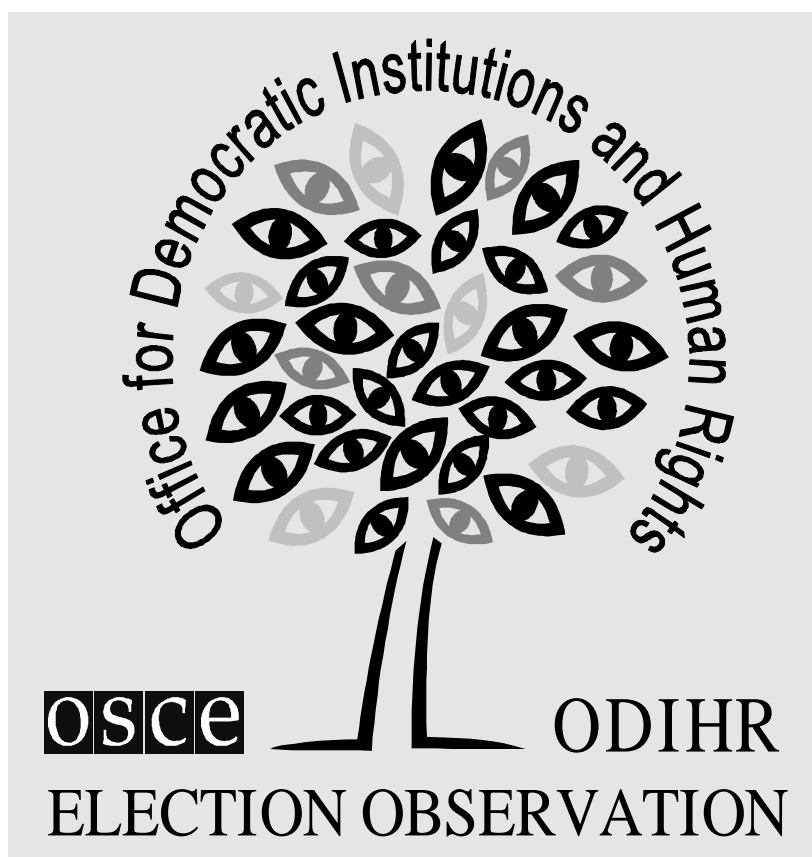




Office for Democratic Institutions and Human Rights

**UKRAINE PRESIDENTIAL ELECTIONS
31 OCTOBER AND 14 NOVEMBER 1999**

FINAL REPORT



**Warsaw
7 March 2000 Amended Version**

Table of Contents

I. EXECUTIVE SUMMARY	1
II. INTRODUCTION	2
III. THE LEGISLATIVE FRAMEWORK.....	2
A. Overview of the Legal System and Courts	2
B. The Legal Framework for Elections.....	3
IV. THE ELECTORAL ADMINISTRATION.....	5
A. Role and Authority of the Central Election Commission.....	5
B. Formation of Territorial Election Commissions	5
C. Formation of Polling Station Commissions.....	7
D. Additional Problems with the Work of Election Commissions	9
E. Training of Election Commissions.....	9
V. CANDIDATE REGISTRATION.....	10
VI. THE PRE- ELECTION CAMPAIGN.....	11
A. Campaign Violence	11
B. Campaign Finance.....	12
C. Illegal Campaigning, Defamation and Anonymous Printed Materials.....	13
D. Obstruction of Campaign Activities and Intimidation of Campaigners	15
E. Role of State Officials and Public Institutions.....	16
F. Withdrawal of Candidates and the Production of Ballot Papers.....	18
VII. THE MEDIA.....	19
A. Legal Framework and Regulations.....	19
B. Results of Monitoring of the Media	21
C. Administrative Restrictions and Harassment of Media Outlets by the State.....	22
VIII. VOTER AND CIVIC EDUCATION.....	23
IX. COMPILATION OF VOTER LISTS	24
X. POLLING DAY.....	26
A. First Round of Voting.....	26
B. Second Round of Voting.....	27
XI. THE COUNTING AND AGGREGATION.....	28
A. Aggregation of the Results, first round	29
B. Aggregation of Results, second round.....	30
XII. ADJUDICATION OF COMPLAINTS AND DISPUTES.....	31
B. Efficiency in Disputes Resolution by Election Commissions	32
C. Efficiency in Disputes Resolution by the Courts	33
XIII. CONCLUSION AND RECOMMENDATIONS.....	33
ANNEX I	36
ANNEX II	36
ANNEX III	41

UKRAINE
31 October and 14 November 1999
Presidential Elections

OSCE/ODIHR FINAL REPORT
7 March 2000 Amended Version*

I. EXECUTIVE SUMMARY

The Ukrainian Presidential Election held on 31 October and 14 November 1999 failed to meet a significant number of the OSCE election related commitments.

The Law on Elections of the President of Ukraine was adopted on 25 March 1999. Despite significant improvements in the legal framework, important drawbacks and weaknesses remain. Moreover, the selective interpretation and enforcement of legal provisions at various levels of the State structure prevented the uniform application of the law. As a result candidates were not competing on a level-playing field in the pre-election period, and the election disputes and appeal procedures generally did not provide the complainants with effective means to seek redress prior to the election.

State administration and public officials were observed campaigning for the incumbent President and against his challengers. The OSCE/ODIHR Election Observation Mission uncovered clear evidence that this campaign by State institutions was widespread, systematic and co-ordinated across the country, and provided the incumbent with a substantial and sustained advantage over his competitors.

The publicly funded electronic and print media, and private broadcasters comprehensively failed to meet their obligations to provide a balanced coverage of the campaign and equal treatment of all candidates. This was in breach of the laws of Ukraine and relevant OSCE commitments.

In the first round, observers reported that polling day procedures were carried out in a peaceful and orderly manner despite minor irregularities in very few polling stations. However, during the second round, election day procedures were not followed as closely. Observers noted instances of more serious violations such as students and hospital staff voting under the supervision of their superiors, instances of multiple voting and proxy voting, and state officials bussed around to vote more than once.

The aggregation of the votes was chaotic in places and instances of interference by State officials at this stage raised concern.

* *The Section on Aggregation of results of the first and second rounds of voting (see pages 30-31) was amended on 7 March 2000 to reflect the final and official figures provided by the CEC.*

II. INTRODUCTION

The OSCE/ODIHR established an Election Observation Mission (EOM) on 15 September 1999. The ODIHR appointed Mr. Simon Osborn (seconded by the United Kingdom) as Head of the EOM.

In addition to the core team members, 15 Long-term Observers (LTOs) from Austria, Canada, Finland, France, the Netherlands, Spain, UK, and USA were seconded to the EOM. They were supplemented by three LTOs from the UK and USA resident in Ukraine. For the first round, 270 Short-term Observers (STOs) from 26 participating States were deployed by the EOM to every region of the country on 31 October. In addition 18 parliamentarians and officials from the Parliamentary Assembly of the Council of Europe (PACE) observed the first round. A joint press statement was released by the OSCE/ODIHR EOM and PACE delegation on 1 November.

Sixteen of the STOs from five participating States remained in country between the two rounds and monitored the aggregation and verification procedures of the vote count, as well as complaints from the first round.

For the second round, 150 STOs from 18 participating States were deployed by the EOM to 16 Oblasts, the City of Kyiv and the Autonomous Republic of Crimea. They were joined by a PACE delegation of eight Parliamentarians and officials. Once again the OSCE/ODIHR EOM and the PACE delegation issued a common statement on 15 November.

III. THE LEGISLATIVE FRAMEWORK

A. Overview of the Legal System and Courts

The Constitution has the highest legal force within the legal framework of Ukraine, guarantees the rights of its citizens and defines the separation of powers between the branches of government.¹ However, the Ukrainian State had to rely on the pre-1989 legislation for the functioning of the judiciary. A transition period of five years is foreseen in Chapter XV of the 1996 Constitution.²

The laws and codes of Ukraine are the legal acts adopted by the Verkhovna Rada (Supreme Council), requiring the majority of the constitutional composition of the Parliament.³ Equivalent to national laws in force, there are twenty codes in the Ukrainian legal system. The Criminal Code, the Civil Procedure Code, and the Code on Administrative Offences are directly relevant for elections. New drafts of the Civil, Administrative and Criminal Codes as well as procedural codes are currently under consideration in Parliament.

¹ Constitution of Ukraine 1996, Article 8.

² Constitution of Ukraine, Chapter XV Transitional Provisions, Item 12. "Laws and other normative acts, adopted prior to this Constitution entering into force, are in force in the part that does not contradict the Constitution of Ukraine."

³ Articles 76 and 91 of the Constitution. The total constitutional composition is 450 MPs.

Executive power in Ukraine lies with the President and the Cabinet of Ministers, with power to issue mandatory instructions for other executive bodies.⁴ Ministries and other central bodies of the State executive power also issue instructions and regulations, after approval by the head of ministry or other body of the central executive power.⁵ Both the Verkhovna Rada of the Autonomous Republic of Crimea and local self-government bodies can pass normative legal acts within their competence.

The final decisions of the judiciary are taken by the Constitutional Court on questions of legislative conformity with the Constitution of Ukraine and by the Plenum of the Supreme Court with regard to civil, criminal, administrative and military matters. There are also three operational chambers of the Supreme Court, the Civil Chamber, which deals primarily with election-related cases, the Criminal Chamber and the Military Chamber.

Under the soviet system, the prosecutors at various levels had the power to intervene in court at almost any given phase of a case and without a clear link. The new Constitution foresees a limitation to the prosecutorial functions.⁶ However, until a new law detailing the authority granted the public prosecutors is passed, the previous provisions adopted in 1991 remain in force. In particular, the prosecutor has general supervision over the courts and the correct application of the laws. The discretion of the prosecutor to bring cases and prosecute is not well defined.⁷

B. The Legal Framework for Elections

The framework for the regulation of elections is found in:

- The relevant provisions of the Constitution of Ukraine;⁸
- The Specific laws of Ukraine on elections;⁹
- Provisions related to elections in other laws;¹⁰

⁴ For example, Article 17.1 of the Law "On elections of the President of Ukraine" provides that the payment for work performed by members of election commissions shall be carried out in accordance with the procedure established by the Cabinet of Ministers of Ukraine. Thus, the Cabinet of Ministers adopted Resolution # 991 of 7 June 1999 "On payment for work of members of Territorial and Polling Station Election Commissions for elections of the President of Ukraine".

⁵ An example of this is the "Procedure of Financial Maintenance of the Elections of the President of Ukraine" adopted jointly by the Central Election Commission, Ministry of Finance (Treasury), and the Oshchadbank (Savings bank of Ukraine).

⁶ Constitution of Ukraine, Chapter VII Procuracy, Art. 121.

⁷ See the case on the Registration of Candidates IV (3) b. In this case the Plenum of the Supreme Court decided to admit an appeal by the Prosecutor General despite the fact that following the transition period this should be beyond his authority.

⁸ Constitution of Ukraine, relevant articles are: 36, 38, 69-74, 76-77, 82-23, 85, 88, 90, 92, 103-104, 112, 138, 141, 156 and Chapter VII Transitional Provisions.

⁹ The Laws of Ukraine "On elections of the people's deputies of Ukraine", "On elections of the President of Ukraine", "On elections of the deputies of the Autonomous Republic of Crimea", "On elections of the deputies of local councils and village, settlement and city heads", "On the Central Election Commission".

¹⁰ Articles 127-129 of the Criminal Code of Ukraine (election offences), Article 186-2 of the Code of Ukraine on Administrative Offences, Chapters 29-30 of the Civil Procedure Code, Article 30 of the Law "On the National Council for TV and Radio Broadcasting" (supervision of mass media during elections), Article 5 "On freedom of conscience and religious organization" (prohibition for Churches to campaign and finance elections), etc.

- General provisions applicable to the elections (legislation on judicial procedures, local authorities, self-government, mass-media, judiciary, prosecutor, complaints of citizens, libel, etc);
- Resolutions of the Central Election Commission of methodological and practical nature; and
- Decisions of the Constitutional Court on election laws.

The current laws on elections adopted in 1997 and 1999 reflect the changes that have occurred in the legal system, primarily the adoption of the new Constitution of Ukraine in 1996. The law “On elections of the President of Ukraine”, promulgated on 25 March 1999, generally increased the accountability and clarity of the electoral process. It introduced more detailed provisions for voting, counting, the establishment of results, general responsibility for violations of election legislation and extraordinary and repeat elections.¹¹ The appointment of multi-party election commissions and the opportunity for candidates to appoint official observers¹² and other authorised representatives¹³ improved the transparency of the whole process. The powers of these commissions¹⁴ and the status of their members were more clearly defined¹⁵ and amendments to both the Administrative and Criminal Codes ensured that members of election commissions could be held responsible for violations of the law. The law also provided more detailed provisions on the filing and consideration of complaints,¹⁶ the regulation of campaign finance,¹⁷ restrictions on campaign activities,¹⁸ and provided earlier deadlines throughout for the administration of elections.

However, all too often the law did not specify any provisions for enforcement. Nor did the law provide for domestic non-partisan observers to monitor the elections, contrary to the Law “On elections of the people’s deputies of Ukraine” and OSCE commitments.

Furthermore, numerous attempts were made by the Verkhovna Rada to amend the law during the election campaign. On 8 September, the Verkhovna Rada overcame the Presidential veto and amended the legislation to enable members of election commissions to be given copies of the first report of the election results (protocols). Despite the desirability of the change, its timing was not welcome.

In conclusion, the legal framework still presents a number of shortcomings, that were evidenced further during the elections, namely:

- restriction on domestic non-partisan observers;
- inadequate definition of electoral offences;
- insufficient mechanisms for enforcement for breaches of the law by state officials, public institutions, and the mass media;
- and inadequate authority of the CEC.

¹¹ Law “On elections of the President of Ukraine”, Articles 42, 43, 46, 47 and 50.

¹² *Ibid*, Article 38.

¹³ *Ibid*, Article 37.

¹⁴ *Ibid*, Article 15.

¹⁵ *Ibid*, Article 16.

¹⁶ *Ibid*, Article 19.

¹⁷ *Ibid*, Article 35.

