



Office for Democratic Institutions and Human Rights

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PARLIAMENTARY ELECTIONS
31 MARCH 2002

FINAL REPORT



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UKRAINE PARLIAMENTARY ELECTIONS

31 March 2002

OSCE/ODIHR Election Observation Mission Final Report¹

I. EXECUTIVE SUMMARY

The 31 March 2002 Verkhovna Rada (Parliament) elections in Ukraine indicated progress over the 1998 parliamentary polls. Despite shortcomings, these elections brought Ukraine closer to meeting international commitments and standards for democratic elections.

While Ukraine met in full or in part a number of commitments such as universality, transparency, freedom and accountability, it failed to guarantee a level playing field, an indispensable condition to ensure the fairness of the process. As regards election day procedures, technical improvements are needed to protect the secrecy of the ballot and to offer an orderly and dignified process to the voters.

The outgoing Verkhovna Rada and the President were locked in a conflict for most of the past four years over required legislative reforms. As such, the Parliament elected on 31 March could have a significant impact on the future development of the country and its place within the international community.

Factors contributing to an improved environment for these elections include:

- A new Election Law that took into account OSCE/ODIHR and Council of Europe recommendations from previous elections, providing an improved framework for democratic elections;
- An efficient, orderly and timely administration of the elections by the Central Election Commission (CEC) whose sessions were open to political parties and blocs, the media and observers;
- Multi-party election commissions that improved the transparency of the process;
- More streamlined electoral dispute resolution mechanisms;
- A broad spectrum of political choice available to voters with 33 parties and blocs, and some 7,000 candidates competing in the parliamentary elections; and
- A civil society engaged in the electoral process.

However, the media performance during the campaign was mixed. In general all media and in particular the electronic media remained highly biased. Nonetheless, all major candidates, parties and blocs had greater access to television and other media, through the welcome innovation of organized debates, free air time, and paid advertising. By contrast outside Kyiv, parties, blocs and candidates in opposition often found their access to electronic media restricted by local authorities. Moreover, the State-funded national television channel gave disproportionate coverage to the pro-presidential contestants.

¹ This report is also available in Ukrainian. However, the English version remains the only official document.

The post-election period marked important progress over the 1998 parliamentary elections, in particular the transparent publication of the detailed results. The enhanced legal framework prevented repeated appeals and endless election disputes that characterized previous elections. However, due to tight legal deadlines, this process emphasized speedy, rather than judicious, resolution of complaints. The Supreme Court operated with a degree of independence, providing complainants with a viable option for appeals and redress. The CEC continued to function efficiently, but more effective oversight of lower commissions is required.

Despite important improvements in the legislative and administrative framework for the elections, a general atmosphere of distrust pervaded the pre-electoral environment, both among contestants and voters. Contributing to this low level of confidence were:

- Illegal interference by public authorities and abuse of administrative resources, including allegations of pressure on public employees to vote for certain candidates, State facilities selectively made available to certain contestants only, and campaign material of some contestants in public buildings;
- Failure by some political forces to distinguish between State and party activities, compounded by the abuse of incumbency to gain undue campaign advantage;
- Unfair distribution of leadership positions on district and lower election commissions;
- A campaign marred by the murder of a prominent candidate on the eve of the elections, other isolated violent incidents, and allegations of intimidation and harassment against opposition contestants, activists and voters.
- Failure to inform voters during the campaign about challenges confronting the country;
- Failure to enforce effectively legal provisions on campaign violations;
- Inaccurate voter registers, including deceased persons and non-residents on the lists, while omitting entitled citizens; and
- Failure to publish all polling station results aggregated by district in a timely manner.

The 69% turnout of voters on election day is an indication of the level of interest voters have in the outcome of the elections despite the low level of confidence in the process. The polling was conducted in a generally calm atmosphere and observers rated positively the performance of a large majority of polling station commissions. The most serious problems noted during the polling were violations of the secrecy of the vote, voters added to registers in apparent contravention of the law, overcrowding in some polling stations as a result of poor facilities, and abuse of "absentee certificates" thereby allowing the possible manipulation of some contests.

In order to continue building on the strengths of these elections and remedy the shortcomings identified in this report:

- A greater political effort is required to prevent the abuse of administrative resources during future elections;
- The various election codes in force currently should be consolidated into a comprehensive election legislation taking into account the detailed recommendations at the end of this report;
- A law should be adopted to create a centralized voter register which should be updated regularly; and

- Another law should be adopted to create an independent media commission tasked to monitor the conduct of the media during elections and to enforce decisions regarding the same.

During a follow-up visit (9-11 May) by the OSCE/ODIHR, the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, and the European Parliament, the President of Ukraine, the Minister of Foreign Affairs, the Speaker of the Verkhovna Rada, and other officials acknowledged the Election Observation Mission's findings and conclusions and welcomed further cooperation with the international community, in particular in view of the 2004 presidential elections.

The OSCE/ODIHR is prepared to assist the authorities and civil society of Ukraine to overcome the remaining important challenges and to build on the progress already accomplished. The international community's continued engagement in Ukraine is essential for the consolidation of democratic development and the further integration of the country into European structures.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

In accordance with its Copenhagen Document commitments as an OSCE participating State, the government of Ukraine invited the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to observe the 31 March 2002 parliamentary elections.

The OSCE/ODIHR Election Observation Mission (EOM) was established on 26 February, with Ambassador Michael G. Wygant as Head of Mission, and shortly thereafter started monitoring the electoral process with 38 experts and long-term observers deployed in Kyiv and 11 regional centres. A small advance team started monitoring the media on 9 February. The EOM's team of experts and observers came from 20 participating States.

On election day, the EOM was joined by the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), and the European Parliament (EP) to form the International Election Observation Mission (IEOM). Some 390 short-term observers were deployed from 45 OSCE participating States, including 45 parliamentarians from the OSCE PA, 19 from the PACE, and 3 from the EP. In addition, the Council of Europe's Congress of Local and Regional Authorities in Europe (CLRAE) contributed observers who focused on the local elections that were held concurrently with the parliamentary elections. On 31 March, the IEOM monitored voting and counting in 1,624 (4.9%) of the 33,113 polling stations across Ukraine.

Mr. Bruce George (UK), Vice-president of the OSCE PA, was designated by the OSCE Chairperson-in-Office as Special Co-ordinator for the elections in Ukraine to lead the OSCE short-term observers. Mr. Andreas Gross (Switzerland), Vice President of the PACE, led the Council of Europe delegation, and Mr. Jan M. Wiersma (Netherlands), President of the European Parliament Delegation to the EU-Ukraine Co-operation Committee, led the EP delegation.

From 9 to 11 May, the three parliamentary institutions and ODIHR returned to Kyiv for a series of consultations on the post-election period with the highest level Ukrainian authorities, political parties, civil society, and the diplomatic community accredited in Kyiv.

The ODIHR wishes to thank the OSCE Project Co-ordinator's Office as well as international organisations and embassies accredited in Kyiv for their support throughout the duration of the EOM. In addition, the ODIHR expresses its appreciation to the Ministry of Foreign Affairs, the Central Election Commission, and other national and local authorities for their assistance and co-operation during the course of the election observation.

III. BACKGROUND AND POLITICAL CONTEXT

The 31 March parliamentary elections were the third held since Ukraine became an independent State in 1991. The elections were viewed as an important indicator of Ukraine's democratic development since the 1998 parliamentary and 1999 presidential elections, which fell short of OSCE commitments and international standards.

Disagreements between the outgoing Parliament and President Leonid Kuchma blocked legislative reforms on many important issues. The Parliament's decision not to adopt the results of the controversial constitutional referendum held in 2000 further strained relations between the executive and legislature. The results of this referendum, if implemented, would have strengthened presidential powers by easing the dissolution of Parliament, would have repealed parliamentary immunity, introduced a bicameral Parliament and reduced the number of deputies in the lower house to 300 from 450.

The elections were held against a background of corruption allegations, the unsolved murders of two journalists, Georgiy Gongadze and Ihor Alexandrov, and charges of foreign interference in Ukrainian politics. Although economic insecurity and poverty persist, the economy grew significantly in 2000 and 2001 after many years of recession. However, a large shadow economy continues to exist.

