

INTERIM REPORT 2
14 February – 1 March 2006

I. EXECUTIVE SUMMARY

Following an invitation from the Ukrainian Authorities in December 2005, the OSCE/ODIHR established an Election Observation Mission (EOM) on 23 January in order to observe the lead up to the 26 March presidential election. In addition to the 52 long-term observers currently deployed, the OSCE/ODIHR has requested the participating States to send 600 short-term observers to monitor voting, counting and tabulation of election results.

- The campaign remains active mainly in the South and East and has generally proceeded peacefully. However, a limited number of minor incidents have been reported, as well as a few allegations of instances of possible pressure on some categories of voters to support certain contestants. The EOM is following these cases.
- There are concerns that holding multiple elections might create problems for the logistical organisation of the elections and for voters' understanding of the process. The Central Election Commission (CEC) is conducting a voter education program through the media.
- Continuing changes in District Election Commissions (DEC) membership makes their tasks at times difficult and impacts negatively on the appointment of Precinct Election Commissions (PEC) members. The low budget allocated for election commissions and unclear recruitment criteria hamper the hiring of qualified support staff.
- The appointment of PECs faced serious human resource problems, due to the failure of smaller political parties to submit enough nominees, and to numerous resignations from newly-appointed PEC members. As a result, a considerable number of PECs are yet to become fully functional. This could shorten the time voter lists will be available for public scrutiny, and could hamper election preparations.
- The OSCE/ODIHR EOM has heard criticisms on the new voter lists from opposition parties. Although this is not formally required by the law, the CEC published on 1st March voter lists data per Oblast on its website. The publication of more detailed voter registration figures would further enhance the transparency of the process.
- The campaign in the media has remained active, with evening news programmes and paid advertisements, representing a broad range of views and underscoring a vigorous campaign. The EOM has also received a number of complaints from smaller parties and blocs on the cost of campaign advertisements in media.
- A total of 16 local non-partisan organisations have been accredited by the CEC for the observation of the elections. The Committee of Voters of Ukraine, Ukraine's largest observation organisation, plans to field up to 5000 observers on election day.

II. OVERVIEW

The political discourse has been dominated in recent weeks by the issue of coalition agreement talks. Discussions on this issue amongst the forces which supported the candidacy

of Viktor Yushchenko in 2004 faded on 21 February as three different coalition agreements were published by Bloc Yulia Tymoshenko (BYT), the Our Ukraine Bloc (OU) and PORA-ROP. Both the Socialist Party (SPU) and the Party of Regions (PoR) have publicly stated that they will not agree on any coalition agreements prior to the election results being known.

A further element that may impact on the parliamentary race is a possible referendum to be held in Crimea over the issue of Russian as a second State language. The Crimean Supreme Council decided on 22 February to allow a referendum to be held on 26 March, concurrently with the parliamentary vote. This decision has been questioned by the Presidential administration, which considers it unconstitutional, and it has been publicly criticised by the Crimean Prosecutor. On 27 February, a special group was set up by President Yushchenko to “analyze the implementation of the Constitution, laws, and presidential acts in Crimea”.

The swearing in of Constitutional Court appointees by the Parliament has been postponed to 15 March. As a result, the Constitutional Court continues not to function.

After the Speaker of Parliament announced on 14 February the appointment of a special ‘Parliamentary Committee on Election Legislation Observation’, on 25 February the President announced the creation of a ‘Presidential Council for Honest Elections’, presented as responsible for drafting proposals to the President on actualizing the electoral rights of citizens. The impact these bodies can actually have on the electoral process is still uncertain, in particular the extent to which they could potentially encroach upon the area of competence of the institutions responsible for the conduct of the elections, according to the law.

Political Campaign

The election campaign has been proceeding apace, with an increased visibility of parties and blocs throughout the country. Many parties are utilizing billboard advertising and handing out campaign information and leaflets from ‘party-labelled’ tents in the streets to get their message out to voters. Some parties have complained to the EOM that billboards are prohibitively expensive for smaller and less well financed parties/blocs.

In addition, talking to individual voters in the streets, carrying out door-to-door campaigning, and holding small public meetings with voters constitute the main focus of party’s/bloc’s campaigns. The campaign is still more visible in the East than in the West, with a greater number of meetings and visits of candidates.

There have been few complaints to the EOM of parties/blocs being hindered in the carrying out of their campaign, although minor disturbances and attacks on party/bloc property by unknown individuals have been reported. The majority of these reports however were found to be exaggerated or were not substantiated by parties. In recent days, a number of attacks on Our Ukraine campaigners in Donetsk *oblast* have been reported, but the police are still in the process of investigation. The EOM will follow developments. The Communist Party expressed concerns about hate graffiti being sprayed on few buildings in Western Ukraine, in which their offices are located.