¹⁸ *Ibid*, Article 33.

IV. THE ELECTORAL ADMINISTRATION

A three-tiered hierarchy of election commissions administers the presidential elections. The legal provisions for the formation, powers and restrictions on the activities of election commissions are all new and far more detailed than in the previous legislation. The principle of nomination of commission members by political parties and their appointment by the relevant Rada marked noted progress over past law and practice. Unfortunately, these provisions were not fully implemented and deprived the election process of the important safeguard of true multi-party election commissions.

A. Role and Authority of the Central Election Commission

The permanent Central Election Commission (CEC) consists of 15 members, appointed by the Verkhovna Rada (National Assembly) on the basis of nominations submitted by the President. They have a six-year term of office and the Chairman, Deputy Chairman and Secretary are elected by the members of the CEC. The Constitution, the Law on the CEC and the Presidential election law govern the activities and authority of the CEC.

The principal role of the CEC in these elections is to oversee the administration and conduct of elections and provide for the realisation of the electoral rights of citizens as determined by the principles laid down in the Constitution and Laws of Ukraine. Previous OSCE/ODIHR reports recommended that the CEC should have decisive authority over the election administration.¹⁹ Unfortunately, the CEC still did not have decisive authority over the administration of elections at every level.

The greatest weakness in the authority of the CEC resided in its inability to enforce its own regulations regarding the conduct of the election campaign (see in particular sections below on campaign and media). This lacuna in the law is significant. Either the Verkhovna Rada should amend the legislation governing the powers and functions of the CEC accordingly or the powers of the Courts should be strengthened to ensure the realisation of citizens' rights.

B. Formation of Territorial Election Commissions

There are 225 Territorial Election Commissions (TECs) under the CEC, which are established no later than sixty-five days prior to polling day. The TECs administer the elections within their territorial election constituency, hear complaints regarding the conduct of the campaign and appeals on the decision, actions and omissions of lower election commissions.

TEC members are appointed by the Autonomous Republic of Crimea, Kyiv and Sevastopol City and Oblast Radas (Assemblies) following submissions from the political parties and groups of voters who have nominated a presidential candidate. The Radas are obliged to appoint up to two nominees of each candidate to the TECs

¹⁹ ODIHR Final Report on the Parliamentary Elections, 29 March 1998,

page 22 paragraph IX.

in their area (if sufficient persons have been so nominated) and each TEC must have at least 10 members. The Chairman, Deputy Chairman and Secretary must not be members of the same party.

Table 1: Allocation of TEC chairman by candidate

Candidates	Chairman	% share
Kuchma	80	35.7%
Simonenko	19	8.4%
Udovenko	19	8.4%
Tkachenko	16	7.1%
Kononov	15	6.6%
Moroz	15	6.6%
Onopenko	14	6.2%
Oliylyk	12	5.3%
Kostenko	11	4.9%
Marchuk	10	4.4%
Vitrenko	4	1.7%
Basyliuk	3	1.3%
Rzhavskiy	3	1.3%
Karmazin	2	0.8%
Haber	1	0.4%

Source: CEC Website. There was no information on the Officers of TEC 37.

Table 1 indicates the allocation of chairmanships by candidate and shows a clear disparity in the number of TECs chaired by the nominees of the incumbent President and those chaired by representatives of other candidates. Further investigation revealed that President Kuchma's representatives were often nominated to the chairmanship of TECs in which his main opponents had previously secured substantial popular support in the 1998 parliamentary elections. For example, Kuchma supporters chaired 10 of the 12 TECs in the Luhansk Oblast, in which a majority of voters voted for the Communist Party in 1998. In the western Oblast of Ivano-Frankivsk where Rukh won its highest vote in 1998, the incumbent's supporters chaired five of the six TECs. In Kharkiv Oblast, Kuchma representatives chaired nine of the 14 TECs.

Whilst the new Law required election commissions to be appointed by the elected Radas, the executive authority still maintained a significant role in the selection process. Given that members of TECs must reside or work in the constituency, executive authorities were often required to check whether nominees did so. Consequently Oblast State Administration retains considerable influence on the composition of the final list of nominees for each TEC and who is the Chair, Deputy Chair and Secretary in each.

Candidates complained to the CEC of the imbalance in the appointment of chairman and the other officers of TECs in various regions of the country. They argued that there should be a proportional allocation of these positions. Clearly the law does not

stipulate such an allocation, although one Oblast Rada did make a broadly proportional allocation (Odesa).

Given the level of suspicion among candidates, greater consideration should have been given to the perception such an imbalance in appointments would create. To avoid such suspicions in future, it is recommended that the positions of Chairman, Secretary and Deputy Chairman of TECs should be appointed by lot with the proviso that none should represent the same party, bloc or candidate.

C. Formation of Polling Station Commissions

The boundaries of each polling district were agreed 60 days prior to the day of election. Each district has a Polling Station Commission (PSC) whose members are appointed 45 days prior to polling day. The local settlement or Rayon Rada appoints members of PSCs. The relevant Rada receives nominations from parties and groups of voters who have nominated candidates, and the candidates (or their appointed representatives) themselves. The Chairman, Deputy Chairman and Secretary are appointed at the same time as the PSC and must not be nominees of the same party or candidates. As with higher level commissions the Rayon State Administration retains considerable influence on the composition of the final list of nominees for each TEC and who is the Chair, Deputy Chair and Secretary in each.

Each PSC must have at least eight members. According to the CEC, a total of 396,519 polling station members were appointed.²⁰ It is clear that not every candidate could readily call on two people from the local community to serve as PSC member in all 32,830 polling stations.

Table 2: Number and proportion of commissioners representing the various candidates.

Candidates	Number of Representatives	Number of Representatives as a %	Number ²¹ of Chair., Dep. Chair. And Sec. as a %
Kuchma	58,904	14.9%	24.0%
Moroz	48,577	12.3%	9.5%
Tkachenko	47,464	12.0%	10.0%
Symonenko	45,192	11.4%	9.4%
Kononov	41,632	10.5%	11.0%
Marchuk	39,580	10.0%	8.0%
Udoenko	34,966	8.8%	8.0%
Oliylyk	19,173	4.8%	4.5%
Kostenko	14,853	3.7%	2.5%
Vitrenko	14,110	3.6%	2.0%
Onopenko	12,132	3.1%	2.8%
Rzhavskiy	11,709	3.0%	2.5%

²⁰ Data supplied by the CEC as of 11 October 1999.

²¹ Data supplied by the CEC for 184 out of 225 TECs. This data is for both TEC and PSC representatives.

Karmazin	3,866	1.0%	0.6%
Basyliuk	3,839	0.9%	0.4%
Haber	522	0.1%	0.1%

Source: Information supplied by the CEC.

Once again, President Kuchma secured a plurality of the leading positions on PSCs across the country. Observers confirmed that the imbalance in the appointments was visible on election day in the PSCs visited. This only served to further heighten suspicions that the vote count could be manipulated.

A total of 18 official complaints over the formation and work of PSCs were copied to the OSCE/ODIHR Election Observation Mission. Of these, half (9) dealt with the formation of election commissions. Regrettably, few were adequately resolved even when a complaint was filed with a court.

For example, on 16 September a group of candidates' proxies (25) complained to the Odesa prosecutor about the Odesa City Rada's decision on the formation of PSCs in the four territorial constituencies in the City (TECs 133-136). The substance of their complaint was that some parties and candidates were given a disproportionate number of officer positions in the polling stations in the City. The prosecutor ruled, on 7 October, that the Rada's decision had been adopted in accordance with the law. However on 16 October, the proxy for presidential candidate Marchuk filed the same complaint with the Zhovtnevyi Rayon Court. The court came to a different conclusion and ruled, on October 21, that the Rada's decision had not been made in accordance with the relevant regulations and law, and recommended that the Rada adhere to them. The composition of the PSCs in the four constituencies however did not change.

More significantly, the principle of multi-party election commissions was seriously compromised in a number of regions. In Odesa, Kyiv, Poltava, Vinnytsia, Kharkiv, and Dnipropetrovsk Oblasts, observers reported that large numbers of PSC members had no affiliation to a political party and seemed unaware of which candidate they should be representing. On closer inspection, observers discovered that these members were either workers from the institution in which the polling station was housed, often chaired or supervised by their superior who acted as a representative of the Kuchma campaign. These members, it was reported, had no formal or direct link with a party but were "assigned" a party or candidate label after they had been appointed, irrespective of their own political opinions. Although the law allows local Radas to appoint people to fill places on PSCs if there have been insufficient nominations, in most of these cases there were party nominees, who had simply not been appointed.

Observers also noted that a disproportionate number of allegedly Green Party representatives were unable to recall which party had nominated them, often needing to refer to the original documentation. It should be noted that, according to official figures, the Green Party succeeded in nominating 41,632 representatives to PSCs.

To avoid allegations of manipulation in the formation of PSCs in future, it is recommended that the Chairman, Deputy Chairman, and Secretary of each PSC be chosen by lot among the nominees submitted by the political parties and candidates.

The existing requirement that they should not be representatives of the same party, bloc or candidate should be retained.

D. Additional Problems with the Work of Election Commissions

The Chairman of the CEC, Mr. Ryabetz, complained to the press that the new provisions introducing multi-party composition of election commissions resulted in an over-representation of President Kuchma nominees in TECs and PSCs, and that a number of members of PSCs had been appointed without prior knowledge.²² The CEC estimated that, as a result of this, almost 6% of the 396,519 members of PSCs resigned. Others resigned because their employer would not allow them the necessary time off from work to serve or they themselves decided to resign due to the low and delayed remuneration for the work.

As a consequence, large numbers of members did not attend meetings of the PSC thereby leaving their PSC inquorate and thus, unable to take decisions or taking decisions without the quorum in attendance.²³ The CEC therefore faced considerable problems in establishing an effective cadre of Polling Station Commissioners.²⁴

Unfortunately, the CEC's lack of direct authority over PSCs made it impossible to sanction members who did not attend the sessions of their PSC. In addition, the CEC did not have the power to determine the remuneration of members of PSCs, which as determined by the Council of Ministers. Ministers are of the view that election administration at this level should be by and large a voluntary activity.

If competent local election officials are to be appointed and retained through the whole election period, then the nominating parties must be required to gain the assent of commission members prior to their nomination. Furthermore serious consideration should be given to the question of remuneration of PSC members, and timely disbursement of funds.

E. Training of Election Commissions

Training was particularly important given the large numbers of inexperienced election officials.²⁵ In 1998, the CEC already provided training for members of election commissions, although the guidance manuals unfortunately arrived after polling day.

The CEC developed a schedule of training for all PSC members and a number of methodological guides to assist them. Copies of the relevant CEC resolutions and the law were also printed for all PSCs. Some funding for these programmes was received from a number of donors including UNDP and USAID and technical assistance was provided by the Washington-based International Foundation for Electoral Systems.

²² Press Conference in Ivano-Frankivsk Oblast, 9 October 1999.

²³ 2/3 of election commissions members must be present for it to have legal authority, Article 18 Law "On elections of the President of Ukraine".

²⁴ See Annex 1: Report of 8 October by CEC member charged with the professional preparation of polling station members, giving a breakdown of some of the problems encountered in a selection of TECs.

²⁵ The CEC estimated that almost 60% of the 396,519 members of PSCs had no previous experience of election administration.

Observers reported good attendance at training sessions for PSC members and generally noted that the training provided was well received. However, attendance at training sessions was not compulsory and a number of TECs reported that a minority of PSCs did not attend. Given the concerns noted above, the majority of questions from participants concerned finances and allowances. Members of PSCs often raised this problem with TECs after the first round when many had still not received any payment for the work undertaken.

V. CANDIDATE REGISTRATION

Candidates for President may be nominated either by political parties registered with the Ministry of Justice, or blocs of parties, or by a meeting of no less than 500 citizens with full suffrage rights, 140 days prior to polling day. Once registered with the CEC, nominees and their supporters must gather and submit signature lists with at least one million signatures (of citizens of voting age) no later than 110 days before the day of election. Of these, each candidate must have at least 30,000 signatures from each of at least two thirds of the 27 regions of Ukraine.

Of the 32 nominees who applied to the CEC for registration, 13 were unsuccessful and 19 were registered. These 19 nominees then attempted to gather the requisite number of signatures to gain accreditation. Although not present in country during this period, the OSCE/ODIHR EOM received copies of a number of official complaints alleging violence or threats to activists collecting signatures.

Eventually, 15 nominees submitted signature lists prior to the deadline on the appropriate booklets to the CEC; six submitted their documentation at the last moment – Oleksandr Filimonovych Basyliuk, Mykole Oleksandrovych Haber, Yuriy Anatoliyovych Karmazin, Vitaly Mykolayovych Kononov, Vasyl Vasyliovych Onopenko, Oleksandr Mykolayovych Rzhavskiy. The law allows the CEC only five days, after the deadline for receipt, to check the documentation submitted. Consequently, the CEC had to check a total of 8,574,860 signatures submitted by these six nominees in the time allowed. On 1 August, the CEC resolved that they had not gathered sufficient signatures and refused to register them.²⁶ The documentation of the other nine nominees was accepted earlier and the CEC registered them.

The rejected nominees then appealed the CEC decision to the Supreme Court. On 6 August, the Civil Chamber of the Supreme Court decided in favour of them arguing that the CEC's method of checking the signatures had not been applied systematically. The CEC, however, argued that the Supreme Court risked putting the election results into question, by reinstating candidates who did not meet the criteria established by law.

Based on the transitional arrangements,²⁷ the Prosecutor General was able to appeal the decision to the Plenum of the Supreme Court. On 24 September, the Plenum

²⁶ CEC resolution 147.

²⁷ Article 37 on “cassation appeal of the prosecutor” of the Law of Ukraine “On the Prokuratura”.

decided to uphold the original decision of the Civil Chamber. However, the delay in reaching a conclusion on this case marred the ability of these candidates to effectively compete in the election for the whole of September.

Clearly the period for checking signature lists is unrealistic. The CEC should be given a longer period, say 10 days after the deadline, to check signature lists and the number of signatures required should be reduced, for instance reverted to 100,000 as in 1994. Secondly, consideration might be given to the idea that candidates are required to make a limited financial deposit to be registered and that this deposit is retained by the state if the candidate fails to achieve a small proportion of the vote (to deter frivolous candidates).