Opinion polls conducted prior to the elections indicated a low level of public confidence in the election process.² Many significant political blocs shared this sentiment and repeatedly stated that election violations would occur. On 15 March, Mr. Oleksandr Yelyashkevich, an opposition MP and chairman of the Parliamentary Commission on Electoral Rights, released a memo allegedly written by Mr. Ivan Kirilenko, campaign manager of "For a United Ukraine" (FUU) and addressed to Mr. Volodymyr Lytvyn, Head of the Presidential Administration and leader of FUU. The memo outlined a comprehensive plan for the authorities to subvert election laws, de-register and obstruct opposition candidates and parties, and tamper with election results. However, the authenticity of the document was suspect and Mr. Kirilenko strongly denied the allegations. Nonetheless, the allegation further diminished confidence in the process.

A broad spectrum of political parties, blocs and candidates contested the elections, offering voters a wide choice. Support or opposition to the President was a central feature of the pre-election campaign. The FUU bloc overtly supported the President and comprised five parties. Its list included high-ranking government officials and directors of State-owned enterprises, including Prime Minister Anatoly Kinakh and Volodymyr Lytvyn. The Social Democratic Party of Ukraine - united (SDPUu), led by Viktor Medvedchuk, positioned itself as part of the Western European social-democratic movement and took pro-presidential stands on many issues

² According to an opinion poll published in February, only 8% of the public believed the elections would be conducted "honestly", with 75% expecting violations. Socis/Democratic Initiatives Foundation poll published on 21 February.

in the outgoing Parliament. The party exerted a strong influence over important media outlets and many of its candidates were well-connected businessmen. Two other parties, Women for the Future and the Green Party were also considered pro-presidential.

The “Our Ukraine” bloc led by Viktor Yushchenko, former Prime Minister, defined itself as neither pro nor anti-presidential. It included two of the three Rukh parties (nationalists with historically strong support in western Ukraine), Solidarity, and the Party of Reforms and Order. The bloc criticised the status quo without directly reproaching the President.

The Communist Party, led by Petro Symonenko, advocated closer ties with Russia and Belarus and commanded the largest faction in the outgoing Parliament. Traditionally it draws most support from the heavily populated, industrial eastern regions and in Crimea. Although in opposition to the President, the party sided with him on some issues.

Two parties and blocs were consistently opposed to the President: the Socialist Party led by former Speaker of Parliament Oleksandr Moroz and the Bloc of Yulia Tymoshenko, led by the former Deputy Prime Minister. Mr. Moroz is known for his anti-corruption stance, while Ms. Tymoshenko was plague by an old criminal investigation into her business dealings in the 1990s as Head of Unified Energy Systems.

A variety of local elections also took place on 31 March, including a vote for the Crimean Parliament.³ The EOM limited its observation to the parliamentary elections.

IV. LEGAL FRAMEWORK

A. General Outline

The Constitution of Ukraine, adopted in June 1996, establishes a unicameral Parliament with 450 members. Deputies are elected for a four-year term on the basis of universal, equal and direct suffrage by secret ballot. The Constitution guarantees the free expression of voters will.

In addition to the Constitution, other legislation regulate the elections, the most important being: the Law on Elections of People’s Deputies (October 2001, amended February 2002; hereafter, Election Law); the Law on the Central Election Commission (1997); Laws on Local Elections (1998), Political Parties (2001), Mass Media (1992, 1993 and 1997) and Citizenship (2001); the Criminal (2001), Civil Procedure (1963, amended 2002) and Administrative Codes (1984); Presidential Decrees; and Decisions of the Courts and the CEC.

The election legislation establishes a mixed majoritarian and proportional system. Half the deputies (225) are elected in single-mandate constituencies (hereafter majoritarian seats) using a one round, first past the post system. The other half is elected in a nation-wide constituency (hereafter proportional contest) based on party or coalition lists, with a 4% threshold to gain representation.

³ Local elections were for deputies of Regional (*Oblast*) Assemblies; District (*Raion*) Assemblies, City Assemblies Town/Village assemblies; City Borough Assemblies; the Autonomous Republic of Crimea Parliament and City Mayors.

Every Citizen of Ukraine aged 18 or over on election day has the right to vote. Convicts and citizens resident abroad are also entitled to vote. Only citizens who are deemed incompetent by a court order are barred from participating in elections. To be eligible as a candidate, citizens must have attained the age of 21, have the right to vote, and resided in Ukraine for the preceding five years.

B. Assessment of the Legal Framework

The Election Law adopted in October 2001 after five presidential vetoes marks a significant improvement over previous legislation and provides an adequate framework for the conduct of democratic elections. The new law incorporated most OSCE/ODIHR and Council of Europe recommendations. However, the late passage of the law and delays in adopting corresponding amendments to other election-related laws caused some uncertainty.

A number of provisions in the new law increased transparency and accountability of the process, including:⁴

- Introduction of multi-party representation on intermediate and polling station election commissions, and a proportional distribution of chairperson position on polling station commissions among party representatives;
- Detailed rights of international, party and candidate observers;
- Streamlined appeal procedures to higher level election commissions and the courts;
- Enhanced equality of opportunity for all election contestants and improved access to the media and other campaign facilities;
- Appropriate range of election-related violations;
- Public posting of result protocols; and
- Introduction of monetary deposits instead of signatures for candidatures.

The October 2001 Presidential decree “On Securing Implementation of Citizens’ Rights, Principles of Democratic Society, Openness and Transparency of the 2002 Election Process” further strengthened existing transparency provisions and instructed State bodies to treat all election contestants on an equal basis.

Notwithstanding the notable improvements in the Election Law, flaws remain:

- Transparency was reduced by the absence of provisions for non-partisan domestic observers in contravention of Article 8 of the 1990 OSCE Copenhagen Document;⁵
- International observers are not specifically entitled to receive copies of PSC results;
- There is no requirement to publish summary tables (worksheets) of all PSC results within the timeframe for appeals. This would have enabled parties and candidates to audit more effectively the correct aggregation of single and multi-mandate contests; and
- The election law would benefit from more explicit provisions concerning measures to protect the independence of election commissions.

⁴ For more details, see the OSCE/ODIHR Review of the Election Law, Warsaw, 26 November 2001.

⁵ Parliamentary political parties opposed to the Presidential Administration blocked such provisions.

One of the main weaknesses of the electoral framework was the failure to amend the Administrative Code, thereby enabling the imposition of penalties for breaches of the election legislation. Despite the adoption of amendments by Parliament in January 2002, the President vetoed these, objecting to a number of provisions relating to campaign violations. In March, Parliament declined to adopt revised amendments and as a result, infringements of some electoral rights contained in the Election Law could not be enforced or prosecuted effectively.⁶ This affected the overall fairness of the campaign.

In an attempt to ensure the consistency of the Civil Procedure Code (CPC) with the Election Law, Parliament amended the Code on 7 March 2002. These define procedures for litigating election-related court cases, give guidance to the courts in adjudicating violations of the Election Law and determine which courts have jurisdiction to hear appeals on election commission decisions. The amendments did not receive Presidential assent and were consequently not in force for the parliamentary elections.

The implementation of the Election Law revealed additional shortcomings, addressed in the remaining sections of this report.

V. ELECTION ADMINISTRATION

A. Structure, Composition and Competencies of the Election Administration

A three tiered election administration structure was established, comprising the Central Election Commission (CEC), 225 District Election Commissions (DEC) and 33,113 Polling Station Commissions (PSC). Other regional commissions organise and direct local elections, although PSCs administer both parliamentary and local elections.

The CEC, a permanent State body, administered the 1998 and 1999 elections as well as the 2000 referendum. It consists of 15 members appointed by Parliament on the recommendation of the President for a 6-year term of office. It has substantial powers of inquiry. Political parties contesting the multi-mandate constituency have the right to appoint one representative to the CEC with a right of deliberative (advisory) vote.

DECs consist of 8-20 members, nominated by political parties or blocs and appointed by the CEC, which also appoints the Chairperson, Deputy Chairperson and Secretary (who should not be members of the same party or bloc). DECs are responsible for organising the majoritarian elections and the proportional ballot within its territory. DECs announce single-mandate constituency results and aggregate results for the multi-mandate election. They also consider complaints against PSC decisions. A marked imbalance was noted in the distribution of chairperson positions. FUU with 17% of DEC members and 7% of candidates obtained 43% of DEC chairs. Other parties also had disproportionately high shares of these positions including the minor, Democratic Union Party with over 10%. Overall, some 70% of chairs were drawn from pro-Presidential parties. In contrast, "Our Ukraine" with 20.5% of all DEC members held only 9% of chair positions. The Communist Party was also under-represented.

⁶ The Administrative Code contains only a single article (Article 186-2) that anticipates liability for few specified violations and only members of law enforcement authorities are empowered to initiate reporting on administrative violations connected with the elections.

