October, including the role of TECs and PSCs in remedying mistakes on the voter list. The CEC gave PSCs the authority to change entries in the voter list without

having to take a formal decision on the case. This CEC decision may have introduced the possibility of manipulation of the voter lists at PSC level.

Resolution of Election Disputes after the First Round

After the first round of voting, the majority of election complaints were filed with the CEC. Continuing a pattern noted before the first round, the CEC was passive in addressing alleged violations of the law and rejected most complaints on procedural grounds without considering their merits. A large number of complaints concerned the accuracy of TEC results protocols. Many TEC protocols recorded a number of votes cast that exceeded the number of ballots issued to the TEC. Nevertheless, in all of these cases, the majority of the CEC members voted to “leave without consideration” these complaints, arguing that TEC protocols are not “decisions” or “acts” of an election commission, but simply “mathematical calculations”.

In general, the Supreme Court was more active and effective in addressing legal violations and overturned several CEC decisions. The proceedings of the Supreme Court observed by the OSCE/ODIHR EOM have been open and transparent, and all parties have had the opportunity to present evidence and legal arguments in support of their claims. The Court’s decisions on cases heard between the first and second rounds of voting appear to be consistent with applicable legal provisions.

Notably, the Supreme Court issued an important decision protecting suffrage rights, when it reversed the CEC’s invalidation of the first round voting results in TEC 100. In this case, the CEC annulled the entire election district results. The Supreme Court noted that the CEC had violated the right of universal suffrage of voters in 128 polling stations, and that the CEC had an obligation to tabulate the PSC protocols itself in order for the will of the people to be expressed. The Court also noted that invalidation of election results could only occur at the level of the PSC, and only in cases where the limited grounds stated in the Presidential Election Law were established.

The various courts of appeal and local courts were also active in addressing legal violations. Although there was inconsistency in some decisions by lower courts and courts of appeal, overall, the court system was more responsive in addressing violations of the law than election commissions. On another positive note, the Supreme Court granted relief in some cases that were incorrectly decided by courts of first instance. The majority of complaints, in election commissions and courts, were filed by the Yushchenko campaign.

The Campaign

The law provides that the campaign period for the second round begins one day after the CEC formally calls for a second round to be held. As the CEC decided to use the full time given to it by law to announce the final election results and the second round, the successful candidates had only nine days to campaign. Only a very few high profile campaign events took place before 10 November, notably a large rally in Kyiv on 6 November in favour of Mr Yushchenko. The Yanukovych campaign filed a complaint with the CEC as this rally was held before the announcement of the second round. After the Supreme Court reversed the CEC’s refusal to hear the complaint, the CEC found that the Yushchenko campaign had violated the law. Observers noted pro-Yanukovych campaign events in Crimea on 8 November.

Oleksandr Moroz, the Socialist Party leader, signed an agreement backing Mr Yushchenko in exchange for Mr Yushchenko’s support for constitutional reform, to be enacted before 1 January

2005, and to take effect in 2006. Other first round candidates supporting Mr Yushchenko in the second round included former Prime Minister Anatoliy Kinakh, and Leonid Chernovetskyi. While the Mayor of Kyiv, Oleksandr Omelchenko, publicly supported Mr Yushchenko, the consent of his party (Unity) to this endorsement was less apparent.

President Kuchma and Nataliya Vitrenko, presidential candidate for the Progressive Socialist Party in the first round, endorsed Viktor Yanukovych. Petro Symonenko, leader of the Communist party, urged his voters to vote against both candidates in the second round. Metropolitan Vladimir of the Ukrainian Orthodox Church's Moscow Patriarchate endorsed Mr Yanukovych. Anti-Yushchenko campaign material which asserted that he was "an enemy of Orthodoxy" was distributed in a number of churches.

In addition, both candidates received messages of support from abroad, arousing mutual consternation from the respective opponents. On 12 November, Russian President Vladimir Putin joined President Kuchma and Mr. Yanukovych in an event highly covered by the media, the reopening of a ferry link between the Crimea and Russia. In the coverage, President Putin wished Yanukovych success in his candidacy. Although it was a lower profile endorsement, Viktor Yushchenko received the backing of the European People's Party, the centre-right group in the European Parliament.

