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INTERNATIONAL ELECTION OBSERVATION MISSION
UKRAINE
PRESIDENTIAL ELECTION
31 OCTOBER 1999

JOINT PRELIMINARY STATEMENT

Kyiv, 1 November 1999 - This is the joint preliminary statement of the observation of the first round of the Presidential Elections In Ukraine held on 31 October 1999, by the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights' (OSCE/ODIHR) Election Observation Mission and the Parliamentary Assembly of the Council of Europe (PACE). No final assessment can be reached until the counting and aggregation of votes have been completed and the official results published. The ODIHR Election Observation Mission will remain in country until the election process is completed. A second statement will be released after the second round of voting, scheduled for November 14.

The Election Observation Mission would like to thank the Central Election Commission (CEC) and officials at all levels, as well as the Ministry for Foreign Affairs of Ukraine for their extensive support and co-operation throughout the mission.

EXECUTIVE SUMMARY

The first round of the Ukrainian Presidential Election held on 31 October 1999 failed to meet a number of OSCE commitments.

The coverage of the campaign by the media and the widespread involvement of public officials in the campaign breached both the legal framework governing these elections and the relevant OSCE commitments. Although the Laws showed improvement, implementation and enforcement was often selective and did not provide a level-playing field for all candidates in the pre-election period. Moreover, the election disputes and appeal procedures generally did not provide the complainants with effective means to seek redress prior to the election.

The Law on Elections of the President of Ukraine was adopted on 25 March 1999 and amended on 8 September 1999. Despite significant improvements, drawbacks remain. The Presidential Election Law and the Law on the Central Election Commission have increased transparency. However, the legal framework continues to fall short of adequate provisions on a number of critical issues. Moreover, it is also the selective interpretation and enforcement of the legal provisions at the various levels of the state structure that prevented the uniform application of the law.

Both the publicly funded electronic and print media, and private broadcasters comprehensively failed to meet their obligations and it can be concluded that the media coverage of the campaign and of the candidates in the first round did not live up to the required legal provisions and OSCE commitments.

The ODIHR Election Observation Mission received numerous verified reports that public officials in state institutions were campaigning in favour of the incumbent President. Allegations were raised about state security forces actively involved in politically-motivated interventions.

During the campaign period, the election commissions, and the CEC in particular, received a large number of complaints, mostly concerning the campaign coverage of candidates in the media and abuse of public office by state officials for campaign purposes.
Observers reported that election day procedures were carried out in a peaceful and orderly manner, despite minor irregularities in very few polling stations. The ODIHR received several reports of wrongly printed/stamped ballots, which seem to reflect poor organisation rather than intentional misconduct in these locations. Although most reports are still being processed, particularly those on counting procedures, the ODIHR has not been informed of any widespread irregularities at this stage.

The ODIHR Election Observation Mission will continue to monitor the aggregation procedure until the official results have been published and will monitor any complaints submitted.

THE LEGAL FRAMEWORK GOVERNING ELECTIONS

The Law on Elections of the President of Ukraine was adopted on 25 March 1999 and amended on 8 September 1999. Despite significant improvements, drawbacks remain.

Additional and more detailed procedural rules have clarified the legal framework regulating the electoral process. The Presidential Election Law and the Law on the Central Election Commission have increased transparency through the adoption of multi-candidate election commissions and the supply of protocols to all members of those commissions. The regulatory power of the Central Election Commission has been reinforced and this is reflected in the passage of over 400 regulations, including on sensitive areas such as the mass media.

However, the legal framework continues to fall short of adequate provisions on a number of critical issues. Most importantly, the law is incomplete with regard to the regulation of campaign activities and their media coverage. Moreover, the legal framework does not secure enforcement mechanisms for the Central Election Commission to effectively apply the law in areas such as the abuse of state office for campaign purposes. Additionally, there are still discrepancies and lacunae with regard to the definition of electoral offences and legal remedies associated with them. Despite improvements in the regulation of campaign finance (establishment and limitation on personal election funds), the law still fails to ensure fair and equal campaigning conditions. The law also takes a regressive step on the issue of domestic non-partisan observers, in that they no longer have the right to observe the election process.

