

INTERIM REPORT No. 1
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I. EXECUTIVE SUMMARY

- In line with constitutional provisions, parliamentary elections will be held on 28 October 2012. The 450 members of parliament will be elected under a mixed electoral system.
- The candidate lists of 22 political parties were registered for the proportional component of the elections, while over 3,000 candidates will contest the 225 single-mandate constituencies. The Central Election Commission (CEC) rejected over 400 nominees, often for minor omissions in their documentation. Two prominent opposition political figures, Ms. Yulia Tymoshenko and Mr. Yuriy Lutsenko, remain imprisoned and were deemed not eligible to register as candidates.
- The new electoral law, adopted in November 2011, provides an overall sound foundation for the conduct of democratic elections, if implemented properly. It contains a number of improvements, but some shortcomings raise concern.
- The elections will be administered by the CEC, 225 District Election Commissions (DECs), and over 33,000 Precinct Election Commissions (PECs). The CEC is active in making preparations for the elections and is meeting legal deadlines, but the transparency of its work is diminished by holding meetings behind closed doors, which take place in advance of CEC sessions. One single lottery was held to distribute seats on all DECs. As a result, some parties nominating candidates throughout the country are not represented at the DEC level at all, while parties that nominated candidates in only a few districts obtained positions in all DECs. Lotteries for choosing the parties eligible to nominate PEC members lacked transparency and were not implemented uniformly throughout the country.
- There are 36.7 million registered voters. Voters can check their registration and request changes. The CEC limited the possibility for voters to vote away from the polling station serving their place of residence, responding to concerns about possible abuse.
- The campaign is visible in most constituencies visited by OSCE/ODIHR EOM long-term observers (LTOs). Several cases of violence against candidates or campaign staff have been reported, and there are allegations of misuse of administrative resources, intimidation, bribery and vote buying. The OSCE/ODIHR EOM is following up these claims.
- The media environment is characterized by a significant lack of political pluralism on television. Reportedly, there is a practice to pay journalists for positive news coverage. The electoral law contains no mechanisms for monitoring compliance with provisions on balanced media coverage.
- The election dispute resolution process is relatively complex, with instances of overlapping competences between election commissions and courts. A significant number of complaints and appeals have been filed, mainly regarding candidate registration and campaign violations.

- The OSCE/ODIHR EOM opened in Kyiv on 12 September, with a 20-member core team and 90 LTOs who are deployed throughout the country.

II. INTRODUCTION AND BACKGROUND

In line with constitutional provisions, parliamentary elections will take place on 28 October 2012. Following a timely invitation from the Ministry of Foreign Affairs of Ukraine and based on the recommendations of a Needs Assessment Mission conducted from 22 to 25 May, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 12 September. The EOM, led by Ambassador Audrey Glover, consists of a 20-member core team based in Kyiv and 90 long-term observers (LTOs) who were deployed on 19–20 September throughout the country. The OSCE/ODIHR EOM is drawn from 34 OSCE participating States. Participating States have been requested to second 600 short-term observers to observe voting, counting, and tabulation of results.

Since the 2010 presidential election, the governing coalition formed by the Party of Regions, the Communist Party and the People's Party/Lytvyn Bloc, has enjoyed a clear majority in parliament. These parties are now competing against opposition parties, primarily the United Opposition – *Batkivshyna* (Motherland) and the non-parliamentary parties United Democratic Alliance for Reform (UDAR) and *Svoboda* (Freedom). Another prominent non-parliamentary party, "Nataliya Korolevska – Ukraine Forward!", presents itself as between the opposition and the ruling coalition.

The new mixed electoral system has changed the dynamic of these elections in comparison with the 2007 parliamentary elections, as party-nominated and independent candidates are competing strongly at the local level. A number of independent candidates are linked to wealthy businesspeople, some of whom are also supporting political parties financially.

The elections take place against the backdrop of the cases of Ms. Yulia Tymoshenko and Mr. Yuriy Lutsenko, two prominent opposition political figures who are currently serving prison sentences following trials criticized by the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE) as unfair.¹ These bodies have also called on the Ukrainian authorities to ensure that all political leaders can take part in the elections, including those in prison.

