

INTERNATIONAL ELECTION OBSERVATION MISSION Ukraine – Presidential Election, Second Round, 21 April 2019

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

PRELIMINARY CONCLUSIONS

The 2019 presidential election in Ukraine was competitive and held with respect for fundamental freedoms. The orderly transfer of power should offer the opportunity for strengthening democratic institutions and their accountability, although the campaign for both rounds lacked genuine discussion of issues of public concern. The media landscape and campaign coverage reflected the dominance of economic interests in public and political life. The runoff was well-organized, despite operational challenges and a limited timeframe. The legal framework still contains shortcomings, and there was little will to resolve electoral complaints in a way that would guarantee effective remedy. Election day was assessed positively, and, despite a few procedural problems, there was a marked improvement in the conduct of the vote count and tabulation compared to the first round.

The election took place in the context of ongoing armed conflict and other hostilities in the east of the country and the illegal annexation of the Crimean peninsula by the Russian Federation. As a consequence, the election could not be organized in Crimea and certain parts of Donetsk and Luhansk regions that are controlled by illegal armed groups.

As no candidate had won the required absolute majority in the first round of voting on 31 March, the Central Election Commission (CEC) called a second round between Volodymyr Zelenskyi and incumbent President Petro Poroshenko for 21 April. The election legislation regulates some but not all aspects of a second-round election, and the CEC did not address all of these gaps in its regulations.

The CEC continued to hold regular open sessions in a collegial manner, but also maintained the practice of holding preliminary meetings before sessions, which decreased the transparency of its work. Despite time constraints, the CEC carried out all preparatory tasks efficiently and met legal deadlines. District and Precinct Election Commissions (DECs and PECs) were formed anew for the second round, based on nominations of the two candidates contesting the runoff. The DECs were efficient in meeting deadlines within a tight timeframe and coped with a heavy workload.

For the second round, voter lists were updated to reflect recent changes. Voters were given a brief window of opportunity to check their voter list data online and to request corrections at Register Maintenance Bodies (RMBs). Voters who needed to temporarily change their voting location were required to submit a new request, even if they had already done so for the first round. This represents an unnecessary burden, especially for internally displaced persons (IDPs), voters abroad, and persons with disabilities. Despite a short timeframe and long queues in some areas, changes in registration were processed efficiently by RMBs.

The candidates chose to not conduct large-scale campaign rallies between the two rounds. Campaign activities were predominantly conducted on television, in online media and social networks, as well as through billboards and posters. At the same time, campaign activities at the national level intensified, and increased tensions between the two sides were reflected by massive and systematic negative campaigning and harsh mutual accusations. The increase in negative campaigning, to the detriment of the presentation of structured election programmes and the conduct of an issue-oriented debate, diminished voters' ability to make an informed choice. There was a marked asymmetry between Mr. Poroshenko's conventional campaign and Mr. Zelenskyi's campaign, which to a large extent was conducted by proxies rather than

by the candidate himself and put little emphasis on his campaign platform. Social networks users engaged in extensive negative campaigning against both candidates. The format of the much-anticipated public debate that took place on 19 April at the Kyiv Olympic Stadium offered only a limited opportunity for voters to acquaint themselves with the candidates' programmes.

During the second round, the ODIHR EOM observed and was informed that misuse of state resources continued, both at the national and local level. In addition to an ongoing investigation into an alleged nationwide vote-buying scheme by Mr. Poroshenko's campaign in the first round, 13 new criminal investigations into vote-buying were initiated, including cases against the incumbent's campaign.

All the candidates who did not progress to the second round submitted their final campaign finance reports by the legal deadline, and the two runoff candidates submitted their interim finance reports. The reports were posted on the CEC and National Agency for Prevention of Corruption websites. No violations were identified by the oversight bodies on the basis of these interim reports so far; the official analyses of all final reports are to be published at a later date. Both campaigns were partly financed from sources other than their legal campaign fund account, which included the use of state resources and external financing by the Petro Poroshenko Bloc in favour of Mr. Poroshenko and third-party financing of Mr. Zelenskyi's campaign.

The monitored media extensively covered a series of increasingly provocative video challenges between Mr. Poroshenko and Mr. Zelenskyi on a possible debate between the two. The election law stipulates that a debate between the two candidates must be organized and broadcast by public television on the Friday before the second-round election day. On 19 April, Mr. Zelenskyi did not come to the *UA:PBC* studio for the official debate, and Mr. Poroshenko used the time to present his political platform and to answer experts' questions.

