

## CG/BUR (5) 60 rev

# CLRAE Observation of elections for the Mayor of Odessa - 23 August 1998

### Report prepared by the delegation

*Document approved by the Bureau of the Congress on 29 September 1998*

### Background

Municipal elections in Ukraine, observed by a CLRAE delegation, were held on 29 March 1998.

The conclusions of the delegation were contained in a report (CG/BUR (4) 132) presented to the CLRAE Bureau meeting on 27 April in Geneva and incorporated into the national report on local and regional democracy discussed at the Plenary Session of the CLRAE, 31 May – 2 June 1998.

This report was accompanied by Recommendation 48 with proposals for local and regional government reform in Ukraine; and Resolution 68 which asked the CLRAE Bureau to continue to monitor the situation in Ukraine and particularly to consider a visit in the near future to Odessa.

This specific concern about Odessa was a result of a particularly unpleasant and contentious electoral campaign for the 29 March election, even though the day of voting had passed off without major incident. The members of the delegation present in Odessa for these elections, Mr Kieres (Poland) and Mr Vanicek (Czech Republic), had expressed considerable concern about the situation. These concerns had been shared by OSCE in its report on the elections and by journals such as the independent Kyiv Post which on 22 May had written that the "election campaign was perhaps the most violent of the many races through the country with numerous cases of intimidation, assault and even murder".

In the event, the opportunity for such a CLRAE visit came rather earlier than expected as a result of the cancellation of the 29 March elections for Mayor and the organisation of new elections for 23 August.<sup>1</sup>

The CLRAE Bureau at its meeting on 29 June confirmed its intention to observe the new elections and accordingly received accreditation from the Central Electoral Committee of Ukraine to this effect.

### Members of the delegation

**Mr Chirita** (Romania), Vice-President of the CLRAE,  
**Mr Kuybida**, Head of the Ukraine delegation,  
**Mr Voitenko**, Member of the Ukraine delegation.

They were accompanied by **Mr Hartley**, Secretary of the Chamber of Local Authorities, and **Mr Sagach**, an official in the Presidential Foundation for Local Self-Government in Ukraine.

Exceptionally, the bureau had agreed to include members of a host country delegation in the observation team, given the highly complex political situation in Odessa. In so doing, it was motivated by the belief that the insight and information provided by the Ukraine delegates outweighed the risk of accusations of political bias.

This belief was vindicated. Behind the seemingly straightforward polarisation between two rival political heavyweights, Mr Gurvits and Mr Bodelan, lies a complex web of economic, legal, constitutional and central government dimensions which are not simple for outsiders to understand.

The same can be said for the presence of a representative of the Presidential Foundation, **Mr Sagach** whose presence was essential in securing logistic support in Odessa and helping with last minute problems and precautions.

### The Campaign

The 29 March elections had been won by Mr Gurvits with a majority of 70,000.

In a subsequent tangled legal battle, these elections had been declared invalid by a decision of 6 May of the Court of Kirovograd because of alleged irregularities by Mr Gurvits in relation to campaign expenditure. The ruling of Kirovograd Court had also found that the City Electoral Commission itself had been found to have acted in breach of certain aspects of the electoral law and not applied it even-handedly (see Appendix I).

This court ruling had taken place not in Odessa but in Kirovograd following a decision of the Supreme Court. Allegations had been made that neither Mr Gurvits, nor the then Head of the City Electoral Commission, Mr Kapelyushny had been given a fair hearing. It was also contested whether a court, rather than a City Electoral Commission, had the right to determine the question of validity or otherwise of elections.

To complicate matters further, there had been an earlier ruling of an Odessa District Court of 23 April which had considered the elections to be legal, a position confirmed on 8 May by the then City Electoral Commission.

In pursuance of the Kirovograd ruling, the registration of Mr Gurvits, winner of the 29 March elections, was not accepted for the election of 23 August, by a City Electoral Commission which had seen its Presidency and partial composition modified after the Kirovograd Court ruling (see Appendix II). Whilst electoral legislation in Ukraine certainly bars a candidate, found guilty of irregularities, from remaining in office as a Councillor or Mayor; or participating as a candidate in the rerun of the same elections, the CLRAE delegation did raise the question of whether the elections of 23 August should be considered as completely new elections, in which case there was little justification for continuing to bar Mr Gurvits or whether they were simply a rerun of the 29 March elections. A relevant extract from the electoral law appears as Appendix III.