III. THE LEGAL FRAMEWORK AND ELECTION SYSTEM

The conduct of the parliamentary elections is regulated primarily by the Constitution, the Law on Election of People's Deputies (hereinafter: the electoral law), the Law on the Central Election Commission, the Law on the State Voter Register, the Code of Administrative Procedure, the Criminal Code, as well as instructions and resolutions of the Central Election Commission (CEC).

A new electoral law was adopted in November 2011, following the widely disputed 2010 local elections. A number of changes addressed several OSCE/ODIHR and Council of Europe's Commission for Democracy through Law (Venice Commission) recommendations, *inter alia* the possibility for independent candidates to run for office, the unrestricted access for media to all public events relating to the elections, the elimination of provisions allowing voters to be added to the voter list on election day, and barring parties that nominated an election commission member from recalling

¹ Both the OSCE PA and PACE statements expressed concern about "numerous shortcomings" that may have "undermined... the possibility for the defendants to obtain a fair trial" and urged their release from prison.

that member without grounds.² Some concerns remain, in particular with regard to the absence of clear criteria for the formation of single-mandate election districts, the lack of possibility for representation of independent candidates at District Election Commissions (DECs), provisions that give Precinct Election Commissions (PECs) discretion in invalidating the results,³ the lack of transparency of campaign spending reporting, and the different treatment of parties and independent candidates with regard to their unused campaign funds.

Various OSCE/ODIHR interlocutors commented on the lack of inclusiveness and transparency during the revision of some fundamental elements of the law, namely the electoral system, the increased threshold for allocation of mandates and the prohibition of forming electoral blocs.⁴ Overall, the electoral law provides a sound foundation for a democratic electoral process, if implemented properly. However, some parts of the law are excessively detailed and complex, while some important issues remain unaddressed and commensurate political will is essential to ensure its effective implementation.

Citizens who are 18 years or older on election day and enjoy legal competence have the right to vote. Candidates must have the right to vote, be at least 21 years old on election day and have resided in Ukraine for the last five years, which has been noted in previous OSCE/ODIHR recommendations as excessive and unnecessary.⁵ Citizens who have been convicted of committing a deliberate crime cannot be nominated as candidates or elected, unless their criminal record has been cleared or cancelled prior to the nomination process. Despite previous OSCE/ODIHR and Venice Commission recommendations that called for a distinction based on the severity of the crime committed, this provision was maintained in the law.

Parliament is elected for a five-year term. The new electoral law re-introduced the mixed parallel electoral system used in 1998 and 2002. Half of the 450 members of parliament (MPs) are elected under a proportional closed list system in one single nationwide constituency; the other 225 MPs are elected in single-member districts, under a plurality system with one round of voting (first past the post). In order to participate in the distribution of mandates from the proportional component, political parties must secure at least five per cent of the votes cast, compared to the three per cent required in the 2007 elections.

As required by law, the CEC delineated the single-mandate districts, meeting the legal requirement that the number of voters in each district should not deviate by more than 12 per cent from the average. Some stakeholders expressed concerns about the transparency of the process, criticizing the fact that some election districts were non-contiguous and asserting that some minority communities were divided among several election districts, disadvantaging minority candidates.

² At the request of the Minister of Justice of Ukraine, the OSCE/ODIHR and the Venice Commission carried out a joint legal review of the draft law, which is available at <http://www.osce.org/odihr/84126>.

³ Article 92.1 of the electoral law is problematic since allows to invalidate results in cases where irregularities exceed certain level and in effect allows PEC to avoid investigation of possible election fraud.

⁴ In their joint opinion on the draft law, the OSCE/ODIHR and the Venice Commission commented that this restriction has “implications for the right of free association of parties.”