ODIHR EOM media monitoring results indicate that, overall, the monitored private channels provided imbalanced and biased coverage of the two candidates. In particular, *5 Channel* and *1+1* continued to show strong support for Mr. Poroshenko and Mr. Zelenskyi, respectively. The public broadcaster divided its prime-time news coverage equally between the two contestants. Notably, Mr. Zelenskyi to a large extent chose to avoid appearing in person and live on TV channels.

More than 90 criminal investigations were initiated concerning irregularities related to the first-round election day. The CEC denied admissibility on technical grounds of all 43 complaints related to election-day irregularities, taking decisions outside open sessions and without consideration on the merits. This deprived complainants of access to effective remedy and undermined transparency of the election-day dispute resolution process. During the second-round election period, the CEC received seven complaints, all denied consideration on technical grounds. All cases against the CEC and candidates lodged in administrative court in the pre-election period were denied admissibility or dismissed.

Only candidates who appeared on the second-round ballot and the parties that nominated these candidates were entitled to observers. The status of election observers who were registered for the first round was extended for the second round. The overall number of citizen observers decreased compared to the first round with civil society organizations and the CEC attributing it to the fact that many were registered as DEC or PEC members by the candidates, and as such, were de-registered as citizen observers.

Election day was peaceful, with a voter turnout of 62.1 per cent. The International Election Observation Mission (IEOM) assessed opening and voting positively in the overwhelming majority of polling stations observed. IEOM observers noted that the PECs worked transparently and almost always adhered to established procedures during voting. Some problems with the secrecy of the vote were noted again, albeit less than in the first round. Counting was assessed positively overall, even though some of the

PECs did not follow prescribed order or basic reconciliation procedures likely due to lack of experience or training. Unlike in the first round, the initial stages of the tabulation process were assessed positively. With few exceptions, DEC's followed procedures, and handover and tabulation were transparent, prompt and orderly. The presence of candidate and citizen observers throughout the day was significantly lower than during the first round.

PRELIMINARY FINDINGS

Background and Post-First Round Developments

In the first round of election, none of the 39 candidates received an absolute majority of votes required to be elected. Following the tabulation of all DEC protocols, the Central Election Commission (CEC) determined the first-round results and on 7 April announced that a second round would be held on 21 April between Volodymyr Zelenskyi, who received 30.24 per cent of the vote, and incumbent President Petro Poroshenko, who received 15.95 per cent.

Yulia Tymoshenko, who came third with 13.40 per cent, publicly claimed that the first round results had been falsified in favour of Mr. Poroshenko through misuse of state resources and the use of so-called technical candidates. She said, however, that she would not lodge any complaints to court.¹

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

Legal Framework

The election legislation regulates some but not all aspects of the second round. Those areas regulated include the reestablishment of District Election Commissions (DECs) and Precinct Election Commissions (PECs) with equal numbers of representatives of the two candidates; timeframes for the official second-round campaign period and campaign finance reporting; and provision of free airtime on the public broadcaster for the candidates and a debate between them.

The legislation is silent on the compilation, update and amendments of the voter lists for a second round.² It also does not address the application of provisions for homebound voting, change of temporary voting address and observer accreditation, in particular whether there is a need to renew requests and if new applications are allowed. The CEC did not address all of these gaps in its regulations.³

Election Administration

The CEC continued to hold regular open sessions in a collegial manner, but also maintained the practice of holding preliminary meetings before sessions, which decreased the transparency of its work.⁴ Despite

¹ Ms. Tymoshenko claimed that the Ukrainian judiciary lacked independence.

² With the exception of the inclusion of voters who have turned 18 as of the runoff date.

³ For the second round, the CEC only addressed the accreditation of observers in its regulations.

⁴ The CEC, in its Rules of Procedure, defined these preliminary meetings as one of the organizational forms of its activity. Interested parties may attend only upon the CEC's permission or invitation.

the limited time in the run-up to the second round, the CEC carried out all preparatory tasks efficiently and complied with legal deadlines. The visibility of voter education remained extremely limited.

In line with the law, lower-level election commissions were formed anew after the first round. Members of the DEC and PECs formed for the second round were appointed based on nominations of the two candidates contesting the runoff, with DEC having 14 members and PECs 12 to 16, depending on the number of registered voters.⁵ The CEC appointed the DEC, and the DEC appointed the PECs, with each candidate entitled to have an equal share of executive positions (chairpersons and secretaries). Since the initial appointments on 10 April, the CEC replaced some 8 per cent of DEC members.