Whatever the interpretation, this decision marked the beginning of a protracted legal and political battle:

- a large number of appeals made by candidates and their supporters to the Electoral Commission. Some may have been justified but many were allegedly designed to upset the electoral process. All appeals were properly examined and most were rejected as unfounded by the City Electoral Commission and/or the City Court.
- accusations of unequal access to the media,
- presence in the Odessa City Hall of specialised units of national police,
- controversy within the City Council of Odessa in relation to a citizen referendum on June 28<sup>th</sup> concerning the validation of the results of the 29<sup>th</sup> March election.
- political propaganda couched occasionally in extremely violent terms. For example, an unsigned poster was widely distributed with names, addresses and telephone numbers of all members of the City Electoral Commission who were denounced as criminals and saboteurs against whom citizens were invited to take action.

In the weeks prior to the elections, the Council of Europe had also been made aware of the electoral campaign through a number of protests and appeals sent by the supporters of Mr Gurvits and the former Executive Committee of Odessa. These concerned a number of alleged wrongdoings by the supporters of Mr Bodelan and by the Odessa Regional State Administration – provoking a ruling signed by the Head of the Presidential Administration that such appeals made directly to the Council of Europe were unconstitutional and illegal and should be made through the Foundation for Local Self-Government and the CLRAE Ukraine delegation.

The number of candidates for the position of Mayor was considerable (58). They included Mr Bodelan, the former Head of the Odessa Regional State Administration, and in the absence of Mr Gurvits, clearly one of the front runners. Many of the other candidates were without genuine hope and some had been nominated for what turned out to be spurious reasons, ie., withdrawal at the last minute in order to create administrative difficulties for a City Electoral Commission which then had to alter manually a large number of ballot papers, in the seven hours between the deadline for withdrawal of candidates at 24h 00 on 22 August and the opening of the polling stations at 07h 00 on election day of 23 August.

In the end, the City Electoral Commission and many local Electoral Commissions managed to achieve the necessary changes but other Local Commissions were still carrying out the alterations during the morning of polling. Clearly, there is now a substantial risk of candidates appealing against results on the ground of uncertain or spoilt ballot papers.<sup>2</sup>

### **Appointment of an interim Mayor**

By Presidential Decree, the Deputy Prime Minister, **Mr Biloblotsky** was appointed on 26 May, as an interim Mayor with responsibilities for the daily management of the city, the reduction of social and economic tension and the organisation of new elections. A copy of the Presidential Decree is appended (see Appendix IV).

The Prime Minister had described Odessa on his visit in May as the most crime-infested region of the country. In a Press Release from the Presidential administration, the city was described as financially unstable with large scale money machinations by officials and a consistent pattern of individual city employees misusing their positions for financial gain. It said the city remained a hotbed of activity by criminal gangs, with many high-profile contract killings unsolved. The Press Release also noted that many Odessa municipal employees had not been paid for six months. It concluded with a call for the general audit of the local government and an overhaul of the local tax system.

Such arguments, of course, were refuted by Mr Gurvits and the Executive Committee of the City.

Whilst difficult to reconcile with the principles of local democracy, the appointment of Mr Biloblotsky was justified as a reasonable and even necessary measure, in order to deal with some of the problems mentioned above, defuse a highly volatile situation and organise and manage an efficient election. The CLRAE delegation met Mr Biloblotsky on several occasions and was impressed not only by his solid practical and efficient approach but also by his conviction and will to leave the running of the city to the newly-elected Mayor, once his own job was over.

### **The programme of the delegation**

The delegation held discussions with:

- the new Head of Odessa Regional State Administration, Mr Hrynevetsky;
- the President of the City Electorate Commission, Mrs Budiak and members of the Commission;
- the acting Mayor of Odessa and Deputy Prime Minister of Ukraine, Mr Biloblotsky;
- representatives of four or five different political parties and groups.

## **Election Day and the impressions of the CLRAE delegation**

On election day, the delegation visited approximately 20 polling stations, including those in a prison, a hospital and a military zone.

The delegation started its visits at the opening of polling at 7 a.m. and finished at 22h 00 at the moment of closing. It then visited the City Electoral Commission when the first results were beginning to come through.

The impressions of the delegation were positive. The domestic observers from different political parties expressed themselves satisfied with procedures and management of the day of polling. Voting took place in a calmer and more orderly manner than had been the case in the March elections – a discipline certainly occasioned by a voter turnout considerably lower than in March (37%) because of the holiday period and by the imminence of a widely celebrated Independence Day – but also certainly influenced by an electoral campaign which in its last few days had been relatively free of incident.