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THE ROLE OF THE MEDIA

Publicly funded media in particular is required by law to provide voters with information about candidates and their programmes free from prejudice or preference. Moreover, in CEC resolution number 96, the electronic media, the most important source of information for most voters, is obliged to provide news which does not express bias or give preference to any of the candidates. The ODIHR Election Observation Mission found that, at national and regional level, both the publicly funded electronic and print media, and private broadcasters comprehensively failed to meet these obligations - an annex including all the data on this monitoring is available and will be released with the final report.

In accordance with the law, 14 out of the 15 candidates took full advantage of their allocation of free time in the media. However, on the national state television, UT1, these candidate broadcasts were preceded, and in one case followed, by critical comments. Presidential candidate Oleksandr Moroz complained to the CEC, which upheld his complaint and instructed UT1 to allow Mr. Moroz the right to reply. The spirit of the law requires that candidates should reasonably expect their own broadcasts to air free from comment immediately prior, during and after, so that voters can make up their own mind about the content.

There was a plurality of views in the private print media. Although legal, the news coverage in the national private print-media showed strong bias in favour of their chosen candidate to the extent that it was almost impossible for a voter to rely on any one source of information to gain an objective view of the campaign.

The ODIHR Election Observation Mission was told that the CEC received some 130 complaints from candidates regarding the coverage of the campaign by the media. However there is a lack of clarity between the various laws as to which institution – CEC or National TV and Broadcasting Council – has the power to enforce the provisions governing media coverage of the election campaign. The National TV and Broadcasting Council, which could sanction breaches of the Law by fining media outlets, remained in-quorate throughout the period of the first round.

In conclusion, the media coverage of the campaign and of the candidates in the first round did not live up to the required legal provisions and OSCE commitments.

THE ROLE AND INFLUENCE OF PUBLIC OFFICIALS AND THEIR EMPLOYEES

The Ukrainian Election Law (Article 33.1) prohibits state and publicly owned institutions, and public officials and their employees from participating in campaign activities.

The ODIHR Election Observation Mission received numerous verified reports that public officials in state institutions were campaigning in favour of the incumbent President. For example observers noted that Heads of State Administrations in 8 Oblasts at various levels openly urged voters to vote for the President. Public officials and employees in Educational and Medical facilities were reported to be campaigning for President Kuchma in a further 6 Oblasts.

Allegations were raised about state security forces actively involved in politically-motivated interventions. In Vinnytsia, observers witnessed members of the police handing out banners for President Kuchma to his campaigners. In L'viv, observers reported that law enforcement agents evicted a candidate's campaigners from their local headquarters, enforcing a local court decision only two weeks before election-day.

The ODIHR Election Observation Mission recognises the need for the Ukrainian authorities to uphold the law and enforce legal decisions. However, all necessary steps should be adopted to ensure that such measures are not applied in a discriminatory manner, nor perceived as being partisan.

Furthermore, the ODIHR Election Observation Mission received numerous allegations that postal workers were distributing campaign materials for President Kuchma and that ZhEK[1] employees were canvassing support for the incumbent President in 4 Oblasts. In the latter case, their involvement in an election campaign could easily be perceived as intimidation.

Clearly these activities, where verified, are in breach of the legal provisions and the OSCE commitments.

CAMPAIGN VIOLENCE

The campaign was regrettably affected by a violent attack on presidential candidate Natalya Vitrenko on October 2nd. It was, and remains totally unacceptable that any candidate or their supporters should be confronted with violence or the threat of violence. As stated by the ODIHR Election Observation Mission in a press statement on October 5, such actions run completely contrary to both the letter and the spirit of OSCE Commitments on elections.

It is also of concern that there was a further case of violence, this time against Vasyl' Hara, a Deputy of the Verkhovna Rada (Parliament) and supporter of another candidate, allegedly for his involvement in the campaign.

THE CAMPAIGN

[1] 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.

The Presidential Election Law governs the campaign activities of candidates and their supporters. In the law, candidates enjoy the right to campaign free from administrative hindrance and under equal conditions. As has been already noted, the definitions of electoral offences within the law still lack clarity.

In 7 Oblasts, observers reported that the relevant authorities either selectively denied or obstructed access to public buildings to certain candidates and their supporters to hold campaign meetings. Furthermore, local authorities selectively denied certain candidates equal opportunity to publicly display and disseminate materials.