As in the first round of the election, the DEC struggled to form PECs. Largely, this was due to the shortfall of nominees, which candidates, predominantly Mr. Poroshenko, failed to provide. Some interlocutors, including commission members, claimed that this was a deliberate maneuver by Mr. Poroshenko to delay the PEC formation process, obstruct preparations and potentially disrupt voting on election day. Consequently, the DEC had to compensate a significant shortage of people in order to complete the process of PEC formation.⁶ ODIHR EOM observers reported that in some cases, where DEC experienced problems finding the required number of people, nominees suggested by Mr. Zelenskyi's representatives were appointed to the PECs, which undermines the equal representation of candidates in the PECs as required by the law. According to the CEC, some 40 DEC experienced a severe shortfall of PEC members. In total, DEC had to appoint up to 60,000 members countrywide.

In a few cases, ODIHR EOM observers were informed that some nominees among those hastily collected by the DEC contained fictitious individuals, which DEC used to formally establish the PECs within the deadline. Therefore, following the formation of PECs, the DEC continued to complete the PECs by replacing significant number of members. This again raises concerns regarding the legality of the PEC formation process as reported by the ODIHR EOM during the first round of election. Overall, the DEC carried out preparations efficiently and coped with a heavy workload in a short period of time, which is commendable.

Women are well-represented at DEC, accounting for 60 per cent of all members. As of 20 April, 106 of the 199 DEC were chaired by women, while there were 143 female secretaries. Some 78 per cent of PEC where voting was observed were chaired by women.

Voter Registration

For the second round, voter lists were updated to reflect changes to civil registration data, recently deceased voters, those who turned 18 years of age, and corrections requested by voters.⁷ The Register Maintenance Bodies (RMB) prepared the voter lists and transferred them to the respective PEC by 18 April, as required by law.⁸ Voters were given a brief window of opportunity to check their voter list data on the State Voter Register (SVR) website and could request corrections of their data at the relevant RMB until 15 April, and at local courts until 18 April.

Voters who needed to temporarily change their voting location or who had applied for homebound voting were required by the CEC to submit a new request to the relevant RMB between 7 and 15 April, even if

⁵ While the law sets the number of DEC and PEC members at 14 and 12 to 16, respectively, on 19 April, the CEC decided to allow DEC and PECs to be formed with a minimum of 12 and 9 members, respectively.

⁶ By law, if candidates submit insufficient number of nominees, the superior commission has to complete the membership of the respective commission.

⁷ According to the State Voter Register (SVR) Service, 79,921 voters were added to the voter lists, including 45,607 voters who registered an electoral address.

⁸ According to the SVR office, four PECs in the Donetsk and Luhansk *oblasts* received the voter lists after the deadline due to hostilities in the respective areas.

they had already done so for the first round. The need for voters to renew such requests represents an unnecessary burden, especially for internally displaced persons (IDPs), voters abroad, and persons with disabilities. Despite the short timeframe and long queues witnessed in some RMBs, a total of 325,604 temporary changes of voting place were registered, including 75,607 IDPs.⁹ The total number of IDPs included on the voter lists was similar to the first round.¹⁰ The late formation of some PECs effectively prevented their members from benefitting from a temporary change of voting place if necessary.

Campaign Environment

The campaign for the second round officially commenced on 8 April, one day after the CEC announced the final results of the first round, and the silence period began the day before election day (20 April). In practice, however, the two candidates who advanced to the second round resumed campaigning almost immediately after the first round.

In the period leading up to the runoff, campaign activities at the national level intensified, and increased tensions between the two sides were reflected by massive and systematic negative campaigning and harsh mutual accusations. At the local level, campaign activities were generally low-key. In the eastern part of the country, the campaign was unnoticeable.

Campaign activities were overwhelmingly conducted on television, in online media and social networks, as well as through billboards and posters. Limited door-to-door canvassing was also observed, mostly in rural areas. The candidates chose to not conduct large-scale campaign rallies between the two rounds. In the days before campaign silence, new billboards appeared featuring slogans associated with Mr. Poroshenko's key campaign messages. They remained in place during the silence period, effectively breaching campaign silence.

