

INTERIM REPORT 1
23 January – 13 February 2006

I. EXECUTIVE SUMMARY

- On 26 March, Ukrainian voters are expected to elect the 450 members of the Verkhovna Rada (the Parliament) through proportional representation of national party lists with a three percent threshold for eligibility in the seat allocation. The elections will be held within a renewed legal framework which takes into consideration several previous OSCE/ODIHR recommendations.
- 45 parties and blocs are registered to run in the parliamentary contest. These represent a wide variety of political options offering a choice to voters. Only a few applications for registration from contestants have been rejected by the Central Election Commission.
- The campaign is quite visible, including in the media, with campaigning being more active in the south and east of the country. Candidates are actively touring the regions and using a variety of means to convey their messages to the electorate. There have been a few incidents associated with the campaign, mainly negative campaigning, although a few attacks on property and on activists have been reported.
- Polls suggest that between five and nine parties and blocs are most likely to enter the new Parliament. The Party of Regions has led the majority of polls, trailed by Our Ukraine Bloc and the Yulia Tymoshenko Bloc. Discussions concerning post-election coalitions have not yet come to any definitive conclusion.
- To date, the Central Election Commission (CEC) is administering the electoral process in a transparent and professional manner, and most EOM interlocutors expressed confidence in its management. The appointment of the members of the 225 District Election Commissions by parties and blocs was largely uncontested.
- Voter lists have gone through a comprehensive overhaul, based on a new system involving local Government bodies and State structures at local level. So far, the EOM has received positive indications from interlocutors on the improved quality of voter lists.
- The media environment has undergone significant and positive changes both during and since the 2004 presidential election, and previous practices of so-called “*temnyky*” (unofficial guidelines) or patterns of intimidation of journalists no longer appear to be an issue. However, issues related to journalists' professional training and to the lack of transparency in media outlets' ownership do remain.
- In a welcome development, the Parliament extended the right to observe elections to domestic non-partisan observer organizations.

II. INTRODUCTION

Following an invitation from the Ukrainian authorities to observe the 26 March parliamentary elections, an OSCE/ODIHR Election Observation Mission (EOM) was established on 23 January 2006 in Ukraine. The EOM, headed by Ambassador Lubomir Kopaj (Slovakia), consists of 64 election experts and long-term observers from 23 OSCE participating States. The main office is in Kyiv, with long-term observers (LTOs) based in 22 cities around the country. LTOs were deployed to the regional centres on 30 January. On 25 January, the EOM held a press conference to introduce the mission, its mandate and the scale, scope and timing of its operations.

The OSCE/ODIHR has requested 600 short-term observers (STOs) to monitor proceedings on election day. The OSCE Parliamentary Assembly (OSCE PA) the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP) have all indicated their intention to send observers.

Local elections at various levels are scheduled on the same day as the parliamentary elections. While the OSCE/ODIHR will not observe the local elections, it may comment on issues related to them to the extent that they impact on the parliamentary election process.

III. POLITICAL OVERVIEW

After completion of the contentious presidential electoral process of 2004 between Viktor Yushchenko and Viktor Yanukovich, Mr. Yushchenko was sworn in as President of Ukraine on 23 January 2005. He appointed Yulia Tymoshenko as Prime Minister, a choice that Parliament approved on 4 February. A series of internal differences of opinion placed a considerable strain on the new government, and challenged the unity which had existed after the presidential election. Eventually, in September 2005, a crisis unfolded after two prominent State officials resigned, claiming that corruption existed within the Government. This fractious situation led to the President's dismissal of the Tymoshenko Government on 8 September, and Yuri Yekhanurov was appointed to lead the government.

On 10 January 2006, the Parliament adopted a resolution dismissing Prime Minister Yekhanurov and his Cabinet. This followed a heated debate on the handling of the gas crisis which developed between Russia and Ukraine since the end of 2005. The government, however, continues to carry out its function, as the provisions of the Constitution that regulate the formation of a new Government do not permit the Parliament to form a new Government before the next elections.