PSCs prepare and display voter lists, issue “absentee certificates”, and administer elections on election day. A PSC consists of at least eight members. DECAs assign chairpersons, deputies and secretaries on the basis of nominations from parties and candidates. Chairperson positions are distributed proportionally among nominations made by election contestants. While some parties complained of under-representation in PSC management positions, the EOM noted that the imbalance seen at DEC level was not repeated at PSC level.

B. Organisation of the Elections and Application of the Legal Provisions

1. Central Election Commission

The CEC administered the 2002 parliamentary elections in an efficient, orderly and timely manner. Sessions were open to the EOM, media and political parties. Information on its work and decisions was available through its website and generally the CEC provided the EOM with information upon request. However, the EOM noted that CEC members tended to vote unanimously. Only three times in four weeks of observation did a member abstain and only once did a single member vote against any of the 350 decisions taken during this period. Although the CEC is an administrative rather than a political body, such unanimity is unusual and indicates virtually no divergence of opinion. More lively discussions took place between the CEC members and representatives of political parties.

The printing of ballots was not sufficiently transparent. No official documents were made available on the process of printing, storage, transfer and delivery of the ballots. Three days before the elections, thousands of unsecured ballots were discovered in Kirovohrad (DEC 99), raising questions about the integrity of voting there. The CEC responded promptly by ordering the printing of new ballots of a different coloured paper for the entire district.

Following a request by the CEC, the State Tax Administration scrutinized 3,880 property and income statements of party-list candidates contesting the proportional contest as well as 21,000 income statements of their family members. In addition, 3,504 income statements of majoritarian candidates were also checked. Discrepancies were found in the statements of 647 party-list candidates and 870 majoritarian candidates, representing 32 parties and electoral blocks. Income statements are considered confidential and therefore the EOM had no access to the documents and could not assess the equal and consistent application of the procedures for their verification.

The CEC gave candidates 10 days to rectify mistakes and provide explanations for inconsistencies. However, there is no legal definition which discrepancies constitute “vital inconsistencies”. Thus, *de facto* the issue was left to the determination of the CEC and the courts. The CEC has no power to interpret the law and it declined to take a formal decision of “general application” on this issue. Instead, the CEC adopted separate decisions for each candidate applying a criteria whereby inconsistencies of over 20% regarding income or failure to declare a major property item such as a car or an apartment, would result in a candidate’s de-registration. Under instruction from the CEC, DECAs followed suit, de-registering majoritarian candidates. The CEC de-registered 219 candidates, of whom 10 were reinstated by the Supreme Court, including the top two placed candidates on the list of the Yabluko Party.

Many appealed DEC decisions to local Appeal Courts. Approximately 40 were de-registered in the week prior to the election with some de-registered the day before the election. These late

decisions made an appeal to the courts problematic, if not impossible. DEC's did not de-register candidates in a uniform manner, and the rulings of Regional Courts of Appeal against DEC decisions were inconsistent.

2. District Election Commissions and Polling Station Commissions

Despite the late passage of the Election Law, most DEC's performed well, met deadlines and worked hard to administer the process successfully. The majority of DEC's implemented legal provisions properly, although in almost 20% of DEC's visited during the pre-election period, long-term observers received allegations that DEC's failed to apply the legal provisions impartially.

While election commissions generally had sufficient resources, a lack of experience in administering elections and unfamiliarity with the law was problematic. Observers reported that many commissioners did not attend scheduled meetings, thus causing problems in achieving a quorum. Training was another problem, with often only PSC Chairpersons receiving training.

Resignations of DEC and PSC members altered the political balance of commissions and left many understaffed. Members resigned mostly due to insufficient remuneration, job responsibilities, weak party affiliation and long working hours. However, observers received allegations that some resignations resulted from pressure exerted by the local administration. In some cases, DEC's rejected party nominees, instead appointing members from the local administration bodies. The law only provides for non-party PSC members when the membership falls below eight persons. Observers expressed concern that some PSC members drawn from local public institutions would face pressure and intimidation. In some 20% of constituencies visited, observers reported that the local authorities interfered in the work of the DEC.⁷

DEC's' hardest task was to appoint PSC members according to the new provisions stipulating that political parties and candidates should make these nominations. Many personnel changes had to be made, often at short notice. Keeping a political balance was especially problematic where party structures are not strongly developed.

3. Registration of Parties, Candidates and Lists

Political parties and party coalitions (blocs) may register candidates for the proportional contest and the majoritarian contests providing the party or parties were registered with the Ministry of Justice at least one year in advance of election day.⁸ Independent candidates can also stand in the single mandate constituencies. The CEC registers the party lists, while DEC's register the majoritarian candidates. In contrast with the past, parties and candidates are no longer required to collect citizens' signatures in support of their nominations. Instead, parties must deposit the equivalent of approximately US\$50,000 with the CEC.⁹ Candidates in single-mandate

⁷ For example in Crimea, a DEC Chairperson experienced constant interference from the local authority who tried to pressure and bribe the DEC into de-registering candidates. In Mykolaiv, a PSC member was forced to resign her position as School Director.

⁸ The one-year registration requirement was referred to the Constitutional Court that decided, on 7 March, not to hear the case until after the elections, reasoning that any judgement would be considered "political".

⁹ This amendment was challenged in the Constitutional Court. On 6 February 2002, the Court declared Article 43 of the Election Law constitutional.

constituencies are required to deposit the equivalent of approximately US\$200 with DEC. Deposits are reimbursed for parties receiving over 4% of the vote in the proportional contest and for elected candidates.

The initial candidate registration process took place with relatively few complaints, creating a broad spectrum of political choice for voters. The CEC registered 33 parties and coalitions (comprising 4,002 candidates) to contest the proportional ballot and 3,504 candidates were registered at constituency level. Altogether, 7,506 candidates were registered to contest the elections. Of these, 403 were incumbents, with 233 representing parties and 180 non-party members.

After de-registration and candidate withdrawals, 6,846 candidates contested the parliamentary ballot.¹⁰ Of these, 3,762 were party-list candidates and 3,084 contesting single mandate constituencies. By election day, 420 candidates withdrew or were de-registered in the majoritarian race and 240 for the proportional contest.

4. Voter Registration

Centralized voter registers do not exist in Ukraine. In general, voter lists are unreliable, containing outdated information, including voters who have moved to other districts or left Ukraine, and deceased persons whose names remain on voter lists. These inaccuracies received wide coverage in the election run up and led to concerns that inaccuracies would be exploited to manipulate the election.

The local administration compiles voter lists and passes them to PSCs for verification. PSCs display them, enabling voters to check their accuracy and make corrections. Many PSCs checked the accuracy of lists through “door-to-door” verification. Some irregularities were reported, such as failure to display voter lists publicly, late receipt of the lists, inclusion of non-existent addresses, and duplicates. In Crimea, observers reported that in DEC 2, some PSCs received voter lists that had not been updated since 1993-4.

Voters who are omitted from lists could only be registered on election day in the PSC of their place of residence if they had a judicial decision. Voters who are temporarily absent from their place of registration can request an “absentee certificate”, whereupon they should be de-registered. They are then issued a document that enables them to vote at any polling station in any constituency.

In September 2001, the Constitutional Court ruled that the issuance of residency permits “*propiska*” by the Ministry of Interior was unconstitutional. The President decreed that temporary measures should be put in place to replace the old system until a new legislation is adopted by Parliament. This was not implemented. Eligibility to vote is based on permanent residence in Ukraine, which can only be certified through documentary proof. In practice, this was the *propiska* stamp. As no new system of residency registration is in place, citizens who moved recently faced difficulty in registering to vote.

¹⁰ On 30 March, 6,984 were on the ballot. Over 138 candidates voluntarily withdrew from the contest only a few days before election day.

The CEC decided that the expected number of voters would be 38.3 million, or 1.2 million more than were registered for the 1998 elections. Using this higher number, the average number of voters per constituency amounted to approximately 170,000, but constituencies varied in size from 146,500 and 204,100, more than the recommended +/-10% margin.¹¹ Following amendments to voter lists, the estimated total number of voters decreased to 36.9 million. The average number of voters per constituencies thus became 163,566, with 50 constituencies having deviations greater than the figure prescribed by law. Other anomalies were also noticed, such as 894,175 voters and 6 constituencies in the Zakarpatia Region, against 903,100 voters and only 5 constituencies in the Kherson Region.¹²

These variations also led to anomalies in the number of ballots that the CEC printed – 39.5 million ballots (38.3 million, plus 3% reserve), some 2.5 million more than the number of registered voters.

