

CG/BUR (4) 132 rev.

Report of the CLRAE observation mission for the municipal and regional elections in Ukraine - 29 March 1998

Adopted by the Bureau at its meeting on 27 April 1998 in Geneva

1. Background

At its meeting on 3 February 1998 in Lecce (Italy), the CLRAE Bureau accepted an invitation from the Ukraine Parliament to appoint a delegation to observe the forthcoming local and regional elections, to be held in Ukraine on 29 March (letter from the Vice-President of the Ukraine Parliament, Mr Muysika of 30 January 1998).

In so accepting, the Bureau had in mind the opinion of its Rapporteur Group on Ukraine, currently preparing a report for the 1998 Session of the CLRAE; and its own earlier deliberations which had resulted in the an expression of concern about the lack of local self-government reform in the country and excessive central government influence on local and regional structures.

Recent months had also seen a crisis in the management of Kyiv and Sebastopol where, against a background of imbalance between political representatives and central administration, a duly-elected Head of the municipal council of Kyiv had been removed from office, in a legally doubtful procedure and where a subsequent ruling of the Supreme Court, which had reversed this removal, had not been applied.

Furthermore, in an encapsulation of a Parliamentary-Presidential confrontation which had bedevilled the political climate in Ukraine in recent months - there was a continuing Presidential veto on key legislation passed by Parliament on territorial administration and on a new statute for Kyiv and Sebastopol, defined in the Ukraine Constitution as having special status.

Furthermore, the weeks immediately prior to the elections had seen a proliferation of complaints reaching the Secretariat about the electoral campaign, for example, about a disturbing conflictual situation in Odessa; with the media; and uncertainty about whether or not there would be direct elections to the position of the Head of the Council in Kyiv and Sebastopol.

Such considerations had therefore induced the Bureau to accept the invitation and appoint a delegation - a mission which the CLRAE, with few exceptions, normally reserved for applicant rather than member countries.

2. The elections

Elections were to be held throughout the country for the three levels of municipal, district (rayon) and regional (oblast) councils and, simultaneously but separately, for the Heads of these Councils.

These elections were also taking place on the same day as elections to the Parliament of Ukraine, for which the Parliamentary Assembly of the Council of Europe had nominated an observer delegation.

In addition to delegations from the Council of Europe, the elections were also being observed by OSCE, by some national delegations and by domestic observers from a range of different political parties.

The elections had been prepared in Ukraine by a Central Electoral Commission with the assistance of the International Foundation for Electoral Systems (IFES) - an NGO, with an office in Kyiv, with a history of assistance to Ukraine on legal matters.

Polling would take place throughout the country in 38,000 polling stations.

Over 30 political parties were contesting the elections. A list of the principal parties, as drawn up by the International Republican Institute (I.R.I.), Washington, is available from the Secretariat.

3. The CLRAE delegation and destinations

Kyiv

Mr Alain CHÉNARD (France), Vice-President of the Congress, Municipal Councillor of Nantes, Rapporteur for Ukraine of the Chamber

Mr Catalin Calin CHIRITA (Romania), Mayor of the 5th sector of the Municipality of Bucharest

Mr Dimitrios FRANGOS (Greece), Governor of Eastern Attica, Greece

Mr Louis ROPPE (Belgium), Provincial Councillor of Limbourg

Mr Richard HARTLEY (Secretariat)

Mr Wilfried NARTUS, Ambassadeur of Belgium to Ukraine (in an ex officio capacity).

Donetsk

Mr Ton DOESBURG (Netherlands), Member of the Provincial Executive of Gelderland

Mr György RINGELHANN (Hungary), Mayor of Eger

Odessa

Mr Leon KIERES (Poland), Vice-President of the Congress, Councillor, Wrocław

Mr Jiri VANICEK (Czech Republic), Mayor of Tabor

Sebastopol/Yalta (based in Simferopol)

Mrs Lea TOLONEN (Finland), Mayor of Ähtäri

Mr Anthony DEGIOVANNI (Malta), Councillor of Fgura

Transcarpathia (based in Uzgorod)

Mr Alexander SLAFKOVSKY (Slovakia), Member of the City Council of Liptovský Mikuláš

Mr Janos PERENYI (Secretariat)

Secretariat:

Mr Richard Hartley, Responsible for the Secretariat of the Chamber of Local Authorities, CLRAE, Council of Europe

Mr Janos PERENYI, LODE Programme Adviser, Council of Europe

Most members of the delegation arrived in Kyiv on Friday, 27 March in order to attend briefing meetings. All of them managed to return to Kyiv on Monday, 30th for a debriefing session and to take part in the Press Conference (see below).