After the announcement of the second round, there was a relatively high, although imbalanced, visibility of the two campaigns in the mass media. There was a wide display and distribution of campaign material, and campaign events were held by both candidates. Yushchenko campaign material focussed on small posters and stickers, and his supporters frequently wore or tied orange ribbons to their cars, clothes, statues and public places, though this was far less visible in the east of the country. Billboards in favour of Mr Yanukovych were in evidence throughout Ukraine.

The Yanukovych campaign devoted most of its campaign effort towards raising the turnout in the eastern and some southern regions, where Mr Yanukovych polled well in the first round. Indeed, Mr Yanukovych personally urged miners and residents of Luhansk region to vote, stating it was necessary to boost turnout by 20% in the region. Observers noted that his campaign often employed door-to-door canvassing, and reportedly, this was intrusive at times.

Overall, the tone of the campaign between the two rounds remained heated and personal. Inflammatory campaign material was once again distributed. The TV debate between the two candidates featured frequent personal accusations over policies and alleged corrupt practices. The candidates blamed each other for the polarization of politics during the election campaign.

On 17 November, Mr Yanukovych's campaign manager implied at a press conference that he would call 30-40,000 miners from eastern Ukraine to defend the CEC from supporters of Mr Yushchenko. On 19 November Mr Yanukovych stated that he was against this suggestion. Also on 19 November, Mr Yushchenko urged his supporters to congregate in Kyiv's Independence Square after the close of the polls to defend their vote.

Challenges to Civil and Political Rights

Following the announcement of official results on 10 November, the majority of observers recorded numerous instances whereby public employees and students were pressured to support the Prime Minister. Such pressure was frequently directed by State officials or work supervisors against their subordinates. Observers also reported some cases where the opposition's campaign activities were impeded.

The IEOM is seriously concerned by reports from its observers that firemen, policemen, tax officials, customs officials, teachers, health workers and some private sector factory workers, in Volyn, Lutsk and Lviv, were asked by their superiors at work to apply to PSCs for “absentee certificates” and demanded that these should be handed over to them. The retention of these certificates could prevent these persons from voting, thereby compromising citizens’ suffrage rights. Furthermore, this apparently concerted activity appears to constitute an attempt to manipulate the election result. However, it is not clear who issued the instructions to their superiors.

Other specific examples of concern include:

- Arrest and imprisonment of voters attempting to verify the protocols posted at a polling station in Sumy region;
- Disruption of pro-Yushchenko campaign activities in Kirovohrad and harassment of the pro-Yushchenko campaign activists in Luhansk by the police;
- Inmates at one prison were told that they had to deliver a 90% vote for Yanukovych to retain the possibility of early release, family visits, and privileges;
- In Mykolaiv region, the detention and rough treatment of pro-Yushchenko campaigners and an opposition MP for “littering” while handing out orange ribbons.

Role of State Structures during the Campaign

There remained a lack of clear distinction between State and party resources in the second round. State officials continued to campaign on behalf of Mr Yanukovych. A number of local government officials and State employees, such as University Rectors and managers of public utilities, instructed their subordinates to vote for Mr Yanukovych. In Zaporizhia, observers reported that persons were checking voter registration records and asking voters for whom they would vote. On one occasion an observer noted that this task was performed by uniformed police.

In some instances, observers reported that law enforcement and justice organs were employed to pressure or harass electoral commission members after the first round and that local officials interfered in the work of some TECs. These actions raise serious questions about the political neutrality of some State institutions, their respect for citizens’ rights and the independence of election commissions. For example in Ivano-Frankivsk, Chernivtsi, Khmelnytskyi and Ternopil regions, where Mr. Yushchenko gained a commanding majority in the official results, local prosecutors opened criminal cases against TEC officials on inexplicable or questionable grounds.

After the announcement of results, President Kuchma dismissed 15 senior local administration officials, in all cases in areas where Mr Yushchenko had won the first round of elections or performed well. In addition, observers received reports of local officials having signed undated letters of resignation or facing recrimination due to Mr Yanukovych’s perceived poor showing in some areas, for example in Poltava region.