VI. PARTICIPATION OF WOMEN AND NATIONAL MINORITIES

Election Commissions generally had a good gender balance. Based on observer report forms, over half of PSC Chairperson positions were held by women as well as 61 of the 225 DEC chair positions. Women also held 78 Deputy Chairs and 166 Secretary positions in DECs.

While women held 8% of seats in the outgoing Parliament, the 2002 elections returned only 23 (5%) women to Parliament, 14 from party-lists and 9 from majoritarian contests. While women represented 24% of all candidates in the multi-mandate constituency, the main reason for women's under-representation in Parliament is the failure of the main parties and blocs to place women sufficiently high on their election lists.¹³

Only three of the major parties included gender related issues in election platforms: the Communist Party, the Greens Party and the SDPUu. The only party specifically representing women in the multi-mandate constituency was "Women for Future", with 176 women candidates on its list. However, this party did not overcome the 4% threshold.

Based on the 1989 census, ethnic Ukrainians comprise 73% of the country's total population, followed by ethnic Russians (22%). Other national minorities each account for less than 1% of the population.

Article 10 of the Constitution guarantees "the free use and protection of the languages of the Russian and other national minorities". However, the UN Human Rights Committee recommended that the authorities should ensure that national minorities in Ukraine enjoy the use of their own language in accordance with the International Covenant on Civil and Political Rights. In the context of the current elections, ballots and information on voting were not available in the minority languages. Nonetheless, language was not a barrier to participation in the elections and national minority issues did not play a significant role in the campaign.

¹¹ 22 constituencies had deviations greater than 10%, with the highest being 16.8%.

¹² In 1998, Kherson Region had 6 constituencies and Zakarpatia 5 constituencies.

¹³ Of the 880 women candidates on the party lists, 33 were in the top 5 positions; 221 were in positions 6-50; 266 were in positions 51-100 and 360 were placed in positions 101-225.

Following a forced exile after the Second World War, Crimean Tatars began to return to Crimea in 1988. Some 300,000 Crimean Tatars currently live in Crimea, of whom 90% have obtained Ukrainian citizenship. Tatars were not represented in the outgoing Crimean Parliament, but obtained 7 seats in the new Parliament. In addition, three Tatars included in party lists were elected to the Verkhovna Rada. As a result, the representation of Tatars in political institutions has significantly improved during the 2002 elections.

VII. THE ELECTION CAMPAIGN

The 50-day campaign period gave candidates sufficient time to publicise their election platforms. The Election Law contains a number of important provisions aimed at creating an appropriate campaign environment. Regardless, the campaign remained the most problematic aspect of the election.

The Election Law prohibits executive and local self-government bodies, their employees and election commissions from campaigning. However, the possibility for State officials running in the elections to make “official announcements” during the campaign period while performing their official duties sometimes led to a confusion of roles. On occasions, it was unclear in what capacity some of these candidates were speaking.

The President’s October 2001 Decree stipulates that the “officers and staff of executive government agencies steadfastly follow the provisions of the Election Law primarily as concerns unbiased treatment of political parties and blocs”. Many local government bodies failed to follow the President’s Decree and the Election Law.

A. Abuse of State resources and undue influence in the campaign

The abuse of State resources (so called administrative resources) has been a common feature of election campaigns in Ukraine that, once again, created an uneven campaign environment. In over half of all constituencies visited, observers received allegations of improper or preferential use of State owned resources for campaign purposes.

Some candidates benefited from office space and transportation directly deriving from their official position in local administrations. Also, local officials put State resources at the disposal of candidates who visited an area. The main, but not exclusive, beneficiary of such violations was FUU, which took advantage of State officials to obtain meeting venues and use official events to promote the bloc. FUU campaign material was predominant and could be seen throughout the country, often in local administration buildings and even DEC premises.¹⁴ Furthermore, governors and other officials were seen campaigning in favour of some candidates in direct contravention of the Election Law. These failings demonstrate a political tradition that fails to adequately distinguish between State and party activities, and uses incumbency to gain undue campaign advantage.

¹⁴ Observers encountered FUU propaganda in DEC premises. Examples include DEC 224 (Crimea); 25 (Dnipropetrovsk); 19 (Volynska); 113 (Lugansk); 177 (Kharkiv).

B. Obstruction of campaign

Observers received a variety of complaints from opposition parties and “Our Ukraine” concerning obstruction of election campaigns, including poor access to advertising billboards, locally owned media “blackouts”.¹⁵ These problems were most evident in eastern Ukraine and Crimea. Overall, observers received complaints in 47 constituencies concerning obstruction of campaign activities and complaints in 64 constituencies regarding lack of access to local State-owned media.

Access to venues was also problematic. At times opposition candidates were denied suitable meeting space.¹⁶ Some opposition parties experienced difficulties in renting campaign premises, a few had their premises vandalised and others faced smear campaigns.

C. Pressure on voters and candidates

The law explicitly prohibits the distribution of free goods and other inducements offered to citizens in order to vote for a particular party or candidate. However, observers received allegations in this regard in 38 constituencies. In Lviv, free coal was distributed by the Head of a local branch of FUU, even using official vehicles and during working hours. In a Kharkiv apartment bloc, citizens “who will be supporting FUU candidates” were invited to receive free electrical appliances. Notes were found inside packaging, urging recipients to vote for FUU candidates. In Dnipropetrovsk, observers received written statements where citizens confirmed having received the sum of 50 HRN to vote for a certain candidate.

In a third of constituencies, the EOM received credible reports of intimidation and undue pressure exerted on employees of local administrations, schools, hospitals, universities and State-owned enterprises. In Lugansk, an association “Region”, circulated a so-called “Social Agreement”, whereby citizens committed to vote for FUU and signed a pledge to that effect. It was circulated in workplaces and employees were threatened with loss of their jobs if they refused to sign. Similar practices were observed in other regions. The right to free association was compromised in Donetsk where miners were pressured to withdraw from an independent trade union supportive of Yulia Tymoshenko bloc. Observers received various allegations that lecturers and students, were instructed by the University Rectors to apply for absentee certificates and vote for specific candidates.¹⁷

D. Tone of the Campaign

Although the use of defamatory campaign material was not as widespread as in previous elections, observers collected a variety of anonymous material discrediting or misrepresenting candidates. Examples of defamatory leaflets were collected in Donetsk, Zhytomir, Ternopil,

¹⁵ Yulia Tymoshenko informed the EOM that, despite a press conference in Crimea attended by 30 journalists, none reported on her visit.

¹⁶ A candidate for “Our Ukraine” in Kiev Region informed observers that he had been denied the use of State owned venues seven times in various locations. In Kharkiv, the Director of the Cultural Palace told observers that he cancelled a booking to Yulia Tymoshenko bloc due to a shortage of seats.

¹⁷ One allegation concerned Petro Melnyk, Rector of the Ukrainian Tax Academy FUU and candidate in constituency 95. Another concerned O. A. Ustenko, Our Ukraine candidate and Head of the Academy of Agriculture in Ternopil.

Kyiv, Kirovohrad, Mykolaiv and Lugansk. In Vinnitsa and Odessa, observers were shown anti-Semitic literature against two high-profile Jewish candidates.

In November 2000, Socialist Party leader Mr. Oleksandr Moroz disclosed that former presidential security guard Mykola Melnychenko had secretly recorded hundreds of hours of conversations between President Kuchma and government officials during 1999 and 2000. The tapes, characterised as fabrications by the President, purportedly implicate him and top aides in a variety of crimes. Mr. Moroz used excerpts of the Melnychenko tapes on his government-paid TV ads, drawing a warning from the CEC. The existence and broadcasting of some of these tapes caused political unrest in 2001 and set a rancorous tone for the election campaign, especially among opposition parties and blocs.

E. Election Related Violence

A number of violent incidents occurred during the pre-election period, including the murder of two candidates. While the first murder appears not to have been election related, the second, involving a candidate of the SDPUu and deputy Governor of the Region Mykola Shkribliak, occurred on 29 March and may have been related to his political activities. During the pre-election campaign, a number of physical assaults and harassment of candidates and campaign workers took place, especially against those working for the Socialist Party, "Our Ukraine" and "Yulia Tymoshenko" blocs. Incidents against opposition and "Our Ukraine" candidates and activists were reported in Kyiv City, Kyiv Region, Odessa, Rivne, Donetsk, Kirovohrad, Poltava and Lviv.