VI. THE PRE- ELECTION CAMPAIGN

The candidates, their supporters and many commentators claimed that the 1999 presidential elections were critical to the direction and future of the country, with two clear alternatives facing the electorate concerning the pursuit of reforms. The campaign was further complicated by the fact that 12 of the 15 candidates were members of parliament and, as a consequence, further polarised the debate between the Presidential administration and Parliament.

The campaign period was riddled with allegations of obstruction, illegal arrests of campaigners, illegal seizure of campaign materials, the circulation of vast numbers of anonymous and defamatory materials, falsified versions of newspapers, biased media coverage and the involvement of state officials in the campaign. Allegations and instances of violence against candidates and their supporters further reduced confidence in the process and heightened tensions.

The conclusion of the OSCE/Election Observation Mission was that many of these allegations were true and that substantial breaches of the legal framework and of election-related OSCE commitments took place.

A. Campaign Violence

The 1998 ODIHR report noted that the campaign was “marred by incidents of violence”. Unfortunately, the 1999 elections were not free of such incidents.

In the early evening of Saturday 2 October, presidential candidate Natalya Mykhailivna Vitrenko and a large group of her supporters were attacked by two unknown assailants who threw grenades at the group following a campaign meeting in the Kryvyj Rig Rayon of Dnipropetrovsk Oblast. As a result, 30 people were injured, 18 of whom were taken to hospital. Mrs. Vitrenko escaped serious injury. A few hours later, local police arrested two suspects – both citizens of the Russian Federation, and held a young woman for questioning. The EOM issued a press release, strongly condemning such acts of violence and stressing that candidates and their supporters should be able to campaign free from violence or the threat of violence. In addition, the EOM called on the authorities to undertake a full and complete investigation, in accordance with internationally recognised principles of due process of law.

The Deputy Minister for Interior's comment on the case was unfortunate. During a press conference on the morning of Sunday 3 October, he said that the Ministry "knew which side was responsible politically", and seemed to prejudice the police investigations.²⁸ This comment referred to police inquiries regarding the alleged involvement of the local Moroz campaign proxy, Mr. Ivanchenko, and received wide coverage in the media. Presidential candidate Moroz in turn complained that this comment libeled him and he attempted unsuccessfully to seek a right of reply.²⁹

On Thursday 14 October, three men assaulted Mr. Vasylii Khara, a communist Member of the Verkhovna Rada, and prominent supporter of Petro Symonenko, outside his apartment in Donetsk. His driver was also attacked. Mr. Khara claimed that he had been followed during the day and that the attack was directly related to his role in Symonenko's campaign. Local police, however, were skeptical of any political involvement and ascribed the attack to "local hooligans".

In addition, the Election Observation Mission received a number of complaints that campaigners had been attacked, allegedly because of their involvement in the campaign. The Militia (police) rarely accepted this reason, labeling such incidents as "hooliganism". It was impossible for the EOM to verify whether such attacks were politically motivated. However, the frequency of these attacks was again a worrying feature of the campaign.

B. Campaign Finance

Each candidate is obliged by law to establish a personal election fund to record all donations and expenditures of the candidate's campaign. The CEC, the State Tax Administration (STA) and the National Bank of Ukraine are responsible for monitoring such accounts.³⁰ Limits are set in law on the size of a candidate's personal election fund and on the size of donations. The STA is empowered to investigate the sources of money donated, to try and keep the election free of so-called "dirty money". Although some candidates complained that these investigations were invasive, only 1.65% of donations made were rejected by the STA.

According to candidate expenditure report issued by the CEC, the majority of expenditure went to advertising in the media (71%), half of which was on television (53%). Whilst the innovation of personal election funds provided greater transparency, some candidates complained that the expenditures recorded did not match the real amount spent.

For example, a proxy of presidential candidate Kostenko complained, at the CEC meeting on 7 October, that the data released indicated that candidate Kostenko and President Kuchma had spent a similar amount on television advertising when, he alleged, the incumbent had had far more TV adverts. This case was not brought before a court, although some of the data supplied seemed to support such claims. According to the information released at that time, presidential candidate Olyinyk had only

²⁸ Press Conference from Interior Ministry shown on *UT 1* news 2 October 1999.

²⁹ Following his extradition from the Russian Federation, Mr. Ivanchenko was arrested by Ukrainian authorities on 31 December and charged on 4 January.

³⁰ Law On elections of the President of Ukraine, Article 35.

received 25 Hryvnya, even though substantial number of posters and leaflets had been distributed. Furthermore *Studio 1+1* released data that indicated that the amount spent on TV advertising on their channel had already exceeded the amount declared by various candidates.

The overall progress in terms of transparency and public accountability, gained by the establishment of personal election funds contrasted with the substantial and undeclared amounts spent by ‘third parties’ in support or against candidates. This expenditure was not accounted for, despite giving the recipients considerable advantage.

The case of Zlahoda is the most illustrative. Zlahoda is an alliance of parties, non-governmental organisations and associations committed to the “development of democracy” in Ukraine. Although the organisation was not established solely to support the re-election of incumbent President Kuchma, the majority of its activities during the pre-election campaign were designed to support him. Its campaign, principally targeted at young voters, used both television advertising and pop concerts to get their message across. Furthermore, substantial numbers of posters and handbills proclaiming “The President is for Zlahoda, Zlahoda is for the President” were distributed throughout the country. Whilst other candidates received the endorsement of various NGOs, from which they gained publicity, these groups rarely mounted such an expensive and slick campaign.³¹

Campaign finance regulations should be reviewed with a view to limiting significant third party campaign expenditure and subjecting it to the same monitoring as the personal election fund. The upper limit on expenditure by a candidate should then be increased.

C. Illegal Campaigning, Defamation and Anonymous Printed Materials

According to law, “bodies of interior affairs” must investigate any complaints regarding the distribution of anonymous material, which discredits a candidate for President”.³² The Deputy Minister of Interior reported to the CEC that it had received 141 cases of complaints regarding the publication and distribution of anonymous printed materials defaming candidates.³³ Of the 71 election-related complaints that had been investigated, the Deputy Minister reported that 23 were confirmed cases of defamatory anonymous materials. According to the Deputy Minister’s report, 10 of the 15 candidates were victims of libelous anonymous printed materials.³⁴

The amount of anonymous printed materials was unprecedented. Huge numbers of leaflets were circulated at the end of September and beginning of October, defaming candidates Marchuk, Moroz, Vitrenko, Symonenko and Tkachenko. According to the

³¹ For example, on 5 October the Kyiv based organization “Youth – the hope of Ukraine”, the NGO “ Nove Pokolillya”, “European Youth Club” and the youth organization of NRU established a coalition, with draft name “Our president – Hennadiy Udovenko”. In Crimea the Tatar’s Kurultai recommended fellow tartars to vote for Udovenko.

³² Law on Elections of the President of Ukraine, Article 33.

³³ Letter to the Chairman of Central Election Commission from Deputy Minister of Interior Shtanko, 17 November 1999.

³⁴ These were: Kuchma, Moroz, Marchuk, Tkachenko, Symonenko, Vitrenko, Kostenko, Karmazin, Udovenko and Onopenko.

leaflets, they had been published by a Kyiv based NGO called “We”. However, representatives from this organisation publicly denied any involvement. Moroz, Marchuk, Tkachenko and Vitrenko and their supporters lodged complaints with the authorities.³⁵ Despite the enormous numbers of these materials printed and circulated, no one was arrested or brought before a court prior to the first round of voting.

In contrast, the NGO named “We” produced a number of allegedly defamatory materials about the incumbent, including a mock version of the newspaper “*Facty*”. A photograph of one of the distributors was printed in the next day’s copy of “*Facty*”; the distributors were arrested and the material impounded.

In another example, an anonymous article from the parliamentary newspaper “*Holos Ukrainy*” was circulated, the content of which alleged that President Kuchma had died of alcohol abuse and that the man standing for election was his security double. A local lawyer, a Moroz proxy in Donetsk, was arrested on 1 November for allegedly circulating an unknown number of copies on the 30th and 31st October. The local Prosecutor and Investigator told OSCE/ODIHR observers that the person was a “serious criminal” and would be prosecuted, facing a possible prison sentence of up to 5 years or 2 years of labour, if found guilty.³⁶

In contrast, when falsified versions of “*Sil’s’ki Visti*”, a rural, leftwing newspaper appeared across the country, defaming presidential candidates Moroz and Tkachenko in contradiction to the usual editorial line of the paper, no remedial action was found.³⁷

To publish, print and distribute on such a large scale clearly requires substantial logistic and financial support. Many allegations were made, and some formal complaints, that copies of the three falsified versions of “*Sil’s’ki Visti*” and the anonymous leaflets and handbills defaming “opposition” candidates had been distributed by state officials. OSCE/ODIHR observers saw packets of anti-Marchuk and anti-Moroz leaflets in Kyiv with the imprint of the Social Welfare Fund on the packaging.³⁸ Observers in Kyiv, Vinnytsia, Ivano-Frankivsk, Chernihiv, Poltava, Donetsk, Kharkiv, and Luhansk Oblasts received numerous reports from parties and members of the public that leaflets had been either delivered to their door by postal workers or had been handed out in the street by members of the Militia.

In Ternopil, OSCE/ODIHR observers investigated allegations, including from TEC 163, that 350,000 copies of one of the false versions of “*Sil’s’ki Visti*” had been printed by the state owned print house “*Zbruch*”. Candidates Moroz and Marchuk’s supporters had attempted to protest outside the print house to halt distribution on 28 October. The issue had been referred to the Oblast Office of the Ministry of Interior and the Oblast Prosecutor’s office by the TEC. However by 7 November 1999, no one had been held

³⁵ OSCE/ODIHR EOM received copies of complaints lodged with CEC (4), TECs (2), Oblast Ministry of Interior (2) and by TEC 70 to CEC, Zakarpattia Oblast Prosecutor and the Prosecutor General. All made around the end of September/beginning of October 1999.

³⁶ Interview with Mr. Andrei Gennadievych Ayndynov, Public Investigator Donetsk, 8 November 1999.

³⁷ The paper claims a print run of 640,000. OSCE/ODIHR monitoring indicates that President Kuchma received 43% of coverage wholly negative or neutral whereas Moroz received 34% almost wholly positive or neutral in the month before the first round.

³⁸ The Social Welfare Fund is a private “charitable” institution established by Oleksandr Volkov MP, an “informal” advisor to President Kuchma.

in custody or been called in for questioning. The CEC Chairman informed the EOM that a criminal case had begun, although the details were unclear.³⁹

During the second round, a similar incident occurred when a false version of *Sil's'ki Kommunist* was circulated.⁴⁰ This paper supported the candidacy of Petro Symonenko in both rounds of the election. Once again, at first sight, the false version was an exact replica, with the exception of its content. Observers received copies of it and numerous complaints about its circulation in Kharkiv, Kyiv, Chernihiv, Sumy and Dnipropetrovsk Oblasts. Furthermore, local Communists in Sumy made a formal complaint to the Oblast Prosecutor's office, in which they claimed that the false paper had been printed in the local state owned printing house. The plaintiffs also alleged that neither the local Militia nor the Prosecutor had done anything to halt the production and distribution of the fake newspaper at the time.

Despite numerous complaints and the widescale distribution of much of this defamatory material and falsified versions of newspapers, almost no one was arrested and none of the material impounded.

D. Obstruction of Campaign Activities and Intimidation of Campaigners

The EOM received copies of 90 complaints from opposition candidates and activists, claiming that their ability to freely campaign was obstructed through personal and physical threats, removal of campaign material, obstruction of campaign meetings, interruption of airtime allotted to candidates and obstruction in publishing and disseminating campaign materials. In vast majority of cases, the plaintiffs alleged that state institutions and their employees were responsible.

Complaints were filed by the Moroz campaign that their campaign materials were seized and impounded in Zaporizhiya, Mykolaiv, Dnipropetrovsk, Kharkiv, and Donetsk Oblasts, and in the City of Sevastopol. Symonenko's campaigners complained that their materials had also (illegally) been seized and impounded in Donetsk. The EOM raised some of these complaints with the Ministry of Interior at both national and local levels. In all these cases, the Ministry claimed that the materials had been seized following a spot check by traffic police or as a result of a search undertaken in allegedly illegal campaign offices. In addition, the Ministry claimed that the materials seized either far outnumbered the official print run or that the relevant receipts were not available for inspection.⁴¹ The speed with which the authorities acted contrasted dramatically with their inaction over the circulation of false newspapers and anonymous leaflets defaming "opposition" candidates.

In L'viv, OSCE/ODIHR observers were called on three nights, on 15, 16 and 17 October 1999, as Militia and bailiffs attempted to evict Moroz activists from their local headquarters. The Militia eventually seized the office equipment including a computer with all membership records. The eviction resulted from a court decision over a dispute between the leaseholder and the owner – L'viv Oblast State

³⁹ Interview with M. Ryabetz, 19 November 1999.

⁴⁰ *Sil's'ki Kommunist* is a relatively small circulation (up to 500,000) rural newspaper produced by the Communist Party.

⁴¹ The Law On Elections of the President of Ukraine, Article 31 and 33, requires candidates to print the name of the printer and the size of the print run on the campaign material.

Administration. On 13 October 1999, in Kharkiv, Moroz activists were evicted from their local headquarters and their campaign materials seized by Militia, because the rental agreement on the apartment did not allow such usage.

Opposition campaigners also faced obstruction in the distribution of their materials. In accordance with the law, executive committees and Radas of local self-government bodies in many Rayons decided on places available for parties and candidates to paste up posters and other campaign material.⁴² Campaigners in the Cities of Odesa, Poltava, Donetsk, and Kharkiv complained that too few sites were available and were not in places frequented by the public. In one case, the Deputy Chair of the Odesa City Council and members of the Militia attempted to enforce the decision by threatening to arrest Udovenko campaigners because they were walking and wearing “sandwich” boards in an area of the City in which City ordinances had banned political advertising. The EOM received similar complaints in various Rayons in Vinnytsia, Khemel’nyts’kyi, Kirovohrad, Ivano-Frankivsk, L’viv and Donetsk Oblasts.

