



## INTERNATIONAL ELECTION OBSERVATION Ukraine — Parliamentary Elections, 28 October 2012

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### STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

**Kyiv, 29 October 2012** – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving 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 (NATO PA).

Walburga Habsburg Douglas (Sweden), Head of the OSCE PA delegation, was appointed as Special Co-ordinator by the OSCE Chairperson-in-Office to lead the short-term OSCE observer mission. Andreas Gross (Switzerland) headed the delegation of the PACE, Paweł Kowal (Poland) headed the delegation of the EP, and Assen Agov (Bulgaria) headed the delegation of the NATO PA. Ambassador Audrey Glover (United Kingdom) is the Head of the OSCE/ODIHR Election Observation Mission (EOM), deployed from 12 September 2012.

The assessment was made to determine whether the elections complied with the OSCE and Council of Europe commitments for democratic elections, as well as with the legislation of Ukraine. This statement of preliminary findings and conclusions is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, including the count, the tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The OSCE PA will present its report at its Bureau meeting in Dublin on 5 December. The PACE delegation will present its report in November 12. The EP will present its report at its Committee of Foreign Affairs on 6 November. The NATO PA will present its report at its next annual session in November.

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### PRELIMINARY CONCLUSIONS

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The 28 October parliamentary elections were characterized by the lack of a level playing field, caused primarily by the abuse of administrative resources, lack of transparency of campaign and party financing, and lack of balanced media coverage. Certain aspects of the pre-election period constituted a step backwards compared with recent national elections. Voters had a choice between distinct parties. Election day was calm and peaceful overall. Voting and counting were assessed mostly positively. Tabulation was assessed negatively as it lacked transparency.

The legislative framework for parliamentary elections could provide a basis for the conduct of democratic elections, if implemented properly. The new electoral law, adopted in November 2011, reinstated a mixed electoral system without the required wide consensual discussion and re-introduced deficiencies that were noted when it was previously used. The law includes some important improvements, although it also contains a number of shortcomings, mainly regarding the full enjoyment of candidacy rights, adequate campaign finance provisions, absence of clear criteria for the delineation of single-mandate election districts, and lack of effective sanctions for serious violations of the law.

Candidate registration was inclusive, with two notable exceptions, and resulted in a diverse field of candidates, representing a wide variety of political views, even though over 400 nominees were rejected, almost half for minor technical problems. Twenty-one political parties contested the proportional elections, while over 2,600 party and self-nominated candidates ran in the single-mandate districts. Women were underrepresented among candidates, in particular in single-mandate districts. Some small parties appear to have registered candidates solely in order to obtain seats on election commissions (so-called ‘technical parties’). In line with legal provisions, the CEC denied registration to Yulia Tymoshenko and Yuriy Lutsenko, two prominent opposition politicians, who are currently serving prison sentences following trials criticized by the OSCE PA, the PACE and the EP as unfair. As a consequence of such trials, their inability to stand is in contradiction with the commitments outlined in paragraphs 5.1, 7.5 and 24 of the 1990 OSCE Copenhagen Document. The fact that they were not able to run as candidates negatively affected the election process.

Powerful economic groups influenced the political environment to the detriment of the electoral process. This manifested itself, *inter alia*, in a lack of diversity in media ownership and pluralism, as well as a lack of transparency in campaign and party financing.

During the pre-election period, the election administration, headed by the Central Election Commission (CEC), managed the technical aspects of the process adequately. However, it routinely held pre-session meetings behind closed doors, and most open sessions lacked substantive discussion; this decreased the transparency of the CEC’s activities. The CEC did not always take steps to ensure a consistent implementation of the electoral law.

Most positions in District Election Commissions (DECs) and Precinct Election Commissions (PECs) were filled by lottery, as a result of which some technical parties obtained representation in all DEC while other parties with candidates throughout the country were not represented in DEC at all. Almost half of PEC and 60 per cent of DEC members were subsequently replaced. There were claims, some of which were verified by the OSCE/ODIHR EOM, that election commissioners nominated by technical parties were, in fact, affiliated with other parties, especially the ruling Party of Regions.

The centralized voter registration system appeared to be functioning well, with no serious concerns raised by stakeholders. Preliminary voter lists were generally available for public scrutiny. In a positive step, the CEC limited the possibility for voters to vote in another electoral district, in response to concerns about possible abuse.

The campaign was visible and active overall, in particular in urban areas, and was competitive in most of the country. However, the ability of candidates to get their messages to voters and to compete under equal conditions, in accordance with paragraphs 7.6 and 7.7 of the 1990 OSCE Copenhagen Document, was negatively affected in a significant number of electoral districts due to harassment, intimidation and misuse of administrative resources. This misuse demonstrated the absence of a clear distinction between the State and the ruling party in some regions, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document.

Regarding the media environment, new provisions in the electoral law for voters’ right to diverse, objective and unbiased information and for balanced coverage are a positive step. However, they remain declarative as balanced coverage remains undefined in the law and mechanisms for monitoring of and ensuring compliance with this provision are lacking. The campaign coverage in news and current affairs programs on the most popular monitored TV channels was limited, which may have negatively affected voters’ access to different political views. The fact that five times as much paid political advertising was broadcast indicates that in order to reach out to voters, political

parties required significant financial means. State TV displayed a clear bias in favour of the ruling party.