Differences of opinion between the President and the Parliament over the constitutional reform and the balance of power between legislative and executive branches remain evident. As of 1 January, important constitutional changes have taken force on the basis of the 2004 tripartite political agreement between V.Yushchenko, V.Yanukovich, and former President L.Kuchma. The effect of these changes has been to shift substantial powers (including the power to form the Government) to the Parliament. President Yushchenko has publicly voiced his dissatisfaction with the reform, which has led to speculations within Parliament that he may try to initiate Constitutional Court proceedings against the reforms. This is seen by some as a key reason for Parliament's failure to approve constitutional court nominees, leaving this institution non-operational (See below, Section IV).

On 9 February, in his annual State of the Nation Report to Parliament, President Yushchenko announced his intention to establish a constitutional commission after the elections, to elaborate a new draft Constitution to be put to a national referendum.

Almost all major parties and blocs have announced their intention to establish coalitions, both before and after the elections. While there is a stated intention from the political forces that supported the candidacy of Victor Yushchenko in 2004 to reach an agreement on a post-electoral coalition, no definitive conclusion has been reached to date. On the other hand, former members of this alliance have exchanged reciprocal accusations of planning to coalesce with Viktor Yanukovich's Party of Regions after the elections.

Political parties and candidates

With a field of 45 registered parties/blocs representing all major political forces, voters will have a wide variety of political options in this parliamentary contest. According to most opinion polls, the opposition Party of Regions, led by former presidential candidate Viktor Yanukovich, enjoys the highest popular support ratings. The pro-government Our Ukraine Bloc and non-aligned Yulia Tymoshenko Bloc are vying with one another for the second place position. Other parliamentary parties, such as the Socialist Party and the Communist Party, are widely considered as likely to enter the new Parliament, while four parties hover around the 3% mark, making their entry into Parliament uncertain.¹

There continues to be a geographical divide between the parties/blocs on the basis of where they derive their primary electoral support. While the Party of Regions has strong backing in the east and south of the country, the Our Ukraine Bloc and the Yulia Tymoshenko Bloc base their support in the west of the country.

Across the board, parties/blocs seem to be generally satisfied with the composition of DEC's, with the state of the voters' lists, and with the increased openness in the media sector.

Campaign

The election campaign commenced on 12 December 2005² and each party/bloc was able to start campaigning as soon as its candidate list was registered by the CEC. Many interlocutors anticipate a highly contested race. Thus far, the campaigns of many parties have been highly visible through billboards, posters and information tents. Meetings with voters have been especially noted in the east and south of the country.

To date, issues in the political campaign have centred on issues of Ukraine's relation to the West and to Russia, especially regarding questions of entry into NATO or the Single Economic Space³. The issue of Russian as a second state language is a prominent issue, especially in Crimea, and the recent gas crisis and ban on animal product exports to Russia continue to impact on the electoral campaign and to dominate the political discourse. The state of the economy has also been a strong focal point for parties.

¹ This field includes the Bloc of Lytvyn, the Bloc of Natalia Vitrenko, the PORA-ROP Bloc, and the *Ne Tak* Bloc.

² The first candidate list from the Communist Party was registered on that day.

³ A grouping that includes Belarus, Kazakhstan and Russia

At the regional level, there have been several reports of negative campaigning being used by competitors against one another. In a few other cases, incidents have been reported, including reported attacks on property and activists of the Natalia Vitrenko Opposition Bloc in Chernihiv, Kyiv Region and Kirovohrad. Similar incidents have been reported against the Yulia Tymoshenko Bloc in Donetsk, while one of the candidates from her bloc was severely beaten in Mykolayiv. While perpetrators are still unidentified, the cases are currently being investigated by police and being followed by the EOM .

At this stage, complaints from opposition parties/blocs have been minimal and generally restricted to incidents of negative campaigning, statements by government ministers to the press, and the high costs of running a campaign in the media for small parties. Additionally, different interlocutors voiced their lack of trust in the judiciary system to the EOM. Some of them expressed their dissatisfaction with the new proportional system of representation.

IV. LEGAL FRAMEWORK

The legal framework for the upcoming parliamentary elections includes relevant articles from the Constitution of Ukraine, the Law on the Election of People's Deputies (Parliamentary Election Law – PAEL) and decisions of the Central Election Commission. Amendments to the Constitution were adopted on 8 December 2004 and came into force on 1 January 2006. Major amendments to the PAEL were made on 7 July 2005, while several additional adjustments of a technical nature were adopted by Parliament up until 9 February 2006.