In nine regions, observers noticed campaign material displayed on public buildings. In eight cases this was in favour of Mr Yanukovych. In at least ten regions, Mr Yanukovych had a campaign office in a public building. Only one such example for Mr Yushchenko was recorded. In 15 regions, observers reported that the equality of campaign conditions was poor or very bad.

The Media

On 2 November, the OSCE/ODIHR EOM recommenced monitoring six nationwide TV channels, two channels with partial national-level coverage, the main newscasts of several regional TV channels and nine daily newspapers¹. Over a one-week period after the first round of election, the media actively covered the activities and opinions of the two leading first round candidates.

While many voters received exposure to a wider range of views than before the first round of election, Ukraine lacks a strong and independent media that can provide electors with balanced campaign coverage. Between 2 and 20 November, there was a divergence between the various media's portrayal of the candidates and the election campaign. The main three nationwide TV channels, *UTI* (owned by the State), *Inter* and, to a lesser extent, *I+I* (both privately owned), continued to exhibit bias in favour of Mr Yanukovych and against Mr Yushchenko, thus repeating a pattern observed prior to the first round of election.

Mr Yanukovych derived an excess of additional media exposure in his capacity as Prime Minister, thereby gaining an advantage prior to 11 November, when the official campaign period commenced. A broad interpretation of the newsworthiness of the coverage allotted to the Prime Minister, versus his role as a candidate, in State and some private media outlets, blurred the distinction between a State official carrying out official duties and a candidate engaged in campaigning.

Conversely, other private TV channels, *ICTV*, *STB* and *Novy Kanal*, aired a greater diversity of views. In particular, they provided the opposition with more airtime, including direct-speech, during which it challenged the political opinions of its opponents and presented its electoral platform. However, these channels' broadcast range, and consequently their potential audience, is less than the three main networks.

The political content of news coverage on the main TV channels continued to be controlled through "temnyky" (guidelines), which instruct editors to cover only certain points of view on political themes, events and issues while omitting others, thereby constraining the public's access to balanced information. Observers received numerous allegations that these guidelines are issued by the State administration. While the OSCE/ODIHR EOM was not able to verify these allegations, it conducted a detailed analysis of prime time news devoted to domestic news items on *UTI*, *Inter* and *I+I*. In a similar pattern to that noticed before the first round, almost 44% of these were presented in a conspicuously similar manner raising questions over the editorial freedom of the three channels.

Prior to the first round of the election, a number of journalists from four TV channels initiated a statement against censorship on the main TV stations. To date, this statement has been signed by more than 330 journalists from a variety of TV channels. On 3 November, a presenter of the main *UTI* evening news programme refused to read a statement by Mr Yanukovych's campaign headquarters on the issue of TV debates, saying that if it were aired it would also be necessary to present the opinions of the opposition candidate. On 9 November, a senior manager of State television reported that the news presenter was no longer an employee of *UTI*. On 15 November,

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

the news presenter filed a lawsuit against *UTI* with a local Kyiv court requesting reinstatement and seeking damages.

Another thirteen journalists of the *UTI* main news program drafted an “editorial policy agreement” aimed at ensuring full, accurate and balanced news coverage and to limit pressure on journalists or TV company management. However, the management of *UTI* refused to sign the document.

UTI complied with a CEC decision to allocate free airtime to candidates, and, in a positive development, for the first time in 10 years, a televised debate between the two main presidential candidates took place on *UTI*. Other channels also broadcast the debate. After the debate, *UTI* aired a biased “round table” discussion programme in which only the supporters of the Prime Minister participated.

In a positive development, *UTI* aired public information advertisements, produced by a well-known NGO, the Committee of Voters of Ukraine, to increase voters’ awareness of electoral provisions and citizens’ participation in the poll, and to encourage the public to check their entries in the voter list. However, in some regions of eastern Ukraine, observers reported that a few pro-Yanukovich NGOs placed misleading campaign advertisements that were misrepresented as public service slots.

