

INTERIM REPORT No. 2
29 September–14 October 2012

19 October 2012

I. EXECUTIVE SUMMARY

- The Central Election Commission (CEC) is currently training the District Election Commissions (DECs), which will in turn train Precinct Election Commissions (PECs). The ongoing large-scale replacement of DEC and PEC members, mainly upon the request of nominating political parties, raises concern as it may negatively affect the election process. The CEC continues its practice of holding closed pre-session meetings.
- Preliminary voter lists have been delivered to PECs, where voters can scrutinize them.
- The election campaign is active, thus far, although it is less visible in rural districts. The Party of Regions and its candidates have the most visible campaign overall, followed by United Opposition – *Batkivschyna* and the Ukrainian Democratic Alliance for Reforms (UDAR). OSCE/ODIHR Election Observation Mission (EOM) long-term observers (LTOs) have observed over 80 campaign events to date. There have been reports that some meeting venues were refused by local authorities. Some parties have claimed that in certain areas companies refuse to rent them billboard space or have cancelled signed contracts for advertising.
- The abuse of administrative resources by some official bodies is the subject of widespread allegations and has been observed or verified by LTOs in more than 20 instances in a dozen *oblasts*. Most such cases have been in support of the Party of Regions or its candidates. OSCE/ODIHR EOM LTOs in a number of regions have noted the activity of charity organizations, which are closely linked to certain candidates and distribute material benefits or services to voters. Some cases of threats or physical attacks on candidates and campaign workers were also reported.
- Preliminary OSCE/ODIHR EOM media monitoring results show that the amount of campaign coverage in news and current affairs programs is limited, in particular on the most watched TV stations, which may negatively impact on voters' access to different political views. By contrast, paid political advertising is used extensively on the monitored TV stations, indicating that in order to reach out to voters through the most popular broadcasters, political parties require significant financial means. The National Television and Radio Broadcasting Council does not monitor broadcasters' compliance with legal provisions for unbiased and balanced coverage of contestants.
- During the reporting period, the CEC received 25 complaints alleging campaign violations and indirect vote buying. The CEC is processing complaints in a timely manner but deliberates behind closed doors, and its resolutions often lack adequate factual information or legal reasoning. District and Appeal Administrative Courts rejected the majority of complaints analyzed by the OSCE/ODIHR EOM, either on formal grounds or due to lack of evidence. In some cases, courts applied unsound, overly narrow or inconsistent interpretations of the law.

II. ELECTION ADMINISTRATION

The Central Election Commission (CEC) continues the practice of holding closed pre-session meetings. On one occasion, while discussing the dismissal of an entire District Election Commission (DEC), the CEC mentioned that another draft decision had been proposed, discussed and rejected during a meeting before the formal CEC session.

The CEC, jointly with the International Foundation for Electoral Systems (IFES), is currently training chairpersons, deputy chairpersons and secretaries of DEC, and providing them with printed material on different issues. They subsequently train other DEC members and the chairpersons, deputy chairpersons and secretaries of Precinct Election Commissions (PECs). OSCE/ODIHR Election Observation Mission (EOM) long-term observers (LTOs) assessed the training sessions they attended as thorough. However, their ultimate effectiveness is of concern because of the large-scale replacement of DEC and PEC members, including people who were already trained. Furthermore, attendance at some DEC training sessions was low. Some parties have organized training sessions for their own PEC members.¹

Two training sessions for the operators of the automated information system *Vybory* are planned, to test the procedure of transferring polling station election results from the DEC to the CEC.² OSCE/ODIHR LTOs were denied access to such training in DEC 11, 90, 99, 122, 123, 128, 187, 201, 203, 204, 216, 219, 222, 223, 224 and 225, mainly due to a lack of a stated provision in the law specifically providing for such observation.³ Moreover, the CEC confirmed to the OSCE/ODIHR EOM that according to their understanding of the electoral law, international observers are not entitled to receive copies of PEC and DEC results protocols.