⁵ The electoral law does not provide an unambiguous definition of the five-year residency requirement for candidate registration. Despite this shortcoming, the CEC did not establish any procedures for checking it. In one case challenging the registration of a candidate, on the grounds of the residency requirement, the High Administrative Court held that the requirement does not imply permanent or continuous residency, and also took the individual circumstances into consideration. In a similar case, the same court established that the non-residence of the candidate during the last five years was proved by the State Border Guard Service and cancelled his registration.

IV. THE ELECTION ADMINISTRATION

Parliamentary elections are administered by a three-level system of election commissions: the CEC, 225 DEC in as many single-mandate constituencies, and 33,762 PECs.⁶ The CEC is the only election commission functioning on a permanent basis. Its 15 members were appointed by parliament on the proposal of the president for a seven-year term of office in June 2007.

The 18 members of each DEC were appointed by the CEC on 26 August, based on party nominations. Parties represented by a faction in parliament are guaranteed representation in DECs. The remaining seats were filled by lottery among the other parties contesting the elections. Several stakeholders expressed concerns about the composition of DECs, which resulted from one single lottery performed by the CEC for all 225 DECs at once. As a result, some parties, which nominated candidates in only a few districts, obtained positions on all DECs, while some parties nominating candidates throughout the country are not represented at the DEC level at all.⁷ The initial appointment of DEC members, including the chairpersons, deputy chairpersons and secretaries, was followed by their large-scale replacement. As of 21 September, 2,072 of all DEC members (51 per cent) had been replaced. Although formally nominated by the same parties, a large number of these replacements appear to be affiliated with other, larger parties.

The PEC positions were distributed by the DECs among nominees of all 87 political parties contesting these elections and of the majoritarian candidates registered in the respective single-mandate districts. On 13 September, amid widespread concerns about the DEC membership distribution, the CEC changed the procedure for drawing lots for PEC membership and instructed DECs to provide one lottery for all PECs within a single-mandate district, arguing this would reduce the time required for the lottery.⁸ In practice, the implementation of the lottery procedures was not uniform, as reported by OSCE/ODIHR EOM LTOs.

The CEC is actively making preparations for these elections, within legal deadlines. It meets regularly in sessions that are open to parties, candidates, media and observers. Most decisions are adopted unanimously and are posted on the official website within a few days of their adoption. The Law on the CEC stipulates that the commission must act in an open and public manner. Party and candidate proxies can participate in discussions on all issues related to the elections. However, the CEC routinely holds pre-session meetings behind closed doors, leaving most open sessions without any substantial discussion, which decreases the transparency of the CEC's activities.⁹

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

For these elections, web cameras will be installed in all polling stations, with live streaming over the internet during voting hours.

⁶ Including 116 out-of-country and 1,458 special polling stations. A precinct can have up to 2,500 voters.

⁷ For example, 8 political parties with 20 or fewer candidates have representatives in more than 200 DECs (not all of these parties nominated members to all the DECs), while 5 political parties with more than 100 registered candidates each are not represented in any DEC.

⁸ The previous CEC Regulation No. 88 of 17 May 2012 provided separate drawing of lots for each PEC.

⁹ In addition, party representatives, candidates, observers and media are usually not provided with any materials and draft decisions, apart from the session agenda.

V. VOTER REGISTRATION

Voter registration is based on a centralized State Voter Register (SVR), whose custodian is the CEC. Voters are included in the SVR according to their registered place of residence, which is defined as their voting address. According to the SVR office of the CEC, 36,687,114 voters were included in the SVR as of 31 August 2012.

The SVR is reviewed and updated quarterly (monthly in election years) by 754 Register Maintenance Bodies (RMBs; one for each local-government unit). Preliminary voter lists are compiled by RMBs for regular polling stations and by the respective PECs for special polling stations, no later than 20 and 15 days, respectively, before election day. According to the electoral law, preliminary voter lists are made available for public scrutiny at each PEC's premises, and voters can request amendments or changes of data, as well as inclusions or exclusions.¹⁰ As provided by law, all nine political parties currently represented in parliament received electronic copies of the SVR. A welcome change in the electoral law prohibits changes to voter lists during the last two days before election day, except by court decision and notification from the relevant RMB (on election day, by court decision only).