F. Campaign Financing

Breaches of campaign spending limits can result in a party's disqualification. Considering the costs of running a national campaign, the spending limit of approximately the equivalent of 475,000 USD appears relatively modest.

A number of civil society organisations and parties raised concerns with the violations of campaign spending limits. The Freedom of Choice Coalition monitored the media advertising, primarily on television, paid by major parties. On 24 March, it declared that SPDUu, Women for the Future and the Green Party exceeded the legal spending limit.¹⁸ The group noted that large amounts of money could be spent on TV and other media advertising as long as it is not financed directly from a party's official campaign fund. In addition, in some cases campaign material did not bear the necessary information about circulation and printing as required by the Law.

Despite numerous requests, the CEC did not provide the EOM with the spending figures of political parties. Auditing the campaign spending by parties and blocs will be a difficult challenge given the uncertainty of what activities constitute campaigning, the valuation of goods received "in kind", and the commingling of campaign and general party funds.

¹⁸ Each party spent the equivalent of 1,8 million, 1 million and 595,000 USD respectively for political ads.

VIII. THE MEDIA AND ELECTIONS

The 1998 and 1999 OSCE/ODIHR Final Election Reports identified the media as one of the most important shortcomings. In both years, media were biased and the harassment and intimidation of reporters and media outlets were common. These developments combined with the murder of two journalists during the preceding two years prompted the Parliamentary Assembly of the Council of Europe and the UN Human Rights Committee to place at the forefront of their concerns in Ukraine the threats to the freedoms of expression and information.

A. Media Landscape

Approximately 800 Radio and Television companies and 2,400 printed publications are registered in Ukraine. However, TV provides the main source of information for over 75% of the population. The State-owned broadcaster *UTI* is the only network with a nation wide coverage, while private networks “*I+I*” and “*Inter*” reach approximately 90% of the territory. Local TV stations, including the Kyiv-based private TV channels “*Utar*”, “*Novij Kanal*” and “*TET*”, operate in all areas of the country.

The main daily newspapers have a relatively high circulation, but the cost is prohibitive for many citizens, thus lessening their impact as an information source. A significant number of printing and distribution facilities are State-owned. In the absence of competition, they charge high costs for their services. Due to the difficult economic situation, newspapers have become dependent from political and business interests.

B. Legal Framework

The Constitution guarantees the freedom of expression and censorship is prohibited. The media related legislation is considered among the most comprehensive in the CIS. The Election Law contains a number of improvements regarding election campaigning in the media, including clear provisions granting equal access to all political contestants and allocating free time and space in the State-owned media, permitting paid political advertising, and prohibiting State media to campaign for or against candidates.¹⁹

Article 6 of the Presidential Decree tasked media-related State bodies and the CEC to provide effective control to ensure broadcasters’ full compliance with media related laws, and to guarantee the freedom of expression and equal access to publicly owned electronic media for all election subjects. The Decree supplemented the Election Law that had failed to specify which authorities were responsible for enforcing media provisions. Importantly, the Decree provided for the creation of an independent civic board, composed of prominent and independent public figures, tasked to monitor the media coverage of the campaign. Regrettably, on 7 February, the President rescinded this provision, which removed a potentially effective instrument to ensure an impartial and fair coverage of the campaign.

¹⁹ All parties (blocs) are entitled to use State-funded media free of charge, as follows: 30 minutes on national television; 30 minutes on national radio; 20 minutes on regional television in each region; and 20 minutes on regional radio. In addition, parties (blocs) can publicise their political program through two State-funded newspapers free of charge. Majoritarian candidates are granted a maximum of 10 minutes on regional television and 10 minutes on regional radio, and may publicize election programs through State-owned or private local press.

The CEC received over 100 complaints relating to the mass media and issued media-related warnings to the Socialist Party, SDPUu and the Natalia Vitrenko bloc. The CEC declined to give copies of the complaints to the EOM since they contain personal information and were subject to appeals.

C. State Authorities and the Media

In a positive step, the Tax Administration announced a freeze of all investigations against media outlets until after the elections. In 1998, these inspections caused great problems for media outlets. However, State licensing bodies suspended the transmission of some regional TV stations because of expired licenses, though in some cases, licenses had expired for two years. They also ignored that a large number of regional broadcasters operate without valid licenses. The Council revoked licenses without court decisions and disregarded other types of possible sanctions, such as warnings and fines.

Some broadcasters alleged that the local administration applied political pressure because they gave positive coverage to the opposition. For example, in Zaporizhzhia Region, two TV channels operated on expired licenses for over a year. The privately owned station *Khortysia* was closed by the State licensing bodies. In contrast, *TV Alex*, also without a valid license but pursuing a different editorial line, continued broadcasting without obstruction. Observers investigated other cases of harassment of the media in Zaporizhzhia, Dnipropetrovsk, and Kirovohrad Regions.

While physical attacks on journalists were fewer than during previous elections, problems persisted. For example, in Crimea, a local TV journalist was offered inducements to give positive coverage of certain candidates and, after declining the offer, received threats. Some private regional newspapers also faced problems with printing houses refusing to publish their publications. In Poltava, complaints were received from opposition-leaning newspapers that the local authorities pressed vendors not to sell their papers. In general, the State-funded local media supported the political line of the local authorities. Opposition parties and Our Ukraine provided credible examples of obstructions in gaining access to local media, either through paid advertisements or balanced news coverage.

D. Media monitoring

Between 9 February and 29 March, the EOM monitored seven TV stations and 10 newspapers, using a qualitative and quantitative analysis methodology. From early March, the main news broadcasts of six regional stations were also monitored.²⁰

In comparison with the 1998 and 1999 election campaigns, a broader range of media provided a greater diversity of political views during the 2002 campaign. However, Ukraine still lacks a strong and independent media that could provide the electorate with objective coverage of the campaign. While more political information was available to voters through a diversified range

²⁰ The following media were monitored: State-owned *UTI*; private channels *1+1*, *Inter*, *STB*, *ICTV*, *Noviy Kanal* and *Utar*; Newspapers; State-owned *Uryadovyi Kurier* and *Golos Ukrainy*; privately owned *Fakty*, *Segodna*, *Kievskie Vedomosti*, *Den*, *Ukraina Moloda*, *Zerkalo Tyzhnya*, *Vechernie Vesti* and *Silski Visti*; State-owned regional TV stations in *Kharkiv*, *Rivne*, *Crimea*, *Odessa*, *Lviv* and *Nikolaiv*. The EOM monitored the prime time (18:00 to 24:00) of *UTI*, *Inter* and *1+1* and the main news editions of *STB*, *ICTV*, *Noviy Kanal* and *Utar*.

of programming, most media failed to provide an impartial and fair coverage of the campaign. Overall, the media did not provide the electorate with sufficiently balanced information about all political contestants, allowing voters to make a fully informed choice on election day.

UTI adhered to the legal provisions granting free time to all political contestants, but was biased in its news and analytical programs, clearly supporting FUU. Despite a decrease from 40% in early March to 21% overall in the amount of prime time news coverage devoted to the FUU, the tone of the coverage remained positive. In contrast, the Yulia Tymoshenko Bloc obtained only 3.3% of prime time news coverage, which was mainly negative in content. In addition, *UTI* devoted almost half of its analytical programs to the FUU activities. In current affairs programs, journalists frequently criticized opposition candidates without presenting any opposing views.²¹

The double capacity of some FUU leaders as also State officials gave to the party an advantage through intensive exposure on *UTI*. For example, during his visit to Zaporizhzhia, the President campaigned for FUU and his comments were reported on *UTI*. The station also granted Mr. Volodymyr Lytvyn more than 93 minutes of overwhelmingly positive news coverage. In about half the coverage, Mr. Lytvyn was introduced as the leader of FUU. In the six weeks preceding the election, Mr. Lytvyn and Mr. Kinakh received more than seven hours of coverage on *UTI* prime time news and current affairs programs. By comparison, during the same period Mr. Yushchenko received a total of 14 minutes despite the bloc's leading position in most opinion polls.

Private broadcasters offered a more balanced coverage of party platforms. However, most gave clear support to particular parties or blocs. The popular *Inter* TV station gave strong support to the SDPUu by allocating 21% of exclusively positive news coverage. The privately owned Studio *I+I* also supported the SDPUu, giving the party 12% of prime time news coverage, mainly positive. Both channels were biased against Mr. Yushchenko.