Voter education is ongoing, with spots on various aspects of the electoral process being aired on different TV channels. Most DEC are operational but are adversely affected by replacements of their members. As of 6 October, more than 4,400 replacements have been made by the CEC, which resulted in a change of more than 55 per cent of all DEC members. More than half of the replacements have been at the request of five small parties, each of which have changed almost all of their DEC members and which together have a combined total of 10 candidates in the elections.⁴ DEC appear to be on track in their preparations, distributing election materials to the PECs, although the deadline for PEC formation was not respected by some DEC.⁵

Some 85 parties and 1,567 majoritarian candidates have representatives in PECs as a result of the lotteries carried out by DEC for the distribution of PEC positions.⁶ Some interlocutors expressed their lack of confidence in the election administration, claiming that many small parties represented in DEC and PEC are affiliated with the Party of Regions, which increases the predominance of the ruling party within the election administration.⁷ Moreover, OSCE/ODIHR LTOs reported allegations that DEC and PEC members were being pressured to withdraw from their positions. The

¹ Party of Regions, *Batkivschyna*, Ukrainian Democratic Alliance for Reforms (UDAR).

² *Vybory* is an online automatic data system used for data processing by DEC and the CEC, including for distributing leadership positions in DEC and PEC, for financial purposes, as well as for the transmission of preliminary election results and for posting the official election results on the CEC website.

³ Article 77.2 of the electoral law provides international observers with the right to observe the entire election process.

⁴ These parties are: Union of Anarchists of Ukraine, *Yedyna Rodyna*, *Bratstvo*, *Ruska Yednist* and *Rus Yedyna*.

⁵ For example DEC 2 and 19.

⁶ Some DEC (61, 138, 159, 224 and 225) failed to adhere to the rules set by the CEC and had to repeat the lottery.

⁷ Cases of apparent affiliation of small parties with the Party of Regions were reported to OSCE/ODIHR EOM LTOs by some opposition parties and candidates in respect to the DEC and/or PEC in election districts 27, 82, 93, 96, 97, 107, 108, 112, 113 and 184.

large-scale replacement of PEC members is ongoing, reaching up to 50 per cent of the membership of some PECs.⁸ The reasons given for resignations vary and include the distance of the PEC from their home, insufficient remuneration, and lack of experience; however, most replacements are initiated by the nominating political parties. Some PECs were not fully operational due to a lack of quorum or the absence of the chairperson due to resignation.⁹

Polling stations are being equipped with voting equipment and the web cameras for filming the voting and counting process are being installed. During voting hours, footage from the web cameras will be recorded as well as streamed on the internet. During the vote count, it will only be recorded.¹⁰

The total number of voters as of 30 September, established after the last monthly pre-election update of the State Voter Register, was 36,666,020, including 451,160 voters registered for out-of-country voting. In the first days of October, the Regional Maintenance Bodies (RMBs) printed preliminary voter lists and the invitations for voters registered in regular polling stations and for those who will vote in special polling stations in prisons and pretrial detention centers.¹¹ For these elections, RMBs printed voters' names and other information on the invitations, thus reducing the workload of PEC members. OSCE/ODIHR EOM LTOs reported that preliminary voter lists and the invitations were distributed to PECs within the legal deadline of 7 October. In general, preliminary voter lists were available on time at PECs for review by voters. However, OSCE/ODIHR EOM LTOs report different approaches with regard to voters' rights to inspect the lists; while some PECs allow voters to inspect the entire voter list, others only allow voters to check their personal data.¹²

An increasing numbers of domestic observers are being registered. As of 11 October, DEC had registered 6,799 party observers and 4,933 candidate observers, with significantly more expected to be registered by the legal deadline of 22 October. The number of registered observers from domestic non-governmental organizations is 488, but it is also expected to increase substantially.¹³

III. THE CAMPAIGN ENVIRONMENT

The election campaign is thus far active overall, with significant variations within most regions. In urban areas, there are outdoor rallies, small-scale meetings with voters, tents for the distribution of leaflets and party/candidate newspapers, and political advertising by means of billboards, posters and local media. In rural areas, campaigning tends to be limited to billboards, posters, and occasional meetings with voters. In some electoral districts the campaign is scarcely visible except for a few billboards and posters. The Party of Regions and its candidates have the most visible campaign, followed by United Opposition – *Batkivschyna* and the Ukrainian Democratic Alliance for Reforms (UDAR), although both have less visibility in the east of Ukraine. The Communist

⁸ More than 30 per cent of initially appointed members were replaced in some PECs of DEC 27, 41, 115, 116, 117, 118, 129, 156, 176, 218 and 221.