Voters who will be away from their place of residence on election day can request a change of voting place, without having to change their voting address. The reintroduction of a majoritarian component in the elections made this possibility a sensitive issue. Reports of domestic observers indicate that unusually large numbers of voters requested to move their voting place to particular election districts. The CEC's SVR office confirmed this for several districts¹¹ and asked the CEC to adopt more restrictive conditions for temporary changes of the voting place. On 22 September, the CEC decided that such temporary changes are allowed only within the voter's single-mandate district. According to this decision, previous permissions for changes of the voting place outside the respective single-mandate district have to be cancelled.

VI. CANDIDATE NOMINATION AND REGISTRATION

Candidate nomination lasted from 30 July until 13 August. Registered political parties could nominate candidate lists for the nationwide constituency, as well as individual candidates for the single-mandate districts. Individuals could nominate themselves as independent candidates in the single-mandate districts. Decisions on the registration of all candidates were adopted by the CEC, within five days of receiving a nomination. This gave the CEC very little time to process the more than 6,000 registration requests. The CEC registered all 22 submitted party lists (with a total of 2,643 candidates) and 3,130 majoritarian candidates, including 1,429 self-nominated ones. There are 949 female candidates; 528 on proportional lists and 421 running in single-mandate districts. Only two proportional lists are headed by women. A total of 85 parties nominated majoritarian candidates; however, 26 parties nominated a candidate in only one district.¹² While some of these small parties may be competing actively in the elections, others appear to have registered candidates for other motives, such as obtaining seats on election commissions.

The CEC denied registration to Ms. Tymoshenko and Mr. Lutsenko due to their criminal convictions.¹³ The CEC decision was upheld on appeal. The CEC informed the OSCE/ODIHR EOM that, in addition, 439 nominees were denied registration, mostly on the grounds that necessary

¹⁰ Such requests can be made until five days before election day for regular polling stations (three days for special polling stations).

¹¹ Electoral districts 95 (Kyiv *oblast*) and 212, 221 and 222 (Kyiv city).

¹² Two parties with proportional lists did not nominate any candidates in single-mandate districts.

¹³ Ms. Tymoshenko and Mr. Lutsenko were nominated as number one and number five, respectively, in the United Opposition – *Batkivshyna* list.

documents had not been provided; many were rejected for minor omissions, such as failing to state whether they had done social work.¹⁴ While nominees were given the opportunity to remedy minor errors, such as misspellings, they were not given an opportunity to remedy omissions.

VII. CAMPAIGN ENVIRONMENT

Parties and candidates are formally permitted to begin campaigning as soon as the CEC issues a decision on their registration for an election. In practice, many parties and potential candidates began informal campaigning during the summer. According to OSCE/ODIHR interlocutors there were widespread instances of potential candidates providing gifts of food and other materials to voters, making charitable donations to schools and medical clinics, and organizing road repair and other assistance to local communities.

During the official campaign period, the law requires that equal conditions be provided for all contestants, including access to campaign venues and to billboards and other means for political advertising. The use of administrative resources for campaign purposes is strictly prohibited, as is giving gifts to voters, which is considered “indirect bribing of voters.”¹⁵

The campaign is visible in most constituencies visited by OSCE/ODIHR EOM LTOs. There is widespread use of billboards, door-to-door distribution of fliers, and street booths set up by political parties for the dissemination of leaflets and newspapers. Campaign materials and events such as rallies and meetings with party leaders are most evident for the Party of Regions, *Batkivshyna*, *UDAR*, the Communist Party, *Ukraine Forward!*, and *Svoboda*, but other parties also have visibility in some places, including *Our Ukraine*, *Green Planet* and the *Radical Party*. Campaign materials for individual candidates in single-member districts are also present.