Election commissions and courts received a high number of complaints and appeals. While these were adjudicated in a timely manner, the CEC's handling of complaints was often excessively formalistic and at times contradictory, and a number of its resolutions were lacking sufficient factual information or legal reasoning. This left the aggrieved parties without due consideration of their claims, contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document. A significant number of court decisions displayed an inconsistent approach to the implementation and interpretation of the law.

Election day was calm and peaceful overall. The CEC announced a preliminary voter turnout of 58 per cent. The voting and counting process was orderly and well organized in the large majority of polling stations observed, with only minor procedural problems noted. However, the unusually high number of homebound voters in some election districts raises concerns. The tabulation process was assessed negatively in one third of DEC's observed, mainly due to problems with PEC protocols and limited transparency. The active involvement of a large number of domestic observers throughout the entire electoral process enhanced its overall transparency.

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## **PRELIMINARY FINDINGS**

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### **Background**

Since the last parliamentary elections in 2007, the political landscape has shifted considerably. The Party of Regions candidate Viktor Yanukovich won the January 2010 presidential election, and the party subsequently formed a governing coalition with the Communist Party and the Lytvyn Bloc. The Party of Regions was also victorious overall in local and regional elections in October 2010, giving it considerable power at all levels. The main opposition parties were United Opposition–*Batkivschyna* (Motherland) and the non-parliamentary parties Ukrainian Democratic Alliance for Reform (UDAR) and *Svoboda* (Freedom). Another non-parliamentary party, “Ukraine Forward!”, presented itself as between the opposition and the ruling party.

The 28 October elections were conducted under a mixed electoral system, which had been used in 1998 and 2002 and was reinstated without the required wide consensual discussion, re-introducing deficiencies that were noted when it was previously used. One half of the 450-member unicameral parliament was elected from a proportional closed list system in one single nationwide constituency; the other half were elected in 225 single-member districts, under a majoritarian system (first past the post). The electoral law establishes a threshold of five per cent of the votes cast for the allocation of mandates under the proportional component, compared to three per cent required in the 2007 elections.

The system has changed the dynamic of these elections in comparison with the 2007 parliamentary elections. A large number of party-nominated and independent candidates, some of whom are linked to wealthy businesspeople, competed at district level, while at national level some parties currently represented in parliament have had to adapt to the new threshold. The elections take place against the backdrop of the cases of Yulia Tymoshenko and Yuriy Lutsenko, two opposition political leaders who are currently serving prison sentences following trials criticized by the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP) as unfair. The fact that two leading opposition figures have sought to be candidates in these elections and were denied based on unfair criminal convictions unduly restricts their right as citizens to stand for office as well as the fundamental

rights of citizens to freely choose their representatives is contradictory to paragraphs 5.1, 7.5 and 24 of the 1990 OSCE Copenhagen Document.<sup>1</sup>

## **Legal Framework**

The legislative framework for parliamentary elections overall could provide a basis for the conduct of democratic elections in line with OSCE commitments, Council of Europe and other international standards, if implemented properly. The electoral law, adopted in November 2011 through a not fully inclusive process, includes some important improvements, in particular with regard to voter and candidate registration. Nevertheless, it is in parts excessively complex, while some shortcomings remain, mainly regarding the full enjoyment of candidacy rights,<sup>2</sup> adequate campaign finance provisions, absence of clear criteria for the delineation of single-mandate election districts, and lack of effective sanctions for serious violations of the law. Furthermore, the implementation of the law was not always consistent and in line with international standards, particularly in regard to the full, non-discriminatory enjoyment of fundamental rights such as the freedom of voters to form their opinion and equality of opportunity for parties and candidates.

## **Election Administration**

Parliamentary elections are administered by a three-level system of election commissions: the Central Election Commission (CEC), 225 District Election Commissions (DECs) in as many single-mandate constituencies, and 33,762 Precinct Election Commissions (PECs).<sup>3</sup> The CEC is the only election commission functioning on a permanent basis.

The CEC made technical preparations for these elections within legal deadlines. It held regular sessions, which were open to parties, candidates, media and observers. However, it also routinely held pre-session meetings behind closed doors, leaving most open sessions without any substantial discussion; this decreased the transparency of the CEC's activities. Although the CEC is the main state body charged with providing uniform implementation of the electoral law, in practice it did not take sufficient steps regulating crucial aspects of the electoral process. This particularly concerned such areas as ensuring transparency during the tabulation process, enforcing campaign rules, deterring indirect vote buying, addressing media-related violations, and providing complainants with efficient remedy. Voter education was mainly provided through spots on various aspects of the electoral process being aired on different TV channels.<sup>4</sup>

The DECs were appointed by the CEC based on party nominations. Parliamentary groups are guaranteed representation in DECs, while the remaining seats were filled by lottery among the other parties contesting the elections. Several stakeholders expressed concerns about the resulting composition of DECs. Some parties with candidates in only a few districts (usually referred to as 'technical parties') obtained positions on all DECs, while other parties having candidates throughout the country were not represented at all.<sup>5</sup> Some 85 parties and 1,567 majoritarian candidates had representatives in PECs as a result of the lotteries carried out by DECs for the

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<sup>1</sup> The decision of the European Court of Human Rights (ECtHR) in the fair trial case of Yulia Tymoshenko and Yuriy Lutsenko are still pending. In Lutsenko's case against his arrest and pre-trial detention, the ECtHR decided in his favour. The ECtHR stated that "Lutsenko's arrest had been arbitrary; no valid reasons had been given for his detention; and the lawfulness of his arrest and detention had not been properly reviewed."