4. The programme for the delegation

With the assistance of the Secretariat of the Ukraine Parliament, the individual CLRAE delegation teams on Saturday, 28 March, had a programme of discussions and meetings with candidates for positions of councillors and mayors; with representatives of the principal political parties contesting the elections; with the Electoral Commissions; with local and regional administrative officials; and with representatives of the media, eg., a Round Table with the press which took place in Odessa.

These meetings were designed to provide the delegates with a maximum amount of information and impressions in order to gain as full a picture as possible of the electoral campaign.

5. The electoral campaign

i. General

There had been a considerable number of difficulties on media questions.

The Ukraine Pravda had been closed and a heavy fine imposed upon another major national daily, the Kievski Vedomosti. There were innumerable allegations of unequal access to the media, particularly from opposition candidates, giving rise to a comment from the OSCE, in its Press Communiqué, which "called into doubt Ukraine's obligation as a Council of Europe member state to respect the rights and freedoms of the press".

In Odessa, there had been severe complaints about interference with the media (see below).

On procedural matters, there were complaints about the composition of some Electoral Commissions, with excessive influence from the relevant administrations and/or majority parties in the region in question. Some complaints addressed to Electoral Commission remained unanswered and there had been some delays or obstruction in the registration of candidates.

Allegations were made to the CLRAE delegation about bias for official candidates belonging to the Executive, able to call upon resources and logistic support unavailable to opposition candidates.

A few days prior to the election there had been changes to constituency boundaries and some last-minute changes to the electoral law, considered by opposition parties as politically motivated.

The CLRAE delegation in Kyiv met the Parliamentary Committee on Electoral Infringements whose members spoke openly of interference by executive authorities in Electoral Commissions, bribing of voters, threats and physical violence towards candidates (the Mayor of Lubny had been shot), improper storing of ballot papers which, in a number of cases, were scattered around the electoral station in advance of polling.

Generally speaking, it was felt that the electoral law was too complicated, that there were too many elections on the same day likely to cause voter confusion and that there were too many parties contesting the election.

ii. Odessa

In Odessa a highly visible and disturbing dispute between Mr Bodelan, the Regional Governor and the Mayor of Odessa, Mr Gurvits, both candidates for the position of Mayor, had coloured the campaign and created an intimidating atmosphere.

The municipal TV station "Art" had been raided and material confiscated; opposition TV's and radio had been cut off, sometimes on the supposition of a bomb threat. An editor of a newspaper - Odessa Evening Post - had been murdered; there had been assassination attempts on a municipal councillor and on Mayor Gurvits himself. The Head of a District Commission had been shot, the Chairman of another had been kidnapped and there had been occupation of the Town Hall by militia under the control of the regional administration.

There were cases of civil servants working on election procedures who were afraid to return home, who had received threatening telephone calls and whose families were temporarily relocated. There were allegations about the misuse of the judiciary for electoral purposes and, in a city where legislation on privatisation has not yet been applied, of political blurring with economic interests.

Whilst the CLRAE delegation in Odessa was careful to avoid taking sides, it was clear that such an intimidating environment would have an influence on voters. Two days before the election, a local court ruled that Mr Gurvits be excluded from the list of candidates, on the basis of his violation of rules. Neither the CLRAE delegation nor the local Electoral Commission, which maintained his candidacy, could see any valid reason for this. On the day of polling on 29 March, another court decision, taken in "huis clos", withdrew the candidacy of Mr Gurvits, a withdrawal proclaimed on the day on official radio (see below).

iii. Crimea

In Crimea, the attention of the CLRAE delegation was drawn to the disenfranchisement of Tartars. Although not citizens of Ukraine and, therefore, not entitled to vote under the electoral law, some Ukrainian parliamentarians felt that it could have been possible for the Ukraine authorities to enact legislation to enable such non-citizens to vote, pending regularisation of their situation.

