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Observation of the Presidential Election in Ukraine (17 January 2010)

Report
Ad hoc Committee of the Bureau of the Assembly
Rapporteur: Mr Mátyás EÖRSI, Hungary, Alliance of Liberals and Democrats for Europe

I. Introduction

1. At its meeting on 2 October 2009, the Bureau of the Assembly decided to set up a 40-member ad hoc committee to observe the Presidential election in Ukraine scheduled for 17 January 2010, and also authorised an enlarged pre-electoral mission consisting of 11 Assembly members, taking into account the D'Hondt rule. On 16 October 2009 the President of the Ukrainian Verkhovna Rada, Mr Lytvyn, invited the Parliamentary Assembly to observe the presidential election. The President of the Assembly appointed Mr Mátyás Eörsi Chairperson and Rapporteur of the ad hoc committee.

2. On 4 October 2004 a co-operation agreement was signed by the Parliamentary Assembly and the European Commission for Democracy through Law ("Venice Commission"). In accordance with Article 15 of this agreement, "when the Bureau of the Assembly decides to observe an election in a country in which electoral legislation was previously examined by the Venice Commission, one of the rapporteurs of the Venice Commission on this issue may be invited to join the Assembly's election observation mission as legal adviser", the Bureau of the Assembly invited a Venice Commission member to join the ad hoc committee as adviser.

3. Drawing on the proposals put forward by the Assembly political groups, the ad hoc committee was constituted as follows:

Mátyás EORSI, Hungary, ALDE, Head of Delegation

Group of the European People's Party (EPP/CD)

Renato FARINA	Italy
Denis JACQUAT	France
Corien JONKER*	Netherlands
Anna LILLIEHÖÖK	Sweden
Krasimir MINCHEV	Bulgaria
Marietta de POURBAIX-LUNDIN*	Sweden
François ROCHEBLOINE	France
Kimmo SASI	Finland
Mustafa ÜNAL	Turkey
Egidijius VAREIKIS	Lithuania
Piotr WACH	Poland
Renate WOHLWEND*	Liechtenstein

Socialist Group (SOC)

Anna ČURDOVÁ*	Czech Republic
Andreas GROSS	Switzerland
Sabir HAJIYEV	Azerbaijan
Sinikka HURSKAINEN	Finland
Tadeusz IWIŃSKI*	Poland
Mogens JENSEN	Denmark
Pietro MARCENARO	Italy
René ROUQUET	France
Indrek SAAR*	Estonia
Rainder STEENBLOCK	Germany
Lord TOMLINSON	United Kingdom

Alliance of Liberals and Democrats for Europe (ALDE)

Hendrik DAEMS	Belgium
Mátyás EÖRSI*	Hungary
Michael HANCOCK	United Kingdom
Kerstin LUNDGREN	Sweden
Bernard MARQUET	Monaco
Andrea RIGONI	Italy
Paul WILLE	Belgium

European Democrat Group (EDG)

David WILSHIRE	United Kingdom
Davit HARUTYUNYAN *	Armenia
Oleg LEBEDEV	Russian Federation
Sergey MARKOV	Russian Federation
Ganira PASHAYEVA	Azerbaijan
Tuğrul TÜRKEŞ*	Turkey

Unified European Left Group (UEL)

Jaakko LAAKSO	Finland

Venice Commission

Srdjan DARMANOVIC	Montenegro

Secretariat

Vladimir DRONOV, Head of secretariat, Inter-Parliamentary Co-operation and Election Observation Unit
Chemavon CHAHBAZIAN, Deputy Head, Inter-Parliamentary Co-operation and Election Observation Unit
Pierre GARRONE, Head of the Elections and Referendums Division, Venice Commission
Bastiaan KLEIN, Secretary of the Monitoring Committee
Angus MACDONALD, Communication Unit
Franck DAESCHLER, Secretariat of Interparliamentary co-operation and Election observations
Daniele GASTL, Secretariat of Interparliamentary co-operation and Election observations

(*)pre-electoral mission (24-26 November 2009)

4. The ad hoc committee was acting as part of the International Election Observation Mission (IEOM), which also comprised delegations from the OSCE Parliamentary Assembly (OSCE PA), the European Parliament (EP) and the NATO Parliamentary Assembly (NATO PA), as well as the election observation mission of the Organisation for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

5. The ad hoc committee met in Kyiv from 14 to 18 January 2010 and met with the main candidates for the presidential election and/or their representatives, the Head of the OSCE/ODIHR election observation mission and his team, the representative of the Council of Europe Secretary General in Ukraine,

representatives of the international community and representatives of civil society and the mass media. The programme of the ad hoc committee's meetings appears in Appendix 1.