<sup>2</sup> As provided for in paragraphs 7.3 and 7.5 of the 1990 OSCE Copenhagen Document and Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

<sup>3</sup> Including 116 out-of-country and 1,458 special polling stations. A precinct can have up to 2,500 voters.

<sup>4</sup> The CEC produced voter-education spots in co-operation with the OSCE Project Co-ordinator in Ukraine.

<sup>5</sup> For example, 8 political parties with 20 or fewer candidates were represented in more than 200 DECs, while 5 political parties with more than 100 registered candidates each were not represented in any DEC.

distribution of PEC positions.<sup>6</sup> More than 60 per cent of initially appointed DEC members were replaced before election day, with the majority of the replacements requested by six small parties.<sup>7</sup> Similarly, thousands of PEC members were changed, with replacements reaching up to 50 per cent of the membership of some PECs.<sup>8</sup> Most replacements were initiated by the nominating political parties.

Some interlocutors expressed their lack of confidence in the election administration, claiming that election commissioners nominated by ‘technical parties’ were in fact affiliated with other parties, especially with the ruling Party of Regions, as confirmed by OSCE/ODIHR EOM LTOs, which increased its predominance within the election administration.<sup>9</sup> Formally, the principle of proportional representation of all contestants at the PEC level was respected. However, it was undermined by the high number of parties and candidates who did not appear to actively contest the elections but obtained seats on election commissions.<sup>10</sup>

Women were well-represented at the DEC level, where they accounted for 56 per cent of all members. Of the 225 DECs, 106 were chaired by women, while there were 114 female deputy DEC chairpersons and 155 DEC secretaries. In the CEC, 4 of the 15 members, including one of the two deputy chairpersons and the secretary, are women.

### **Candidate Registration**

Registered political parties could nominate candidate lists for the nationwide constituency, as well as individual candidates for the single-mandate districts. Individuals could nominate themselves as independent candidates in single-mandate districts. The electoral law does not require majoritarian candidates to be residents of the district where they contest elections. The CEC was responsible for registering all candidates. The five-day legal deadline for deciding on individual nominations gave the CEC very little time to process the more than 6,000 registration requests. The CEC registered all 22 submitted party lists (with a total of 2,643 candidates) and 3,130 majoritarian candidates. Among 85 parties that nominated majoritarian candidates, 26 had a candidate in only one district.

In line with legal provisions, the CEC denied registration to Ms. Tymoshenko and Mr. Lutsenko.<sup>11</sup> In addition, 439 nominees were not registered, mostly on grounds of missing or incomplete documentation; many were rejected for minor omissions, which is at odds with paragraph 24 of the 1990 OSCE Copenhagen Document.<sup>12</sup>

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<sup>6</sup> The majority of DECs did not respect the deadline for conducting the lottery for distribution of PEC positions. Several DECs (61, 138, 159 and 225) failed to adhere to the rules set by the CEC and had to repeat the lottery, while a few DECs (2, 19) did not manage to establish PECs within the legal deadline.

<sup>7</sup> The parties Union of Anarchists of Ukraine, *Yedyna Rodyna*, *Bratstvo*, *Ruskyi Bloc*, *Ruska Yednist* and *Rus Yedyna*, which had a combined total of ten candidates in the elections, replaced almost all their DEC members.

<sup>8</sup> More than 30 per cent of initially appointed members were replaced in some PECs of DECs 27, 36, 41, 60, 78, 79, 115, 116, 117, 118, 122, 129, 156, 172, 176, 186, 200, 213, 215, 218 and 221.

<sup>9</sup> Cases of apparent affiliation of small parties with the Party of Regions were reported to OSCE/ODIHR Election Observation Mission (EOM) long-term observers (LTOs) by some opposition parties and candidates, in respect to DECs and/or PECs in 15 election districts. OSCE/ODIHR EOM LTOs were able to confirm instances of Party of Region members serving on election commissions as nominees of different ‘technical parties’. Such cases were also listed in a report of one of the main domestic observer groups *OPORA* and referred to by a Party of Regions activist while instructing PEC members in Simferopol (<http://f-bit.ru/16617>).

<sup>10</sup> In addition, parties that failed to register a nominated candidate, as well as parties and candidates, which withdrew before election day, were entitled to keep the seats in election commissions.

<sup>11</sup> Ms. Tymoshenko and Mr. Lutsenko were nominated as number one and number five, respectively, in the *Batkivschyna* list.

<sup>12</sup> Paragraph 24 of the 1990 OSCE Copenhagen Document states that “[any] restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate

Candidate registration was largely inclusive and resulted in a diverse field of candidates representing a wide variety of political views. Ultimately, 21 political parties contested the proportional elections, with 2,554 people in their lists, of whom 510 were women.<sup>13</sup> Some 1,500 party-nominated and 1,151 self-nominated candidates were running in single-mandate districts, including 208 and 149 women, respectively.