The EOM has received a few allegations of possible pressure placed on some particular categories of voters. In relation to allegations of pressure upon students of the Law Academy in Odessa to support the Party of Regions, the local youth branch of SPU and the local branch of PORA wrote a petition to the Governor of Odessa and to the Minister of Education in the first half of February requesting the matter be investigated. Also, the local branch of Our

Ukraine in Kharkiv claims they have filed a complaint with the Police alleging that the students of College 38 were being compelled to produce campaign material for the Party of Regions. The EOM is also following these cases.

Also, two isolated instances of the use of administrative resources were directly observed by the EOM. One occurred in Poltava during the official commemoration of the Day of the Veterans of the Afghanistan War. At this event, while army veterans were receiving commendations from the head of the *Oblast* administration, who is running as a candidate for the parliamentary elections on the SPU list, a large SPU banner was displayed in the background and clearly visible during the TV coverage of the event. Some of the participants complained in an open letter in newspaper *Poltavsky Vistnyk*, that the Head of the *Oblast* administration had used the event for campaigning purposes. In Kharkiv, gas bills from the local utility company carried a political message from SPU's leader, Mr. Moroz. SPU has denied any connection and requested the company to halt this practice. To date, these incidents do not seem to represent a pattern in the elections.

In addition, during a gathering of school directors in a school in Odessa, Our Ukraine campaigners allegedly used the event to present their party platform. This case has been brought to the attention of the Minister of Education and of the Governor of Odessa in the same petition as the one concerning the students of the Odessa Law academy.

Instances of negative campaigning continue to be noted in the regions and complaints have been filed by parties/blocs accordingly. While these cases are handled countrywide with no new case recorded in the north and west, several new complaints were filed in the south and east.

Political Parties/Blocs and Candidates

The EOM has, to date, met with 24 parties/blocs, representing more than half of those registered to run in the parliamentary elections. Smaller parties have focused their complaints to the EOM on what they consider as insufficient state funding for media airtime. Overall, the lack of funds, compared to larger parties, seem to be the main source of dissatisfaction. Many also expressed their desire to see the lowering or complete withdrawal of the threshold for representation in Parliament. Many interlocutors expressed concern that the holding of local and parliamentary elections concurrently may lead to confusion amongst voters.

III. ELECTION ADMINISTRATION

The CEC continues to hold frequent and open sessions, with most decisions taken by consensus. Adjudication of complaints however often generates lively discussions, with some members expressing dissenting opinions during both the discussion and through their respective vote. Contestants' proxies are active in these discussions.

On February 18, the CEC formed the election commissions for the 114 polling stations located in 78 countries abroad. All parties/blocs who have the right to nominate PSC members submitted altogether only 118 names, which were all accepted by the CEC. According to the law, all remaining 1590 positions were filled by submissions forwarded by the Ministry of Foreign Affairs.

The CEC is currently conducting a voter education program on both public and private media, consisting of a one hour program broadcast weekly on *UTI* and *ICTV* in an effort to raise voters' awareness of the simultaneous electoral processes. Given the complexity of the elections, and the changes the election system has undergone, several interlocutors commented that more efforts are needed to raise voter awareness.

Frequent changes in personnel and frequent replacements in DEC managerial positions continue to hamper the work of some DECs. This directly impacts on the quality and consistency of their work. As of 24 February, 436 DEC's members had resigned, more than 10% of all DECs' membership. The rate of withdrawal from managerial positions for the 225 DECs was even higher, affecting 48 chairman, 36 deputy chairman and 60 secretary posts. Reasons given for withdrawal include the responsibility vested in managerial positions, newly-introduced individual liability, the high workload with tight deadlines, and low salary.

The quality of work of DECs varies considerably throughout the country. It often depends on the number of members that were changed, on the member's experience, resources available and on the level of cooperation offered by local authorities. Recently introduced provisions prohibiting state employees to take part in the election process have positively sought to limit undue influence of local authorities on election commissions. However, in some cases they have resulted in some local authorities being reluctant to offer material support to DECs, for fear that it might be interpreted as interference.

Additionally, the low budget available and unclear selection criteria for recruiting administrative staff makes it difficult for DECs to hire qualified specialised support staff, such as lawyers and IT system administrators. This has already caused problems in the functioning of some DECs, and it created concerns for election day operations, as IT system administrators are in charge of setting up the network for the transmission of election results from DEC to CEC level.

The formation of PECs has been the focus of DECs' activities and has evidenced serious staffing problems, due mainly to an insufficient number of submissions from smaller political parties. According to the current system of formation of election commissions, all contestants are to submit only one nominee per PEC.