6. On election day, the ad hoc committee split up into 22 teams to observe the elections in the cities of Kyiv, Dnepropetrovsk, Kharkiv, Odessa and Simferopol and their surrounding areas.

7. With a view to assessing the organisation of the election campaign and the political climate in the run-up to the elections, the Bureau sent a pre-electoral mission to Ukraine from 24 to 27 November 2009. The cross-party delegation comprised Mátyás Eörsi, Head of Delegation (Hungary, ALDE), Corien Jonker, (Netherlands, EPP/CD), Marietta de Pourbaix-Lundin (Sweden, EPP/CD), Renate Wohlwend (Liechtenstein, EPP/CD), Anna Ćurdová (Czech Republic, SOC), Tadeusz Iwiński (Poland, SOC), Indrek Saar (Estonia, SOC), Davit Harutyunyan (Armenia, EDG) and Tuğrul Türkeş (Turkey, EDG). Unfortunately, no member of the Unified European Left (UEL) group was available to represent this group on the delegation. During its visit to Kyiv, the pre-electoral delegation met the President of Ukraine, the President of the Constitutional Court, members of the Ukrainian delegation to the Parliamentary Assembly of the Council of Europe (PACE), members of the Central Electoral Commission (CEC), main candidates for the presidential election and/or their representatives, the Vice-Minister of the Interior and representatives of the media, civil society and the international community. The text of the declaration issued by the pre-electoral mission appears in Appendix 2.

8. In the declaration issued the day after the presidential election, the IEOM unanimously concluded that "the first round of Ukraine's presidential election was of high quality and showed significant progress over previous elections, meeting most OSCE and Council of Europe commitments". The IEOM press release issued after the elections appears in Appendix 3.

9. The ad hoc committee would like to thank Ambassador Ake Peterson, the representative of the Secretary General of the Council of Europe in Kyiv, and his team, and the OSCE/ODIHR election observation mission for their co-operation and support.

II. Political and legal framework

10. Ukraine has no unified electoral code. There are too many laws governing elections, and they are unnecessarily complex and unclear; furthermore, they often contradict each other. This is why the Parliamentary Assembly and the Venice Commission have repeatedly advised the Ukrainian authorities to develop and adopt a unified and simplified electoral code.

11. The Verkhovna Rada has set up a special working group comprising representatives of all the parties represented in Parliament and outside experts to prepare a draft unified Electoral Code, in co-operation with the Venice Commission. However, the members of this working group have been unable to meet in recent months because of the political climate prevailing in the country in the run-up to the presidential election. The members of the working group are hoping that following the presidential election they will once again encounter the conditions for achieving consensus among the main political forces in the country and that the work on the draft Electoral Code will now be able to continue.

12. On 24 July 2009, during an extraordinary session and at the third and last reading, the Verkhovna Rada adopted several amendments to the electoral legislation, including the Law on Elections of the President. President Yuschenko vetoed these amendments, but the Parliament managed to overcome the Presidential veto by adopting the amendments on a 2/3 majority.

13. President Yuschenko and 48 Members of Parliament appealed to the Constitutional Court, which, on 19 October 2009, invalidated the following amendments, declaring them unconstitutional:

- the fact that Ukrainian nationals residing abroad are required to register with the relevant Ukrainian Consulate in order to exercise their right to vote;
- the fact that members of the regional and district electoral commissions are required to reside in the corresponding region or district;
- the provisions prohibiting the filing of complaints with the Central Electoral Commission on the day of the election and the days immediately following it;
- the provisions authorising the courts to discontinue examining any complaint concerning the electoral process, two days before the election;
- the provisions prohibiting any judicial challenge to the results of the voting as established by the regional and district electoral commissions.