Just prior to the 16 October deadline for candidate withdrawal, *Batkivshyna* and UDAR reached agreement to support each others' candidates in certain single-mandate districts and withdrew 28 and 40 majoritarian candidates, respectively. Additionally, 407 more majoritarian candidates withdrew after registration. The *Sobor* party withdrew its proportional list in favour of other opposition parties.

### **Registration of Voters**

Voter registration is based on a centralized State Voter Register (SVR), overseen by the CEC. Voters are included in the SVR according to their registered place of residence, which is defined as their voting address. As provided by law, the SVR was reviewed and updated every month by 754 Register Maintenance Bodies (RMBs; one for each local-government unit). Between 1 January and 19 October, 57,917 multiple entries were removed. According to the CEC's SVR office, 36,588,697 voters were included in the voter lists for these elections, including 424,858 people registered for out-of-country voting.

In general, preliminary voter lists were available for public review at PEC premises within the legal deadline. However, OSCE/ODIHR EOM LTOs reported different approaches with regard to voters' rights to inspect the lists. While some PECs allowed voters to inspect the entire voter list, others only allowed them to check their own records and the data of family members registered at the same address.<sup>14</sup> A welcome change in the electoral law prohibits changes to voter lists during the last two days before election day, except by court decision or a notification from the relevant RMB. On election day such changes can be made by court decision only.

Voters away from their place of residence on election day could request a change of voting place, without changing their voting address until five days before the election day. The reintroduction of a majoritarian component in the elections made this possibility politically sensitive. In a positive step, the CEC decided that such temporary changes are allowed only within a voter's single-mandate district. By this decision, some 5,000 previously issued permissions for changes of the voting place had to be cancelled.<sup>15</sup>

### **Campaign Environment**

The campaign was visible and active overall, although less so in some electoral districts, particularly in rural areas. Parties held rallies with heads of lists in major cities, while majoritarian

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to the aim of that law." Thirty-three candidates were rejected only because of lack of data about their social work, failure to provide a photo or telephone numbers, or other minor technicalities. The only reason for rejecting 85 candidates was the failure to declare their willingness to resign from activities incompatible with an MP's status if elected.

<sup>13</sup> Few women were included among the top positions on the candidate lists. Only two lists were headed by a woman; three parties registered four female candidates among the top ten candidates, two parties had three women among the ten leading candidates, while three had no women among the first ten candidates.

<sup>14</sup> According to Article 40.3 of the electoral law, voters are entitled to "access the preliminary voter list at the premises of the PEC" and to request corrections, "in particular concerning the inclusion or exclusion of the voter or any other person".

<sup>15</sup> However, the relevant CEC decision foresaw no specific measures to individually inform affected voters.

candidates tended to organize smaller meetings with voters. Other popular methods of campaigning included banners, posters, outdoor advertising, advertising in local media, and tents for the distribution of leaflets and newspapers. At national level, parties campaigned extensively for their lists and majoritarian candidates through the use of paid advertising on television.

The campaign was competitive in most of the country, with voters having a choice between a wide range of parties and candidates. However, the ability of candidates to get their messages to voters and to compete under equal conditions, in accordance with paragraphs 7.6 and 7.7 of the 1990 OSCE Copenhagen Document, was negatively affected in a significant number of electoral districts due to intimidation and the misuse of administrative resources. The campaign environment was assessed as not fair overall by 22 of the 45 OSCE/ODIHR EOM LTO teams.

Campaign events proceeded peacefully, and police provided security for events in an unobtrusive manner. However, throughout the campaign period there were incidents of violence and intimidation against candidates and campaign workers.<sup>16</sup> Thirteen candidates informed OSCE/ODIHR EOM LTOs that they had received serious threats, with some relocating their families. At least ten opposition candidates had criminal charges or tax investigations brought against them during the election period, with two campaigning in a clandestine manner in order to avoid arrest.

The misuse of administrative resources was observed or verified in numerous instances in 15 *oblasts*, in most cases benefiting the Party of Regions, or occasionally self-nominated candidates.<sup>17</sup> This took several forms: the use of official events, meetings, or public works to promote the party or its candidates;<sup>18</sup> the active participation of local or regional officials in candidate meetings;<sup>19</sup> public workers being required to attend meetings with candidates;<sup>20</sup> newspapers or websites of regional or local authorities containing materials in support of candidates or attacking the opposition;<sup>21</sup> and planned rallies or meetings of opposing candidates being denied, cancelled or otherwise obstructed without a justifiable reason.<sup>22</sup> Of the 45 OSCE/ODIHR EOM LTO teams, 33 found that misuse of administrative resources negatively affected the campaign environment. The misuse of administrative resources demonstrated the absence in practice of a clear distinction

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<sup>16</sup> A candidate and a candidate proxy were stabbed in Kyiv in separate incidents. A female candidate was shot in Donetsk *oblast*. Two *Batkivschyna* candidates had green dye thrown on them in Lviv and Kharkiv; one of these, a female candidate, also had her telephone number posted on an escort service website. Candidates or campaign workers were beaten in Kyiv, Ternopil, and Odessa *oblasts*, and in Cherkasy *oblast* there were two instances of candidates' homes being attacked with an explosive device. No arrests have been made in these cases. At least three campaign offices were broken into or damaged, in Volyn, Lviv and Sumy *oblasts*.

<sup>17</sup> There were also a few instances in which opposition candidates benefited from the support of local-government bodies.