⁹ Some OSCE/ODIHR EOM LTOs reported problems in reaching the quorum of two thirds of appointed commission members who had taken the oath of office so that a PEC may operate, which delayed the start of the work of some PECs in election districts 14, 106, 108, 110, 115, 116, 122 and 123.

¹⁰ The OSCE/ODIHR EOM was informed that the recorded footage will be stored for one year.

¹¹ The invitations notify voters of their inclusion in the preliminary voter list for a specific precinct and provide information about the address of the polling station, the telephone number and the working hours of the PEC, as well as the time and place of voting.

¹² According to Article 40.3 of the electoral law, voters are entitled to "access the preliminary voter list at the premises of the PEC" and to request corrections, "in particular concerning the inclusion or exclusion of the voter or any other person".

¹³ Among the domestic non-party observers registered so far, more than 400 come from the two main domestic observer organizations, *OPORA* and the Committee of Voters of Ukraine (CVU).

Party, Ukraine Forward and *Svoboda* (Freedom) are actively campaigning, but tend to have more visibility in certain regions rather than nationwide.

OSCE/ODIHR EOM LTOs have observed over 80 campaign events to date. There have been reports from several regions that some meeting venues requested by *Batkivschyna*, UDAR, *Svoboda*, the Communist Party, and some self-nominated candidates were denied by local officials.¹⁴

Through 13 October, 284 majoritarian candidates had withdrawn from the elections. Just prior to the 16 October deadline for candidate withdrawal, *Batkivschyna* and UDAR reached agreement to support common candidates in some 50 majoritarian districts. Both parties began the process of withdrawing candidates. The *Sobor* party withdrew its list in the nationwide multi-member constituency in favour of other opposition parties.

During the reporting period, five majoritarian candidates have told OSCE/ODIHR EOM LTOs that they were threatened or physically attacked. There have also been threats to or attacks on campaign workers, as reported by LTOs.¹⁵

The abuse of administrative resources by some official bodies is the subject of widespread allegations and has been observed or verified by LTOs in more than 20 instances in a dozen regions. In most cases, instances of abuse of administrative resources have been in support of the Party of Regions or its candidates.¹⁶ This has taken the form of the organization of events by local and regional authorities at which flags, campaign tents or other materials of the Party of Regions are in evidence or where its candidates figure prominently;¹⁷ campaign appearances by the party's candidates together with local officials;¹⁸ and teachers and hospital staff being required to attend meetings with candidates.¹⁹ LTOs have also observed meetings with citizens organized by local administrations at which Party of Regions campaign materials have been distributed. Party of Regions representatives and state officials have acknowledged to the OSCE/ODIHR EOM that instances of abuse of administrative resources have occurred, but stated that they are relatively few.

Party of Regions billboards are dominant in some areas, such as Odessa and Zaporizhzhya, with few for any other party. Opposition parties as well as the Communist Party have claimed that in some areas companies refuse to sell them space or have returned payment after signing rental contracts for billboards or light boards, allegedly due to pressure from local or regional officials.²⁰ LTOs have not been able to meet representatives of billboard companies regarding these claims. Some parties and candidates have been affected by systematic destruction of billboards or posters in certain districts.²¹ The destruction of campaign tents or harassment of campaign workers has also taken place in several cities. Finally, instances have been observed in some regions of 'black PR', in

¹⁴ Three such instances have been confirmed by LTOs in Zaporizhzhya *oblast*, and there are similar allegations from Ivano-Frankivsk, Kherson, Khmelnytsky, and Odessa *oblasts*, the Autonomous Republic of Crimea, and Sevastopol. In Chernihiv, a *Batkivschyna* rally was eventually allowed on appeal, but only the day prior to the scheduled event.