Several instances of violence directed against candidates or campaign staff were reported before the deployment of OSCE/ODIHR EOM LTOs, including two instances of candidates being beaten (Ternopil and Donetsk *oblasts*), two candidates splashed with paint (Lviv and Kharkiv *oblasts*), the stabbing of a candidate proxy (Kyiv city), assaults and threats against campaign workers, and the destruction of a campaign office (Volyn *oblast*). These cases are under investigation by law enforcement bodies. Opposition parties have alleged that some candidates have been pressured to withdraw, including by means of tax inspections, prosecution on old criminal charges, and threats to family members. Allegations of illegal interference or abuse of administrative resources in the campaign by local and regional authorities include refusal to allocate requested venues to parties or candidates, pressure on companies not to rent billboard space, and pressure on teachers and health care workers. Allegations of vote-buying and “indirect bribery” have been made in some districts. The OSCE/ODIHR EOM is looking into these claims. There are also numerous reports about other violations of campaign rules, such as posters placed illegally or campaign materials printed without the legally required identifying information.¹⁶

¹⁴ Thirty-three candidates were rejected only because of lack of data about their social work, or failure to provide a photo, telephone numbers or other minor technicalities. The only reason for rejecting 85 candidates was the failure to declare their willingness to resign from activities incompatible with an MP’s status if elected. The CEC considered any nomination missing documentary data required by law as not having been filed and therefore rejected the candidates for the omission of documents.

¹⁵ Electoral law, Article 74.13. Such gifts do not include minimal value campaign materials.

¹⁶ Several parties and candidates, including the Party of Regions, *Batkivshyna*, *UDAR*, and *Svoboda*, have informed the OSCE/ODIHR EOM of numerous violations of campaign rules by their opponents, ranging from serious allegations of intimidation to lesser violations such as posters not containing legally required data.

VIII. THE MEDIA

The media environment of the election campaign is characterized by a significant lack of political pluralism on television. Editorial independence is virtually absent from commercial TV stations with nationwide coverage due to an insufficient advertising market and the politicization of media by businesspeople supporting the ruling power. *TVi*, the only nationwide TV station broadcasting investigative programs critical of the authorities, faces serious restrictions.¹⁷ The reported practice of ‘envelope payments’ to journalists in return for positive news coverage leaves viewers unable to distinguish between news coverage and paid-for editorials. Internet access is unrestricted and contributes to pluralism in the public sphere, despite relatively limited penetration.

On 19 September, the OSCE Representative on Freedom of the Media called on the Ukrainian parliament to reject a proposed amendment to the Criminal Code that would recriminalize libel and introduce penalties of up to three years of imprisonment.¹⁸

The electoral law acknowledges voters’ right to make an informed choice by granting the right to “access to diverse, objective and unbiased information necessary for making deliberate, informed and free choices”. Furthermore, media are obliged to provide “balanced coverage” of comments made by political parties or candidates. However, the law does not provide any definition of balanced coverage, and it does not define procedures or the body competent to monitor the compliance with rules and to provide for timely remedies in case of violations or complaints.

Political parties and candidates have the right to purchase political advertising time under “equal conditions” and are entitled to a certain amount of free airtime or space on state-owned media outlets during the campaign, once they have been registered. The electoral law does not limit the amount of airtime political parties and candidates may purchase.¹⁹ Reportedly, paid political advertising in favor of certain political parties was broadcast before the official start of the campaign, when the rules providing for equal conditions did not apply.

To assess the conduct and coverage of the campaign in the media, the OSCE/ODIHR EOM on 16 September started monitoring the prime-time broadcasts of seven television stations and four newspapers.²⁰

IX. COMPLAINTS AND APPEALS

Decisions, actions or inactions of election commissions, bodies of executive power or local self-government, candidates and their proxies, political parties, enterprises, organizations and media outlets can be challenged by parties, candidates, observers, election commissions and voters. Complaints against a PEC are filed with the superior DEC. Complaints against a DEC may be filed with the district administrative court at the location of the DEC; complaints against inaction of a DEC may also be filed with the CEC. Complaints against parties may be filed with the CEC or the

¹⁷ In 2010, *TVi*’s terrestrial broadcast frequency was withdrawn by court order as a result of an action brought by Inter Media Group, a broadcasting company. In 2011 *TVi* was denied a license as part of Ukraine’s digital switch-over in 2015. Being broadcast by satellite and cable only, several cable providers have recently excluded *TVi* from their packages. On 12 September, the Kyiv District Administrative Court ordered *TVi* to pay UAH 4.1 million (around EUR 400,000) following a criminal case for tax evasion.