<sup>18</sup> Flags, campaign tents or other materials of the Party of Regions were present and/or its candidates figured prominently at official city and *oblast* celebrations and other public events; inaugurations of public works; and working visits of high-ranking state officials. Such cases were observed or verified by OSCE/ODIHR EOM LTOs in Chernihiv, Donetsk, Kharkiv, Kyiv, Luhansk, Odessa, Poltava, Zaporizhzhya, and Zhytomyr *oblasts* and in the Autonomous Republic of Crimea

<sup>19</sup> OSCE/ODIHR EOM LTOs observed instances of local officials speaking or working on behalf of candidates at campaign events in Dnipropetrovsk, Donetsk, Kirovohrad, Luhansk, Odessa, Poltava, and Vinnytsia.

<sup>20</sup> OSCE/ODIHR EOM LTOs observed that teachers, hospital staff or other public employees were required to attend meetings with candidates in Chernihiv, Donetsk, Kharkiv, Poltava and Vinnytsia *oblasts* and in the Autonomous Republic of Crimea.

<sup>21</sup> Observed in Kharkiv and Luhansk *oblasts* and in the Autonomous Republic of Crimea.

<sup>22</sup> In Chernihiv and Kharkiv, *Batkivschyna* rallies were initially not allowed by local authorities and district courts. These decisions were overturned on appeal. In at least four additional cases, attempts by local authorities to prohibit campaign events were rejected by district courts. In Zaporizhzhya *oblast*, OSCE/ODIHR EOM LTOs verified that five requests for campaign events by *Batkivschyna* and UDAR were formally denied by local authorities, and that campaign events planned by Ukraine Forward! were cancelled by the authorities.

between the State and the ruling party in some regions, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document.

Party of Regions billboards overwhelmingly dominated in several regions. In some cities and electoral districts, opposition parties, the Communist Party and self-nominated candidates alleged that advertising companies refused to sell them space or broke existing contracts due to political pressure. Such instances were confirmed by a private company in Odessa region. In addition, some parties and candidates were affected by systematic destruction of billboards or posters in certain electoral districts.<sup>23</sup>

Other negative features of the campaign environment were the extensive use of charitable organizations by candidates to provide voters with material goods or services in an apparent effort to skirt campaign rules against indirect voter bribery; destruction of campaign tents or harassment of campaign workers in several cities; and widespread use of ‘black PR’, in which fake campaign materials were printed seemingly on behalf of a party or candidate, as a provocation. No effective steps in addressing such violations of the law were taken.

The system of campaign financing has been assessed by the Council of Europe’s Group of States Against Corruption (GRECO) as falling short of international standards.<sup>24</sup> While the law obliges parties and candidates to pay all campaign expenses from specially established bank accounts, it does not sufficiently provide for transparency of funding and spending, the full disclosure of sources and amounts of campaign expenditure and the proportionate and dissuasive sanctions for violation of campaign funding provisions. In addition, there are no spending limits by parties and candidates. This caused many parties and candidates to rely on the support of wealthy individuals or business interests and made it difficult for candidates and parties to compete on an equal playing field.

## **Media**

The media environment is characterized by a virtual absence of editorial autonomy on television. The politicization of TV by businesspeople and the dependence of state-owned broadcasters<sup>25</sup> on the state budget significantly limit political pluralism, in favour of the ruling powers.<sup>26</sup> The direct access of media owners and political actors to news content, the latter through ‘envelope payments’ to journalists, hinders investigative journalism and ultimately undermines the media’s crucial role as the watchdog for political power. Internet access is unrestricted, which provides room for investigative journalism and contributes to pluralism in the public sphere, despite limited penetration.

Provisions in the electoral law for voters’ rights to “access to diverse, objective and unbiased information” and for unbiased and balanced coverage of contestants in the elections are a positive step but remain declarative. The law does not provide any definition of balanced coverage, and it does not define procedures and the body to monitor the compliance with rules. It also does not

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<sup>23</sup> This was observed, for example, in Sevastopol city, and Zaporizhzhya, Donetsk, and Kyiv *oblast*.

<sup>24</sup> Standards as defined by “Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.” See “Evaluation Report on Ukraine: Transparency of Party Funding”, 21 October 2011.

<sup>25</sup> The nationwide *Pershyi Natsionalnyi* and 28 TV stations in the *oblasts*.

<sup>26</sup> The oppositional *TVi*, broadcasting investigative programs critical of the authorities, faces serious restrictions. In 2010, *TVi*’s terrestrial broadcast frequency was withdrawn by court order as a result of an action brought by Inter Media Group. In 2011, *TVi* was denied a license as part of Ukraine’s digital switchover in 2015. Being broadcast by satellite and cable only, several cable providers have recently excluded *TVi* from their packages. On 12 September, the Kyiv District Administrative Court ordered *TVi* to pay UAH 4.1 million (around EUR 400,000) following a criminal case for tax evasion.

provide for timely remedies in case of violations or complaints, which leaves political parties or candidates disadvantaged by imbalanced media coverage without prompt remedy. The CEC, the implementing body for media-related provisions according to the electoral law, does not consider media-related violations or complaints. Moreover, the National Television and Radio Broadcasting Council, legally bound to oversee broadcast media during the election campaign, does not monitor broadcasters' compliance with provisions on balanced coverage.<sup>27</sup>