14. The Constitutional Court decision specified that these provisions would not be applied during the 17 January presidential election. However, it would be legitimate to wonder which provisions will be used to deal with any questions raised, particularly in connection with complaint and appeal procedures. Consequently, the fact that these provisions are excluded from the law does not rule out the possibility of abuse being committed during the electoral process.

15. In its joint opinion with the OSCE/ODIHR, adopted on 12 October 2009 (CDL-AD (2009) 040) on the amendments to legislative acts on the presidential election in Ukraine, the Venice Commission concluded that some amendments did not comply with international standards and good practices in electoral matters. The Venice Commission identified the following problems, among others:

- the obligation on district electoral commissions to issue the results of elections without taking account of annulments of the voting by a number of regional electoral commissions in the corresponding territory;
- the reduced time-limit for filing complaints (cut from 5 to 2 days);
- the fact the electoral commissions may, on election day, add voters' names to lists that have already been established;
- the limitation of the matters on which complaints can be filed with the higher electoral commissions (including the Central Electoral Commission), even where these matters are subject to a judicial appeal;
- the prohibition of independent Ukrainian observers;
- the excessive amounts to be deposited in guarantee by presidential candidates (equivalent to € 208 000);
- the lack of clarity in the rules on replacing members of electoral commissions;
- the lack of transparency in political party and campaign funding.

16. One of the most worrying of the provisions which the Constitutional Court failed to invalidate is the one allowing electoral commissions to add, on election day, names to established voter lists, because this increases the risks of electoral fraud and is contrary to the Parliamentary Assembly's recommendations. It is especially disturbing as the party of one presidential candidate has claimed that almost 500 000 electors "disappeared" from the lists in areas where this party traditionally enjoys very strong support.

17. On 28 December 2009 President Yuschenko, a presidential candidate, sent a letter to the President of the Parliamentary Assembly voicing his concern about possible tampering with voter lists by adding names on election day. On 8 January 2010 the Prime Minister, Ms Timoshenko, another presidential candidate, sent a letter to the international observers sharply criticising the Central Electoral Commission's decision to authorise home voting without the requisite medical certificate.

18. In addition to these specific concerns, there are others concerning restrictions on remedies before the courts vis-à-vis the electoral process and on the general right to challenge the elections, as well as provisions on vote counting and the determination of the election results, which provisions came into force in July 2009 and were not challenged by the Constitutional Court. These provisions theoretically provided for the possibility of declaring the election of a specific presidential candidate, *inter alia* in cases of serious doubts as to the validity of the results and allegations of massive electoral fraud. The events during the 2004 presidential elections clearly point to the risks inherent in these provisions.

19. Another subject for major concern is the status of domestic observers. According to the current electoral law, domestic observers cannot observe the 17 January elections. The only persons authorised to observe the elections are representatives of the political parties, presidential candidates and the international observers. This situation is particularly unacceptable in that domestic observers were very active during the previous elections in Ukraine, when the quality of their work and their civic commitment were widely acknowledged by the Ukrainian public and the international community. In its joint opinion with OSCE/ODIHR, adopted last October, the Venice Commission strongly recommended reintroducing the right of observation for domestic observers.

20. Last November the Verkhovna Rada adopted at first reading a bill taking account of most of the recommendations set out in the joint Venice Commission/OSCE/ODIHR opinion, but this bill did not obtain the requisite majority at second reading. Later, at the beginning of December 2009, the authorities attempted to adopt a compromise text amending the current electoral law, in order to go back on the Constitutional Court decision and put an end to the Venice Commission's concerns. However, this attempt failed owing to opposition from the Party of the Regions and the Yulia Tymoshenko Bloc. Consequently, the 17 January presidential election was organised on the basis of the law adopted in July 2009, with the

exception of the provisions declared unconstitutional under Constitutional Court Decision No. 26 of 19 October 2009.

21. Lastly, for lack of time, the members of the electoral commissions of different levels had to implement the amended legislation without having received any training in procedures. This also concerns the administrative courts.

III. Registration of candidates and voter lists

22. Registration of candidates for the presidential election of 17 January 2010 began on 20 October and ended on 13 November 2009. The CEC registered 18 candidates in the course of a process which proved on the whole to be inclusive and transparent, offering voters a wide range of candidates, including four women. What makes the presidential election in Ukraine politically unique is that the current President of Ukraine, the Prime Minister and the President of the Verkhovna Rada were all candidates.