In 5 Oblasts, observers received complaints that the Militia impounded candidate campaign literature. The law indeed specifies that details of the print run and the publisher of campaign materials must be printed on each and every item. Furthermore, it prohibits anonymous campaign materials. In the above cases, the Militia claimed that the number of campaign materials impounded exceeded the print number stated. The observers could not verify this information, and in one case, they were denied access to the materials.

In contrast, substantial numbers of anonymous materials against four candidates – Oleksandr Tkachenko, Natalya Vitrenko, Oleksandr Moroz and Yevhen Marchuk – were distributed throughout the country. Unlike the cases mentioned above, the Ministry of Interior did not halt the circulation of these anonymous materials.

In addition, 3 false editions of the private newspaper *Silski Visti* were printed, published and sold throughout the country by persons unknown. The relevant authorities did not halt the distribution of these false versions of this newspaper nor were any copies impounded.

The Presidential Election Law limits candidates' campaign expenditure to their personal election fund. However, the law does not limit the substantial amounts of money spent by unofficially affiliated bodies that campaign in favour or against a candidate.

PRE-ELECTION DAY COMPLAINTS AND APPEALS

During the campaign period, the election commissions, and the CEC in particular, received a large number of complaints, mostly concerning the campaign coverage of candidates in the media and abuse of public office by state officials for campaign purposes. Although election commissions at all levels are mandated by law to address complaints, the decisions they adopted rarely resulted in satisfactory remedies for the complainants. However, contrary to the 1998 parliamentary elections, the problem of competing jurisdictions of election commissions and the judiciary appears to have been reduced significantly.

The ODIHR Election Observation Mission collected 145 complaints. Regrettably, at the time of writing, the ODIHR Election Observation Mission has been informed that only 17 of these complaints have been resolved, of which 7 have been enforced.

ELECTORAL ADMINISTRATION

The Central Election Commission made commendable efforts to improve the level of transparency of the election process through the provision of information to candidates, their representatives, observers and the voters. Furthermore, they made strenuous efforts to provide a unified and comprehensive training programme for election officials. This was of particular importance given that over 70% of election officials have had no previous experience. Unfortunately, the CEC did not seem to enjoy the complete confidence of all the candidates, despite the inclusion of candidate representatives with deliberative vote on the CEC.

According to the law, the formation of Territorial and Polling Station Election Commissions (TECs and PSCs) is the responsibility of the relevant Rada (local assembly) based on candidate nominations. Their formation caused some critical comments: firstly, the legal but large numbers of Kuchma supporters who secured the Chairmanship of TECs; and secondly the method in which PSC members were nominated.

Observers received complaints that the Head of State Administration forced the relevant Rada to revise the appointment of Chairman, Deputy Chairman and Secretaries of PSCs.

More worrying, the ODIHR Observation Mission verified that the Chairmen of TEC numbers 133 and 134 received over 3,000 extra ballots each that should have been delivered in the presence of a quorum of the TECs. This issue has now been referred by the overwhelming vote of TEC 133 to the Prosecutor General.

ELECTION DAY

Observers reported that election-day procedures were carried out in a peaceful and orderly manner, despite minor irregularities in very few polling stations. The ODIHR received several reports of wrongly printed/stamped ballots, which seem to reflect poor organisation rather than intentional misconduct in these locations.

Although most reports are still being processed, particularly those on counting procedures, the ODIHR has not been informed of any widespread irregularities at this stage. It is also encouraging to note that open and family voting were observed on a smaller scale than during the more complex 1998 parliamentary and local elections.

The ODIHR Election Observation Mission will continue to monitor the aggregation procedure until official results have been published and will monitor any complaints submitted.

This preliminary statement is based on the findings of 25 ODIHR long-term observers and core staff deployed from 15 September 1999 and 270 international short-term observers. The international observers included 18 members and staff from the Parliamentary Assembly of the Council of Europe, individuals sent from OSCE participating States, members of the diplomatic community in Ukraine as well as other international organisations present in the country, representing in total 26 participating States. The PACE Delegation was led by Ms. Pilar Pulgar (Spain) and the ODIHR Election Observation Mission was headed by Mr. Simon Osborn (UK). An ODIHR media unit has been monitoring 4 national television stations and 7 newspapers nationally as well as 22 electronic and print media in the regions. In addition, an ODIHR legal unit has been compiling a database to track election-related complaints and disputes.

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