¹⁵ In Kyiv city and in Kyiv, Lviv and Zhytomyr *oblasts*.

¹⁶ In Poltava *oblast*, LTOs have observed administrative resources being used on behalf of a self-nominated candidate.

¹⁷ Observed at official celebrations in Zhytomyr, Zaporizhzhya and Chernihiv; working visits of high-ranking state officials to Odessa, Luhansk and Zaporizhzhya; and an employment fair in Simferopol.

¹⁸ Observed in Donetsk and Luhansk *oblasts*.

¹⁹ Observed in Chernihiv and Kharkiv *oblasts* and in the Autonomous Republic of Crimea.

²⁰ These allegations have been made in the *oblasts* of Dnipropetrovsk, Donetsk, Kharkiv, Luhansk, Lviv, Odessa, Sevastopol, Zaporizhzhya, and in the Autonomous Republic of Crimea.

²¹ Systematic destruction or defacing of posters and billboards has been observed, for example, in Sevastopol (election district 224, Russian Bloc party candidate targeted), Zaporizhzhya (UDAR targeted), Donetsk (district 52, self-nominated candidate targeted), and Kyiv (district 98, self-nominated candidate targeted) *oblasts*.

which fake campaign materials are printed seemingly on behalf of a party or candidate, as a provocation.²²

There are other practices which affect the campaign environment. LTOs in a number of regions have noted the activity of charity organizations that are closely linked to certain candidates in single-mandate districts. These charities distribute goods or services to voters, often together with newspapers or fliers prominently mentioning the candidate, and appear to be efforts to skirt the legal provisions against indirect voter bribery.²³ In some cases, these charities have organized events around larger-scale donations to communities with the presence of the candidate.

IV. THE MEDIA

The National Television and Radio Broadcasting Council, which is in charge of overseeing broadcast media during the election campaign,²⁴ does not monitor broadcasters' compliance with legal provisions for unbiased and balanced coverage of political parties and candidates contesting the elections.²⁵ According to interlocutors within the council, these provisions are not sufficiently well-defined to allow media monitoring results to be assessed against them. Furthermore, Article 5.3 of the Law on Television and Radio Broadcasting prohibits interference by public authorities in the activities of broadcasters, which according to the council prevents it from taking any measures to ensure balanced coverage. Moreover, a resolution by parliament of 2 February 2012 stops any "inspections" of media outlets during the campaign by "executive bodies, government agencies, State Tax Services and the National Broadcasting Council".²⁶ This resolution, initiated by several members of *Batkivschyna*, is aimed at "ensuring undeterred functioning of the media during the pre-election period in 2012".²⁷ However, as a result of its interpretation by the Council, political parties or candidates disadvantaged by imbalanced media coverage are deprived of a prompt remedy.²⁸

OSCE/ODIHR EOM media monitoring results from 16 September to 12 October show that the amount of campaign coverage in news and current affairs programs, in particular on the most watched TV stations, is limited, which may negatively impact on voters' access to different political views.²⁹ Out of a total of 35 hours of campaign coverage in news and current affairs programs of competing parties broadcast in the monitored media, only 6 hours were broadcast by the leading channels 1+1, TRK Ukraina, Inter and ICTV. At the same time, 37 hours of paid political advertising were broadcast on these 4 commercial TV stations, indicating that in order to reach out to voters through the most popular broadcasters, political parties require significant financial

²² The Communist Party appears to have been the victim of large scale 'black PR' in Luhansk and Zaporizhzhya *oblasts*. Other instances, affecting various parties and candidates, have been observed in Ivano-Frankivsk, Kharkiv, Kirovohrad, and Vinnytsia *oblasts* and in Kyiv city.

²³ Such charity organizations have been observed working in the *oblasts* of Kharkiv, Kyiv, Luhansk, Lviv, Mykolaiv, Odessa, Poltava, and Vinnytsia, as well as in Kyiv city.

²⁴ According to Article 13 of the Law on the National Television and Radio Broadcasting Council.