One day before the deadline for forming PSC, on 18 February, the CEC Chairman announced that some 27 000 positions (approximately 6%) in PECs remained un-manned, some 5000 in Kharkiv region alone. Several DEC were not able to meet the deadline. For example DEC 71 appointed the last PEC on 23 February, and DEC 90 on 27 February.

In case a PEC still has vacant posts after parties have submitted candidates, the law gives the DEC chairperson the duty to find additional nominations for the remaining vacant positions. This was carried out in a non-uniform manner, with DECs contacting local administration, local party branches, NGOs, or advertising in the local media, etc. The EOM is assessing whether this had any effect on the principle of balanced representation in election commissions.

This shortage of nominations by elections' contestants is further aggravated by numerous withdrawals of newly-appointed PEC members, in some areas reaching 50% of the total membership (DEC 157, Rivne). Reasons given for withdrawals include low salaries, the length of the task and a new individual criminal liability of election commissions' members introduced in the amended PAEL. Some individuals also appeared to find themselves

nominated for PEC membership without their knowledge or consent¹. DEC's are still in the process of filling in vacancies and ensuring suitable premises. As of 28 February, ten days after the deadline, a considerable number of PEC were still not operational, for example, in DEC 111, in Luhansk oblast, 80% of PECs were staffed only with the three top managerial positions.

Voter lists

According to the law, voter lists had to be submitted by local authorities to DEC's by 13 February. This generally occurred within the deadline. However, in many cases, problems experienced in DEC and PEC staffing had a direct influence on the delivery of the lists to PECs, where they should be available as of 21 February for public scrutiny and update, therefore limiting the voters' chance to check their data.

Although this is not formally required by the law, the CEC published on 1st March voter lists data per Oblast on its website. The provision of detailed voter registration figures at lower level would further enhance the transparency of the process.

The EOM received reports about a significant number of PEC where the number of registered voters is well above the legal maximum of 2500. This seems to be frequent in highly populated urban areas and could have consequences on the conduct of voting and counting.

Finally, the EOM has received some first negative comments on the state of voter lists from different opposition parties, including from the Party of Regions. The law gives parties represented in Parliament the right to receive an electronic copy of voter lists, and to participate in 'control groups' in charge of overlooking the performances of the 'working groups on voter lists' at local, regional and central level. It appears that, except at central level, most parliamentary parties did not use this opportunity since voter registration started.

IV. CANDIDATE REGISTRATION

Individual candidates can withdraw from the party list until three days before the elections. As of 25 February, 98 out of 7747 originally registered candidates withdrew. On 12 February, the CEC received information from the Ministry of Interior about 10 registered candidates who were in the past convicted by a court², and therefore not eligible to take part in the elections. Following the publication of the list, most of them either withdrew or were revoked by the nominating political party.

V. MEDIA

According to EOM media monitoring preliminary findings, the election campaign in the media has remained visible and active, through television newscasts, in particular via paid advertisements throughout the observed period. While in general media provide voters with a diversity of information, printed media in particular favour specific political subjects.

¹ In the area of DEC 121, Lviv, the same person was appointed as PEC member by five different parties.

² Under Article 9.4, the passive right of suffrage is denied based on any conviction, regardless of the nature of the underlying offence. This restriction is not in line with the latest jurisprudence of the European Court of Human Rights (*Hirst vs United Kingdom* - Application no. 74025/01).

The state-funded television *UT 1* has so far complied with its legal obligation to provide free air time to all contestants. Outside of the free time, the state-broadcaster has showed low interest in the electoral campaign, but has yet devoted a significant portion of coverage to the activities of the ruling authorities outside the campaign context.

The EOM media monitoring results show that over a four-week period during the campaign, *UT 1* provided the Government with 42% of its political prime time news coverage and the President with 16%, making these the main subject of attention. In addition, their coverage was overwhelmingly neutral or positive in tone. As for the parties and blocs, the most information has been dedicated to Bloc Our Ukraine, Bloc Yulia Tymoshenko and Party of Regions, with 8%, 6% and 4% respectively of mostly neutral coverage.

The most popular private broadcasters *Inter* and *I+I* adopted two different approaches while covering political events and showed support to opposite political subjects. *Inter*, for example, has allocated 11% of its political prime time news coverage to Bloc Our Ukraine as well as to Bloc *Ne Tak!*. However, while the coverage of the ruling party was mostly neutral and negative, information about the opposition bloc contained a predominantly neutral and positive tone. Conversely, channel *I+I* devoted the largest portion of political prime time news coverage to Bloc Our Ukraine, granting it 16% of mostly neutral and positive information. Party of Regions ranked second with 6%, and has received almost exclusively neutral and negative information in its tone.