There was an increase in negative campaigning, to the detriment of the presentation of structured election programmes and the conduct of an issue-oriented debate.¹¹ This diminished voters' ability to make an informed choice. There was a marked asymmetry between Mr. Poroshenko's conventional campaign, which was more articulated and specific in terms of content, and Mr. Zelenskyi's campaign, which to a large extent was conducted by proxies rather than by the candidate himself and put little emphasis on his campaign platform. Mr. Zelenskyi's position on a number of key policy issues remained undefined despite several media appearances a few days before election day. The incumbent in his campaign tried to shift the public's attention away from domestic policy issues to Ukraine's geopolitical choices. He portrayed himself as the internationally recognized leader and commander-in-chief of a country at war, indicating his opponent's lack of experience, unclear geopolitical stance and dependence on the backing of a wealthy businessman who has fled the country. Mr. Zelenskyi's camp addressed issues related to corruption scandals allegedly involving the incumbent and individuals close to him, the incumbent's inability to improve the country's economy, as well as inefficiency in re-establishing peace in the east.

After the first round, Mr. Zelenskyi challenged Mr. Poroshenko to a public debate to be held at the Kyiv Olympic Stadium. The event took place on the 19 April, the last day of the campaign period. It was attended by an estimated 22,000 spectators and was broadcast by the main TV channels. It was the only

⁹ For the runoff, RMBs registered nearly 10,000 more temporary changes in a week than they did in three months for the first round. In total, 51 per cent of temporary changes were made by the same voters during the first and second round, indicating that over 460,000 voters nationwide made use of the procedure during this presidential election.

¹⁰ IDPs registered only 130 fewer changes of voting place than in the first round. They represented 76 per cent and 82 per cent of all changes registered from the Donetsk and Luhansk *oblasts*, respectively.

¹¹ For example, billboards, newspapers and stickers containing negative messages on Mr. Zelenskyi were observed by the ODIHR EOM in Donetsk region, Kharkiv, Khmelnytskyi region, Kyiv, Lutsk, Mykolaiv, Poltava, and Rivne. Billboards with negative campaigning against Mr. Poroshenko were observed in Cherkasy, Kryvyi Rih, Sumy, and Uzhgorod.

direct interaction between Mr. Poroshenko and Mr. Zelenskyi during the campaign. The format of the event, which was the result of protracted negotiations between the candidates' campaign staff, offered only a limited opportunity for voters to acquaint themselves with the candidates' programmes.

Social networks users engaged extensively in negative campaigning. The use of social media advertisements and posts to denigrate the opponent played a central role during the second-round period, particularly from supporters of Mr. Poroshenko and to a lesser extent of Mr. Zelenskyi. Mr. Zelenskyi's team mobilized supporters through voter education videos and calls to counteract negative campaigning and fake information.

Continued misuse of state resources at national and local levels by the incumbent was observed by and reported to the ODIHR EOM.¹² The ODIHR EOM observed indications of vote-buying and received some allegations of vote-buying from across the country. The Ministry of Internal Affairs (MoIA) reported that its investigation into the alleged nationwide vote-buying scheme of the incumbent, launched in the first round, was ongoing. According to the MoIA website, 13 new criminal investigations into vote-buying were initiated in the second- round period which included cases of alleged vote-buying by the campaign of Mr. Poroshenko.¹³

Campaign Finance

All of the candidates who did not progress to the second round submitted their final campaign finance reports by the legal deadline of 15 April. The reports were posted on the CEC and National Agency for Prevention of Corruption (NAPC) websites.¹⁴ Ms. Tymoshenko, whose campaign was reported to be fully funded by her nominating party, had the highest reported expenditures of UAH 229 million (some EUR 7.6 million), of which 74 per cent was spent on media.¹⁵ Six candidates reported zero or near zero donations, and no expenditures.¹⁶ The reports of several candidates were not filled out in the detail required by the template.¹⁷ Yuriy Tymoshenko did not report expenditures for his campaign billboards that were apparently designed to confuse voters and undermine the vote of Ms. Tymoshenko.¹⁸

Both candidates submitted their interim campaign finance reports for the second round by the legal deadline of 16 April.¹⁹ The reports were posted on the CEC and NAPC websites and their analyses of the

¹² For example, the Presidential Administration's website was used extensively to campaign on behalf of the incumbent. On 15 April, at an event titled "Dialogue between the state authorities and business: Meeting with the President of Ukraine P. Poroshenko", the incumbent and the prime minister made several anti-Zelenskyi comments, suggesting he was unfit for presidency. The ODIHR EOM observed a meeting for heads of villages and city councils from Lviv *oblast* which took place in a public building and was organized by the Head of the Lviv Regional Administration. Attendees were asked to campaign and vote for Mr. Poroshenko; a proxy of Mr. Poroshenko praised his programme while criticizing Mr Zelenskyi's platform during his speech for students at Lutsk National Technical University.