The Constitutional changes shift substantial powers from the President to the Parliament, and extend the parliamentary term from 4 to 5 years. They give Parliament the authority to form and dismiss the Cabinet of Ministers, and to select the candidate for Prime Minister, which the President will have only to formally approve. Furthermore some other state authorities, such as the Chair of the Antimonopoly Committee, the Chair of the State Property Fund and the Chair of the State Committee for TV and Radio Broadcasting, will no longer be appointed by the President but by the Parliament.

For the first time, the parliamentary elections will be held under a proportional electoral system with closed party or coalitions lists. The whole territory of Ukraine, and the out-of-country electoral district for voters abroad, constitute a single 450-mandate constituency. Every party/bloc participates in the elections with a list of candidates. The order of the candidates on the list is specified by the party/bloc upon its submission to the CEC. The law sets a threshold of 3% for a party/bloc list to take part in the distribution of mandates, which will be proportionally allocated among party/bloc lists using the Hare quota of largest remainder method. Seats are allocated to candidates according to their ranking on the list.

In the recent Joint OSCE/ODIHR - Venice Commission Opinion on the Election Law⁴, both institutions stated that '*the Law draws on recommendations from international organizations and builds on the experience of previous elections*'. In particular, in a positive step, the amendment introduced the possibility for domestic non-partisan observers to observe the elections, a long standing OSCE/ODIHR recommendation. Yet, as indicated in the Joint Opinion, '*good legislation is of course no substitute for effective implementation*'.

⁴ OSCE/ODIHR – Venice Commission of the Council of Europe, Opinion on the Law on the Elections of People's Deputies of Ukraine (opinion 338/2005 - CDL-AD(2006)002).

After the Parliament adopted a resolution dismissing the Government on 10 January 2006, the dispute between the President and Parliament has been further compounded. One of the results is a situation of deadlock over the appointment of new judges to the Constitutional Court, thereby leaving this key institution in a non-operational status. The Constitutional Court comprises 18 members and needs a quorum of 11 judges to reach a decision. The 18 judges of the Constitutional Court are appointed in equal shares by the president, Parliament and by the Congress of Judges. Within one month of their appointment, judges have to be sworn in by Parliament. Thirteen seats are currently vacant, as nine judges, who have been appointed by the President and the Congress, have not been sworn in by Parliament. In addition, the Parliament has thus far failed to appoint an additional four judges from its allocation of nominees.

Local elections will be conducted on the same day as parliamentary elections, and voters will be electing a number of regional, district and city councils, as well as mayors. While the most evident discrepancies between parliamentary and local election laws have been eliminated by recent amendments, most of interlocutors still expect the election to be complex overall. While the OSCE/ODIHR will not observe the local elections, it may comment on issues related to them to the extent that they impact on the parliamentary election process.

V. ELECTION ADMINISTRATION

A three-tiered election administration is responsible for the conduct of the parliamentary elections. The CEC is a permanent body with 15 members. Every party/bloc registered for the elections has the right to appoint one representative with an advisory vote to the CEC. The CEC holds regular sessions which are open to the media and observers. The OSCE/ODIHR EOM has established a good working relationship with the CEC and its Secretariat.

At the intermediate level, 225 District Election Commissions (DEC) have been formed by the CEC, one for every territorial election district, a heritage of the previous mixed electoral system whereby half of the MPs (225) were elected in single-member constituencies. DEC's are in charge of the creation of election precincts, the formation and management of polling station election commissions and the first-level tabulation of polling station results.

New rules for forming DEC's were introduced by the 7 July amendment to the law. Drawing upon lessons learnt during the 2004 presidential election, DEC membership is now reduced to a maximum of 18 members. The main part of the DEC membership was appointed by the 15 parties/blocs that were represented in Parliament as of 15 September 2005, while all other parties/blocs registered for the elections have the right to appoint the remaining three positions through a lottery at the CEC.