23. Every candidate in the presidential election is under an obligation to provide the CEC with a certain number of documents, including a financial document certifying the deposit of the sum of 2.5 million UAH (roughly 208 000 Euros). This sum will be refunded only to candidates who reach the second round of the election. It should be noted that the law is not explicit regarding the eventuality of no second round taking place. The Venice Commission, in its joint opinion with the OSCE/ODIHR adopted on 12 October 2009, criticised the excessive amount of the financial deposit required from candidates.

24. The CEC refused to register another 40 candidates for various reasons: non-payment of the guarantee deposit, incorrect personal details, failure to meet the deadline for submission of documents. 18 of the rejected candidates lodged complaints with the Administrative Court in Kyiv. These complaints were unsuccessful.

25. The Verkhovna Rada adopted the Law on the State Register in February 2007, but it did not come into force until 1 February 2007. For the first time, therefore, elections took place with voter lists drawn up on the basis of electronic data. The CEC is responsible for updating the lists of the state register. The state register database was compiled on the basis of the voter lists used for the 2006 and 2007 elections.

26. The number of voters registered on the lists is 36,298,991. 592 805 duplications were removed in relation to the voter lists used for the last elections in 2007. According to representatives of the “Party of the Regions”, a considerable number of voters removed from the lists were from regions which traditionally supported their party. According to the authorities, this was the result of updating of the database to avoid duplications. As regards the number of voters in other countries, CEC estimates put the figure at around 360 000.

27. On 27 December 2009, the district electoral commissions (DECs) began forwarding the preliminary voter lists to the precinct electoral commissions (PECs), where they could be inspected by voters. The voter lists of some 1000 PECs were reportedly reprinted following technical errors. This represents around 3% of all PECs. The deadline for correcting the preliminary lists was 10 January 2010.

28. The voter lists could create problems at polling stations on election day, both for voters and for commission members. According to the Venice Commission’s opinion, legal provisions allowing new voters to be entered on the lists on election day could undermine the credibility of the final election results in some regions of Ukraine.

IV. Election administration

29. The presidential election was administered by a three-tier election administration composed of the Central Electoral Commission (CEC), 225 district electoral commissions (DECs) and 32 087 precinct electoral commissions (PECs). In addition to these, 1497 special electoral commissions were set up in hospitals and prisons, and 113 PECs were formed to organise the election in other countries.

30. The CEC is a permanent body consisting of 15 members appointed by the parliament for a seven-year term of office. Since the political agreement of 27 May 2007, the CEC has been composed entirely of representatives of the parties which were present when the outgoing parliament was formed, with 8 members nominated by the government parties and 7 by opposition parties. The agreement also stipulates that the Chair of the CEC must be elected from among the members representing the opposition and its Secretary from among those representing the government parties.

31. The composition of the DECs and PECs is also regulated by the amendments to the electoral law stipulating that electoral commissions must be composed entirely of representatives of the parties present when the outgoing parliament was formed. The DECs have 18 members, with equal numbers of opposition party and government party representatives, which share the chairmanships of the commissions. The PECs have 9 to 23 members and their chairmanships are divided proportionally among the parliamentary parties.

32. The CEC functioned in an efficient and generally transparent manner. However, meetings were held in camera when politically sensitive issues were brought up for discussion, in order to work out compromises and present co-ordinated positions. But it was not possible to hold in-depth discussions at these closed meetings; they served rather to take decisions according to the commission members' political affiliations. This mode of operation of the CEC was not in conformity with the electoral legislation and did not contribute to greater transparency of its proceedings.

33. Each candidate could appoint two representatives to the 225 DECs. Only 9 candidates were able to appoint the maximum number of representatives to the DECs, ie 450 members. Although, when the appointment of DEC members began on 27 November 2009, the principle of proportionality was observed, later, because of changes in the commissions, the CEC decided that it was not possible to observe this principle. As a result, the four main candidates, namely Mr Yanukovych, Ms Timoshenko, Mr Yatsenyuk and Mr Yuschenko, were over-represented on the DECs.