Another problem in Crimea, in the electoral period, was in Yalta where the local Mayor had been replaced by an appointed official from Kyiv - a manoeuvre the subject of a complaint to the Secretary General by the Governor of the Autonomous Region of Crimea. Another problem was in Sebastopol where, as in Kyiv, there had been doubts up until the last minute for the direct election of the Head of its Council.

iv. Kyiv

In Kyiv, there had been a controversial question relating to the direct election of the Head of the Council.

Beforehand, the Secretariat had received many complaints about the refusal of the President to hold direct elections to the post.

According to the general law on local government in Ukraine and the Constitution, Heads of Councils were to be elected directly by the population. In the case of Kyiv and Sebastopol, which enjoyed a special status, the Parliamentary draft for a new statute foresaw such elections but was currently being blocked by a Presidential veto. Hence, the former legislation on Kyiv (or the General Law) was, theoretically, still applicable - this also foreseeing direct elections. Such was the position of Parliament.

It was contested by the Presidential administration which accepted elections only to the municipal council, with direct elections for City Head to await a new law for the statute of Kyiv and Sebastopol. The opposition candidates met by the delegation condemned such a threatened postponement as a move to maintain Presidential control over the capital.

The history of the dispute concerning direct election of the City Head

a. Parliament decides to organise the direct elections and accordingly passes the electoral law;

b. The Presidential administration blocks this law. The City Court issues instructions to the Electoral Commission not to register candidates for the position of Head of Council;

c. These instructions were ignored by the City Electoral Committee which continues to prepare elections and appeals to the Supreme Court;

d. The Supreme Court decides to hear the case on 8 April, ie., after the elections;

e. The Electoral Commission and most of the candidates insist that such a Hearing should not have a suspensive effect on the election;

f. Ballot papers continue to be printed and distributed;

g. On Friday 27th, two days before the election, a meeting of the Constitutional Court took place, following which the next day, ie., one day before the poll, an announcement was made of the cancellation of the elections.

The citizens of Kyiv had, therefore, been treated to a judicial and political controversy which in the end had deprived them of the possibility of voting for the position of Head of Council, much to the indignation of most of the candidates, some of whom had made local self-government a key element in their electoral platform.

6. The day of the elections

Certainly, with such an electoral campaign, the day of voting must have been negatively and possibly positively, affected. The high participation, for example, may have occurred partly because of a vigorous and controversial campaign.

The CLRAE delegation visited, in respective destinations, a total of 80 polling stations - at their openings; during the day; and at the counting.

The day of polling passed without major incident and was generally considered to be successful. One of the key factors in this was considered to be the widespread presence of domestic observers from different political parties and groups - a significant safeguard against irregularities. There was also a strong interest in local issues and in the local elections. Many voters felt that it was now possible to select and not just vote.

Voters seemed to be aware of the electoral procedure. Domestic observers reported no great problem, even with the mobile voting urns taken to their homes.

The turnout of approx 70% and voter affluence resulted in some delays and phenomena such as family voting and a degree of confusion, in often the restricted space of a number of polling stations and as a consequence of, what seemed in some places, to be a shortage of voting urns. CLRAE delegates saw many cases of voters filling in their ballot papers in virtually all possible parts of a polling station, outside the building and there were even stories of electors taking their ballot papers home to complete them in peace!.

There were cases of distribution of unsigned ballot papers.

There may also have been some influence on voting patterns of soldiers by their superior officers but at least soldiers were able to vote in civilian polling stations rather than in their barracks. Similarly, in prisons, there may have been influence by the inevitable presence of prison personnel but it was considered by the delegation to be quite an achievement in itself for prisoners to be able to vote.

According to law, official photographs and programmes of candidates were to be displayed in polling stations but this was not always the case. Conversely, the electoral law forbade partisan publicity of candidates in and around polling stations, not always observed.

There was not always enough rigour about striking off names of candidates from lists on the ballots. This was done sometimes by telephone and marked on ballot papers simply with the stroke of a pen or completely ignored through lack of time.

There were some reports of observers from domestic parties not being able to observe as freely as they would wish, due to restrictions imposed by Presiding Officers but these cases were ironed out by their Electoral Commission and, in one case, by a CLRAE delegation!

The main problem on the day of the election was in Odessa where, in a continuation of the electoral campaign conflict, it was announced by a court and radio that the candidacy of Mr Gurvits had been withdrawn on 29 March. It required a fax to be sent by the City Electoral Commission to every polling station to clarify and contradict this information.