OSCE/ODIHR EOM media monitoring results<sup>28</sup> show that the amount of campaign coverage in news and current affairs programs, in particular on the most watched TV stations, was limited, which may have negatively impacted on voters' access to different political views.<sup>29</sup> The fact that five times as much paid political advertising was broadcast on four main commercial TV stations indicates that in order to reach out to voters through the most popular broadcasters, political parties required significant financial means.<sup>30</sup> Moreover, the above-mentioned TV stations did not increase the amount of discussion programs during the campaign period.<sup>31</sup> However, monitoring results show a slight increase of campaign coverage on these broadcasters during the last ten days of the campaign.<sup>32</sup>

OSCE/ODIHR media monitoring results show that state-owned *Pershyi Natsionalnyi* displayed a clear bias in favor of the Party of Regions, devoting 48 per cent of its campaign coverage, excluding coverage of institutional events, to that party, while devoting only 13 per cent to *Batkivschyna*. Some 97 per cent of the Party of Region's coverage was in a positive tone while 18 per cent of *Batkivschyna*'s was negative. While *5 Kanal*, *Inter* and *TVi* devoted more time to *Batkivschyna* (42, 35 and 50 per cent, respectively) than to the Party of Regions (26, 25 and 25 per cent, respectively), only the tone on *5 Kanal* and *TVi* confirmed a clear bias in favor of *Batkivschyna*.<sup>33</sup> However, *Inter* displayed a more balanced approach.<sup>34</sup> While *ICTV* and *TRK Ukraina* devoted more time to Party of Regions (38 and 36 per cent respectively) than to *Batkivschyna* (21 per cent respectively); only the tone on *TRK Ukraina* confirmed bias in favor of the Party of Regions. *ICTV* showed a more

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<sup>27</sup> According to the council, the Law on Television and Radio Broadcasting prohibits interference by public authorities in the activities of broadcasters, which prevents it from taking any measures to ensure balanced coverage. A 'working group' within the council considers violations and complaints regarding (other) campaign provisions. After consideration, complaints might be forwarded to courts after the elections.

<sup>28</sup> The OSCE/ODIHR EOM conducted media monitoring from 16 September until the start of the electoral silence on 27 October. The monitored broadcasters include *Pershyi Natsionalnyi* and the commercial *1+1*, *5 kanal*, *ICTV*, *Inter*, *TRK Ukraina* and *TVi*. Due to limited availability of *TVi* on cable providers, monitoring of *TVi* started on 22 September.

<sup>29</sup> Out of a combined total of 75 hours of coverage of the campaign of competing parties broadcast in news and current affairs programs in the seven monitored broadcast media, the four leading channels *1+1*, *TRK Ukraina*, *Inter* and *ICTV* accounted for only 12 hours. For audience shares of the main TV channels see: [http://www.mediabusiness.com.ua/component/option.com\\_rating/Itemid,55/lang.ru/](http://www.mediabusiness.com.ua/component/option.com_rating/Itemid,55/lang.ru/).

<sup>30</sup> More than 60 per cent of paid airtime was purchased by the Party of Regions, Our Ukraine and *Batkivschyna*.

<sup>31</sup> The electoral law does not provide for discussion programs on state-owned media outlets.

<sup>32</sup> On 15 October, Ukrainian media reported on a statement by the Foreign Ministry that respective measures have been taken in response to the OSCE/ODIHR EOM's first Interim Report and that "objective coverage of the election campaign has been ensured."

<sup>33</sup> On *5 kanal*, 31 per cent of the Party of Regions coverage was in a negative tone, while only 7 per cent of *Batkivschyna*'s coverage. On *TVi*, 60 per cent of the Party of Regions coverage was in a negative tone, while only 2 per cent of *Batkivschyna*'s coverage.

<sup>34</sup> *Inter*'s coverage of Party of Regions and *Batkivschyna* was 24 per cent respectively in a negative tone.

balanced coverage.<sup>35</sup> *I+I* displayed a very balanced approach by devoting 31 per cent to both Party of Regions and *Batkivschyna*.<sup>36</sup>

Ultimately, the key role of the media, and in particular the leading commercial TV stations, in framing electoral issues and informing the electorate in a critical way on the policy positions of the various contestants may have been undermined.

### **Participation of National Minorities**

According to the latest census (conducted in 2001), 77.8 per cent of citizens of Ukraine are ethnic Ukrainians, while ethnic Russians form the most sizeable minority (17.3 per cent). The remaining five per cent of the population comprise Belarusians, Bulgarians, Crimean Tatars, Jews, Hungarians, Moldovans, Poles, Roma, Romanians, and other small minority groups.<sup>37</sup>

National minorities appear to have been represented at DEC and PEC level, particularly in areas of compact minority settlement. Isolated cases of anti-Semitic and xenophobic statements have been reported. While national minority issues per se did not feature prominently in the campaign, the issue of language policy proved more divisive than in recent elections. The platforms of the Party of Regions, the Communist Party and the Russian Bloc party listed making Russian a second state language as one of their top priorities, whereas *Batkivschyna*, UDAR and *Svoboda* pledged to oppose such moves. The debate on this issue took place in the context of the recent adoption of a new language law, which sparked concerns regarding both its substance and the manner in which it was adopted in parliament. The language law provides that for parliamentary elections, official election materials must be in Ukrainian only, which may have prevented a full understanding of election materials by some minority voters. At the same time, some party-backed and self-nominated candidates produced campaign materials in minority languages in areas of compact minority settlement, including in Chernivtsy and Crimea.<sup>38</sup>

Another issue of concern among some minority groups was the effect of the changed electoral system on the chances of candidates belonging to most national minorities to get elected. In particular, several OSCE/ODIHR EOM interlocutors expressed concerns that the delimitation of single-mandate districts in some areas of compact minority settlement was done without clear criteria or consultations with the minorities concerned, and that positive mechanisms to encourage national minority representation were not considered.