In contrast, observers reported that banners and posters urging voters to support the incumbent or with the maxims of the President were prominently displayed in almost every town and city visited. Some local authorities hung these displays to mark the visit of the incumbent candidate to their town. In other cases, it was claimed that they had been sponsored by local businesses supporting the President. These banners clearly were not subject to the same restrictions as the posters and handbills of other candidates.

Finally, observers reported incidents of opposition activists either threatened with losing their job or made redundant because of their support for an “opposition” candidate. Observers managed to verify such claims made by those threatened and those who lost their job in Zakarpattia, Sumy and Donetsk Oblasts.

E. Role of State Officials and Public Institutions

The President appoints the Heads of Oblast State Administration (OSA). They are civil servants⁴³ and as such are prohibited from campaigning.⁴⁴ The President appointed 20 of the 27 Heads of Oblast State Administration after the parliamentary elections of March 1998. Below the OSA are the Rayon State Administrations (RSA), the Heads of which are appointed by the Head of the OSA.

OSCE/ODIHR observers confirmed a number of reports regarding illegal campaign activities by senior officials in OSAs and the Heads of RSAs. In Vinnytsia, observers witnessed OSA officials handing out bundles of pro-Kuchma campaign materials to Militia for distribution. In Kharkiv, observers saw Militia handing out Kuchma

⁴² The Law on Election of the President of Ukraine requires bodies of local self-government to allocate public places and billboards for the pasting of campaign posters. Pasting of such materials is prohibited on architectural monuments or where it could endanger traffic safety (Article 31).

⁴³ Definition and activities of “Civil Servants Officials can be found in the Laws of Ukraine; Article 1 “On Civil Service” (16 December 1993), Article 2 “On the State Service”, and (in local government) Article 1 “On the Local Self Government in Ukraine”.

⁴⁴ Law on elections of the President of Ukraine, Article 33.

leaflets to the audience at a concert on 29 October. In Kerch, in the Autonomous Republic of Crimea, observers received copies of a full-page article from the Mayor urging voters to back Kuchma. In Sumy, observers confirmed that the Head of Personnel from the OSA was holding a series of meetings with RSA officials and local entrepreneurs to co-ordinate the Kuchma campaign in the Oblast. In Odesa, observers were informed that the Deputy Head of the OSA was on “sabbatical” leave, although still working from his office, so that he could organise the campaign for the President. Furthermore, the Head of the Odesa OSA was known to be holding meetings with RSA Officials to urge them to work for the incumbent President’s campaign.

In Kharkiv, Odesa and Chernihiv Oblasts, observers verified reports that the Heads of Villages and Kolkhoz had been urged to support the President’s campaign or threatened with the loss of their jobs by RSA officials. Observers verified reports that villagers in Zakarpattia, Odesa and L’viv were forced to campaign in favour of the incumbent or have their gas or electricity supplies cut. In Zhytomir and Cherkassy Oblasts, observers verified that a number of activists had lost their job for not supporting the incumbent.

Observers also witnessed or confirmed reports that the ZhEK in Poltava and Kharkiv had canvassed support for the President on the instruction of local Kuchma campaigners.⁴⁵ In Karlivka Rayon in Poltava, teachers were requested to canvass support for the President (whether they personally backed him or not). In Kharkiv, some teachers refused to campaign for the incumbent and were subsequently threatened with the loss of their jobs.

Observers also recorded many instances of medical and educational institutions and their staff being requested to campaign for the President. In Poltava Oblast, for example, observers received a copy of a letter that all teachers had to read out to parents urging them to vote for the President. A similar letter was released in Vinnytsia Oblast. In Donetsk Oblast, observers received a copy of plan of action for schools in the Kyivskiy Rayon, produced by the RSA Education Department, to campaign in favour of the incumbent.⁴⁶

Observers in Dnipropetrovsk received a plan with instructions of how medical workers in Pavlohrad were to campaign for the President in the first round. The plan also included a roster of medical workers to be used. Significantly, it also linked this campaign to an ongoing campaign to modernise the health service – *Pulse of Ukraine*. The latter had been launched as an initiative of the President earlier in the year. The All-Ukrainian Congress of Medical Workers, which was actively promoting the *Pulse of Ukraine* initiative, urged all medical workers to support the President in the elections. Ministry officials acknowledged that the Pulse campaign had in fact been

⁴⁵ The ZhEK have responsibility for buildings and public services in publicly owned housing, administration of civil status and the management and distribution of certain social welfare provisions.

⁴⁶ “Plan of Organisation of Activities aimed at Preparing and Conducting the Second Round of Presidential Elections in Educational Institutions of Kyivskiy rayon of Donetsk” stamped with seal of the Education Department and in the name of the Head of Rayon Educational Authorities.

used to garner support for the President. ⁴⁷ Observers in Poltava, Dnipropetrovsk, and Donetsk were able to verify this information.

In the immediate aftermath of the first round, the Heads of the OSA in Vinnytsia (Dmytro Volodymyrovych Dvorkis), Kirovohrad (Valerij Mykhajlovych Kalchenko) and Poltava (Oleksandr Oleksandrovych Kolesnikov) resigned. It was alleged that all three Heads of OSA had earlier signed undated letters of resignation and that the three letters had been dated immediately after the first round. Furthermore, it was alleged that their resignations were due to the relatively poor electoral performance of the incumbent President in their Oblasts. ⁴⁸ In the days following, at least eleven more Heads of RSA also resigned. In their resignation statements, some of these public officials intimated that the relatively low results for the incumbent President in the first round reflected badly on their administration. Clearly their resignations have particular significance, given the observed level of interference in the campaign by State administration.

In Poltava, observers received a copy of a telex from the Ministry of Interior to the Heads of City Rayon authorities detailing instructions on what measures should be taken by public authorities to campaign in favour of the President. ⁴⁹ The telex detailed how, when and to whom they should report their findings. This telex was the subject of a complaint from the Moroz campaign. The OSCE/ ODIHR EOM was indirectly given the telex by a local Department of Internal Affairs, not by Moroz campaigners.

It is quite clear therefore that State officials and public institutions at various levels were actively involved in the campaign, overwhelmingly in favour of the incumbent and against his opponents. Although substantial numbers of written complaints were lodged with the CEC and other election authorities, none of these bodies had the power to enforce a decision against State officials.

Interference in the election campaign by State officials, public institutions and their workforce was widespread, systematic and coordinated. These activities were in breach of Ukrainian law and OSCE commitments formulated in the 1990 Copenhagen Document.

F. Withdrawal of Candidates and the Production of Ballot Papers

Candidates could withdraw three days prior to polling day. ⁵⁰ Obviously, this did not leave sufficient time for the production and distribution of ballot papers. Consequently, the CEC issued stamps with the word “withdrawn” on it in case candidates did so. ⁵¹

⁴⁷ Interview with Minister Moskalenko, Deputy Minister of Health, 17 November 1999.

⁴⁸ Moroz won the majority of votes in both Poltava and Vinnytsia, beating President Kuchma, as did Symonenko in Kirovohrad.

⁴⁹ Copy of Telex from the Ministry of Interior, 7 November 1999.

⁵⁰ Law “On Elections of the President of Ukraine”, Article 30.

⁵¹ Four of the presidential candidates announced in Kaniv their decision to form an alliance and, to withdraw in favour of an agreed candidate. Only Oliynyk withdrew in favour of Moroz and Tkachenko in favour of Symonenko.

The law stipulates that a candidate may withdraw from the second round seven days prior to polling. Given that ballot papers must have the number of the TEC and polling district marked, printing such ballots on time for the second round was a considerable challenge. Consequently, the CEC proposed to the Verkhovna Rada an amendment to the law to relieve them from printing TEC and PSC numbers on the ballot papers, which the Rada refused to do. In the end, the CEC was able to print and distribute the required number of ballot papers with the numbering in time.

In the future it may be more sensible for second round candidates confirm in writing their willingness to stand within a shorter period of time, for instance 24 hours after the announcement of the results of the first round of voting.

VII. THE MEDIA

A. Legal Framework and Regulations

The Law “On Elections of the President” regulates the use of mass media during the pre-election campaign and stipulates that all candidates enjoy the right to participate on equal terms.⁵² In addition, the CEC adopted a complementary regulation, stating the right to an equal share of the time and space given by the state, and of equal treatment for paid advertising bought at the candidates’ expense from the personal election fund.⁵³

All candidates were offered the same amount of time for their free election broadcasts on state TV and Radio⁵⁴ (President Kuchma did not avail himself of this opportunity in the first round) and an equal amount of free advertising space in the state newspapers.⁵⁵

The television station *Ukraine Television 1 (UT 1)* was the subject of a complaint by presidential candidate Moroz. During the election campaign, a satirical television programme on *UT 1, Aktsenty*, preceded the free time broadcasts of the candidates. Presidential candidate Moroz complained that the satirical commentary for 10 minutes before and after his 10 minute broadcast on 18 October was defamatory. Candidate Moroz complained to the National Television and Radio Company and requested the right of reply, which was rejected. The CEC eventually decided in favour of Moroz and instructed *UT 1* to give him 10 minutes at the same time the following night. *UT 1* gave candidate Moroz 10 minutes during children’s programmes at 16:30 on 29 October. The CEC was powerless to enforce its own decision. The presenter argued

⁵² See also Civil Code of Ukraine, Law “On Elections of the President of Ukraine” ? 474 -XIV, 05 March 1999, Law “On the Central Election Commission”, 17 December 1997, Law “On Information” ? 2657-XII, 02 October 1992, Law “On Printed Mass Media (Press) in Ukraine” ? 2782-XII, 16 October 1992, Law “On TV and Radio Broadcasting” ? 3759-XII, 21 December 1993, Law “On Information Agencies” ? 7495-?? , 28 February 1995.

⁵³ Regulations on the order of use of mass media for the pre-election campaign during the presidential elections in 1999, Article 2.

⁵⁴ *National TV Company of Ukraine, National Radio Company of Ukraine, State TV & Radio Company “Krym”*; and the state TV & Radio Companies of each of the 24 Oblasts, and the Cities of Kyiv and Sevastopol.

⁵⁵ *Holos Ukrainy* and *Uryadovyi Kuryer*, and the state newspapers in each of the 24 Oblasts, and the Cities of Kyiv and Sevastopol .

that the show was equally offensive to all candidates. However, on the one occasion he had to comment on the incumbent's second round broadcast, he chose to attack the President's opponent.

The law and CEC regulations further defined how the media should report stories and events during the election.⁵⁶ State owned and electronic media had an obligation to provide unbiased coverage of the campaign and were prohibited from supporting or giving preference in any form to a candidate.⁵⁷

While the legal framework for the elections seemed clear, there was an important conflict between this and other legislation. Article 12 of the Law "On Television and Radio Broadcasting" requires that electronic media keep the audience informed of political developments within Ukraine. Accordingly the electronic media are obliged to give coverage to the decisions and actions of the legislature, executive and judiciary.

The executives of the electronic media argued that this article required them to cover presidential visits and activities throughout the election campaign. Conversely, the National TV and Radio Company, responsible for *UT 1* and *UR 1*, cut coverage of parliament in August arguing that it gave an unfair advantage to the 12 candidates in parliament. Furthermore, it decided not to cover the Speaker's address to the nation on Independence Day, 24 August. This became the subject of a complaint by presidential candidate Tkachenko.⁵⁸ As a result of the National TV and Radio Company's decision, parliamentary activities were not covered in the usual way, whereas the presidential activities were.

Clearly, the selective use of this argument gave the incumbent a huge advantage. It is therefore recommended that, in future, the requirements of the election law should take priority and that the Law "On Television and Radio Broadcasting" should be amended accordingly.

The National Television and Radio Broadcasting Council of Ukraine has responsibility to monitor compliance with the Laws (and other pertinent normative acts) concerning the electronic media.⁵⁹ Its members are nominated by the Verkhovna Rada and the President. This body can issue warnings, levy penalties, suspend and even revoke licenses (only at the instigation of a court decision during an election period) if an electronic media outlet transgressed the law. However, the President had not, by the time of this election, nominated his four nominees, and consequently the National Council for TV and Radio Broadcasting was inquorate and unable to make or enforce decisions.

⁵⁶ Article 9, Law "On Information", 1992 - only the rights of other citizens rights and the interests of the juridical persons, restrict the realisation of this right; and article 2, Law "On Television and Radio Broadcasting", 1993.

⁵⁷ Article 45, Regulations on the order of use of mass media for the pre-election campaign during the presidential elections in 1999, v0096359-99, 18 June 1999 and Article 33, Law "On Elections of the President of Ukraine".

⁵⁸ The Court decided that Mr. Dolganov should apologise and announce on the UT1 programme *Panorama* that it was his fault that Tkachenko's address had not been shown.

⁵⁹ Defined in the Law "On TV and Radio Broadcasting" and the Law "On the National Council of Ukraine on Television and Radio Broadcasting".

B. Results of Monitoring of the Media⁶⁰

Prime time television news is the most significant news outlet in Ukraine. Newspapers, although numerous in Ukraine, are not so widely read or trusted by voters with the exception of local Oblast ones.

The OSCE/ODIHR monitored national TV stations from 27 September through 16 November. All four channels devoted the majority of their prime time news coverage to the incumbent throughout the period, whilst his opponents received substantially less airtime. Television also gave the President's campaign overwhelmingly positive coverage whereas his opponents' campaigns received either neutral coverage or substantial negative coverage.⁶¹ ODIHR's monitoring also revealed that the national TV had a clear bias against candidates' Moroz, Marchuk, Tkachenko and Oliynyk who received higher amount of negative coverage than the other candidates. Finally, the monitoring also revealed a marked change in the coverage of these four candidates on the private TV channel STB after 11 October, following a change in the composition of the Administrative Council of STB (See Annex II On The Results of Media Monitoring).