Technically, there were the usual safeguards for ill or handicapped persons; and for persons missing from the electoral roll who were nonetheless able to vote, provided they had the necessary identification.

As far as the delegation could see, the restrictions on political propaganda in the vicinity of polling stations were respected. The ballot boxes had been sealed correctly, the list and photographs of candidates adequately displayed and the Electoral Commissions were purposeful and in control.

## **7. The results**

Mr Bodelan was the elected Mayor with a majority of approximately 40,000 votes out of a total of 247,000 votes cast on the day, ie. 37 per cent of the total registered electorate.

## **8. Press and Media**

A number of journalists were present at meetings with representatives of political parties and did not hesitate to ask questions, sometimes of a leading and politically biased nature. The CLRAE delegation remained throughout objective and informative in its responses.

Rather than organise a formal Press Conference on Monday 24 August, the delegation preferred to give one interview where local and national TV were present. This interview (approximately eight minutes) conveyed the view of the delegation about a difficult and contentious campaign but one which had culminated in a day of polling without major incident and where it was hoped that Odessa politics would now enjoy a period of calm and serenity where the interests of local, regional and central government were balanced in a more structured manner.

The CLRAE delegation also issued a Press Communique (see Appendix V) in which this view was expressed.

## **9. Analysis and future prospects**

Odessa is one of the most important business and commercial centres of Ukraine. It is the site of the country's largest oil terminal, through which oil from Siberia transits to the Mediterranean region. The control of the regional oil transportation facilities is a key element in the national budget. It is therefore not unnatural that central government should take a keen interest, closely follow all developments in the region and take steps to ensure that an acceptable proportion of the undoubted wealth of the city of Odessa finds its way into central government coffers.

It was against such a background of economic interest and distribution of power in which took place a highly visible political polarisation between Mr Bodelan, labelled rather simplistically as a Presidential nominee; and Mr Gurvits, described with equal facility as a liberal market economist.

The saga of political confrontation may well continue. There may well be appeals against the result.<sup>3</sup> We were informed, for example, that Mr Gurvits had appealed to the European Court of Human Rights about the cancellation of the 29<sup>th</sup> March elections and the refusal of the City Electoral Commission to accept him as a candidate for the new elections.

However, the elections were well organised. The Deputy Prime Minister undoubtedly did a good job in lowering the tension, organising the elections and even bringing down the crime rate. (Postscript. Accepting that his job was now over, when a new Mayor was elected, Mr Biloblodsky in fact left Odessa within a few days after the elections of 23 August.)

The City Electoral Commission worked effectively, although under a great deal of pressure. In addition, there were even individual threats levelled at some members of the Commission, to the point where, in the last few days before polling, the President and some members did not leave their HQ in the Town Hall and some of their families were even advised to leave Odessa.

The CLRAE delegation was the only team of international observers. Its presence was appreciated. Several persons, including the interim Mayor and the President of the Electoral Commission, welcomed its highly visible stay as a sign that an outside body of recognised prestige on political questions affecting local government, actually cared what happened in a town in a member country.

**The Appendices I to IV are printed, without changes, as they were received by the Secretariat**

**APPENDIX I**

**Translation from Russian into English**

Office of Public Prosecutor of Ukraine  
270026, City of Odessa, 24, Dasochkin str.

To the Chairman of the City of Odessa

Territorial Election Committee Budyak L.S.

Directions on Elimination of Violations

In respect of Election Legislation

The City of Odessa territorial election committee has committed violations of the Law of Ukraine "On Elections of the Deputies of the Local Councils and Villages, Settlements, Cities Chairmen", No. 14/93-BP dated 14.01.98.

In accordance with the requirements of part 1 of the Law of Ukraine "On elections of the Deputies of Local Councils and Villages, Settlements' Cities Chairmen" the violation of the requirements of the law, by a candidate of the Local Council or a candidate for the position of a village, settlement Chairman, by their Empowered Persons involves cancellation by the territorial Election Committee of its decision about a candidate registration (decisions of the corresponding Election Committee).

Court Bar on civil cases of Korovograd Regional Court in its Decision dated 6 May 1998 on a civil action No. 3-5/1993 says that R.I. Gurvits, a candidate for the position of the city's Mayor, during the election campaign committed violations of the paragraphs 2,3, 4 of article 36, paragraphs 3, 4, 5 of part 2 of article 53 of the Law of Ukraine on "Elections of the Deputies of Local Councils and Villages, Settlements, Cities Chairmen". Thus in the decision of the Court Bar of Kirovograd Regional Court the fact of violation by the candidate for the position of the city's Mayor Gurvits E.I. of the requirements of the law of Ukraine on "Elections of Deputies of Local Councils and Villages Settlements, Cities Chairmen" were ascertained. Due to the fact that elections of Odessa City's Mayor were acknowledged to be invalid, the city Territorial Election Committee did not take the decision to cancel the registration of the candidate for the position of the city's Mayor Gurvits E.I.