¹³ The MoIA provided details on two cases. In Volyn *oblast*, police arrested two people and seized more than 700,000 UAH (some EUR 23,000) at a community club where money was being distributed to Mr. Poroshenko's campaigners. In Chernihiv *oblast*, police seized another large amount of cash from a Petro Poroshenko Bloc office following a report that people were distributing money to citizens in support of the candidate.

¹⁴ These oversight authorities are to publish their analyses of the reports by 30 April.

¹⁵ Anatoliy Hrytsenko reported to have spent UAH 121 million (some EUR 4 million) and Yuriy Boyko UAH 74 million (some EUR 2.5 million), with 50 per cent and 73 per cent of their expenditures spent on media respectively. The reports indicate that neither candidate contributed personal funds to their campaigns.

¹⁶ In addition, one candidate spent only UAH 380,000 (some EUR 12,000) all for electrical connection services and another candidate spent only UAH 30,000 (some EUR 1,000) all on renting premises.

¹⁷ The number and dates of contracts with service providers, and registration codes for business owners and legal entities were missing in two reports. One candidate included more than UAH 6 million (some EUR 200,000) under "other" expenses.

¹⁸ The only expenditure reported by Mr. Tymoshenko, who received 0.6 per cent of the votes in the first round, is UAH 69,000 (some EUR 2,300) on campaign leaflets.

¹⁹ The two candidates were allowed to use the funds in their campaign accounts established for the first round.

reports were posted by the 18 April deadline. For the period of 7–13 April, Mr. Zelenskyi and Mr. Poroshenko reported to have spent some UAH 50.5 million (EUR 1.7 million) and some UAH 97 million (EUR 2.2 million), respectively. The most substantial part of the spending was on media advertising, with Mr. Zelenskyi spending 88 per cent of his funds on media and Mr. Poroshenko 63 per cent. Mr. Zelenskyi reported his nominating party as the sole donor to his campaign, while Mr. Poroshenko reported that his campaign was fully funded from his personal finances. No violations in the candidates' reports were identified by the oversight bodies so far; the official analyses of all final reports are to be published at a later date.

Candidates' campaigns were partly financed from sources other than their legal campaign fund accounts, which included the use of state resources and external financing by the Petro Poroshenko Bloc in favour of Mr. Poroshenko, and third-party financing of Mr. Zelenskyi's campaign.²⁰ Anonymously financed campaign materials that circumvented the campaign finance rules were also observed during the second round.²¹

Media

Between the two rounds, the monitored media extensively covered a series of increasingly provocative video challenges between Mr. Poroshenko and Mr. Zelenskyi on a possible debate between them. The candidates' medical tests, the debate rules as well as the candidates' campaigns on social networks, remained the most discussed topics in the monitored TV channels. With the exception of several instances in the last days of the campaign, Mr. Zelenskyi chose to avoid appearing in person and live on TV channels, sending his representatives instead.²² By contrast, Mr. Poroshenko continued to be extensively present in many live programmes.

The election law stipulates that a debate between the two candidates must be held on the Friday before the second-round election day. The debate must be organized and broadcast by the public broadcaster *UA:PBC*, with the possibility for other channels to rebroadcast it free of charge. On 18 April, the CEC decided that the official debate between presidential candidates will be held at the studio of *UA:PBC* on 19 April from 21:00 to 22:00. The debate had to be aired live for 60 minutes without any break and the candidates must participate in person. The law provides that in the event of the refusal or inability of one candidate to participate in the debate, the airtime is given to the other candidate to campaign.²³

On 19 April, Mr. Zelenskyi did not come to the *UA:PBC* studio, and Mr. Poroshenko used 42 minutes to present his political platform and to answer experts' questions. The programme was rebroadcast by all monitored TV channels except *Inter*.

²⁰ As Mr. Poroshenko was self-nominated, the Petro Poroshenko Bloc was not permitted to donate unlimited funds to his campaign as it would have been if it had nominated him. In addition to its maximum legal donation to the official campaign fund of Mr. Zelenskyi, the NGO "Komanda Ze" directly financed online campaign ads for the candidate. The NGO, which was established for the sole purpose of supporting the candidate, also conducted its own campaign activities through campaign offices and printing of campaign materials financed by private donations and in-kind contributions. "Komanda Ze" was also registered by the CEC to observe the election and registered 14,801 individual observers with DEC's by 12 April.