34. The appointment of members of the PECs was more complex because of the changes after a large number of commission members were forced to resign. The main reason for this situation was insufficient remuneration due to late transfer of the budgetary resources in December 2009. Some PECs were unable to meet the deadlines because of problems in attaining a quorum or the resignation of their chairs. There were cases in which the preliminary voter lists were not made available for inspection by voters within the deadline set.

V. Election campaign and the media

35. The election campaign began on 19 October 2009. It took place in a climate of calm and of free competition. The 18 candidates could be divided into three categories according to their effective presence during the campaign: candidates who were active in the campaign and very well represented at all levels of the electoral commissions; candidates who were relatively active in the campaign but very poorly represented in the electoral commissions, and the last category of candidates who were not prominent in the election campaign but whose representatives were very much present in the electoral commissions.

36. In this connection, it is important to note that, during the pre-election mission in November 2009, the following concerns were raised by some of the persons with whom discussions were held: the presence of so-called "technical" candidates who play the game of the main candidates by using airtime on the public television channels and appointing representatives to the electoral commissions, but who do not aim to reach the second round and lack the potential to do so. This form of political speculation, even if it is not against the law, and society's disappointment following the high hopes of rapid and positive change raised by the "orange revolution" seriously undermine the electorate's confidence in the democratic electoral process.

37. The OSCE/ODIHR mission observed cases of misuse of administrative resources and involvement of state officials in the election campaign. Some candidates took advantage of their office to conduct their campaign, which is a breach of electoral legislation. For example, candidates Timoshenko and Yuschenko used official visits related to the offices they hold to pursue their election campaigns. The Government Pensions Agency sent letters to all pensioners explaining that under the draft legislation sponsored by the

Party of the Regions, pensions would not be increased. In the same letter, the Agency explained that the present government had managed to increase pensions even under economic crisis conditions, and promised to raise pensions in 2010. The ad hoc committee was also informed of cases in which food had been distributed to elderly persons.

38. The government of Prime Minister Timoshenko, a candidate in the presidential election, decided that PEC members accepting home votes without a medical certificate would not be paid for their work. She also threatened them with criminal investigations. In addition to this, she gave instructions to the Minister of the Interior to check all requests concerning home voting, which constitutes direct interference by the government in the electoral process.

39. Most of the persons with whom discussions were held during pre electoral mission thought that there would not be any electoral fraud on the actual day of the election. But democratic elections are not confined to proper conduct of the election on the actual day. The authorities of the country and all political players have a major responsibility: ensuring that the necessary conditions are met to enable all citizens of Ukraine to express their will freely.

40. Another feature of the election campaign was the close interconnection between politics and finance and, generally, the role of money and oligarchies. This has always been a reality of modern Ukrainian political life, but it apparently took on much more disturbing proportions during this election campaign. A considerable number of voters felt that everything is decided in advance and that it is always the same people – those with the money – who decided who is going to govern the country. A considerable number of citizens saw political contests not as a competition between ideas and platforms, but as a competition between different clans and their financial interests. This political cynicism represents a real danger to democracy in Ukraine and is unacceptable in the context of the country's serious social and economic problems.

41. The ad hoc committee received disturbing information about the negative campaigning by some candidates. It was particularly concerned about hate speech, even if there only isolated instances, and about anti-Semitic slurs. In this connection, the ad hoc committee considered the amendment to the Criminal Code on fighting against discrimination and hate speech to be a very positive development. This amendment came into force on 5 November 2008 after being signed by President Yuschenko.

42. Media coverage of the election campaign is regulated by electoral legislation which guarantees all candidates direct access to the media. While welcoming the pluralism of opinions and freedom in the media and the considerable improvement in the situation since the previous elections, the ad hoc committee notes the unprecedented influence of the world of finance and business on the work of the media. The amendment to the electoral law abolishing the limit on spending by candidates was criticised by the Venice Commission in its opinion last October.

43. Nevertheless, the election campaign took place in a vibrant media environment. The public media offered all the candidates in contention free publicity and airtime, in accordance with the law. Although the climate was positive on the whole, some concerns remain, due inter alia to the lack of transparency concerning shareholding in the media sector.