### **Complaints and Appeals**

Election-related complaints can be filed either with election commissions or administrative courts; the law provides for precedence of the court in instances where a complaint has been filed both to a court and an election commission.

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<sup>35</sup> On *ICTV* 18 per cent and 28 per cent respectively of *Batkivschyna*'s and Party of Regions coverage was in a negative tone; however on *TRK Ukraina* 21 per cent of *Batkivschyna*'s coverage was in a negative tone, while only 1 per cent of Party of Regions' coverage.

<sup>36</sup> However, 39 per cent of the coverage of the Party of Regions was in a negative tone, while only 18 per cent of *Batkivschyna*'s.

<sup>37</sup> Those who declared Ukrainian as their mother tongue in the 2001 census totaled 67.5 per cent of the population, while the percentage of those whose mother tongue is Russian totaled 29.6 per cent; other languages were declared as a mother tongue by 2.9 per cent.

<sup>38</sup> Article 12.5 of the language law allows candidates to conduct their campaign in Ukrainian or in regional languages, at their discretion.

By election day, the CEC had issued 94 resolutions on 106 complaints. These were related to rejections of applications for candidate registration, decisions and actions of DEC's, campaign violations, appearances of public officials in campaign events, and indirect vote buying. A large number of complaints was dismissed due to lack of evidence, while at the same time 79 were forwarded to law enforcement agencies for investigation; the CEC issued 24 warnings to parties and candidates following court decisions. The CEC processed complaints in a timely manner but with little or no debate. The lack of effective legal mechanisms for the CEC to restore the violated rights weakened its role to ensure the integrity of the process. Furthermore, the lack of comprehensive reasoning in a number of resolutions, as well as an excessively formalistic and at times contradictory approach, left the aggrieved parties without due consideration of their claims, contrary to OSCE commitments.<sup>39</sup>

The courts made commendable efforts to adjudicate the high volume of complaints filed at the pre-election period in a timely manner. Since the beginning of the electoral process, the courts heard more than 900 complaints and appeals, which they managed to resolve in accordance with the expedited procedure foreseen in the law. Not all complaints alleged serious violations, while it appeared that a number of candidates used court litigation for personal publicity reasons. Contrary to international standards,<sup>40</sup> a significant number of court decisions analyzed by the OSCE/ODIHR EOM displayed an arbitrary and inconsistent approach to the implementation and interpretation of the law. Notably, in the vast majority of decisions examined by the OSCE/ODIHR EOM,<sup>41</sup> the courts demonstrated an inconsistent approach towards an important doctrine of administrative justice, namely the shift of the burden of proof in cases challenging the lawfulness of decisions, actions or inactions of the public administration. Furthermore, the absence of effective sanctions and of a monitoring mechanism for court decisions, in addition to the demonstrated reluctance of some courts to protect electoral rights, compromised the right to an effective remedy.

Approximately one third of the court decisions analyzed by the OSCE/ODIHR EOM challenged the conduct of the lottery for the formation of PECs, and a great majority of complaints was rejected. The remaining complaints were related to campaign violations, indirect vote buying, involvement of officials of state or local executive bodies or use of their pictures during campaigning, and obstruction to campaign by local authorities. A very small number of court decisions established a violation of the legal provision prohibiting the distribution of goods, despite supporting evidences provided, while none of the decisions analyzed established the participation in the campaign of state or local officials.<sup>42</sup>

The Ministry of Interior received some 4,845 allegations of electoral violations, while the Prosecutor General's Office received 73 complaints on violations of the Criminal Code in relation

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<sup>39</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Document establishes the right to "effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".

<sup>40</sup> Article 8 of the Universal Declaration of Human Rights states that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

<sup>41</sup> Up to election day, the OSCE/ODIHR EOM collected and analyzed over 200 decisions of district and appeal administrative and general courts all over the country, as well as of the High Administrative Court.

<sup>42</sup> In a notable case, a court held that the free distribution of school uniforms to children constitutes a campaign violation, as the participation of the candidate in the distribution was a publicly known fact. In contrast, another court ruled that the distribution of school bags bearing party symbols and filled with stationary was not a violation of the law, as the complainant did not prove the link between the gifts distributed and the candidate; the court also held that children are not electoral subjects. In the only case where a district court established the participation of the head of a *rayon* administration in a campaign event, the appeal court ruled that this was a working meeting with the advisor to the prime minister, even though the respondent herself admitted during the hearing that it was a campaign event.

to the electoral process. A number of these cases referred to incidents of violence and other breaches of general provisions of the Criminal Code. To date, only two criminal cases were initiated, while the Prosecutors' Offices appeared reluctant to investigate reports of election violations that had been brought to its attention.