²¹ For instance, the ODIHR EOM observed a weekly edition of the *Volyn Post* (12–18 April) that included a lead article with anti-Zelenskyi propaganda distributed for free in the streets of Lutsk. Anti-Poroshenko billboards were observed without the required information about the entities that ordered and printed the material and its circulation.

²² On 18 April, an interview with Mr. Zelenskyi was aired on *RBC-Ukraine*, and he also participated in the "Right to Power" political talk-show on *I+I*.

²³ In March, a draft law requiring candidates to participate in the second-round debate was submitted to parliament by deputies from the Petro Poroshenko Bloc but was not adopted. The draft proposed de-registration of a candidate in case of refusal to participate in the debate or impossibility to attend.

The two candidates contesting the second round are entitled to 30 minutes of free airtime on public television and 30 minutes on public radio. Only Mr. Poroshenko used this opportunity.

ODIHR EOM media monitoring results indicate that, overall, the monitored private channels provided imbalanced and biased coverage of the two candidates and continued to follow their owners' political agenda. In particular, *5 Channel* and *I+I* continued to show strong support for Mr. Poroshenko and Mr. Zelenskyi, respectively, through promotion of favourable messages, partisan declarations, selection of talk-show guests, and entertainment programmes. While a relative decrease of unmarked promotional material was noted between the rounds, such content featuring Mr. Poroshenko continued to appear on *5 Channel*, *112*, *Inter* and *Ukraina*. During the campaign silence period, *I+I* aired several entertainment programmes featuring Mr. Zelenskyi.

The public broadcaster during its prime-time programmes devoted rather balanced and neutral coverage to Mr. Poroshenko and Mr. Zelenskyi, with 43 per cent and 57 per cent, respectively. *ICTV*, *Inter*, *112* together provided equal coverage to Mr. Poroshenko and Mr. Zelenskyi, predominantly in a neutral tone. On *5 Channel* and *Ukraina* together, Mr. Poroshenko received 52 per cent of the political coverage, often in positive tone, while Mr. Zelenskyi's received 48 per cent, often negative in tone. *I+I* provided equal coverage to the candidates. However, half of the coverage devoted to Mr. Poroshenko was negative in tone.

Complaints and Appeals

According to the MoIA, some 3,000 complaints were lodged with police nationwide concerning irregularities related to the first-round election day.²⁴ More than 90 criminal investigations were opened on violation of secrecy of the vote, interference in election rights, vote-buying, illegal use of ballots, and falsification of election documents.²⁵ In addition, more than 50 protocols on election day-related administrative offences were submitted to courts. From the start of the official second-round campaign period, more than 50 criminal investigations were opened into election-related offences.

The vast majority of complaints related to election day irregularities lodged with the DEC's and District Administrative Courts were found inadmissible or dismissed.²⁶ Some decisions lacked sound legal basis.²⁷ Few complaints were successful.²⁸

The CEC informed the ODIHR EOM that it received 43 complaints related to election-day irregularities, all of which were denied admissibility on technical grounds, without consideration on the merits.²⁹ This deprived complainants of access to effective remedy. In addition, complaints were not dealt with by the CEC in open sessions as required by law and information on complaints was not made available to the

²⁴ This included reports of campaigning during the silence period, taking photos of ballots, vote-buying, damaging ballots, fake bomb threats, and attempts to remove a ballot from a polling station.

²⁵ Six investigations into falsification of election documents were launched, involving allegations that results protocols in several PECs in the Donetsk region had been falsified. According to the Criminal Code, "illegal use of ballots" includes giving a ballot to a person without a right to receive a ballot; stealing or hiding a ballot; multiple voting; and giving a pre-marked ballot to a voter.

²⁶ In total, more than 40 PEC protocols were requested to be invalidated, including two cases of alleged ballot stuffing, one well-documented on video; all cases were denied admissibility or dismissed.

²⁷ For instance, a DEC refused admissibility of a complaint about irregularities at a polling station, directing that such complaint should be lodged with the CEC. Another DEC refused to consider a complaint from a citizen observer located at the DEC on grounds that another observer located at the PEC should have reported the irregularity. Two courts ruled that the exercise of the DEC's discretion over conducting recounts is not subject to judicial review.