The law requires the mass media to cover the election process in an objective manner and not to favour a particular candidate. *UTI*, *Inter* and *I+I* apparently violated this provision by broadcasting advertisements against Mr Yushchenko that were not labelled as “paid advertisements” and thus could have been produced at their own initiative. As their content went beyond acceptable limits of permissible campaign speech by inciting potential interethnic, racial or religious enmity, the airing of these slots was contrary to law and possibly the Constitution.

The OSCE/ODIHR EOM’s analysis revealed that in its news and current affairs programs, *UTI*, in the three-weeks preceding the second round, provided Mr Yanukovich with 84% of its political and election prime time news coverage, of which 99% was considered by the EOM as positive or neutral in tone. In sharp contrast, during the same period, Mr Yushchenko received only 16% of similar airtime, of which 46% had negative connotations.

By displaying clear favouritism to the Prime Minister, *UTI* comprehensively failed to meet its legal obligation to provide balanced treatment of the two candidates during the election process. No legal sanctions have been imposed on *UTI* in the period prior to the second round of election. The political content of the channel during a campaign period is one of the clearest cases of the abuse of State resources and the failure to distinguish between the interests of incumbents and the needs of the public for objective information.

Inter focused its political and election coverage on the activities of Mr Yanukovich, mostly in his capacity as Prime Minister. It devoted 71% of its political and election prime time news coverage to Mr Yanukovich, of an overwhelmingly positive tone. Conversely, during the same period, Mr Yushchenko received 29% of similar airtime, which was mostly neutral or negative in tone. The second of the “big two” private TV channels, *I+I*, provided the opposition with more airtime than noted before the 31 October election, especially prior to the announcement of official election results. However, from 11 November, *I+I* adopted a similar editorial line to *UTI* and *Inter*, and displayed clear support for Mr Yanukovich. Other private TV channels, *ICTV*, *STB* and *Novy Kanal*, covered a wider range of political views and opinions.

The two channels with partial national-level coverage monitored by the ODIHR EOM had very different political positions. *TRK Ukraina* demonstrated its overt support to the Prime Minister whereas *Channel 5* continued to offer favourable coverage to Mr Yushchenko. Prior to the first round, this channel experienced and reported various obstructions in reaching its audience. No such problems were reported in the period prior to the second round contest.

The print media continued to provide a plurality of views, but showed strong favouritism for or against one of the candidates. The State-funded newspaper *Uriadovy Kurier* demonstrated its support to the Prime Minister by granting him 96% of its political and election reporting which was mostly positive in tone. Another State-funded newspaper, *Golos Ukrainy*, was critical of Mr Yanukovych in its political and election reporting.

Out of 14 regional television stations monitored by the OSCE/ODIHR EOM, 8 gave their support to Mr Yanukovych; For example, in Odessa, the State funded TV allocated 100% of its political and election prime time news coverage to the Prime Minister, with an exclusively positive or neutral tone. Conversely, the State funded broadcaster in Ivano-Frankivsk, TV Galichina, provided 67% of exclusively positive or neutral coverage to Mr Yushchenko.

Election Day and the Vote Count

At the time of writing, IEOM observers completed and sent reports from over 2.300 polling stations. Once again, voting was generally calm but observers noted a higher incidence of unrest at polling stations than the first round (7% of polling stations visited). Observers reported that in 15% of polling stations some PSC members had been dismissed or ejected. Overall, observers' assessment of the environment and atmosphere in which the poll was conducted was less favourable than 31 October, with 8% assessing it as poor or very bad. Police were present at polling stations in large number (59%) and in 4% of polling stations visited, unauthorized persons were interfering or directing the process, a number similar to 31 October. In 36 polling stations visited persons were attempting to influence voters.

Surprisingly, in view of the exceedingly high turnout in some eastern regions (for example 96.31% in Donetsk and 88.41% in Luhansk, according to the preliminary CEC turnout figures), overcrowding was reported as less of a problem in eastern regions (4% of polling stations) than in northern regions (12% of polling stations). Other anomalies were also noted in the eastern regions. For example, while most regions averaged 4% of voters casting ballots through a "mobile ballot box" (i.e. outside the polling station), in the east (Donetsk, Luhansk and Kharkiv regions) this figure averaged approximately 8%.