The EOM met with senior executives of all four channels to impress upon them the content and nature of the mission's findings from the first round. In the run up to the second round, the imbalanced and biased coverage on all four channels was even worse than in the first round. *UT 1* devoted 86% of its coverage to the President, giving his challenger Petro Symonenko only 11 minutes in two weeks. The content was overwhelmingly positive for the President and negative for Symonenko. *Inter* apportioned to the President 20 of the 26 minutes of coverage of the second round, *I+I* 12 out of the 15 minutes available, and *STB* 10 of the 17 minutes coverage on prime time news. The content remained either positive or neutral when covering the incumbent and negative or neutral for his challenger.

The EOM also monitored a selection of both state owned and private channels in a number of Oblasts. This monitoring revealed once again a bias for the incumbent in both state and privately owned stations. However the amount of time devoted to covering the elections was relatively small and its electoral significance could only have been to reinforce the impact of other news outlets and sources of information.

By law, the state owned press also has the obligation to provide both balanced and neutral coverage of the election campaign. Monitoring of the two state-owned national papers, *Uradovyi Kurier* and *Holos Ukrainyi*, revealed that both failed to respect their obligations. The former was known as the newspaper of the state administration and overwhelmingly supported the incumbent President. The latter, the paper of the Verkhovna Rada, favoured candidate Tkachenko in the first round and Symonenko in the second.

The privately owned press did not face the same restrictions as the electronic media during the election. They were not, for example, obliged to be neutral in their

⁶⁰ See Annex 2 for more detailed results of the OSCE/ODIHR media monitoring.

⁶¹ Coverage was marked on a five point scale to determine the tone and nature of the coverage of each candidate and their campaign.

coverage. The EOM monitored five privately owned national newspapers – *Facty, Den, Segodna, Zerkalo Nedeli and Sil's'ki Visti* - and concluded that there was a plurality of views in the private press which by and large reflected the opinions of their owners and editors.

In conclusion the monitoring of the media by the OSCE/ODIHR Election Observation Mission revealed that neither television nor the state owned print media respected their legal obligations to provide neutral and balanced coverage during an election period and that the electronic media particularly favoured the incumbent President. The CEC did not have the power to enforce its resolutions, while the National Council for Television and Radio Broadcasting was inquorate and equally unable to enforce the legal provisions on media coverage of the election.

C. Administrative Restrictions and Harassment of Media Outlets by the State

Throughout the election period, before both the first and second round, the OSCE/ODIHR Election Observation Mission received reports and allegations of pressure on certain media outlets to provide better and greater coverage of the activities of the incumbent. These outlets complained of an unwarranted number of inspections by numerous authorities including tax, fire and safety inspectors. These accusations were strongly rebutted by the tax authorities, who claimed that tax evasion was endemic and that some media outlets used as an excuse the claim that inspections were politically motivated.⁶² The STA informed the EOM that they had decided not to undertake any further investigations into the media for the period of the election to avoid such accusations. However the STA is not the only tax inspection agency in Ukraine.

At the national level, *STB*, in particular, was singled out for attention. Since the end of May the station had been the subject of investigation from the State Tax Authorities (STA), *Ukrchastotnahlyad* the licensing inspectorate, *San Epidem* the environmental health inspectorate, the District Tax Administration, the City Tax Administration, the District Tax Militia, the KRU (the government control commission), and the State Committee for Communication which regulates frequencies. Its accounts had been frozen by the tax administration at the end of August and were only reopened in early October. Although it was impossible for the EOM to investigate all these accusations, it did seem to indicate a pattern of investigation into one media outlet by various state authorities of unwarranted proportions.

Regional private television channels also encountered similar difficulties. In the Autonomous Republic of Crimea, *Chernomorskaya TV* was the subject of an investigation due to alleged irregularities of its use of frequencies for broadcasting. The editor in chief of the station claimed that this was due to the station's popularity and unwillingness to support the incumbent. The station's use of its frequency to broadcast throughout Crimea was originally denied in October 1998 following a

⁶² The State Tax Authorities provided the Observation Mission with data of tax inspections for the preceding 18 months. These showed that there was no increase in tax inspections during the period. The STA had undertaken investigation into the media sector following a report by SOCIS/Gallup that indicated growth income in the advertising market far in excess of those declared.

decision of the frequency control authorities that *Chernomorskaya TV* would require a special license to transmit throughout the Autonomous Republic of Crimea. The station eventually was allowed to transmit throughout Crimea on 12 November 1999. The frequency control bodies told the EOM that the station's licensing agreement did not stipulate in sufficient detail which company could use which frequencies and, consequently, the station's transmissions had been restricted. No reason was given for the inordinate delay of 13 months in denying this television company the right to transmit to its full audience.

In Kharkiv, *Simon TV* was also subject to a similar number of unwarranted inspections, although the station continued to broadcast throughout the whole election period. In Nikopol Rayon of Dnipropetrovsk Oblast, *Kanal 5* did not continue broadcasting. The channel was subject of numerous tax, fire and other inspections with growing intensity throughout 1999. The station was threatened with eviction. On November 5, the technicians from electricity service cut off the power supply and in the process caused extensive damage to transmission equipment. On 10 November, Nikopol Executive officials, SBU and Militia confiscated broadcast equipment including the station's antenna, which was cut by Militia, apparently on the order of Nikopol Executive Committee. Copies of photographs and videotape of members of the militia and others confiscating equipment and cutting the cabling to the antennae were handed to the EOM. Directors of the company alleged that this action by the authorities was a result of their unwillingness to change the editorial content of the channel. Although it was impossible to prove that the cutting of antenna and confiscation of equipment was politically motivated, it was clear that the actions of the authorities did amount to a pattern of harassment and did end on the effective closure of the channel during the election period.

Allegations were also received by the EOM that independently minded press in a number of Oblasts found it difficult to print their papers, as printing houses either refused to publish them or delayed publication. For example, in Kirovohrad, four print shops refused to print copies of the privately owned paper *Vedomosti*. In Kharkiv, seven print houses refused to print "opposition" newspapers.

These inspections and restrictions on media outlets created an atmosphere of self-censorship in which editors and journalists concluded that critical comments on the incumbent's campaign would invite unwarranted impediments to the publication of their paper or broadcasting of their programmes.

VIII. VOTER AND CIVIC EDUCATION

Every polling station had a series of state funded posters with information about the candidates, which were on public display for two weeks prior to polling. Each PSC is also obliged to inform voters of the whereabouts of their polling station and delivered a poll card to every registered voter.⁶³ The CEC produced spot ads on television in the week or so before polling to inform voters of the electoral process including prohibition on bribery and lotteries. In addition, 27 video cassettes were delivered by

⁶³ Usually a small paper slip with their registration details, time and date of polling, and the description of the election.

the CEC to all regional state TV and radio companies and the same texts were broadcast on radio.

The International Foundation for Electoral Systems (IFES) together with United States Agency for International Development (USAID) and the United Nations Development Programme (UNDP) provided financial support to the CEC to publish handbooks (6 issues) for TECs and PSCs with extracts from election laws and materials explaining voting procedures. UNDP funded a number of TV adverts, including one informing voters of the role of international observers based on the content of OSCE/ODIHR Election Observation Handbook and OSCE principles.

On the NGO side, the largest contributor to voter and civic education programmes was the coalition "*Freedom of Choice '99*" which united 262 NGOs throughout Ukraine for:

- Voter mobilization - getting people of different ages and social status to vote and understand the importance of individual choice, particularly first-time voters;
- Voter education - promoting the ideas of civil society and free market economy, and explaining to citizens the mechanisms of the voting process;
- Citizen oversight - monitoring of election procedures to ensure an open and honest conduct of the electoral process.⁶⁴

In addition, the Committee of Voters of Ukraine (CVU) recruited, trained and deployed approximately 8–10,000 domestic non-partisan journalist-monitors. The new presidential election law, unlike the parliamentary election law, did not allow domestic non-partisan observers. The CVU, however, accredited their volunteers as journalists of their paper *Tochka Zoru*, since journalists have the right to observe voting and counting. The CVU also prepared public information TV spot adverts on the election process and booklets for PSCs on the electoral rights of citizens.⁶⁵

Finally, Studio *1+1* planned to run five live debates between candidates. Unfortunately, due to the illness of the presenter, only one of these debates was ever shown. This was a missed opportunity given the importance of similar debates shown during the 1994 presidential elections.

In conclusion, voters seemed well informed of their rights and responsibilities on the day of voting. However, substantial evidence indicated that voters had by the time of the election lost confidence in the electoral process with over two thirds (68%) expecting the elections to be fraudulent.⁶⁶

IX. COMPILATION OF VOTER LISTS

The CEC establishes the format for voter lists and executive committees of the relevant local self government (or an official with appropriate responsibility) prepares

⁶⁴ Members of the coalition received funding from the Election Donors Forum '99, which included Freedom House, USAID, IFES, Embassy of Netherlands, Embassy of Canada, Ukrainian Congressional Committee of America, Counterpart Creative Center, UK Know How Fund etc.

⁶⁵ Broadcast three to four times daily on three commercial channels - *UTAR, ICTV, Noviy* - and on some channels in 15 oblasts starting from 13th of October.

⁶⁶ IFES-SOCIS/Gallup poll, September 1999.

a list of eligible voters for each polling district. The latter were responsible for the authenticity and accuracy of the lists, which were handed to PSCs no later than 21 September 1999.

In a small number of exceptional cases, additional polling stations could be established no later than 27 October with the assent of the CEC. Ballot papers for these polling stations did not include the PSC number but only the TEC number. This was a cause of concern among some candidates who queried why the CEC was issuing 10% additional ballots and 3,000 ballot papers with only the TEC number. In Odesa, concerns over the distribution of ballot papers for polling stations formed in exceptional circumstances were referred to the Prosecutor General by the TECs in the City.

Ordinarily, military personnel were registered at the polling stations close to their barracks. In a very small number of cases, the CEC granted special polling stations to be formed in barracks if located some distance from a population centre. Hospitals, sanatoria, prisons, ships at sea and representative offices overseas could establish a polling station on premises.⁶⁷ In each case, the director or head of that institution was responsible for drawing up lists of eligible voters.

Voters registered to vote in hospitals, prisons and sanatoria, including their staff if they were working there on the day, must remove themselves from the list in their local polling district and get a certificate of suspension allowing them to be added to the lists of the institution. The same applied to voters travelling elsewhere in the country on the day of polling or away from home.

Two problems arose in these voter registration arrangements. The first concerned inaccuracies linked to deceased voters and population migration. The original data given to PSCs by local executive bodies was not always accurate.

On election day, observers received reports of unspecified numbers of “dead souls” on voter lists in some areas in Poltava, Dnipropetrovsk and L’viv Oblasts. In Crimea, the Deputy to the President’s representative informed observers that some polling stations were using lists based on the 1994 voter lists. The inaccuracy of the lists raised further concerns, given that not all PSCs were systematically checking identification documents before handing over ballot papers to voters.

In the future, consideration should be given for PSCs to go door-to-door to check the lists provided. This clearly has implications regarding the remuneration and training of PSC members.

The second problem was related to the opportunity for voters to register elsewhere if they had the appropriate documentation. Although this afforded voters the maximum opportunity to cast their vote, it was allegedly subject to abuse. Hospital staff in particular were placed on call and required by their superiors to transfer their polling place from the one near their residence to their workplace. In many cases, their superiors were responsible for the supervision of polling in the workplace, and at times were actually observers for the incumbent President. According to the Ministry,

⁶⁷ 92 in total.

there are 3,146 medical institutions (2,772 hospitals and 374 specialised hospitals) and 212 sanatoria.

X. POLLING DAY

A total of 270 observers from 26 participating States were deployed by the OSCE/ODIHR Observation Mission for the first round of voting on 31 October. The EOM received reports from observers on 1,013 polling stations throughout the whole country. In the second round on 14 November, the EOM deployed 150 observers from 18 participating States. These observers were deployed in 18 of the 327 regions of the country and visited a total of 707 polling stations.

A. First Round of Voting

Based on reports submitted by observers, the EOM concluded that voting was conducted correctly in almost three-quarters (74.5%) of polling stations visited. However, observers reported that not all procedures were followed meticulously.

Compared to 1998, the reported incidence of voting in the open had dropped considerably to less than one in fifteen polling stations visited (14.18%) and was rarely more than one or two voters during the time observers were present.

In a very small number of polling stations visited (3.99%), observers witnessed voters handed more than one ballot. In one case, in a polling station in the City of Odesa (TEC 135, Polling Station 2), the culprits had been caught on film by the local TV station. The militia present did not take any action nor did anyone question the PSC member who was distributing ballot papers. Whilst voters could ask for assistance when casting their vote in private if they required it, observers reported that this happened surprisingly frequently (27.14%).

Observers noted in numerous polling stations that representatives of Kolkozos and local state administration, were authorised to attend the polling station by the local PSC. Unauthorised persons were seen in less than one in ten polling stations. But in a number of cases, observers stated that they were representatives of the Office of State Security (SBU) present in the polling station without an explicit request of the election commission.

Whilst observers were satisfied that voting procedures had been adhered to in a majority of polling stations visited in the first round, a number of incidents raised concern. Students, who normally would return home at the weekend, were instructed by the Heads of their College to stay at their places of higher education on Sunday 31 October. This instruction was challenged by students at the Agricultural college in Luhansk (TEC 103/46). Following a court's decision, the school closed on 31 October, allowing students to return home where they voted at their normal place of residence. However, in many other colleges, this instruction was implemented and students had to register at the polling station nearest to or at their college.

Observers reported that in many cases, the students were voting under the supervision of professors, who had urged them over the pre-election period to vote for the

incumbent. In the Polytechnic in Odesa, the University in Kharkiv (TEC 171 Polling Station 66), throughout Vinnytsia, Chernihiv and Poltava, in various rayons of Luhansk (TEC 103 Polling Station 46 & TEC 105 Polling Station 34), observers noted that students were forced to vote. The numbers voting were noted down and their Dean or Professor called upon those who had not done so to go and vote. It should be noted that according to the Law, voting in Ukraine is voluntary.⁶⁸ In Polling Station 190 in TEC 122 in L'viv Oblast, observers reported that students were coerced to vote, and that their vote was not cast in secret. In TEC 169, polling station 20, observers recorded that 400 students voted under the watchful eye of "guards" wearing red armbands hired by the college.