²⁸ In two cases, courts ruled that the rights of OPORA observers were violated by DEC's who expelled them during tabulation; one court ruled that a DEC breached the law by not considering an observer's complaint in open session.

²⁹ For example, a complaint lodged by Ms. Tymoshenko that alleged 707 unstamped ballots were counted as valid in a PEC in Vinnytsia *oblast* was not considered on the merits.

public, undermining transparency of the election-day dispute resolution process. Five court complaints unsuccessfully challenged the official results.³⁰ The Supreme Court improperly denied its jurisdiction in these cases.³¹

During the second round period, the CEC received seven complaints, all of which were denied admissibility or dismissed. The Sixth Administrative Court of Appeal in Kyiv received eleven complaints before the second-round election day against decisions and actions of the CEC and the campaigns of both candidates. One complaint from 20 April requested de-registration of Mr. Zelenskyi for distributing free tickets to the 19 April public debate at the stadium; the court hearing was streamed online the night before the election.³² All complaints, including this one, were dismissed or denied admissibility.³³

Citizen and International Observers

Accreditation of observers for the second round is regulated by a CEC resolution adopted in early 2019. For the second round, only candidates who appeared on the ballot and the parties that nominated these candidates were entitled to observers. Over 37,000 candidate and party observers were registered.³⁴ All non-governmental organizations (NGOs) already registered by the CEC to observe the election could also register additional observers; the status of observers who were registered for the first round was extended for the second round. Additional international observers could be registered with the CEC until 13 April. In total, over 82,000 domestic observers were registered by 84 NGOs and 2,700 international observers were registered by 41 foreign states and international organizations. There were about 12,000 fewer citizen observers, as compared to the first round. NGOs and the CEC claimed that many were registered as DEC or PEC members by the candidates, and as such, were de-registered as citizen observers.

Election Day

Election day was peaceful, and CEC announced voter turnout of 62.1 per cent, slightly lower than in the first round. The CEC started posting on its website preliminary election results broken down by polling station before 22:00 on election day. The incumbent conceded defeat shortly after the polls closed.

The opening was assessed positively in all but 3 of the 182 polling stations observed. With a few exceptions, established procedures were followed. A few polling stations observed opened with slight delays or ahead of time.

Voting was assessed positively in 99 per cent of polling stations observed. IEOM assessed that the PECs worked transparently, performed well and almost always adhered to established procedures.

³⁰ Four private citizens lodged complaints, including one that asserted Mr. Zelenskyi is not eligible to be president as he does not have the Ukrainian language skills as required by law for candidates. One case lodged by Volodymyr Petrov, who had received 0.08 per cent of the votes, argued unconstitutionality of the preliminary election results and requested annulment.

³¹ The legislation establishes the Supreme Court's jurisdiction over challenges to the election results. However, the court ruled it has jurisdiction only over second round results and forwarded such cases to the lower court.

³² Both Mr. Zelenskyi and Mr. Poroshenko distributed free tickets to the debate.

³³ In two cases, an official observer alleged campaign abuses by Mr. Poroshenko and asserted as unlawful and biased the CEC's inaction to control the misuse. In two cases, Mr. Poroshenko and Mr. Zelenskyi's dueling public statements about the holding of debates and taking of medical tests shown in online videos were challenged. Another case claimed that Mr. Zelenskyi's meeting with the French President Emmanuel Macron violated the ban on campaigning by foreign citizens. For the 20 April case, the court did not find any evidence of a violation by Mr. Zelenskyi.

³⁴ Some 34,000 observers were registered by the incumbent, about 3,500 by Mr. Zelenskyi and 10 by the party that nominated him.

IEOM observers reported only few cases of serious violations such as series of seemingly identical signatures on voter lists (1 per cent), and group voting (2 per cent), and isolated instances of proxy or multiple voting. IEOM observers noted occasional problems with the secrecy of the vote, including voters showing their marked ballots to others present (7 per cent), indications of voters taking pictures of their ballots (1 per cent), or persons other than PEC members keeping track of voters who had voted (2 per cent). All of these could be related to concerns expressed with regard to possible vote-buying. In Ivano-Frankivsk oblast, IEOM observers directly observed a clear case of vote buying in favour of Mr. Zelenskyi. The small size of the runoff ballot resulted in many voters not folding it properly.

In 15 per cent of polling station observed, one or more voters were not allowed to vote, most commonly because they could not produce a valid ID or were not on the voter list. IEOM observers reported from 35 polling stations that some voters were allowed to vote without a proper ID.