As some of the 15 parties present in Parliament on 15 September are now running under the same election bloc, some election blocs have more than one representative in the DEC's. The Our Ukraine Bloc, for example, has three members in every DEC, appointed by the People's Movement of Ukraine, the Party of Industrialists and Entrepreneurs of Ukraine and the Political Party "People's Union Our Ukraine". As a parliamentary faction, the "United Ukraine" Bloc could appoint a member in every DEC, although the bloc as such is not registered as a contestant in this election process. However, some of its members are individually running in the Yulia Tymoshenko Bloc list, and a smaller number in the Party of Putin's Politics list.

From the data provided by the CEC, it appears that the distribution of managerial positions on DEC's (Chair, Deputy-Chair and Secretary) was undertaken in accordance with the law, and the EOM has so far not received complaints on the issue. The EOM will follow further developments. Thus far, LTO teams have visited more than half of the DEC's, and have enjoyed full access to their activity.

DEC membership has been fluctuating because of a number of resignations. According to the CEC, the resignations are due to some of the parties not being ready to nominate persons qualified enough for DEC membership. Other interlocutors also point to the increased responsibilities and tasks vested with DEC members as one of the reasons for their withdrawal. Recent legal amendments have made DEC's legal entities for the first time, and introduced individual penal responsibility for election officials, as well as more serious sanctions for election related fraud.

DEC's are now in the process of appointing Precinct Election Commissions (PEC's), which will conduct voting and counting operations. The rules for PEC composition are similar to those for the DEC composition. Amendments to the law have lowered the maximum number of voters per PEC from 3000 to 2500.

Following widespread shortcomings in the accuracy of the voter lists experienced during past elections, new structures in charge of compiling and updating voter lists have been set up. As a result, 716 special working groups comprising representatives of state and local administration were created from 1 August, 2005 until 30 March, 2006, supervised by some 27 regional working groups and one central working group.

Draft voter lists were available for public inspection and updating at the working groups between 1 November and 31 December 2005. Electronic copies were also given to political parties for cross-checking purposes. According to the CEC, during this period about 10% of the voters used this opportunity to check their data. At present, the voter lists are still with the working groups, and should be sent to DEC's and later to PEC's. They will be available at the PEC's for inspection and update from 22 February until 23 March.

The vast majority of interlocutors met by the EOM have expressed a positive assessment of the improvements in the quality of the voter lists. However, the CEC Chairman expressed his dissatisfaction with the removal from the law of the possibility for voters to apply for inclusion in the voter list on election day. The CEC also reported that, during election day in the previous presidential elections, about 130 000 voters appealed to courts for inclusion in voter lists.

The process of registration of candidate lists ended on 13 January. The CEC registered a total of 45 electoral lists, among which are 28 parties running individually and 17 blocs, for a total of 79 contesting parties. The total number of candidates was 7684 as of February 10. This number is not final because of the ongoing process of withdrawal by some candidates.

The applications for registration of 8 parties/blocs were rejected, resulting in 4 appeals in Court, where CEC decisions were upheld. In the second instance court, two CEC decisions were further upheld, while two other appeals are currently pending. In the case of the application for registration from the Mighty Ukraine Party list (*Mohutna Ukraina*), the CEC initially rejected it on formal grounds. It was later forced to consider the substance of the

application by a higher court, but the application was once again rejected. At this time the EOM is not aware that any further appeal has been lodged.

A small number of candidates' nominations in electoral lists were rejected on the basis of technical mistakes in their applications. All the potential contestants who re-submitted documents after correction were registered by the CEC. An appeal against the CEC rejection of the registration of Pavlo Lazarenko, leader of the Lazarenko bloc, is currently pending at the Supreme Court. The EOM is following the case.

VI. MEDIA

Overall, the media's reflection of the electoral process is extensive, with high visibility of many contestants via paid advertisements, as well as within news bulletins, and in talk-shows. During the 2004 presidential elections and in its aftermath, the media environment has undergone significant changes. Problems such as so-called "temnyky" (unofficial guidelines to media editorial line), and patterns of intimidation of journalists, no longer seem to be a problem. In addition, a discussion on transformation of the current State funded broadcaster into a more open and transparent public media service has started in 2005. However, despite positive developments, certain problems still remain, including a low level of professional training for journalists. In addition, a lack of clarity in the ownership of media outlets could raise question regarding transparency.