7. Results

The Secretariat is still awaiting the results to the municipal and regional elections.

Some considerations:

- In Odessa, the difficulties continue. The regional administration is attempting to have the municipal elections declared invalid because of disturbances and irregularities on the day.
- In Kyiv, the new municipal council already has a number of elected personalities who also hold positions in the city

administration. If the existing legislation on the statute of elected city councillors is to be respected, the persons in question will have a choice to make.

- In the absence of direct elections for the Head of the Council in Kyiv and Sebastopol, who now is the current Mayor still remains an open question.

8. Press coverage

This was considerable. The Press Department of the Council of Europe has compiled a full dossier.

The CLRAE Press Conference of the Congress of Monday 30th was attended by 60-70 journalists and many TV representatives. It was chaired by the Head of the CLRAE delegation, Mr Chénard, in the presence of two members of the Parliamentary Assembly delegation.

The Press Conference continued informally for some time after the formal proceedings were over, with members of the CLRAE delegation giving bilateral interviews in different corners of the press room

See Appendix for the Press Communiqués of the CLRAE (one issued before, one issued after the elections).

9. Parliamentary Assembly/CLRAE cooperation

The cooperation between the delegates of the CLRAE and those of the Parliamentary Assembly was exemplary. In Odessa and Sebastopol, for example, the delegations were a joint affair, at least on the Saturday of discussions with political groups.

10. OSCE

The CLRAE Secretariat made contact with the Head of the OSCE observer mission, physically located a few doors from the hotel of the CLRAE delegation in Kyiv.

These contacts were friendly and informative. Partly as a consequence, there was reference in the OSCE Press Communiqué to the local question in Ukraine. However, given differing objectives and methods, the CLRAE and the OSCE observation missions were kept separate.

11. Conclusion

Throughout its visit, the CLRAE delegation was received with courtesy, efficiency, and a degree of warmth which suggested that its presence in Ukraine for these elections was appreciated.

There had been a vigorous and, in places, a highly intimidating electoral campaign, with a significant number of actual and alleged irregularities and unfair practices which the delegation hopes will be examined by the relevant authorities in the near future.

There had also been an unfortunate blurring of the relative roles of the judiciary and the Electoral Commissions; in some cases, a thinly-disguised use of governmental institutions (police, public prosecutors office, law courts) for electoral advantage; unacceptable pressure on some newspapers and TV stations; allegations about a mix of political, financial and economic interests in the absence of clarity about privatisation processes; a complicated electoral procedure with last minute changes and major problems as the report indicates in Kyiv; Sebastopol and Odessa.

For the future, the CLRAE proposes that there be improvements to the electoral law to avoid last-minute changes; that there be not so many elections on the same day; that there be more polling stations in each constituency in order to decrease voter affluence; that campaigning and electoral propaganda be stopped 48 hours before polling; that more care be taken to ensure impartiality in the composition of the Electoral Commissions and that the central Electoral Commission should be free from any sort of pressure in fulfilling its responsibilities.

* * *

Ukraine is in a transitional phase between a totalitarian and a democratic state. Inevitably the transitional period is affected by a continuing control by the Executive and a determination, sometimes bordering on illegality, to seek and hold political power. There is still not enough clarity and separation of judicial, political, executive and electoral functions.

The Constitution does not clarify mechanisms for solving the inevitable Parliamentary/ Presidential impasse which leaves it mark on local and regional democratic reform. Indeed, it is the control of municipalities and the regions wherein lies one of the keys to control of the country as a whole.

However, there are some promising signs for the future. Some new Parliamentarians openly espouse the cause of local and regional self-government. One of the tasks of the new Parliament will be to proceed with reform on local and regional self-government, bolstered by high participation in the elections; by the strong interest shown by the public and public institutions in local matters and by the belief that real choices are now possible.

List of documents published separately

1. Law of Ukraine on Election of Deputies of Local Radas and of Village Settlement, City Chairmen.

2. Information on Political Parties provided by the Central Electoral Committee and by the International Republican Institute (IRI), Washington.
3. Compilation of press articles on the elections and the Congress.
4. Decree of the Constitutional Court concerning the cancellation of direct elections to the Heads of Councils of Kyiv and Sebastopol.

For further information and complete appendix please contact: webcplre@coe.int