¹⁸ Press release available at <http://www.osce.org/fom/93840>.

¹⁹ The Law on Advertising in Articles 13 and 14 limits the amount of political advertising to 20 per cent per broadcast hour and to 20 per cent of printed space.

²⁰ The state-owned TV station *Pershyi Natsionalnyi* and the commercial *1+1*, *5 kanal*, *ICTV*, *Inter*, *TRK Ukraina* and *TVi* and the newspapers *Komsomolskaya Pravda*, *Fakty I Kommentarii*, *Segodnya* and *Uryadovyi Kurier*.

respective DEC,²¹ while complaints against candidates may be filed either with the CEC or the district administrative court. Decisions, actions or inactions of the CEC can be contested at the Kyiv Administrative Court of Appeal in the first instance and, on appeal, at the High Administrative Court.

The channels for addressing election-related disputes appear complicated, with instances of overlapping competences between election commissions and administrative courts. Although the electoral law provides for the suspension of proceedings by the election commission in case a lawsuit related to the same matter and on the same grounds is being considered by an administrative court, this overlap might impact the efficiency of the dispute-resolution process. An expedited procedure is provided for the adjudication of complaints, which should be considered within two days.

As of 25 September, the Kyiv Administrative Court of Appeal had received around 185 complaints against the CEC and its members regarding candidate registration; subsequently 101 appeals to these decisions were filed with the High Administrative Court, which overturned 18 CEC decisions. Out of a total of 133 appeals challenging decisions of the Kyiv Administrative Court of Appeal, the High Administrative Court has reviewed 112. During the reporting period, the CEC received 32 complaints, a large number of them related to campaign violations and some to actions or inactions of DEC. Many of the complaints were rejected due to lack of evidence, while most were forwarded to law enforcement agencies for further investigation. Notably, the Kyiv Administrative Court of Appeal on 16 September decided that the distribution of discount coupons with the picture of a candidate in a supermarket was a campaign violation.²²

X. DOMESTIC OBSERVERS

A total of 68 non-governmental organizations (NGOs) were granted permission by the CEC to register official observers. Of these, 22 plan to observe countrywide, while 46 will observe in *oblasts* or cities. The CEC rejected eight NGOs that did not present registration documents or whose charter did not include election-related activities, as required by law. The two main domestic observer groups, *Opora* and the Committee of Voters of Ukraine (CVU), have trained and deployed several hundred LTOs and intend to register a high number of short-term observers. *Opora* also intends to conduct a parallel vote tabulation exercise.

XI. OSCE/ODIHR EOM ACTIVITIES

The OSCE/ODIHR EOM formally opened in Kyiv with a press conference on 12 September 2012. The Head of Mission has met with the CEC, the Ministry of Foreign Affairs, the Prosecutor General's office, the Chief Judge of the High Administrative Court, the OSCE Project Co-ordinator in Ukraine, representatives of political parties, civil-society organizations, and members of the diplomatic community. The Head of Mission also met a pre-electoral delegation of the PACE. The EOM has established regular contacts with the election administration at all levels, state institutions involved in the election process, political parties, civil society, and the media.

The OSCE PA, the PACE, the EP and the NATO Parliamentary Assembly (NATO PA) intend to deploy observer delegations for election-day observation. The OSCE Chairperson-in-Office has appointed Ms. Walburga Habsburg Douglas as Special Co-ordinator to lead the OSCE short-term observer mission for these elections.

²¹ Depending on whether the party has nominated candidates in the nationwide election district or in a single-mandate district.

²² Similarly, the Odessa Administrative Court of Appeal held, in its decision of 30 August, that the free distribution of school uniforms to children constitutes a campaign violation, as the participation of the candidate in the distribution was publicly known.