VI. Election day – vote counting and determination of the results

44. The election took place in a calm and orderly climate and was conducted openly and, on the whole, efficiently. The ad hoc committee's 22 teams who observed the election in the cities of Kyiv, Dnepropetrovsk, Kharkov, Odessa and Simferopol and their surrounding areas noted the excellent organisation of the election and the vote counting. The members of the ad hoc committee mentioned a number of minor problems: lack of knowledge of voting procedures at some polling stations, mainly in villages; inaccuracies in voter lists, nervousness at some polling stations because of the presence of international observers, and poor material conditions in a number of polling stations. Based on the assessments of IEOM observers at the 97% of polling stations visited, the voting process was rated "good" or "very good".

45. According to the preliminary results announced by the CEC, Mr Yanukovych obtained 35.33% of the votes cast; Ms Timoshenko 25.02%, Mr Tigipko 13.01%, Mr Yatsenyuk 6.95%, Mr Yuschenko 5.49%, Mr Simonenko 3.55%, Mr Lytvyn 2.34%, Mr Tyangnibok – 1.44% ; Hritsenko – 1.20%. The other candidates obtained less than 1%. The two best-placed candidates, Victor Yanukovych and Yulia Timoshenko, will take part in the second round of the presidential election scheduled for 7 February 2010.

VII. Conclusions and recommendations

46. The ad hoc committee of the Parliamentary Assembly concluded that the first round of the presidential elections in Ukraine had been of high quality, showed significant progress over previous elections and complied with the majority of Council of Europe standards. The citizens of Ukraine were able to make their choice freely in full knowledge of the facts. Voting took place in a calm atmosphere, was transparent and well organised. The 17 January vote confirmed once again the positive trend seen since 2006 in the organisation of elections in Ukraine.

47. The ad hoc committee notes that the CEC functioned effectively, generally transparently, in a complex political environment with unclear electoral laws.

48. The ad hoc committee welcomes the fact that the Ukrainian electorate had a wide choice among 18 presidential candidates. The results of the first round saw the emergence, alongside the two favourite candidates, of the third candidate, Mr Tigipko with an unexpected result which, ultimately, could change the mindset of the traditional confrontation between the two camps, the Party of the Regions and the "Orange Revolution".

49. The ad hoc committee voices its concern about the presence of certain so-called "technical" candidates who play the game of the main candidates by using airtime on the public TV channels, appointing representatives on the electoral commissions, but who have no aim of or potential for reaching the second round of elections. The ad hoc committee believes that this sort of political speculation, legal though it may be, seriously undermines the confidence of the electorate in the democratic electoral process.

50. The ad hoc committee is genuinely concerned about the place of money and oligarchies in politics in Ukraine in general and in the election process in particular. This aspect apparently took on a much more worrying dimension during the election campaign. Many citizens do not see the political "contest" as a competition between platforms and ideas, but between different clans and their financial interests. The ad hoc committee feels that this political cynicism constitutes a real danger for democracy in Ukraine and is totally unacceptable taking into consideration the serious socio-economic problems facing the country.

51. With regard to the media, the ad hoc committee draws attention to a media environment which has become increasingly more vibrant from one election to another. The public media offered all the candidates free publicity and airtime, in accordance with the law. Nonetheless, there remain serious concerns regarding the lack of transparency associated with media shareholding and the unprecedented influence of the financial and business sector on the work of the media. In this connection, the amendment of the electoral law last October, abolishing the limit on expenditure by candidates during electoral campaigns, did not make things easier.

52. The ad hoc committee wishes to stress that stable election legislation is an essential prerequisite for the holding of democratic elections. Although the 17 January 2010 vote showed the democratic nature of the elections, the ad hoc committee could not fail to note a dangerous trend among Ukrainian politicians, namely that of playing *with* the electoral rules rather than playing *by* those rules. It is not normal to have a situation in which the election legislation is constantly being amended, including during an election campaign that has already begun.

53. Ukraine does not have a unified electoral code. There are too many laws governing the elections, they are unnecessarily complex and unclear; moreover, they often contradict each other. Which is why the Parliamentary Assembly had asked the Ukraine authorities to pursue their co-operation with the PACE Monitoring Committee and the Venice Commission in the assessment of the country's electoral legislation well before the elections of 2009 – 2010.