### **Domestic and International Observers**

The electoral law provides for domestic and international election observation. In a positive step, the requirement for non-governmental organizations (NGOs) to be registered for a two-year period before being allowed to deploy observers has been removed from the law. The NGO accreditation process was inclusive and a total of 68 NGOs were granted permission to register observers.<sup>43</sup>

Domestic observers enjoy broad and comprehensive rights, including the right to attend DEC and PEC sessions and to receive copies of result protocols. Contrary to good practice, the electoral law does not explicitly provide international observers with the right to receive copies of the protocols, and CEC did not try to address this issue.<sup>44</sup>

A high number of domestic and international observers were registered for these elections.<sup>45</sup> The main domestic observer NGOs, *OPORA* and the Committee of Voters of Ukraine (CVU), focused on both long-term and short-term observation and deployed several thousand observers each. The active involvement of a large number of domestic observers throughout the entire electoral process enhanced its overall transparency.

### **Election Day**

Election day was calm and peaceful overall. The CEC declared a preliminary voter turnout of 58 per cent. It started posting preliminary results at around 22:30 hours on election night, but not down to polling station level, which reduced transparency.

Opening procedures were assessed positively in 96 per cent of polling stations observed, although isolated problems with the sealing of ballot boxes were noted. Several international observer teams were not allowed into polling stations during the opening procedures, contrary to the law.

The voting process was assessed positively in 96 per cent of polling stations observed. It was generally orderly and well organized. In polling stations observed, 73 per cent of PEC chairpersons and 72 per cent of PEC members were women. Proxies were present in 96 per cent of polling stations observed, and domestic observers in 44 per cent. International observers reported tension or unrest in 2 per cent of polling stations observed, as well as isolated cases of intimidation of voters.

International observers reported only isolated instances of serious violations such as proxy voting, multiple voting, or series of seemingly identical signatures on voter lists. However, group voting was reported from 5 per cent of polling stations observed, and in 2 per cent, ballot boxes were not properly sealed at the time of observation. Not all voters marked their ballots in secret (6 per cent),

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<sup>43</sup> The CEC rejected the applications of 19 NGOs which did not present registration documents or whose charter did not include election-related activities.

<sup>44</sup> The Venice Commission's Code of Good Practice in Electoral Matters states that "...the presence of national or international observers should be authorised. These persons must be allowed to be present in all circumstances. There must be enough copies of the record of the proceedings to distribute to ensure that all the aforementioned persons receive one".

<sup>45</sup> DEC registered 177,330 party observers, 146,394 candidate observers, and 38,693 non-party observers, while the CEC registered 3,797 international observers.

and web cameras were at times placed in such a way that they could compromise the secrecy of the vote (12 per cent). Voters were turned away because their names were not on the voter list in 5 per cent of polling stations observed. According to the CEC, the number of voters included in the voter list excerpts for mobile voting was a high 3 per cent, with considerable deviations among election districts, as high as 6 per cent or higher in 9 districts. The requests for homebound voting in some districts increased significantly just before election day. Some of these requests were invalidated because the accompanying medical certificates had been falsified. On election day, international observers were informed of vote buying, and observed it in two districts, in Dnipropetrovsk and Luhansk *oblasts*.

The voting process was not always transparent. In 4 per cent of polling stations visited, not all observers had a clear view of a process, and in 6 per cent, international observers were restricted in their observation. International observers also noted or were informed of intimidation of domestic non-party observers, and there were cases when such observers had their accreditation cancelled without apparent grounds.

The vote count was assessed positively in all but 24 of the 249 polling station where it was observed. PECs generally followed prescribed procedures, although there were some minor procedural problems. In 23 counts observed, the official results protocols had been pre-signed by PEC members; 37 PECs had difficulties completing the protocols, and 35 revised figures they had entered previously. Protocols were not posted for public familiarization at the end of 39 counts observed. Around two thirds of international observers received copies of the protocols, although not specifically entitled to them.

The tabulation process, which was still ongoing, was assessed negatively in one third of the 181 reports of international observers. The main problems noted included inadequate premises, overcrowding and tension; tampering with PEC election material (38 reports), incomplete PEC protocols (76 reports), and figures in PEC protocols not reconciling (100 reports). Transparency during tabulation was limited, with 63 teams reporting they were restricted in their observation, 152 not being able to observe data entry of results, and 76 not being given full co-operation by the DEC.

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

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#### **MISSION INFORMATION & ACKNOWLEDGEMENTS**

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Kyiv, 29 October 2012 – The OSCE/ODIHR EOM opened in Kyiv on 12 September. It includes 20 experts in the capital and 90 long-term observers deployed throughout Ukraine.

On election day, 802 observers from 42 countries were deployed, including 623 long-term and short-term observers deployed by the OSCE/ODIHR, as well as 94 parliamentarians and staff from the OSCE PA, 41 from the PACE, 25 from the EP and 19 from the NATO PA. Voting was observed in 2,521 polling stations across the country. Counting was observed in 249 polling stations. The tabulation process was observed in 126 DECs.

The observers wish to thank the authorities of Ukraine for the invitation to observe the elections; the Central Election Commission, the Ministry of Foreign Affairs, the Parliament of Ukraine and other state and local authorities for their assistance and co-operation. The observers also wish to express appreciation to the diplomatic community and international institutions for their co-operation and support.

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