The Donetsk based private TV channel *TRK Ukraina* provided a favorable coverage of Party of Regions, with 12% of positive and neutral coverage. Another private channel *ICTV* broadcast only a little negative information overall, with Lytvyn's Bloc and PORA-ROP receiving 8% and 6% of very positive coverage.

As reported before, the EOM has noticed possible by-passing of the PAEL provision, by inserting campaign material within news bulletins. This was observed in two cases at regional level (in Mykolayiv and in Sumy) and on several occasions on nation-wide channels (*Inter*, *ICTV* and *TRK Ukraina*). Specifically these channels conveyed in news bulletins some material promoting specific parties/blocs (Bloc *Ne Tak!*, *Viche*, Lytvyn's Bloc, PORA-ROP and Party of Regions), with questionable informational value for viewers.

The print media landscape appears to be very polarized. The two state-funded newspapers have complied with their legal obligation as regards free space allocation. However, outside of the free space, *Uradovy Kurier* has showed a biased approach in its political coverage in favor of ruling authorities, granting them altogether with more than 70% of highly positive coverage, whereas *Golos Ukrainy*, an official Parliament publication granted 37% of overwhelmingly positive information to Lytvyn's Bloc, led by the incumbent Speaker of the Parliament. Most of the private newspapers also show partisan treatment by supporting respective parties.

On 17 February a local court in Crimea decided to suspend the license of the local-based, privately owned *Chernomorskaya TV* until the end of the campaign, as a result of a complaint filed by a local Bloc that includes Party of Regions, contending that the Channel's reporting was biased. This court decision was condemned by President Yushchenko as well as by the National Broadcasters Association as threatening freedom of speech. On 23 February the Appeal Court of Crimea overruled the initial decision.

On 23 February, the CEC partially satisfied a complaint filed by Bloc *Ne Tak!* against newspaper *Silsky Visty*, for publishing an article written by a journalist, which was critical of L. Kravchuk, leader of the Bloc. The article was mostly criticising past political activities of Mr. Kravchuk's, including aspects of his term as President of Ukraine. This case shows that the provisions of the PAEL on campaign activities can have, if implemented in a formalistic manner, unexpected consequences in terms of freedom of expression. In this particular case, the CEC considered first that the article was to be considered as 'campaigning' based on the definition of campaigning provided in article 66.1 of the PAEL (one can campaign 'for' or 'against' contestants), and secondly that since it was 'election campaign', it had to be paid, in accordance with art.66.6 of the PAEL from an 'election campaign fund'. This approach taken by the CEC, while following the letter of the law, has the potential to restrict the ability of newspapers to report freely on the campaign and political life.

VI. RESOLUTION OF ELECTORAL COMPLAINTS

A new feature for election related administrative complaints is that the procedure has been reduced to two instances, eliminating the instance of cassation and making the decision of the appeal instance final. According to art.237 of the new Code of Administrative Procedures, only 'under exceptional circumstances' can a decision of the High Administrative Court (HAC) be appealed to the Supreme Court. To date, all 25 attempts to submit a decision of the HAC to the Supreme Court failed for the Supreme Court declared the cases non admissible.

As of 17 February, the CEC had registered 134 complaints and decided on 125 of them. The majority of complaints were rejected on formal grounds, and only 20 were satisfied or partially satisfied. A minor part of the complaints, that however received media attention, concerned rejections of registration of political parties/blocs or candidates. A second group of complaints were filed against institutional figures such as the President, the Minister of Justice and the Minister of Interior, for interference in the campaign. Finally, the larger part of the complaints was filed against alleged negative campaigning, pressure on voters, or attacks on campaign material or staff. The majority of these complaints were rejected because of lack of evidence.

Two cases dealing with registration of parties and candidates (non registration of the political party '*Mohutna Ukraina*' and non registration of Pavlo Lazarenko as a candidate) reached their final stage of adjudication at the Supreme Court. In both cases the court considered the precondition of 'exceptional circumstances' not applicable and refused both cases as non admissible to the court. Therefore the decisions by the HAC remained final.

To date, the different courts as well as the CEC have handled complaints and appeals in accordance with the law, the parties' rights were respected and decisions were taken within the legal deadlines in most of the cases.

VII. DOMESTIC NON-PARTISAN OBSERVERS

So far, the CEC has registered 16 domestic non-partisan observer organisations, most of them regionally based. Ukraine's largest observer group, the Committee of Voters of Ukraine (CVU) plans to conduct a large scale, nationwide observation, fielding up to 5000 observers around election day. CVU has observed elections in Ukraine since 1994.