While organising carrying out out of repeated elections for the position of a city's Mayor, on 20.06.93 Odessa City Territorial Election Committee accepted for consideration the Statement of Gurvits E.I. about this registration as a candidate.

The above stated actions of the Odessa City Territorial Election Committee contradict the requirements of p.1 of Article 53 of the Law of Ukraine "On Elections of Deputies of Local Councils and Villages, Settlements, Cities Chairmen".

Taking into consideration that violation of the law has an obvious nature and can inflict a considerable damage to the interests of the State as well as separate citizens, being guided by Article 22 of the Law of Ukraine on "Office of the Public Prosecutor".

**DEMANDS:**

To cancel urgently the above stated violation of the law by refusing Gurvits E.I. in registration as a candidate for the position of a city Mayor.

This Direction is subject to obligatory execution, the results of which are to be reported to the city's Office of the Public Prosecutor within the term of 10 days.

Deputy of Public Prosecutor of Odessa

Senior Councillor of Justice A.N. Medentsev signature

*The first copy of the Direction has been received.*

Its essence and the right of appeal to the higher Public Prosecutor has been explained.

..... 1998 ..... signature

## **APPENDIX II**

NATIONAL EMBLEM

THE ODESSA CITY TERRITORIAL ELECTION COMMITTEE

06 07 90

Excerpt from the Protocol of the Sitting of the Odessa City (Territorial) Election Committee No 7 of 03 07 98

On the first issue:

Heard: Information of the Deputy Head of the City (Territorial) Election Committee Mr SHKLYARUK Z.M. on the submitted documents of the persons that are nominated as candidates.

For the position of the City Mayor of the City of Odessa:

Mr GURVITS EDUARD IOSIFOVICH

Approved: 4. In line with the results of voting of the Members of the City (Territorial) Election Committee on registration of Mr GURVITS EDUARD IOSIFOVICH, self-nomination, born on January 30, 1948, People's Deputy of the Ukraine, residing in the village of Fontanka, Kominternovsky District, Odessa Region, as a Candidate to the position of the City of Odessa Mayor on the grounds of the Decree of the Office of Public Prosecutor of the City of Odessa of 02 07 98 no. 530/ref. "On liquidation of violations of legislation on elections" and the decision of the Kirovogradsky Regional Court of 06 05 98 – to refuse to Mr GURVITS EDUARD IOSIFOVICH in registration as a candidate for the position of the City Mayor of the City of Odessa.

Committee Head Signature L. Budyak

Secretary Signature N. Flotska

## **APPENDIX III**

The Text of the Law No. 0014098 (Part 2)

Article 49, Procedure of carrying out repeated elections

1. Repeated elections are carried out in case elections in an election district were acknowledged as those which did not take place or were invalid, in other cases when the Council is not elected in full composition. Repeated elections are also carried out in cases where a village, settlement, city Mayor is not elected as well as in cases envisaged by part three of Article 32 of this law.
2. The Territorial Election Committee takes the decision to carry out repeated elections not later than in a month term after the day of elections or after the day of repeated elections.
3. Repeated elections are carried out by the same Election Committees, at the same election regions, election districts in accordance with the same lists of electorate within the same procedure and terms as determined by the present law.
4. The Territorial Election Committee can take the decision to reduce the terms of carrying out repeated elections envisaged by this law, but not more than by half.
5. The following persons cannot ballot on repeated elections in respect of whom the decision about their registration as candidates were cancelled as well as the persons who committed such actions in the consequence of which elections or repeated elections were acknowledged to be invalid and in other cases, envisaged by the law.

**For further information and complete appendix, please contact: [webcplre@coe.int](mailto:webcplre@coe.int)**

<sup>1</sup> In fact, on 23 August, in addition to the election of the Mayor of Odessa, there were simultaneous elections for three vacant positions for the City of Odessa on the Regional Council and an election in an Odessa district for a vacant seat on the City Council.

<sup>2</sup> In the event, this fear, at least for the moment, has been unfounded because by the end of September, only two appeals have been lodged.

<sup>3</sup> See earlier footnote