There were significantly fewer observers than in the first round, with candidate observers seen in 33 per cent of polling station observed, and citizen observers in 28 per cent. IEOM observers saw unauthorized persons in 5 per cent of polling stations observed, but they rarely interfered or directed the process.

Some 65 per cent of polling stations observed were not accessible for persons with physical disabilities, and the layout of 24 per cent was not suitable for them. IEOM observers reported overcrowding from 2 per cent of polling stations observed.

The vote count was assessed positively in 238 of the 264 polling stations observed. Counting was transparent, and the performance of most PECs was assessed positively. Candidate and citizen observers were present at around one third of counts observed. IEOM observers still noted a few procedural errors during the vote count. Procedures were generally followed, although IEOM observers reported that 49 PECs did not perform the count in the prescribed sequence. They also reported that basic reconciliation procedures were again often not followed, including when the PEC did not announce important data, such as the numbers of voters on the voter list (28 cases), voters' signatures on the voter list (55 cases) or used ballot counterfoils (33 cases). In one quarter of counts observed, the figures established during reconciliation were not entered into the protocol before the PEC opened the ballot boxes. IEOM observers noted 23 cases where the results protocol had been pre-signed by PEC members. These procedural omissions can mostly be explained by lack of training or experience and rarely led to negative assessments by the IEOM observers.

Unlike in the first round, the initial stages of the tabulation process were assessed positively, with only two of 205 observations being negative. With few exceptions, the 112 DEC where tabulation was observed followed procedures, and handover and tabulation were transparent, prompt and orderly. IEOM observers reported cases of PEC results protocols that had not been completely filled (63 cases) or did not reconcile (94 cases), with IEOM observers in many cases noting poor training or lack of knowledge of procedures. They also reported from 26 DECs that PEC or DEC members were changing protocol figures at the DEC, which contravenes the law. Conditions at most DECs observed were adequate, with few cases of overcrowding or tension. In 15 cases, IEOM observers could not fully observe the data entry of results, which limited transparency. In 14 cases, IEOM observers were restricted in their observation. In one half of DECs observed, not everybody entitled received copies of the intermediate tabulation protocols. Unlike in the polling stations, citizen and candidate observers were present at the large majority of DECs. As in the first round, almost all of the nine observed cases of interference in the work of DECs were by such observers.

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

MISSION INFORMATION & ACKNOWLEDGEMENTS

Kyiv, 22 April 2019 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of Council of Europe (PACE) and the European Parliament (EP). The assessment was made to determine whether the election complied with OSCE commitments, Council of Europe and other international obligations and standards for democratic elections and with national legislation.

The OSCE PA President, Mr. George Tsereteli, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and to lead the OSCE short-term observer mission. Ms. Doris Barnett headed the OSCE PA delegation. Ms. Angela Smith headed the PACE delegation. Ms. Rebecca Harms headed the EP delegation. Ambassador Peter Tejler is the Head of the ODIHR EOM, deployed from 6 February.

Each of the institutions involved in this International Election Observation Mission (IEOM) has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. The ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process. The OSCE PA will present its report at its Annual Session in Luxembourg in early July 2019. The PACE will present its report at its Standing Committee in Paris on 24 May. The EP will present its report at a forthcoming meeting of its Committee for Foreign Affairs.

The ODIHR EOM includes 20 experts in the capital and 89 long-term observers deployed throughout the country. On election day, 690 observers from 44 countries were deployed, including 629 long-term and short-term observers deployed by the ODIHR, as well as a 33-member delegation from the OSCE PA, a 19-member delegation from the PACE, and a nine-member delegation from the EP. Opening was observed in 182 polling stations and voting was observed in more than 2,300 polling stations across the country. Counting was observed in 264 polling stations, and the tabulation in 112 DEC's.

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

For further information, please contact:

- Ambassador Peter Tejler, Head of the ODIHR EOM, in Kyiv (+380 44 256 3231);
- Thomas Rymer, ODIHR Spokesperson (+380 50 302 8446 or +48 609 522 266), or Ulvi Akhundlu, ODIHR Election Adviser (+48 695 808 813);
- Nat Parry, OSCE PA Spokesperson (+45 601 081 77);
- Bogdan Torcătoriu, PACE (+33 650 392940);
- Cristina Castagnoli, EP (+380 68 0965712).

ODIHR EOM Address:

President Hotel, 2nd floor

12 Hospitalna Street, 01601 Kyiv

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