Clearly the presence of senior local government staff observing the work of their employees working as PSC members could be seen to be intimidatory and open to abuse. In one case, in Zhitomir Oblast (TEC 69, PSC 69), the results of the election had been tampered with. The Symonenko representative had questioned the protocol showing 304 votes for Kuchma and 104 for Symonenko. The TEC investigated the issue and found that the protocol had been falsified and the results inverted. In the end, the revised protocol showed 304 votes for Symonenko and 104 for Kuchma. The Chairman and Secretary admitted that there was falsification of the protocol and that the results had been changed, following pressure from the Kuchma observer.⁶⁹

B. Second Round of Voting

In the second round, observers noted again that voting in the majority (75%) of polling stations visited had been conducted correctly. However, the nature of the irregularities observed in a minority of polling stations was more serious.

One of the surprising features of the second round of voting was the high turnout, exceeding that of the first round, from 70.15% in the first round to 74.87% in the second. Turnout varied across the country. The western oblasts, in particular, recorded some of the most dramatic increases in turnout – Zakarpattia Oblast 42% increase, Ivano-Frankivsk 14.9%, L'viv 12.2%, Ternopil'ska 10.3%, Chernivitsy 9.8%. Only Donetsk (20.9%), the Autonomous Republic of Crimea (10.1%) and Sevastopol (14.2%) had similar extraordinary rises in turnout. As during the first round, observers noted far higher numbers of Kuchma supporters holding the chairmanship of PSCs in the west (50%) than the rest of the country (38.78%).

During the second round, observers recorded greater incidence of voters given ballot papers by PSCs without checking their identification documents (up from 6.76% to 10.24%), particularly in rural areas and in the western parts of the country (15%). This is of particular concern, when crossed with the observation of some serious irregularities. For instance, in the rural areas of L'viv, observers noted that the signatures by the names of voters on the list for the second round did not match the signatures on the lists of the first round (PSC 114 and 149 in TEC 122). In the latter, 1,668 were registered to vote, and by 18:10 hours, 1,678 people had voted (100.5%). Whilst there, observers saw voters consistently being given more than one ballot paper. Elsewhere, in the Kryvij Rigg, observers saw state officials from RSA and the

⁶⁸ Article 1, Law On Elections of the President of Ukraine.
⁶⁹ Statement shown to observers by TEC 69.

local tax office bussed into rural areas where they voted without relevant documentation.

In Donetsk, observers received numerous reports of ballot stuffing by observers of Symonenko and *Tochka Zoru*. Although EOM observers were unable to verify these claims, it should be noted that Donetsk Oblast saw the second highest increase in turnout in the country during the second round (20.9% increase). In Odesa, observers were able to verify an allegation of ballot stuffing, where a significant number of extra ballot papers were found in the box compared to the number of signatures on the voter lists (PSC 51 in TEC 134).

Furthermore, almost all of the problems identified in the first round were replicated in the second. Almost every hospital visited by observers in the second round revealed significant breaches of procedure, and in some cases, staff voting under the watchful eye of their superiors. This was true, once again, in the polling station at the maternity hospital in TEC 221. Kyiv

In the medical institution in Kyiv City housing polling station number 63 (TEC 208), observers recorded that a member of staff was inside the booths “assisting” every single voter. The results from the station showed that Symonenko won 213 votes to Kuchma’s 38 in the first round. In the second, 189 votes were cast for Kuchma and 118 for Symonenko.

In Donetsk’s Priazovsky State Technical School, students were recommended to vote at the polling station housed in the school (Polling Station 28 in Mariupol), not at home. In Poltava, the observers reported that the Headmaster who had issued statements and letters to parents and staff to vote for the incumbent, was an observer at the local polling station (TEC 144, Polling Station 8). In Polling Station 25 of TEC 145, observers saw teachers noting down which students had voted. In Vannysia, observers noted once again students voting under the supervision of their teachers and nothing had changed in polling station 190 in TEC 122 as students were once again coerced to vote and monitored by the Director of the School.

Observers also noted a higher preponderance of instances where state officials were actively involved in monitoring or even directing the vote. In Kyiv, observers recorded that the Chairman of polling station 16 (Hospital) in TEC 96 was receiving instructions from the local mayor during the day. In Kyiv City, observers noted the presence of RSA officials in Polling Station 57 of TEC 216 and the unauthorised presence of fire and military personnel in polling stations in TEC 217. Finally, in Poltava, observers met with the Head of the ZhEK who had told them some weeks earlier that his staff had undertaken a canvass of local residents on behalf of the Kuchma campaign. This person was an observer for the President in Polling Station 14 in TEC 145.

XI. THE COUNTING AND AGGREGATION

Counting takes place after the close of polls (20:00) in each of the 32,830 polling stations. Observers reported that the procedures for the counting of votes were not all correctly followed: ballot boxes opened before invalidating unused ballot papers,

counting was done far from the view of observers (both domestic and international) and not always announced. In the second round, observers noted a tendency to rush the count.

During the night, each TEC would check the results from each polling district and record them on the automated system – *Election '99*. The data supplied to the CEC through the automated system was announced throughout the night of the election. This preliminary data did not form the basis for the final legal results, which could only be announced once the CEC had received and checked each TEC protocol.

A. Aggregation of the Results, first round

The aggregation of the results was observed in 73 (32.4%) of the 225 TECs. The process of verifying almost 33,000 results was extremely time-consuming and lasted throughout the night and in some circumstances, throughout the whole of the following day. Observers reported that the verification was relatively transparent during the earlier part of the night. However, as time passed, and as both PSC and TEC members became exhausted, the process was more chaotic. Often PSC members had to wait for hours in either crowded corridors or even outside in the cold, leading to a tense situation. In TEC 97, PSC members became angry and disrupted proceedings. At TEC 13 in Vinnytsia Oblast, PSC members stormed the building housing the TEC after hours of waiting outside the building.

Many TECs suffered from poor accommodation and amenities that often hampered the speed in which results could be processed. TEC 134 in Odesa, for example, suffered from a power cut and had to continue without lighting. The communication system broke down in TEC 143, thereby halting the flow of information to the CEC. In others, the TEC had to split into groups and work in different rooms (TECs 136, 199 and 205) thereby reducing the transparency of the process.

Observers reported that 33 of the 73 TECs visited made every effort to address fairly disputed results and complaints. If a PSC result needed amendments or correction because it had mathematical errors, observers reported that these TECs would request the PSCs to return to their district. Unfortunately, not all TECs were as scrupulous in following procedures. In TECs 10, 13, 14, 71, 94, 134, 136, 147, and 149, the PSC members corrected the disputed results there and then, without the permission of other members of the PSC who were not present. In one case (TEC 10), observers noted that four recounts were taking place in the room where the TEC was checking results.

Members of TEC 135 in the City of Odesa were initially unable to agree on the results submitted by 10 polling stations in their territorial constituency (PSCs 5, 8, 14, 16, 19, 23, 34, 39, 70 and 73). Consequently, the TEC submitted two protocols, one with the results from 92 polling districts, the second with the disputed results from the remaining 10. Upon request from the CEC, the TEC eventually submitted a third protocol after checking and resolving the problems. However, the Verkhovna Rada's ad hoc committee, which was undertaking its own parallel count, did not receive a copy of the final protocol and claimed that the result from this TEC was incorrect (approximately 10,000 votes were unaccounted for in the original protocols). TEC 71 also could not accept the results from seven PSCs and submitted a complaint to the CEC for adjudication.

Notwithstanding these problems, observers reported that the polling station results were recorded accurately. The EOM conducted its own parallel vote tabulation, collecting results of 3,314 polling stations. The aggregation of these results matched those announced by the CEC, within the margin or error for this sample.

However, the EOM was most concerned to discover that PSC results were being examined prior to their arrival at the TEC, as opposed to the direct reporting foreseen by law. In TEC 133, observers reported that the results were first checked by RSA officials and, in another case (TEC 190), by candidate Kuchma's campaigners, before being passed to the TEC. This is clearly in breach of CEC regulations and raised suspicion of interference in the recording of results before they reached the TECs.

The CEC announced the results of the first round on 4 November. President Kuchma had won a plurality of the votes but had not secured the support of over 50% of those participating and consequently a second round run off was scheduled.

Total Number of Electors	37,498,630	100%
Number of voters who received ballot papers	26,318,872	70.19%
Number of voters who participated	26,305,198	70.15%
Number of void ballot Papers	1,038,749	3.95%
Number of voters who did not support any candidate	477,019	1.81%
Kuchma	9,598,672	36.49%
Symonenko	5,849,077	22.24%
Moroz	2,969,896	11.29%
Vitrenko	2,886,972	10.97%
Marchuk	2,138,356	8.13%
Kostenko	570,623	2.17%
Udovenko	319,778	1.22%
Onopenko	124,040	0.47%
Rzhavsky	96,515	0.37%
Karmazin	90,793	0.35%
Kononov	76,832	0.29%
Basyliuk	36,012	0.14%
Haber	31,829	0.12%

B. Aggregation of Results, second round

In the second round, observers witnessed the aggregation of the results in 61 of the 225 TECs (27.1%) and collated the results from 4,309 polling stations. The second round results were obviously quicker and easier to aggregate than during the first, as there were only two candidates in the race.

In general, observers were once again satisfied with the process in the majority of TECs visited and in two TECs (89 and 158), they recorded that the process had improved over the previous round. However, in couple of cases, the process seemed to have deteriorated, including in TEC 30 and TEC 36 where observers reported the

presence and interference of RSA officials in the examination and recording of results.

Despite the general level of satisfaction with the aggregation of the results in the second round, observers reported some of the same problems – poor facilities, chaos in some TECs, and failure to adhere to procedures. Observers also noted once again that PSCs were amending their protocols in the TEC rather than getting all members of the PSC to prepare and sign new versions. However, these changes were often only minor and had no affect on the outcome of the result recorded. Complaints were usually dealt with efficiently by TECs, clearly wishing to complete the process speedily.

However, the mission was particularly concerned to hear that RSA officials were once again observed interfering in the count process in Crimea, Donetsk and parts of Odesa Oblast. For example, in Balta, all PSC members were transported first to the Rayon Administration building where they were met by the Chairman of the local Rada and Kuchma representatives, before being transported to the TEC. In Odesa, observers acquired a written plan for the Zhevtnovy RSA, detailing a systematic reporting structure for PSCs to the RSA, before handing results to TEC 135. A state official working in the RSA confirmed the plan to the observers. The TEC submitted a complaint to the CEC following the first round, stating that the RSA had hindered their work. No action was taken to halt the interference of RSA officials.

In the future, RSA and OSA officials must be given clear guidance from the CEC over their legitimate role in the election process. However, unless the CEC is given powers of enforcement, its decisions and regulations can be ignored with impunity.

Results of the Second Round, 14 November 1999		
Number of voters who participated	28,212,484	74.87%
Number of voters who did not support any candidate	970,181	3.44%
Kuchma	15,870,722	56.25%
Symonenko	10,655,420	37.80%

XII. ADJUDICATION OF COMPLAINTS AND DISPUTES

The collection of information on election disputes and the systematic processing of this information served to indicate whether the elections were held within a solid rule of law framework. Further analysis of the dispute resolution processes available to candidates and voters during elections provided insight into the efficiency of the legal system. To facilitate this task, the EOM collected information on election related complaints. The total number of complaints brought to the attention of the EOM was 281. Of these, 27 cases were filed with the courts at various levels, 192 were addressed to election commissions (of which 144 were addressed to the CEC), and 62 with other institutions, including 28 with public prosecutors.

Plaintiffs were primarily the presidential candidates, their chiefs of headquarters, their proxies, and representatives from political parties. Among the 15 candidates only two, Olexander Moroz and Yevhen Marchuk, systematically complained about various violations.

The complaints can be arranged in six categories:

- violations in registration of the candidates;
- violations in formation and functioning of election commissions;
- illegal campaigning;
- campaign obstruction;
- libel; and
- undue influence which included election day complaints.

A. ODIHR Election Dispute Resolution Project

The Courts had encountered considerable problems following the parliamentary elections of 1998 and the Kyiv Mayoral election of 1999. As a follow-up to the 1998 elections, the OSCE/ODIHR implemented a project aimed at improving the election dispute resolution system and training judges and elections officials on the issue. ⁷⁰

The project consisted of a fact-finding mission and of detailed recommendations for streamlining the legal provisions regulating election dispute resolution in Ukraine and clarifying the respective competencies of election commissions and the courts, to avoid parallel and contradictory outcomes of election-related complaints (phase 1). Then, a seminar was held in Kyiv, in conjunction with the Supreme Court and the CEC to train the practitioners, local judges and election officials alike (phase 2). ⁷¹ The third phase was designed to assess the performance of the mechanisms for election dispute resolution and performance of the judicial system, in connection with the Presidential election and in conjunction with the EOM (phase 3). ⁷²

In the run up to the presidential elections, IFES replicated the training component of the programme, by holding regional seminars in number of cities throughout the country.

B. Efficiency in Disputes Resolution by Election Commissions

During the two rounds of voting, a total of 192 complaints were filed with election commissions of all levels, including 144 with the Central Election Commission. Among the complaints, (according to information available at the time of the EOM's departure from Ukraine), only 18 were decided and four enforced.

Election commissions operated as quasi-judicial bodies with the right to resolve election disputes. However, no mechanism was foreseen in the law to enforce the decisions taken by election commissions, thereby limiting their efficiency. The ^{TECs} can only state the existence of violations and for instance order the relevant state mass

⁷⁰ ODIHR Report on Election Dispute Resolution in Ukraine (phase 1), 15 November 1998.

⁷¹ ODIHR Report on Election Dispute Resolution in Ukraine (phase 2) following the seminar in Kyiv held on 23-24 June 1999.

⁷² Annex 3 and attached ODIHR Report on Election Dispute Resolution in Ukraine (phase 3).

media to publish the decision, but without providing effective means of redress. In addition, as most complaints were not on the decisions of lower election commissions but on the actions and decisions of state institutions, mass media and state officials, the Central Election Commission had no real tool to remedy these violations.