²⁵ See Articles 66.2 and 66.3 of the electoral law.

²⁶ The resolution is available at: <http://zakon3.rada.gov.ua/laws/show/4387-17>.

²⁷ However, on 3 October the Luhansk District Court suspended publication of the newspaper *Nash Vybir* for the election period on grounds of repeated violation of Article 67 of the electoral law, concerning public opinion polls. According to the ruling, the newspaper repeatedly failed to indicate the full name of the organization that conducted and of the person that commissioned the poll. On appeal, the Donetsk Administrative Court of Appeal on 7 October ruled that the law has been violated but withdrew the ban on the newspaper.

²⁸ A 'working group' within the Council considers violations and complaints regarding campaign provisions. After consideration, complaints might be forwarded to courts after the elections.

²⁹ The monitoring of broadcasters includes the state-owned *Pershyi Natsionalnyi* and the commercial 1+1, 5 kanal, ICTV, Inter, TRK Ukraina and TVi. Due to limited availability of TVi on cable providers the monitoring of TVi started on 22 September. For audience shares of the main TV channels see: http://www.mediabusiness.com.ua/component/option,com_rating/Itemid,55/lang,ru/.

means.³⁰ Furthermore, the above-mentioned TV stations did not increase the amount of discussion programs during the campaign period.³¹ The rather limited amount of campaign coverage gives the ruling party, through the dominance of institutional coverage, a distinct advantage.

After public protests by civil society and the media community – a demonstration of approximately 300 participants, including prominent journalists was held on 1 October – parliament rejected the draft law reintroducing criminal liability for libel on its second reading.³²

V. COMPLAINTS AND APPEALS

During the reporting period, the CEC received 25 complaints, of which it referred 12 to law enforcement agencies, returned 4 for correction of errors, partially satisfied 4 and dismissed 13 on formal grounds.³³ The complainants alleged campaign violations and indirect vote buying; the CEC issued six warnings to political parties following relevant court decisions. The CEC is processing complaints in a timely manner overall. However, the practice of discussing the substance of complaints in closed meetings and the subsequent limited deliberation taking place during official sessions reduces the transparency of the process. The lack of adequate factual information or legal reasoning of many resolutions at times puts into question the justification of the resolutions adopted.

Despite the large number of complaints filed with the courts, the judiciary has thus far adjudicated them within the legal time limits.³⁴ Although resorting extensively to the courts for the resolution of election-related disputes, interlocutors from opposition parties told the OSCE/ODIHR EOM about their lack of trust in legal mechanisms and confidence that individual complaints would be dealt with in a manner that they would provide effective legal remedy. A small number of complaints were also filed with DEC, which mostly rejected them on formal grounds, demonstrating in general an excessively formalistic approach.³⁵

The bulk of complaints lodged at the courts challenged the formation of the PECs. Only a very small number of them were upheld by the courts, which in those cases established the illegality of lotteries and cancelled the relevant DEC resolutions.³⁶ Nevertheless, effective remedy was not provided to the aggrieved parties, as no repeat lottery was conducted in implementation of these decisions. Around one half of the court rulings were over complaints alleging campaign violations, indirect vote buying, involvement of officials of state or local executive bodies or use of their pictures during campaigning, and prohibition to campaign by the local authorities.

The courts rejected the majority of complaints examined by the OSCE/ODIHR EOM, either on formal grounds or due to the complainants' failure to provide sufficient evidence. There were some

³⁰ More than 60 per cent of paid airtime was purchased by the Party of Regions, Our Ukraine and *Batkivschyna*.

³¹ The electoral law does not provide for discussion programs on state-owned media outlets.

³² Press Release by the OSCE Representative on Freedom of the Media, available at: <http://www.osce.org/fom/94620>.

³³ The majority of the complaints that were dismissed or partially satisfied were at the same time forwarded by the CEC to the law enforcement agencies to investigate the allegations.

³⁴ The OSCE/ODIHR EOM has, at the time of writing, collected and analyzed 110 complaints from all administrative courts of the country. The High Administrative Court does not keep up-to-date centralized statistical data of election-related complaints filed with the District and Appeal Administrative Courts throughout the country.