ICTV, whose range is limited to Kyiv and surrounding regions, allocated 19% of its prime time news coverage to FUU, with mostly neutral or positive content. Despite its modest showing in opinion polls, the pro-Presidential bloc "Winter Crop Generation" received 15% of similar airtime, most of which was positive or neutral. Our Ukraine received only 8% of time, mainly neutral or negative in content. However, three other private TV channels – *STB*, *Noviy Kanal* and *Utar* – offered viewers a more balanced coverage. *Utar*, and to a lesser extent *Noviy Kanal*, broadcast items critical to FUU, the President and the Government. Only *Utar* clearly favoured Yulia Tymoshenko and Our Ukraine blocs, giving them 22% and 27% respectively of mainly positive or neutral coverage.

The print media provided plurality of views, but invariably supported specific political parties and blocs. As such, voters could form an objective view of the campaign only if they read several publications. The State-funded newspapers, *Uryadoviy Kurier* and *Golos Ukrainy*, adhered to legal provisions granting free space to political contestants and allocated the majority of their space to cover activities of the CEC. The political line of private newspapers varied greatly. *Fakty* the largest selling daily, with a readership of almost 1 million, *Segodna*, *Den* and

²¹ Council of Europe recommendations stipulate that giving equitable treatment to all parties involved in the elections does not necessarily mean devoting equal time to all of them, but rather means ensuring that all significant viewpoints and political parties are heard. It means a democratic debate in the broadcast media. Political impartiality in broadcasting is considered essential.

Kievskie Vedomosti supported pro-presidential parties, while *Silski Visti*, *Ukraina Moloda* and *Vechernie Vesti* supported the opposition.

The news programs of regional media controlled by the State were biased. Of six stations monitored, five gave overt support to FUU. In Kharkiv and Nikolaiv, the State-owned channels allocated 70% and 50% respectively of their prime time news coverage to the FUU, with an exclusively positive tone. The other State broadcaster monitored, in Lviv, provided 33% of mainly positive or neutral coverage to Our Ukraine.

IX. DISPUTES, COMPLAINTS AND APPEALS PRIOR TO ELECTION DAY

Many party representatives expressed little faith in the courts' and CEC's ability and powers to regulate the conduct of the campaign and offer redress. Thus, some party leaders opted to make allegations, often unsubstantiated, in the media. However, they also filed formal complaints through the relevant channels.

The Election Law provided a streamlined complaints and appeals procedure, thereby greatly improving the legal mechanisms to resolve election disputes. This was a major flaw during the 1998 parliamentary elections. Parties, blocs and candidates were given the option of appealing to superior election commissions and/or courts.

As of 31 March, the EOM was informed about 394 election-related complaints, of which 281 were addressed to the courts and 113 to the CEC. About 70% of the complaints concerned candidate registration and de-registration, the composition of commissions, undue influence against election subjects, obstruction of campaign, and illegal campaigning. Of the 281 cases filed with the courts, 72 were against CEC decisions and were filed with the Supreme Court, and 209 contesting DEC decisions were filed with various District Courts of Appeal. The Supreme Court reversed in full or in part 16 CEC decisions, including judgements to re-instate 10 de-registered candidates, including the top two-placed candidates on the Yabluko party list. The Courts of Appeal reversed 54 DEC decisions and upheld 86. The remainder were either pending or, for procedural reasons, were not heard.

The CEC and DEC's operated as "quasi-judicial bodies" with authority to adjudicate election disputes. Some complaints received by election commissions concerned the actions or decisions of other State bodies or concerned campaign violations. However, the legal framework does not grant election commissions the power to enforce its decisions, thereby limiting their effectiveness. Election commissions are also obligated to refer complaints regarding violations of campaign provisions to the respective law enforcement bodies for investigation. However, the EOM is aware of certain cases where election commissions simply dismissed the case as not falling within its jurisdiction. Due to failure to meet the seven-day submission deadline, 34 complaints were dismissed and 38 were rejected for other reasons. The CEC cancelled 35 DEC decisions in full or in part, and issued six warnings to political parties.

As of 31 March, the Ministry of Interior had received 176 reports of election related violations, of which 28 were committed against media representatives. Criminal cases were instituted in 51 of these cases, including 37 for placing campaign materials in places not permitted by law, and 14 involving media representatives. Penalties resulted against 91 individuals.

The overwhelming majority of candidates de-registered by election commissions were charged with having “vital inconsistencies” in the “income statements”. The definition of “vital inconsistency” troubled both the election administration and the courts that applied inconsistent criteria. While the Supreme Court found the failure of a candidate to declare the ownership of a 91.7 m² property insufficient grounds for de-registration, in other cases DEC de-registered candidates for trivial discrepancies. For example, a DEC de-registered a candidate for a discrepancy of 612 UAH (about US\$120); another candidate in Lugansk was de-registered for a discrepancy of 270 UAH (US\$55). Some de-registration decisions raise questions about the political impartiality of the DEC concerned. In DEC 224, seven candidates were de-registered due to arguable irregularities in their income statements, verified by the State Tax Administration. The election in this district was won by Mr. Vernidubov (FUU), Head of the district’s City Tax Office.

The Courts of Appeal or the CEC overturned a number of questionable DEC decisions. However, there were instances where DEC simply ignored the decision of the higher legal authority. For example, in Crimea TEC 25 did not follow the ruling of the Simferopol Court to de-register Leonid Hrach, the outgoing Speaker of the Crimean Parliament and a candidate in the elections to the same Parliament. In Kirovohrad, the DEC 99 instructed PSCs to delete the name of Valeriy Kalchenko from ballot papers despite a court ruling overturning the DEC’s decision to de-register him due to a discrepancy in his income statement giving a slightly different size (off by 3 m²) for a property he owns.

X. DOMESTIC OBSERVERS

A vibrant civil society in Ukraine assumed a vital role in the election process. A number of non-governmental organisations implemented numerous election-related projects, including media monitoring, campaign finance monitoring, and observation. Despite the absence of legal provisions on domestic non-partisan observers, the Committee of Voters of Ukraine (CVU), the main non-partisan domestic observer group, generally did not encounter obstacles to observe the process. It established a long term presence in each of the 225 *oblasts* and announced that they would deploy some 24,000 observers on election day. CVU observers were accredited as journalist from the *Tochka Zory* newspaper and through a provision for domestic observers in the local government election law.

XI. OBSERVATION OF VOTING AND COUNTING

A. Voting

1. De-registration of candidates

The de-registration of some candidates late on the eve of the election, for example in Lugansk, Rivne, Donetsk, Kirovohrad, Odessa and Dnipropetrovsk, left insufficient time for these candidates to lodge appeals and caused confusion at polling stations. Some DEC only notified PSCs of de-registrations during election day, after voters had begun to cast ballots, causing votes to be invalidated.²² Elsewhere, the requirement that PSCs cross out the names of de-registered

²² In Kirovohrad (Constituency 99), the winning candidate secured less than 20% of the vote, over 13% of ballots were cast against all candidates and over 6% were deemed invalid. In constituency 107 in Lugansk,

candidates by hand led to delays in opening polling stations and in some cases caused serious errors. Some DECAs were instructed only on 30 March to delete the names of the “top-5” placed candidate of the bloc “Against All”. Instead, some PSCs deleted the entire list. An observer reported that in another case, a polling station had over 500 cast ballots with “Our Ukraine” bloc crossed out in error.

2. Atmosphere

Voting was conducted in a generally calm atmosphere. Most observers felt that voters were able to express their will, despite some voters having to wait for long periods to cast ballots. However, the overall assessment varied regionally, with reports of some serious problems in southern and eastern Ukraine, particularly Donetsk and Odessa. Party observers and PSC members representing opposition parties were excluded from polling stations or intimidated while carrying out their tasks at polling stations in constituencies 18, 41, 42, 45, 49, 54, 57, 58 and 104. International observers and their staff were obstructed in carrying out their work or harassed by the local authorities, police or unidentified persons in constituencies 25, 41, 45, 49, 53, 54, 57, 58, 104, 105, 144 and 216.

Overall, observers reported 54 instances where voters suffered intimidation or undue influence, 20 violent incidents and 40 cases of campaign activities taking place in the vicinity of the polling stations. Some observers noted a high profile security presence by police or Ministry of Interior personnel.

The requirement that local elections be held simultaneously with parliamentary elections confused proceedings and complicated the task of PSCs. Some polling station had to process 3,000 voters casting up to six ballot papers in unsuitable premises, making access and voting difficult. As a result, polling stations were often overcrowded. At times, this led to long queues and a tense atmosphere, particularly in large urban areas.