The PAEL is the main legal framework regulating the campaign in the media. It provides a detailed framework for the conduct of electronic and print media during the pre-election campaign, *inter alia* providing for free and paid broadcast time and print space to all candidates on the principle of "equal opportunities".

Based on Articles 69.4 and 70.1 of the PAEL, all registered parties and blocs can use a minimum 1 hour on both national State funded television and radio as well as a maximum of 7800 characters in State funded newspapers. It appears that State funded media at national level have so far complied with legal obligations. Through a lottery on January 27, the CEC allocated free time and space on the State funded national broadcast (*UT 1* and *UR 1*) and print media (*Uryadovy Kurier* and *Golos Ukrainy*).

As for news bulletins, current events programmes and debates, Article 68.12 of the PAEL requires an 'objective, unbiased and balanced' coverage of the election process, regardless of the ownership of the media outlet. In its Article 71.17, the law prohibits inclusion of election campaigning materials of contestants in broadcasters' news coverage. It also stipulates that all election campaigning materials must be clearly distinct from other materials. A number of interlocutors met by the EOM have expressed their concern that the latter rule might be easily circumvented both by media and contestants.

An Expert Council on Mass Media has been formed with a consultative role to report and provide recommendations to the CEC and the National Council for TV and Radio Broadcasting on media compliance with the legal framework. This independent expert body is composed of well established domestic media NGOs and professional organizations. To date, the Expert Council has only issued a limited number of suggestions. It remains to be seen whether it will have a significant impact.

The EOM media monitoring commenced on January 26, covering eight nation-wide and one Donetsk based TV channels and eight daily and weekly newspapers. In addition, it will analyse and report on the main news broadcasts of several regional TV channels⁵.

VII. RESOLUTION OF ELECTORAL COMPLAINTS

On 6 July, 2005, the Parliament adopted a new Code of Administrative Procedures. The Code's Chapter XII deals with the procedure for complaints and appeals in electoral matters and applies to the current elections. However, discrepancies exist with the procedure envisaged by the PAEL. The Supreme Court has clarified that for procedural matters, provisions from the Code prevail over conflicting provisions in the PAEL.

The Code creates a new structure with a High Administrative Court as the last and final instance in administrative cases, Administrative Courts of Appeal at regional level, and a number of Local/District Administrative Courts. The last two are however not yet functioning, and regular courts are carrying out their functions.

According to the CEC legal department, since the beginning of the electoral process more than 40 complaints or appeals were filed concerning decisions, actions or inactivity of the CEC. 20 cases were left without consideration, mainly because of technical mistakes in the application; another 20 cases were rejected after consideration. In more than 30 cases, the dismissal and rejection were appealed to the High Administrative Court, which rejected 17 appeals, and dismissed one case without consideration of its merits. Six cases were sent back to the body of first instance for reconsideration. The High Administrative Court fully overruled only two CEC decisions concerning illegal campaigning and list registration, while in two other cases only partial relief was granted to the appellant.

VIII. ELECTION OBSERVERS

On 2 February, the EOM held its initial bi-weekly meeting with representatives from diplomatic missions of OSCE participating States. The OSCE/ODIHR is grateful to the Ukrainian authorities for the cooperation extended to the EOM.

Currently, in addition to the ODIHR, the CEC has accredited observers from the Russian Federation, the Ukrainian Congress Committee of America, the European Network of Election Monitoring Organisations (ENEMO), the Ukrainian – Polish Forum, the International Republican Institute, the World Congress of Ukrainians, Freedom House, the International Assembly for Legal Protection, the organisation "For fair elections", CIS-EMO and the Council of the Inter-Parliamentary Assembly of the Commonwealth of Independent States.

In a welcome development, the Parliament extended the right to observe elections to domestic non-partisan observer organizations in line with previous recommendations. Domestic non-partisan observers provide an essential contribution to the transparency of the electoral process.

⁵ The media outlets are as follows: *UT 1, Channel 5, ICTV, Inter, Novy Kanal, NTN, STB, TRK Ukraine, I+I* (TV channels); *Golos Ukrainy, Uryadovy Kurier, Facity i Komentarii, Segodnja, Silsky Visty, Vechirny Visty, Ukraina Moloda, Zerkalo Nedeli* (newspapers)