54. The Parliamentary Assembly's ad hoc committee calls on the Ukrainian authorities, in close co-operation with the Assembly's Monitoring Committee and the Venice Commission, and well ahead of the next elections, to take practical measures to draw up and adopt a unified electoral code bringing together all the election legislation and fully in line with the European electoral heritage, as developed in particular in the Code of Good Practice in Electoral Matters.

55. In this context, the ad hoc committee calls on the Ukraine authorities to amend the legislation on presidential elections on the basis of the joint opinion of the Venice Commission and the OSCE/ODIHR (CDL-AD(2009)040), and in particular to re-examine:

- Provisions concerning the right to stand as candidate, including the excessive amount of the electoral deposit;
- The provisions governing the determination of the final election results by the Central Electoral Commission;
- The arrangements for appointing the members of the electoral commissions and the provisions relating to the activities and voting procedures of those commissions;
- The changes to the voting procedures of electoral commissions that could lead to abuses;
- The possibility to make changes in the voter list up to one hour before the close of the poll;
- The restrictive media provisions that can be applied to limit the full exchange of political views and delivery of campaign messages from candidates to voters;
- The campaign finance provisions; the legislation on the funding of political parties should also be reviewed in order, in particular, to ensure the transparency of this funding;
- The failure of the law to include a role for non-partisan domestic observers;
- The provisions concerning the invalidation of results and recount of votes, which should be clarified and amended.

Appendix 1

AD HOC COMMITTEE FOR THE OBSERVATION OF THE PRESIDENTIAL ELECTION IN UKRAINE

14 – 18 January 2010

PROGRAMME

Thursday, 14 January 2010

6 pm Ad hoc committee meeting *(Hotel Dnipro)*
- Opening of the meeting and information following the pre-electoral mission by Mr M. Eorsi, Head of the Delegation
- Ambassador A. Peterson, Representative of the Secretary General of the Council of Europe in Ukraine – pre-electoral political situation
- Mr S. Darmanovic, expert and Mr P. Garrone, Head of the Elections and Referendums Division, Venice Commission – Recent developments in the field of election legislation
- Practical and logistical information by the Secretariat

Friday, 15 January 2010

9 am Joint parliamentary meeting *(Hotel Radisson)*

Opening by the heads of delegations (PACE, OSCE PA, NATO PA, EP) (venue: Hotel Dnipro)
Comments from representatives of the OSCE, CE, European Commission

9.30-11 am Briefing by the ODIHR Election Observation Mission
Ambassador H. Tagliavini and his co-ordination team

11-11.30 am Meeting with candidate V. Yuschenko

11am–12 noon Meeting with candidate A. Yatseniuk

12-12.30 pm Meeting with candidate Hrytsenko

12.30-1 pm Meeting with candidate O. Moroz

1 – 2.30 pm Lunch

2.30 – 3 pm Meeting with candidate V. Yanukovych

3 – 3.30 pm Meeting with candidate Lytvyn

3.30 – 4 pm Meeting with candidate Y. Tymoshenko

4 – 4.30 pm Break

5.15 – 6 pm Meeting with representatives of NGOs and the media

7.30 pm Pre-deployment meeting for teams deployed outside Kyiv
(Hotel Dnipro)

Saturday, 16 January 2010

	Deployment in the regions for members deployed outside Kyiv
9.30-11 am	Meeting with long-term observers for Kyiv *(Hotel Radisson)*
11 am	Meeting with drivers and interpreters for teams in the Kyiv region

Sunday, 17 January 2010

	Observation of the presidential elections

Monday, 18 January 2010

8 am	Debriefing of the ad hoc committee *(Hotel Dnipro)*
3 pm	Joint press conference *(Hotel Premier Palace)*
	Departure of delegation members

Appendix 2

Ukraine: Statement by PACE pre-election delegation

Kyiv, 26.11.2009 – The Council of Europe Parliamentary Assembly (PACE) pre-election delegation[1] observed an overall free and competitive atmosphere in Ukraine in the run-up to the 17 January 2010 Presidential election. The situation regarding the freedom of the media improved significantly after the 2004 elections. The delegation notes the commitment and endeavours of journalists, although it recognises that the media works under heavy financial and business influences. In order to assist more efficiently the Ukrainian people to make a well-founded choice, politicians should have no role in setting the agenda for the media. Intimidation is, hopefully, a thing of the past. The Central Election Commission assured the delegation that voters' lists are being improved although the delegation remains uncertain as to the state of progress in this area.