In turn, the CEC forwarded over 140 complaints to the Ministry of Interior for further investigation. On 17 November, the Ministry reported that only 71 of these cases had been investigated and only a very small number had been passed to the Prosecutor's Office.

C. Efficiency in Disputes Resolution by the Courts

The number of complaints lodged with courts was far smaller (27) than those lodged with election commissions, but resulted in decisions and enforcement. Clearly, this forum for adjudication was far more efficient in the resolution of disputes than elsewhere. However, the relatively small number of complaints brought before the courts seemed to indicate unwillingness on the part of plaintiffs to file cases.

This can

be explained by the relatively high cost and poor capacity of the legal profession, the availability of suitable lawyers for plaintiffs, and a wariness based on past experience of the judiciary.

However, the Law did not allow the Courts to be used if a candidate wished to challenge the result of the elections, as confirmed by the Supreme Court on 14 November. This provision thus leaves citizens without the remedy to challenge the results of presidential elections, even if there is substantial evidence of electoral fraud which could have affected the outcome of an election.

fraud

XIII. CONCLUSION AND RECOMMENDATIONS

Notwithstanding the recent improvement in the electoral legislation, the legal framework and administrative regulations failed to provide a fair playing field for all candidates. Furthermore, the widespread, systematic, and co-ordinated campaign by state institutions at all levels to unduly influence voters to support the incumbent President in violation of the electoral laws of Ukraine and OSCE commitments was unacceptable. There can be no doubt that the coercion of citizens by the State to campaign and vote for a candidate has no place in a democratic society. These shortcomings should be addressed prior to future elections.

The OSCE/ODIHR stands ready to assist the authorities of Ukraine in implementing the following recommendations:

1. The CEC must be given decisive authority over the election administration, power to enforce decisions and to apply sanctions;
2. The law should define electoral offences in greater detail, and clarify the body responsible for taking decisions and the body responsible for implementing, monitoring and enforcing legal provisions and CEC decisions.

3. The articles of law prohibiting public officials, state institutions (whether partially or wholly owned by the state) and their staff from campaigning either for or against a candidate or their policies should be reinforced and upheld.
4. Complaints concerning abuse of office by state officials should be investigated and adjudicated upon promptly, and plaintiffs should be informed in writing of the progress made.
5. Consideration should be given to the training of prosecutors and their investigators in the application of election laws and related regulations;
6. The law should regulate “third party” funding; an upper limit on such funding should be fixed and the sources of donations should be monitored by the CEC, along with the electoral funds of all the candidates.
7. The Chairman, Deputy Chairman and Secretary of TECs and PSCs should be appointed by the drawing of lots by the Chairman of the relevant Rada, among the nominees selected by parties and candidates (the requirement prohibiting representatives of the same candidate or party or bloc of parties to hold more than one position should be maintained);
8. Candidates should be required to submit a smaller number of signatures of citizens in support of a candidacy (for instance, no more than 100,000); consideration might be given to requiring in addition a reasonable financial deposit which they forfeit if they fail to gain a minimum percentage of the votes cast;
9. The CEC should have at least 10 days to examine the lists submitted, and the procedure for checking the lists should be clarified and written in law;
10. The President should appoint the remaining four members of the National Council for TV and Radio Broadcasting, thereby allowing it to become operational;
11. The regulations requiring the State and electronic media to be impartial during an election period and to provide balanced coverage should be more clearly defined and added to the law;
12. The Law on Television and Radio Broadcasting should be amended to ensure that the requirements of the election laws take precedence during the period of an election and in the period pending the campaign;
13. The official campaign period should be defined in the law, and the provisions governing media coverage of elections should apply also during the period for the collection of signatures.
14. All members of TECs and PSCs should receive reasonable and timely remuneration for their work;
15. Voter lists should be updated and maintained in a more consistent and accurate manner. The law should set deadlines for inclusion in and deletion from the voter lists. If the practice of door-to-door canvassing by PSCs is retained, such checks

should be undertaken in a systematic manner, and by at least three members, none of whom should be from the same party. PSC members should then be remunerated adequately for this work.

16. Only those persons who, by law, may be accredited by a PSC and TEC prior to polling day, should be allowed to attend the PSC.
17. The regulations and guidance on recounts by PSCs and on amending PSC protocols should be more clearly defined by law.
18. In the event of a second round, candidates should be required to confirm promptly their intention to stand (for example, no later than 24 hours after the declaration of a second round) and should not be allowed to withdraw their candidacy thereafter.
19. Subjects of the election campaign should have the right to challenge the results of a presidential election in the Supreme Court within a reasonable time before the winner is duly installed in office.

ANNEX I

Summary of CEC member Spivak's report on PSC and TEC members to the CEC on 8 October 1999:

- No. 202 (Chernivtsi Oblast): 32 members had not attended sessions of their PSCs. A further 100 members had withdrawn and at least three PSCs without quorum
- No. 212 (City of Kyiv): 40 nominees lived outside the constituency (and were therefore ineligible).
- No. 102 (Oleksandriya, Kirovohradska oblast.): More than 50 appointees asked to be released of their membership after the first session of the PSC.
- No. 223 (City of Kyiv): presidential candidate Marchuk's nominees lived outside the constituency. A further 27 nominees of various candidates could not be contacted.
- No. 205 (Khotyn, Chernivtsi oblast): 1027 members out of a total of 1436 were unable to take part in the work of the 136 PSCs in the constituency.
- No. 206 (Chernihiv city): 30 persons appointed as commission members were, according to Mr Spivak, wanted by the police.
- 500 nominees had requested to withdraw from the PSCs in the 10 constituencies in the Autonomous Republic of the Crimea.

ANNEX II - Results of the OSCE/ODIHR Media Monitoring

The OSCE/ODIHR EOM monitored all four national television channels prime time news, seven "national" newspapers⁷³ and both state and privately owned Oblast TV stations and press in 5 regions of the country.⁷⁴ Regional media were chosen on the basis of those with the largest readership/audience throughout the Oblast.

Electronic Media

UT 1 is the state broadcaster owned by the National Television and Radio Company (which also owns *UR 1*). *Inter* and *Studio 1+1* are both private channels which broadcast on frequencies owned by the National Television and Radio Broadcasting Company. *STB* is the fourth channel and is also privately owned. None of these companies enjoys an overwhelming market share. *Inter* has the largest audience and is often characterised by the amount of Russian language broadcasting, then *1+1* which prides itself on being a primarily Ukrainian language broadcaster, then *UT 1*, followed by *STB*. The latter has by far the smallest audience, but was considered by some commentators as having more influence than its audience figures would suggest. Much newspaper coverage and speculation is given over to who owns what in the Ukrainian media market, however significant shares in all the private media companies rest in the hands of very few owners, most of whom were enthusiastic supporters of the President.

⁷³ Although there are numerous so-called national newspapers, very few are circulated outside the main cities and the largest, *Facty*, sells just under 2 million copies.

⁷⁴ L'viv, Odesa, Kharkiv, Dnipropetrovsk Oblasts and the Autonomous Republic of Crimea.

Television is regulated by a bewildering number of bodies – frequency control regulators, the State Committee on Information (previously the Ministry of Information), and licensing bodies. None of whom come under the control of one body but are answerable in most cases to the appointing authority (usually the Government or President).

UT 1's coverage of the election stood out in that it gave the most bias in favour of the incumbent and against his opponents. Furthermore the nature of some of the news provided was little more than propaganda denigrating the so-called left wing candidates. One particular item on prime time news interspersed archive footage of labour camps, war, nuclear explosions, clips and images of leaders Soviet Union, and mutilation with clips of presidential candidates Symonenko, Moroz, and Tkachenko.⁷⁵ The item bore no relation to any of the day's events and was purely aimed to influence voters against those candidates. In another news item, clips of presidential candidates Vitrenko, Symonenko, Moroz, Tkachenko, Marchuk and Oliynyk were interspersed with clips from cartoons and films again with aim of dissuading voters from supporting them.⁷⁶

In the first round *UT 1* devoted just over half (50.93%) its election related coverage on prime time news to the incumbent. By comparison Tkachenko received 16.7% and Moroz just over one tenth (10.27%). Symonenko, who was to win second place in the first round received less than 4% (3.24%) of *UT 1*'s prime time news coverage. The *UT 1*'s coverage of the incumbent was almost overwhelmingly positive (75%) or neutral. In comparison over three quarters (77%) of coverage of Moroz was negative, with Marchuk it was less (69%), Tkachenko 62%, Oliynyk 61%. A quarter of *UT 1*'s coverage of Vitrenko and Symonenko was negative. Although the rest of the candidates received broadly neutral coverage on *UT 1*'s prime time news the amount of time devoted to them was extremely small.⁷⁷

Inter, the most popular channel, was almost equally biased in its coverage. The channel devoted just under half (48.5%) of its coverage on prime time news of the first round of the elections to incumbent President Kuchma. Once again this coverage was overwhelmingly positive (73%) with only third of its coverage to him being neutral (37%) in its content. The rest of the *Inter*'s news of the election was split between the 14 other candidates. The amount of time apportioned to these 14 candidates ranged from 12.5% to Tkachenko to 0.49% to Bazyluk. Their coverage was rarely positive, although often neutral. However it was noticeable that *Inter*'s coverage of Moroz, Marchuk, Tkachenko and Oliynyk, the so-called Kaniv 4, was more negative than any other "opposition" candidates, even though 26% of coverage of Udovenko and Kostenko was negative.⁷⁸

Studio 1+1's coverage was still biased towards the incumbent but less than either *UT 1* or *Inter*. They dedicated just over one third (34%) of their coverage to the President and his campaign in the first round. Other candidates, although unable to secure the same level of coverage, did get a fairer share. Tkachenko was apportioned 17.26% of the coverage, Moroz 12%, Marchuk just under a tenth (9.94%) and Oliynyk just over

⁷⁵ *UTI News*, October, 1999.

⁷⁶ *UT 1 News*, October 1999.

⁷⁷ 4 minutes 28 for Kostenko, Rzhavskiyi 1 minute 14, the rest less than one minute each over 4 weeks.

⁷⁸ Negative coverage of Moroz 45%, Marchuk 39%, Tkachenko 37% and Oliynyk 50%.

8% of *I+I*'s prime time news. *I+I*'s news team did not dedicate as much time to the 10 other candidates who between appeared in less than a fifth of *I+I*'s news during the period of monitoring. However the content of this news remained substantially biased. Coverage of the incumbent's campaign was generally positive (50% of content) during the first round. Almost all the other candidates received broadly neutral coverage with the exception of Moroz, Marchuk, Tkachenko, Oliynyk and Kostenko. *I+I* gave far more negative coverage of these candidates and noticeably more than the rest. For example, a just over one third (35%) of the coverage of presidential candidate Moroz's campaign was negative, and just under two thirds (60%) was neutral.

STB, the smallest of the privately owned national TV channels, was more balanced in its coverage than the rest. Even this channel devoted more time to the incumbent (23%), the content of which was a little more positive than for other candidates. Some of the other candidates did get a much fairer share of the news coverage than they received in the other 3 national channels.⁷⁹ However Petro Symonenko, who came second on 31 October, received less than 1% of the coverage and fourth placed candidate, Natalya Vitrenko received less than 5%.

The ODIHR observation mission noticed, however, a dramatic change in *STB*'s coverage of the election after 10 October. The mission therefore analysed the coverage of all four channels both before and after this date to see if there was a pattern. This analysis indicated that the so-called Kaniv 4 received a larger proportion of news time on all four channels than they had previously.⁸⁰

Prior to this date *STB*'s coverage of all the candidates was almost uniformly neutral, although the coverage of the President had a more positive content (40%). From 11 to 29 October the station became more biased. The channel devoted less time to the President (17%) but it became more positive in content (up from 42% to 54%) and markedly negative for Marchuk (50%), Moroz (43%), Tkachenko (46%) and Oliynyk (57%).

At the beginning of October a former media advisor from the presidential administration joined the Administrative Council of *STB* as a consultant to the station.⁸¹ He confirmed to the EOM his role as an advisor to the news and current affairs teams and consultant to the station on relations with certain state institutions.⁸² However, *STB* staff informed the EOM that his role was to censor news output from the station. Although he denied these allegations, the output of the station from the time of his appointment clearly indicates a dramatic change away from the more balanced approach it previously had to greater bias.

The OSCE/ODIHR EOM also monitored a selection a both state owned and private channels in a number of Oblasts. The monitoring of which revealed once again a bias to the incumbent in both state and privately owned stations. However the amount of

⁷⁹ Tkachenko 19%, Moroz 16%, Marchuk 15%, Oliynyk 9%.

⁸⁰ Both *Inter* and *I+I* increased coverage of these candidates although the content was substantially more negative. Once again, *I+I*'s coverage shift was less pronounced. *UT 1*, although giving more time, maintained their extremely high level of negative coverage.

⁸¹ Interview in *Facts*, 3 November 1999.

⁸² Interview on 4 November 1999.

time devoted to covering the elections was relatively small and although there was bias the significance of it could only have been to reinforce the impact of other news outlets and sources of information.

Print Media

The written press did not face the same restrictions as the electronic media during the election. They were not, for example, obliged to be neutral in their coverage. Consequently there was a plurality of views in the written press which by and large reflected the opinions of their owners and editors. The mission monitored 5 privately owned national newspapers – *Facty*, *Den*, *Segodna*, *Zerkalo Nedeli* and *Sil's'ki Visti*.

Facty is the largest selling newspaper in the country with an estimated readership of 2 million. Monitoring confirmed its open support for the President and opposition to the “left wing” candidates. *Segodna* was equally emphatic in its support for the incumbent. *Den* clearly backed presidential candidate Marchuk in the first round (23.5% coverage of which 68% was positive) and opposed the re-election of incumbent President Kuchma. However, following Even Marchuk’s announcement that he would support President Kuchma in the second round and following his appointment as head of the National Security Council, the paper switched its support and called on its readers to re-elect President Kuchma. *Sil's'ki Visti*, a rural paper, put its support behind presidential candidate Moroz in the first round, and Petro Symonenko in the second.