³⁵ For instance, rejecting complaints for not indicating the complete name of the complainant or misspelling of the DEC.

³⁶ Notably, one court ordered a DEC to repeat the lottery. Meanwhile, another court, while partially satisfying a similar complaint, ruled that it could not order to repeat the lottery since this was a form of interference in the discretion of the DEC and exceeds the framework of administrative justice.

cases where the courts applied unsound, overly narrow or inconsistent interpretations of the law,³⁷ dismissed complaints on questionable grounds of lack of evidence³⁸ or inadmissible evidence.³⁹ Most importantly, while Article 71 part 2 of the Law on Administrative Procedure provides for the reversal of the burden of proof in cases challenging the lawfulness of decisions, actions or inactions of the public administration, the courts repeatedly did not apply this doctrine, rejecting the complaints as unfounded.⁴⁰ Furthermore, the absence of monitoring of the enforcement of court decisions and the lack of effective sanctions potentially compromises the right to an effective remedy and accountability for violations of electoral rights.

Some 12 complaints alleging criminal offences were forwarded by the CEC to law enforcement agencies or the Prosecutor General's Office for investigation. In some instances, complaints filed with either the prosecutor or the CEC were referred back and forth, which delayed the process. The Prosecutor General's Office informed the OSCE/ODIHR EOM that since the beginning of the electoral process, it had received 456 election-related complaints, of which 273 alleged illegal campaigning. In general, few cases were under investigation during the reporting period, while at the time of writing, no cases involving criminal offences related to elections were reported to have been prosecuted.⁴¹ Many election stakeholders complained to the OSCE/ODIHR EOM about the passiveness and ineffectiveness of law enforcement agencies. The Ministry of Interior informed the OSCE/ODIHR EOM that as of 13 October, it had received some 2,300 allegations of violations of the electoral process.

VI. OSCE/ODIHR EOM ACTIVITIES

During the reporting period, the OSCE/ODIHR EOM continued its regular activities, meeting state officials, party representatives, candidates, the election administration, court officials, media and civil society representatives, and diplomatic missions. LTOs deployed throughout the country continue to observe electoral preparations and the campaign in the regions and are preparing for the deployment of short-term observers. A briefing for members of the diplomatic community and international organizations accredited in Ukraine was held on 5 October.

³⁷ For instance, a court ruled that the appearance of the head of the *oblast* administration together with a Party of Regions candidate, who is also the deputy head of the *oblast* administration, in a political advertisement on TV was not a violation of the electoral law, as long as the head of the *oblast* administration did not urge voters to support this candidate and did not make reference to his official position. By contrast, another court ruled that the presence of the head of a *rayon* (district) administration in a campaign event is an obvious fact of favoring one of the electoral contestants.

³⁸ For example, a court ruled that it could not be proven by a photo of a communal enterprise (musical theatre) with a poster of the Party of Regions placed in the building, that was submitted as evidence, which building was pictured in the photo, neither could the court establish whether the photo was taken during the current electoral process. Another court dismissed a complaint of the Party of Regions against a candidate, on the grounds that the photos submitted as evidence and the testimonies by third parties did not prove that campaign materials distributed at the tent of the candidate had been ordered or distributed by him.

³⁹ For instance, a court did not consider as evidence a dissenting opinion of a DEC member supporting a complaint and subsequently rejected the complaint, on the grounds of late submission to the DEC of the dissenting opinion, although the complainant claimed that the DEC was closed for the two previous days.

⁴⁰ It is noteworthy that a court rejected two complaints against actions of DEC members and one against the city council, filed by *Batkivschyna* on the grounds that the complainants' allegations were not proven, without referring to the shift of the burden of proof, while in two other cases filed by the Party of Regions the court explicitly referred to the burden of proof lying on the public authority (DEC).

⁴¹ In some instances, district prosecutors informed OSCE/ODIHR EOM LTOs that a small number of investigations had been initiated, while other prosecutors stated that there were no pending cases.