At the same time, the delegation is concerned over dwindling public confidence of an electorate whose high expectations of a rapid change had not been met. As a result, political cynicism is on the rise. The delegation is concerned about the strong interconnection between politics and financial flows. The political struggle is widely regarded as a struggle of personalities, ambitions and financial interests rather than a competition of political platforms and ideas. The delegation was upset by the information it received about negative campaigning by candidates; a particular source of concern was the use of hate-speech and anti-Semitic slurs. The delegation expects such incidents to be condemned by political players.

Despite repeated Council of Europe recommendations, Ukraine's electoral legislation, although improved, is still not fully compatible with Council of Europe standards. The proposed July amendments to the relevant legislation marked a step backwards in some aspects of the electoral legislation.

Nonetheless, given the little time left, this delegation believes that, with true political will, the existing legislation, flawed as it is, could still create a functioning framework for this election. The delegation urges political parties in Ukraine to bring the electoral legislation in line with Council of Europe standards rapidly after the new President takes up office and not only weeks before the next vote.

[1] Mátyás Eörsi, Head of Delegation (Hungary/ALDE), Corien Jonker (The Netherlands, EPP/CD), Marietta de Pourbaix-Lundin (Sweden, EPP/CD), Renate Wohlwend (Liechtenstein, EPP/CD), Anna Ćurdová (Czech Republic/SOC), Tadeusz Iwinskí (Poland/SOC), Indrek Saar (Estonia/SOC), , Davit Harutyunyan (Armenia/EDG), Tüğrul Türkeş (Turkey/EDG).

Appendix 3

Ukraine's presidential election meets most international commitments

KYIV, 18 January 2010 – The first round of Ukraine's presidential election was of high quality and showed significant progress over previous elections, meeting most OSCE and Council of Europe commitments, concluded the international election observation mission in a statement published today.

The observers noted that the election demonstrated respect for civil and political rights, and offered voters a genuine choice between candidates representing diverse political views. Candidates were able to campaign freely, and the campaign period was generally calm and orderly.

The legal framework remained unclear and incomplete, and was the subject of ongoing discussion. Nevertheless, the election was generally administered efficiently, and commissions mostly worked in a collegial and non-partisan manner. A pluralistic media offered voters a variety of information about candidates, although electronic media reporting was often influenced by candidates paying for news coverage.

Voting and counting on election day was assessed overwhelmingly positive by observers.

"This was a good and competitive election and very promising for the future of Ukraine's democracy. I look forward to the continuation of this positive experience in the second round of the election," said João Soares, President of the OSCE Parliamentary Assembly and Special Co-ordinator of the OSCE short-term observers.

"Ukraine has proven that it can hold a clean election, even under an incomplete and unclear election law, confirming the desire of the Ukrainian people to freely choose their leaders. However, a major challenge ahead for Ukraine's politicians is to play by the rules rather than with the rules," said Matyas Eörsi, Head of the delegation of the Council of Europe's Parliamentary Assembly.

"These elections consolidated the progress achieved by Ukraine since 2004. We were impressed with the overwhelmingly orderly process conducted in polling stations across the country on election day. Shortcomings remain, particularly with regard to the electoral legal framework and its implementation. This undermines public confidence. Still, the Ukrainian voters won these elections. They have once more demonstrated their strong commitment to freedom and democracy," said Assen Agov, Head of the delegation of the NATO Parliamentary Assembly.

"The people of Ukraine had a genuine democratic choice between a large number of candidates. Open access to information about the candidates and their programmes allowed the Ukrainian voters to make a well-founded choice. Looking back to the last presidential elections, democratic standards and mechanisms have made a great step forward and have stabilised democracy in Ukraine," said Pawel Kowal, Head of the delegation of the European Parliament.

"This election was organised overall efficiently and with respect for fundamental freedoms, despite challenges such as an incomplete and inconsistent legal framework. We commend the tireless efforts of countless election workers to ensure the smooth functioning of the electoral process," said Heidi Tagliavini, Head of the election observation mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

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