3. Polling Station Commissions

The appointment of a wide range of party nominees to PSCs as well as the presence of large numbers of political and non-partisan NGO observers enhanced the transparency of the process. The overwhelming majority of PSCs had at least eight members (98%). The vast majority of PSCs worked to administer the process in good faith despite difficult circumstances. Observers assessed the process at polling stations positively, with only 6% indicating the poll was conducted poorly. However, the EOM received 123 observer report forms (8.4%) indicating that unauthorized persons, including local administration officials, factory bosses, party observers and the police directed the work of PSCs.

4. Transporting voters across constituency boundaries

Observers in Donetsk (constituencies 44, 53, 54, 57 and 58), Kharkiv (174, 181 and 182), Dnipropetrovsk (24 and 40), Poltava (146), Vinnitsa (11) and Kyiv (216) noted or received reports that voters were “bussed” across constituency boundaries. These voters registered to vote on election day, using “absentee certificates” in an apparent attempt to influence the results

in protest at the de-registration of a prominent candidate, some people continued to vote for the candidate despite his de-registration.

of constituencies in which they were not resident. This practice runs counter to the spirit of the law. In over 6.5% of polling stations visited, more than 5% of all voters had been added to registers using absentee certificates, in some instances the figure was greater than 5%.

5. Compliance with voting procedures

Although polling was rather chaotic in places, overall, voting procedures were followed according to the legal provisions. Voters generally produced valid ID documents (91%) and signed the voter list (98.5%). However, some voters (5%) received ballots on behalf of other persons despite a legal prohibition on “proxy voting”. “Group voting” was recorded in 40% of polling stations observed. This, together with widespread “open voting” were the main obstacles to the secrecy of the ballot.

In over 33% of reports, persons not on voters lists were able to register on election day and vote in the parliamentary elections, without being in possession of “absentee certificates” and in contravention of the legal provisions. In some cases, the numbers registering were significant. This failure, which opens the possibility of ineligible persons casting ballots, is of serious concern. Observers also reported that 31% of PSCs visited turned voters away, mainly for justifiable reasons (85%). Almost 12% of polling stations visited, received 10% more ballots than the number of registered voters. In 4.5% of cases, the figure was 25%. The law provides that only an additional 3% should be issued to PSCs.

Isolated cases of “ballot stuffing” were reported in constituencies, 44, 45, 49, 54, 144 and 222 as well as vote buying at polling stations in constituencies 11, 50, 146 and 182.

Voting in “special polling stations” located in hospitals and prisons is of concern. In constituency 28, ballot papers were not folded after voting and a prison guard inspected marked ballots before they were deposited in the ballot box. In constituency 169, turnout at a prison approached 100% with 99.7% of votes cast for FUU. Observers in Crimea reported that military conscripts voted with their officers in close proximity.

B. Vote Count

The counting of ballots was very slow, mainly due to the large number of voters registered at each polling station and the simultaneous holding of local elections. Some 22% of observers reported a tense atmosphere, 16% reported disputes among PSC members and 8% reported that unauthorised persons were directing the work of the PSC. Some PSCs did not even open ballot boxes until after midnight and most counts were not completed until 6 am the following day.

The adherence to correct procedures was less consistent than during voting. Although generally the PSCs tried to count ballots accurately, the counting process was rather disorganised. Due to errors and inconsistencies during the voting, as well as the addition of voters to lists, many PSCs had difficulty reconciling the number of cast ballots with the number of control coupons. Where discrepancies occurred, PSCs only drew up acts in almost 50% of cases. Protocols were not publicly posted in 17% of observations.

One problematic area was the determination of valid ballots. At times PSCs declared ballots invalid when in the opinion of observers the “will of the voter” had been clearly expressed. This led to controversies between PSC members. Some 20% of observers noted ballots lacking

stamps and signatures and others with the control coupon still attached. Overall, observers assessed the count as poor in 14% of cases.

C. Tabulation of Election Results

A limited number of observers visited DEC's to observe the tabulation of results. In most cases, the aggregation of results was conducted efficiently and transparently. However, in one DEC in Odessa and another in Kharkiv, observers were denied entry to the computer room where results were entered. Some observers noted that, where PSC protocols contained errors, only 2 or 3 members of the PSC were present to correct the protocols when the law requires the presence of not less than two-thirds of its members. Observers also noticed instances where election materials were not adequately sealed on arrival at DEC's.

XII. POST-ELECTION DAY DISPUTES, COMPLAINTS AND APPEALS

The EOM maintained a presence in Ukraine through April 19 to observe the publication of official results and assess the resolution of post-election disputes that marked important progress over the 1998 parliamentary elections

A. Publication of detailed results

The transparency of the results publication improved considerably and a wealth of information can be found on the CEC website in Ukrainian and in English. The CEC partly published detailed results per polling station on its website. However, the late and partial publication prevented voters, election contestants, media representatives and observers to audit the results. In addition, this measure lost its relevancy since the legal deadline to challenge the election results in multi-mandate and single mandate constituencies had expired. As of 15 May, all polling station protocols of multi-mandate constituency results are posted on its website while analogous data in single-mandate constituencies are still missing.

Political parties expressed greater acceptance of official results in the multi-mandate constituency than in the single-mandate districts. The early announcement of preliminary results by the CEC combined with efforts by parties to conduct parallel-vote tabulations (PVTs) and a speedy publication of exit polls increased public confidence in the results of the proportional race.

B. Post-election disputes

The CEC received 157 post-election complaints of which 87 related to the results in single mandate constituencies and the work of DEC's. From these, 41 complaints were dismissed for expiration of the legal deadlines or for lack of evidence. Many cases appeared to be poorly documented, frivolous, or inconsequential to the outcome. The CEC took 116 decisions of which 65 were appealed to the Supreme Court. The Supreme Court satisfied seven appeals, partially satisfied 10 and overruled eight. The remainder is still under consideration.

According to preliminary official results, 22 single-mandate contests were decided by less than 2 percentage points. In some close contests, in which credible allegations of fraud or vote-count irregularities could have arguably affected the outcome, the CEC acted promptly rather than judiciously. It often requested DEC's to verify protocols where recounts in a number of polling

stations could have been more effective to unveil discrepancies and determine the will of the voters. In some cases, district wide-recounts would have boosted the confidence in the results. Furthermore, the CEC rarely used its powers to refer cases to law enforcement agencies, even when allegations of suspected fraud were compelling.

As of this writing, the Supreme Court was still addressing post-election disputes. The Supreme Court reviewed 317 complaints on election results in single mandate constituencies. It operated with a certain degree of independence, providing complainants with a viable option for appeals and redress. Its views did not always coincide with those of the CEC and overruled several CEC decisions. However, the Supreme Court's rulings were not published in a timely manner and its scheduling procedures did not encourage public oversight.

In Ivano-Frankivsk (DEC 90), the CEC invalidated the election ruling that the will of the voters could not be determined, in part because nine polling stations did not open. However, the Supreme Court overturned the CEC decision in favour of Roman Zvarych who had received more than 60 percent of the vote, arguing that the will of the voters was clear.

In Dnipropetrovsk (DEC 35), the CEC instructed the DEC to verify the accuracy of protocols, after receiving a complaint from Oleksandr Zhyr on the existence of two sets of signed, stamped protocols. The Supreme Court confirmed the existence of double protocols in eight polling stations and ordered the CEC to discard those polling stations in determining the results. Instead of disregarding results in the eight contested polling stations, the CEC undertook to verify all protocols and on 19 April, decided that it was not able to determine the results, contradicting its earlier decision. Consequently, it invalidated the election results in that district and ordered reruns. However, it did not refer the case for criminal investigation.

In some rulings, the Supreme Court pointed out inconsistencies in CEC decisions. In Zakarpathia (DEC 70), a losing candidate complained about a number of irregularities. The CEC ordered verification but left the complaint unsatisfied. The Supreme Court ruled that the CEC resolution was contradictory in terms and requested the CEC to review the complaint on merits. It added that the CEC "did not verify evidence of all violations" and "did not properly evaluate facts." The Court found, furthermore, that the CEC did not respond to the fact that the elected candidate was under criminal investigation and that the court ordered his imprisonment. In the same district, the CEC also rejected a similar complaint for lack of evidence. In its ruling, the Supreme Court stated that having similar facts in another case, the CEC reached a contradictory decision. In both rulings, the Court underlined that it did not have the legal competence to invalidate elections which is the only prerogative of the CEC.