Segodna was equally emphatic in its support for the incumbent. This paper devoted almost half its coverage to the President’s campaign (46%) and was almost universally positive about it (66% positive coverage). In line with most media outlets that supported the President it was scathing of Moroz and Tkachenko who received 7% and 13% of the space in the paper respectively. Coverage of both these candidates was substantially negative (Tkachenko 66% and Moroz 42%). Interestingly the paper was less critical of Natalya Vitrenko who they devoted 15% of the space in the paper almost all of which was neutral (71%).

Den clearly backed presidential candidate Marchuk in the first round (23.5% coverage of which 68% was positive) and opposed the re-election of incumbent President Kuchma. In the first round the paper devoted over half (56%) of its coverage to President Kuchma three quarters of which was extremely negative. The paper continued to devote more space to President Kuchma (82%) prior to the second round and continued to attack him (48% negative). A few days prior to second round following Even Marchuk’s announcement that he would support the President and his appointment as head of the National Security Council the paper switched its support and called on its readers to re-elect President Kuchma.

As has already been noted, *Sil's'ki Visti*, a rural paper, put its support behind presidential candidate Moroz. The paper devoted a third (34%) of its coverage to him, three quarters (74%) of which was positive. In contrast the paper dedicated 44% of its coverage of the election to President Kuchma, 85% of which was negative.

Although this plurality of views should be welcomed, what became clear in the period of monitoring was that these papers rarely restricted their views to just their opinion

columns and the paper's news coverage also reflected the opinion of the paper. In contrast the weekly paper, *Zerkalo Nedeli*, offered its smaller readership more balanced reporting with less opinion. This paper dedicated 45% of its space to the Kuchma campaign but its content remained remarkably balanced (21% positive, 48% neutral and 31% negative). This policy was followed across the board. Three quarters (77%) of the coverage of the Symonanko campaign was neutral, as was 65% of Natalya Vitrenko's, and over half (57%) of the coverage of Moroz's campaign.

In the second round these newspapers maintained their editorial policies, with the exception of *Den* which switched its support to President Kuchma and *Sil's'ki Visti* which unsurprisingly backed Petro Symonenko.

The state owned press, in contrast, does have an obligation to be neutral. Monitoring of these papers revealed that they failed to respect the legal obligations on them. There are two state-owned national papers, *Uradovyi Kurier* and *Holos Ukrainyi*. The former was known as the newspaper of the state administration, the latter the paper of the Verkhovna Rada. Both papers were subject to the same stipulations and legal requirements to provide both balanced and neutral coverage of the election campaign. As the papers of their respective institutions they could and did argue that they had an obligation to provide information about them and their high officials. Nevertheless both President Kuchma and parliamentary Chairman Tkachenko were both subjects of the election campaign.

Holos Ukrainyi devoted over a third (34.7%) of its coverage to the President's campaign and just under a third (29.8%) of its coverage to the Chairman of the Verkhovna Rada. Just over 10% of news was dedicated to former Chairman Moroz, 4.9% to Natalya Vitrenko, 3.6% to Even Marchuk leaving all the rest with less than 3% of the coverage each. Despite the larger coverage afforded the to the President, *Holos Ukrainyi's* coverage of him and his campaign was almost uniformly negative (70%). Whereas Chairman Tkachenko's coverage was overwhelmingly positive (60%).

In the second round the paper dedicated even more coverage to the President, affording him two thirds of its election news. While on the contrary presidential candidate Petro Symonenko, and leader of the largest parliamentary party, received one third of the coverage. Once again the coverage of the President was substantially negative in content (47%). *Holos Ukrainyi's* coverage of Petro Symonenko although significantly positive in content (46%) was not have as positive of his second round campaign as the coverage of Chairman Tkachenko campaign in the first.

Uradovyi Kurier devoted 79.8% of its space to the President in the first round and 92.7% in the run up to the second round. This coverage was overwhelmingly positive in both rounds⁸³. The amount news space devoted to all the other candidates was miniscule and almost wholly negative in content.

In conclusion the monitoring of the media by the OSCE/ODIHR EOM revealed that neither television nor the state owned media respected their obligations in law and

⁸³ Content of coverage of the President was 71% positive in the lead up to round 1 and equally positive at 73% in round 2.

CEC regulations to provide neutral and balanced coverage. Furthermore this coverage was substantially biased towards the incumbent both in terms of the division of time devoted to candidates and the content of it.

The CEC, although responsible for the conduct of the election campaign and drawing up resolutions for the media, did not, in law, have the power to enforce its own resolutions. The only body that could have done so was the National Council for Television and Radio Broadcasting, which complained and accused various media of bias, but because it was inquorate was unable to pass any decisions or enforce any sanctions.

ANNEX III - Election Dispute Resolution

The collection of information on election disputes and the systematic processing of this information served to indicate whether the elections were held within a solid rule of law framework. Further analysis of the dispute resolution processes available to candidates and voters during elections provided insight into the efficiency of the legal system. To facilitate this task, the ODIHR Observation Mission collected information on the election related complaints with the dual aim of:

- categorising and organising the information received on election related complaints filed with either courts, election commissions, or other state institutions;
- tracing complaints through to a resolution (or lack thereof) by the relevant state body (i.e. courts, election commissions, prosecutorial offices or ministries).

The dual approach was intended to be complementary and served to facilitate the analysis of election dispute trends. Given the fact that complaints abound and vary during elections, registration in the database of complaints was limited to those for which documentary evidence existed. In many cases the complaint document received by the EOM was a copy of the allegation filed with an institution.

Graphs

The following graphs summarise the complaints brought to the attention of the EOM and were devised to readily indicate the categories in which complaints were concentrated.

Categories

Registration of Candidates:

alleged violations during the collection of signatures in support of candidates and the checking of the signature sheets.

Election Commissions:

alleged violations in the functioning of election commissions and administrative irregularities.

Illegal Campaigning:

alleged campaigning by public officials and mass media; distribution of presents; anonymous and illegal campaign material; campaigning during the Election Day.

Campaign Obstruction:

people prevented from campaigning in different ways including personal and physical threats; intimidation and campaign materials being removed.

Libel:

false information in the mass media on the candidates; distribution of the false leaflets against the candidates or in their name.

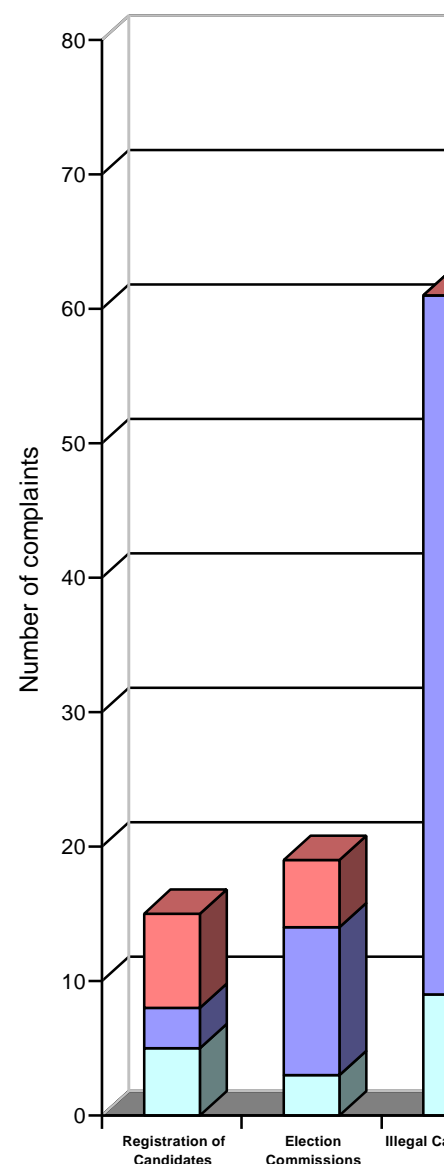
Undue Influence:

alleged violations that aim at influencing the election day results

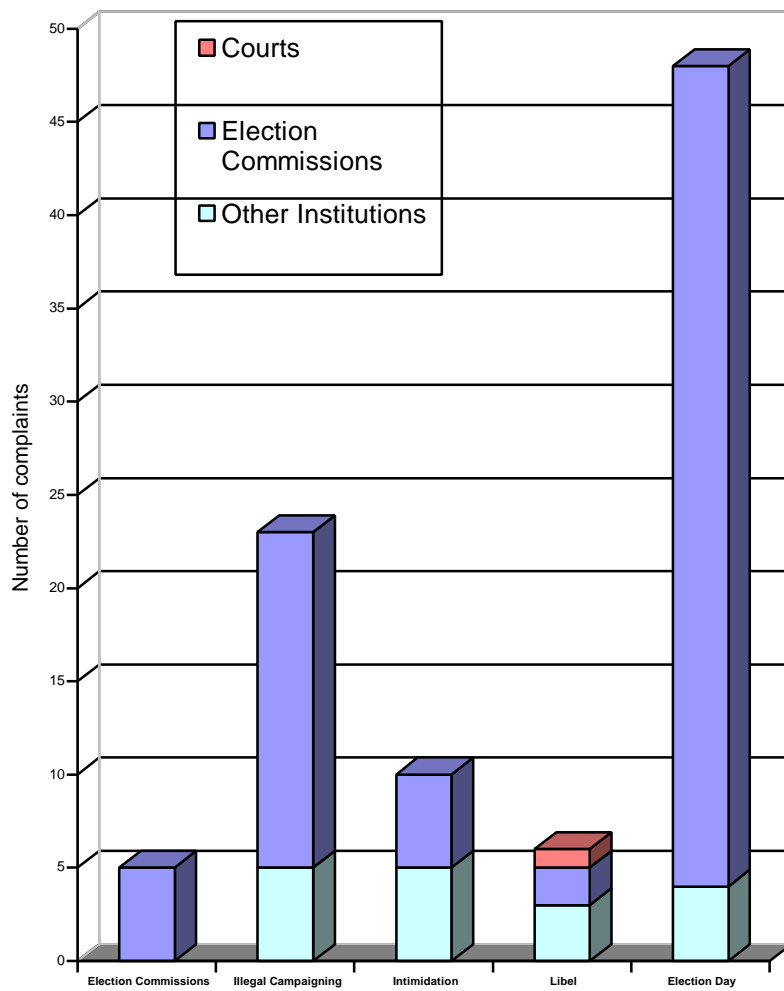
Election Day:

alleged violations that aim at influencing the election results – collective and institutional voting; alleged violations in checking and counting of ballots.

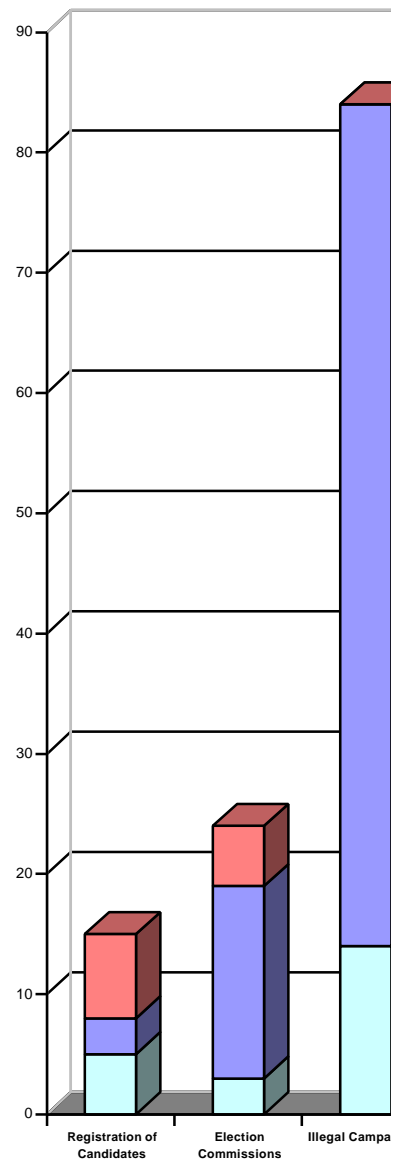
Complaints brought to the Election Observation Mis



Complaints Brought to the Attention of the OSCE/ODIHR Election Observation Mission Between rounds (31 Oct. -14 Nov. `99)



Total Complaints Brought to the Attention of the OSCE/ODIHR Election Observation Mission



Efficiency in Disputes Resolution by Election Commissions

During the two rounds of voting, a total of 192 complaints were filed with election commissions of all levels, including 144 with the Central Election Commission. Among the complaints, (according to information available at the time of the EOM's departure from Ukraine), only 18 were decided and four enforced.

Election commissions operated as quasi-judicial bodies with the right to resolve election disputes. However, no mechanism was foreseen in the law to enforce the decisions taken by election commissions, thereby limiting their efficiency. In addition, a s most complaints were not on the decisions of lower election commissions but on the actions and decisions of state institutions, mass media and state officials, the Central Election Commission had no real tool to remedy these violations.

In turn, the CEC forwarded over 140 complaints to the Ministry of Interior for further investigation. On 17 November, the Ministry reported that only 71 of these cases had been investigated and only a very small number had been passed to the Prosecutor's Office.

Efficiency in Disputes Resolution by the Courts

The number of complaints lodged with courts was far smaller (27) than those lodged with election commissions, but resulted in decisions and enforcement. Clearly, this forum for adjudication was far more efficient in the resolution of disputes than elsewhere. However, the relatively small number of complaints brought before the courts seemed to indicate unwillingness on the part of plaintiffs to file cases. This can be explained by the relatively high cost and poor capacity of the legal profession, the availability of suitable lawyers for plaintiffs, and a wariness based on past experience of the judiciary.

However, the Law did not allow the Courts to be used if a candidate wished to challenge the result of the elections, as confirmed by the Supreme Court on 14 November. This provision thus leaves citizens without the remedy to challenge the results of presidential elections, even if there is substantial evidence of electoral fraud which could have affected the outcome of an election.

Conclusion

The election disputes and appeal procedures generally did not provide the complainants with effective means to seek redress prior to the election.

A comprehensive report on the analysis of the functioning of the mechanism for election dispute resolution in Ukraine during the 1999 Presidential election is attached to this report.⁸⁴

⁸⁴

ODIHR Report on Election Dispute Resolution in Ukraine (phase 3), 29 February 2000.