On 31 October, observers reported errors and omissions in the voter lists. On 21 November, far fewer voters were turned away, and where this was reported by observers the numbers involved were far fewer than previously. However, once again there was a regional variation, with most voters turned away in southern regions and fewest in the east.

Based on the information supplied by PSCs, observers recorded the number of voters registered at each polling station. On 31 October, the national average was 1,813 voters per polling station, whereas on 21 November it was 1,838. Nevertheless, despite the inclusion of additional voters on the lists between the election rounds, a high number were added to voter lists on election day (approximately 5% of all voters casting ballots). The vast majority of these added voters used absentee certificates. This is of concern in view of the abuse of these documents noted by long-

term observers prior to the election. A regional variation also exists for this phenomenon, with most absentee certificated used in southern regions and fewest in western regions.

Generally, ballots were issued to voters in accordance with the legal provisions. However observers noted that the procedures were less scrupulously followed than in October (2.3% violation compared to 1% in October). The secrecy of the vote was not assured in over 4% of polling stations visited. Of concern, a much higher number of allegations of serious violations were received in the second round (almost 9% of polling stations visited) than during the first round (4%). Observers reported a higher number of serious violations (101) including 24 cases of voters being transported from polling station to polling station to vote 12 cases of series of apparently identical signatures on the voter lists (which indicate the receipt of a ballot) and five cases of ballot stuffing (placing a block of marked ballots in the ballot box). Complaints were filed in 11% of polling stations.

In 7% of reports, observers assessed the conduct of polling as poor or very bad. There was a regional variation, with polling in western and northern regions being assessed negatively in 4% and 5% respectively. However, in central and eastern regions this figure was 11% and 9% respectively.

As for voting, observers' assessment of the ballot counting process was worse than 31 October, with 11% assessing the process negatively. In one in six polling stations visited, the PSC did not pack and seal the voter list before the opening of the ballot box as required by law (10% on 31 October). In 17% of polling stations observed the PSC did not announce the number of the number of voters that had voted (12% on 31 October). In 8% of polling stations observed, PSCs did not determine the validity of ballots in a consistent manner and in 7% PSC members were unable to scrutinize ballots. In 10% of polling stations, some PSC members did not receive a copy of the protocol and in 18% of polling stations the PSC did not post the protocol publicly as required by law. In almost half of polling stations unauthorized persons were present including police and local government officials. In 3 cases unauthorized persons interfered in the counting process.

The atmosphere during the count was generally more heated with 23% of observers reporting disputes between PSC members during the count, although tension was not necessarily reported as a major problem. The PSCs organization of the counting process was assessed poorly in 15% of polling stations. In 11% of polling stations observers had a poor or very bad assessment of the accuracy of the results as reported (5 % on 31 October).

Tabulation and Announcement of Second Round Results

After the first round, the CEC updated the computerised results tabulation system, and began to announce preliminary results at approximately 01.00 hrs on election night. Based on 76 report forms of observations at TEC level, observers assessed the process as poor or very bad in 9% of visits. The transparency of the tabulation was rated poorly in one in five TECs. In one in three, unauthorised persons, mostly police officers, were present. Tension was noted in one in eight TECs. While most observers were able to examine the PSC protocols at the TEC, one in seven was not granted access to do so. In addition, in one in four reports, observers had no access to the computerised tabulation of the results. Twelve hours after the close of polls, 75% of preliminary results were accounted for by the CEC. For the second round, the election law grants the CEC 15 days to determine the election results.

*This statement is also available in Ukrainian.
However, the English language 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, Mr. Lucio Malan, Member of the Italian Senate, 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 563 short-term observers from 33 OSCE participating States, including 31 parliamentarians from the OSCE PA, 21 from the PACE, 8 from the NATO PA and 9 from the European Parliament. 331 observers were accredited as OSCE/ODIHR observers. The IEOM observed the polling and vote count in over 2,300 polling stations throughout the country and at over 80 TECs after polling stations were closed, to observe the tabulation of results.

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

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