Thus, reruns will be organised in DEC 18, 35 and 201 on 14 July.

XIII. ELECTION RESULTS

The Official results are as follows for the single mandate and multi-mandate constituencies:

Political Parties	% of votes	No. of seats Proportional race	No. of Majoritarian seats	Total No. of seats
Our Ukraine	23.57	70	40	110
Communist Party	19.98	59	7	66
For a United Ukraine	11.77	35	66	101
Tymoshenko Bloc	7.26	22	--	22
Socialist Party	6.87	20	2	22
SDPUu	6.27	19	5	24
"Democratic party of Ukraine – Party Democratic Union"	0.87	--	4	4
Bloc "Unity"	1.09	--	3	3
Party of National- Economic Development	--	--	1	1
Ukrainian Sea Party	0.11	--	1	1
Self nominated candidates	--	--	93	93
TOTAL	--	225	222	447

Noteworthy in these results is that, despite winning 11.77% of the votes in the proportional contest, FUU secured 66 mandates in majoritarian contests. In contrast, "Our Ukraine" won only 42 constituency contests with 23.57% of the votes. The Communist Party fared even worse, winning just 7 majoritarian seats despite about 20% of the vote in proportional contest. Theoretically, the "first-past the post" election system should favour the highest scoring parties, often giving them an even greater share of mandates than their percentage of votes. Curiously, in many constituencies, it appears that citizens voted for opposition parties in the proportional contest and candidates of pro-presidential parties and blocs in majoritarian contests. In other constituencies where citizens voted for opposition parties in the proportional contest, the single mandate races were carried by "self-appointed candidates", the majority of whom later joined the pro-Presidential bloc in the new Parliament.

The following table illustrates the anomaly:

Party or Bloc	No. of Constituencies in which Party/bloc gained most votes in the Proportional Contest	No. of Single Mandate Contests won
Communist Party	100	7 ²³
"Our Ukraine" Bloc	94	42
For a United Ukraine Bloc	18	66
Yulia Tymoshenko Bloc	1	0

²³ The Communist Party presented candidates in 93 constituencies out of the 100 where it won the most votes in the proportional race.

Socialist Party	12	3
SDPUu	0	5

FUU gained 48 seats in constituencies where other parties gained most votes in the proportional contest. In constituencies where “Our Ukraine” and the Communist Party gained most votes in the proportional contest, they mostly lost to self-nominated candidates.

The official results also show high numbers of invalid ballots and many votes “against all” candidates, 5.6% and 7.4% respectively in the single mandate constituencies ballot. In Constituency 1, the winning candidate gained 18.75% of the vote whilst 17.08% of voters cast ballots “against all”. In constituency 2, the “against all” vote was 22.26%. While these are extreme examples, in 16 other constituencies this figure was over 15%, and in 43 constituencies the figure was in excess of 10%. This trend was flagrant in Dontesk, Kyiv, Crimea and Kharkiv. Eight constituencies had over 10% of invalid ballots, especially in Zakarpatska region.

XIV. RECOMMENDATIONS

In addition to the greater political effort required to prevent the abuse of administrative resources during future elections, the following recommendations should be considered in conjunction with earlier recommendations contained in the OSCE/ODIHR assessment of the Election Law.

A. Legal Framework

1. A consolidated election code should be developed for all types of elections including the Law on the Central Election Commission. The various election laws and procedures should be integrated into a single Election Code. This should ensure that administrative and technical arrangements will be the same for all types of elections.
2. Other election related legislation should be brought into line with the provisions of the Election Law, in particular the Administrative Code that will enable violations to be enforced and perpetrators to be prosecuted.
3. Local elections should not be held simultaneously with parliamentary elections.
4. There should be a legal requirement to publish in time summary tables or worksheets of all PSC results by DEC. This would enable parties and candidates to verify the correct aggregation of single and multi-mandate contests.
5. The law must define what constitutes a “vital” inconsistency to ensure a uniform application of the law when de-registering candidates. Additionally a deadline for de-registration, long in advance of printing the ballots and prior to the expiry of appeal deadlines should be introduced. Discrepancies in the income statements of family members should not lead to a candidates de-registration.
6. To avoid confusions and errors, a deadline for candidate withdrawal, prior to the printing of ballots, should be introduced.

7. The Election Law should more clearly define which activities are considered “campaign activities”.
8. The number of registered voters per polling station should not exceed 2,000.
9. The “10% threshold for violations” (Article 70.1) of the Election Law should be removed completely.
10. The Election Law should strictly prohibit the presence of unauthorised persons in polling stations and DEC premises. Furthermore, police should be entitled to enter a polling station to restore order but only at the request of the PSC chairperson.
11. The Election law should more explicitly define the circumstances in which recounts or invalidation of elections is required.

B. Election Administration

12. The investigative powers of the CEC should be clarified and reinforced. The CEC should have decisive authority over DECs.
13. Both DECs and PSCs should receive timely, thorough and consistent training to improve adherence to procedures, particularly relating to the count. Political parties should properly train their commissioners and observers.
14. Greater transparency in the production and distribution of ballot papers is required. Parties should have the statutory right to observe the ballot printing.

C. Voter Registration

15. A “Law on National Register of Voters” should be adopted providing for a centralised database of voters, updated regularly. This issue is closely linked to residency and the incoming Parliament should adopt a new Law on Registration of Residency, in accordance with the President’s Decree, as a matter of urgency.
16. The use of “absentee certificates” should be severely restricted or further regulated to prevent abuse.

D. Media and the Campaign

17. An independent media commission with a clear mandate to monitor the conduct of media should be created to ensure free, equal and fair access. It should rule on complaints and enjoy effective powers to sanction violations and enforce its decisions. Its membership should be diverse, with a professional and non-partisan composition including media professionals, civil society, judicial bodies and possibly the CEC, the government and political parties.
18. State-owned media should be transformed into an independent public service media that will provide citizens with impartial and politically balanced information on election contestants.

19. Steps to improve the transparency of campaign spending should be legislated, and the CEC or other State body should have full responsibility to scrutinise campaign accounts.

E. Election Observation

20. The law should contain a provision allowing non-partisan domestic observers in accordance with article 8 of the 1990 Copenhagen Document.
21. International observers should be entitled to receive official copies of PSC and DEC protocols.
22. Observers should be granted the right to observe all aspects of the aggregation of votes at DECs.

F. Election Disputes

23. The CEC should enjoy enhanced powers and capabilities to meet its obligations for both speedy and effective resolution of post-election complaints. Alternatively, responsibility for investigation, prosecution and enforcement of election-law violations should be transferred entirely to a competent, independent body or an administrative court with special powers.
24. A less restrictive period for submitting post election complaints and appeals is required. The current deadlines are insufficient for complaints related to voting, counting, completing protocols, modifying protocols and aggregating and declaring results.
25. The decisions of the CEC should be possible to review by the Supreme Court, which ruling should then be final and binding. In particular, the decision by the CEC to partially or fully validate or invalidate an election should be possible to review by the Supreme Court. Also, the Supreme Court should work more transparently and publish its rulings in a timely manner to allow greater public oversight.

G. Gender

26. Political parties should consider measures to encourage greater participation of women in elections.

H. National Minorities

27. When amending the election law in the Autonomous Republic of Crimea, legislators should take into consideration the OSCE Lund Recommendations and the OSCE/ODIHR Guidelines to Assist National Minority Participation in the Electoral Process in order to secure effective representation of national minorities in political institutions.

I. Procedures on Election Day

28. The Election Law should contain more details on election day procedures.
29. Election commissions should ensure that premises for polling stations are suitable to accommodate the voters, including those with disabilities and ensure a smooth flow of voters

during the voting process. The local authorities should provide enough polling booths to avoid long queues.

30. With the exception of voters, all other persons in polling places should wear an identification badge, with different colours for different functions.
31. There should be one secure ballot box per election contest. Voters should deposit ballots into different boxes.

ABOUT THE OSCE ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's main institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and ... to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created in 1990 as the Office for Free Elections under the Charter of Paris. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 80 staff.

The ODIHR is the lead agency in Europe in the field of **election** observation. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following six thematic areas: rule of law, civil society, freedom of movement, gender equality, trafficking in human beings and freedom of religion. The ODIHR implements more than 100 targeted assistance programs, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR **monitors** participating States' compliance with OSCE human dimension commitments. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR [website](#), which also contains a comprehensive library of reports and other documents, including all previous election reports and election law analyses published by the ODIHR.