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EUROPEAN NETWORK OF ELECTION MONITORING ORGANIZATIONS

<p>European Network of Election Monitoring Organizations International Observation Mission Ukraine Parliamentary Elections 2012</p>	<p>Європейська мережа організацій, що спостерігають за виборами Міжнародна місія спостереження Парламентські вибори в Україні – 2012</p>
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UKRAINE PARLIAMENTARY ELECTIONS

28 October 2012

FINAL REPORT

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I. EXECUTIVE SUMMARY

ENEMO international observation mission to Ukraine found that parliamentary elections held on October 28, 2012 were competitive offering voters choice of various political parties and candidates; however, election campaign and tabulation of results were negatively affected by serious flaws and gross violations. Compared to previous 2007 parliamentary elections ENEMO mission observed in the pre-election period significantly higher number of campaign violations, abuse of administrative resources, voter bribery, harassment and intimidation of candidates and campaign workers and intimidation of journalists. The tabulation process at the district election commissions lacked transparency and integrity in a number of single mandate districts and as a result of fraudulent actions, the Central Election Commission declared that it was not able to establish election results in five single-mandate districts. The political landscape of 2012 election was also influenced by the fact that two of the prominent opposition figures, Yulia Tymoshenko and Yuriy Lutsenko were serving prison sentences. Their trials raised significant concerns over the fairness of the process and implications for the elections and were largely condemned by the international community.

The elections of 450 deputies to Verkhovna rada (Parliament) of Ukraine were held on 28 October 2012 according to the re-introduced mixed electoral system in which 225 mandates were elected proportionally from closed party lists and 225 mandates in single mandate districts with a simple majority vote. The threshold for political parties to obtain mandates had been increased from three per cent to at least five per cent of votes in a nationwide constituency. The fundamental change of electoral system and adoption of new election law 11 months before elections raised concerns about ability of political parties and electoral authorities to cope with new challenges in organizing parliamentary elections in Ukraine. On a welcome note, the new law on parliamentary elections extended the rights of domestic nonpartisan observers.

The Central Election Commission meetings were open to observers, media and political parties, although access to real decision-making was limited. During the pre-election period the CEC made efforts to improve access of party authorized representative to materials related to CEC resolutions. Nevertheless, absence of access to draft resolutions restricted political party representatives their right to fully participate in decision-making with their advisory capacity. ***ENEMO recommended the CEC to provide the draft resolutions ahead of CEC meetings and to create necessary conditions for sound informed debates on the issues in consideration.*** ENEMO mission welcomed decision of the Central Election Commission to restrict possible massive voter migration from one majoritarian district to another.

The new election legislation opened space for “technical parties” to win excessive membership in district election commissions and to organize system of massive replacements. As a result, the work of district election commissions was adversely affected by frequent replacements of members and by partisan confrontation. Cases of pressure, closed door sessions, limited access for observers to decisions and documents raised serious concerns about transparency and

integrity of DEC work. ***ENEMO noted necessity for systematic training of election commission members at all levels.***

The sudden decision of the CEC to change procedure of drawing lotteries for the establishment of precinct election commissions adopted just five days prior to the lotteries did not achieve unified and transparent implementation by the district election commissions. The CEC instructions were not followed in the same way and as result repeat lotteries were required and the process of formation PECs was quite disorganized and delayed in a number of cases.

The process of registration of candidates on party lists at the Central Election Commission was quite smooth. In contrast the high number of candidate applications in combination with extremely tight deadlines and inconsistent formalistic way of processing submitted documents by the CEC created organizational problems and resulted in a number of refusals to register self-nominated candidates. The administrative courts in Kyiv were adjudicating complaints and appeals related to candidate registration and in few cases overturned original CEC decision. However, even in two similar cases the courts did pass conflicting decisions. Although the legal framework allowed the CEC to make decisions and the courts to resolve electoral disputes in a timely manner, refused candidates didn't have effective remedies at their disposal.

The level of campaigning increased in the last month of the election campaign. Number of self-nominated and opposition candidates' complaints about being intimidated, pressured or harassed by tax inspections or authorities increased in the month prior to elections. Misuse of administrative resources was widespread. Publicly financed projects were presented as personal candidate achievements or party initiatives in order to promote their election campaign. Domestic observer groups OPORA and CVU reported on a high number of cases of voter bribery by candidates. ***ENEMO expressed serious concerns about a lack of effective sanctions in cases of voter bribery. The CEC issued warnings to candidates, but there were no administrative or criminal punishment for those candidates involved in vote-buying.***

Media situation remained a concern particularly pressure on television channel TVi and newspaper Grivna in Mykolaiv and local television stations in Kherson and Odessa. Following public and media protests, ENEMO welcomed the decision of the Ukrainian Parliament to stop the adoption of controversial draft law to introduce criminalization of defamation.

On Election Day, 86 ENEMO observers made 546 visits to polling stations, followed the counting in 42, and observed transfer of protocols to 40 DECs. ENEMO noted such irregularities as presence of unauthorized persons in more than 10% of polling stations observed. Observers reported voters that were not found on the voters list in 73 of precincts visited. Organized transport of voters by the ruling party were reported from five different regions and ENEMO observers were intimidated by organizers of such activity in Odessa oblast and AR Crimea. ENEMO observers assessed counting process negatively in 7 out of 42 observed cases and particularly disorganized and non-transparent in Zakarpatya and Odessa oblast. Transfer of

protocols was assessed as orderly in most of the observed cases, but the DEC procedures were chaotic and disorganized in six of observed cases.

ENEMO mission observed the post-electoral period, in particular the tabulation of results by the District Election Commissions. ENEMO observers registered an alarming number of violations and irregularities, especially in highly competitive single mandate districts. Observers reported cases when the law enforcement agencies or unknown persons stopped the functioning of DEC, spoiled ballot papers, illegally seized protocols of Precinct Election Commissions, prevented and impeded the regular work of commissioners. Multiple sources claimed mismatches between protocols filled out at PECs and results published at the website of Central Election Commission. Incidents occurred mostly in districts where the difference between candidates was narrow such as in districts #211 and #223 (Kyiv City), #94 and #95 (Kyiv oblast), #132 (Mykolaiv oblast), #20 and #21 (Volyn oblast), #11 and #14 (Vinnytsia oblast) and #189 (Khmelnitsky oblast). Limited access of journalists and proxies to tabulation rooms raised serious doubts about the transparency of DEC activities and validity of result tabulations in those constituencies. ***ENEMO called on authorities and courts to comply with the law and preserve the will of the voters as to reflect it correctly in the vote counts and tabulation of results. Furthermore, ENEMO urged authorities to investigate impartially violations and fraud during the tabulation process and to prosecute persons who committed electoral offences.***

The Central Election Commission adopted a resolution on November 5 that it was not able to establish election results in 5 electoral districts due to tampering of PEC protocols and PEC results posted on CEC website or invalidating results from election precincts. Thus the CEC announced results for the proportional part of elections with 225 MPs elected and 220 MPs elected in single mandate districts leaving five MP seats vacant. Although the CEC addressed the Ukrainian Parliament to adopt legislation required for possibility to organize repeat elections in 5 remaining districts, MPs turned to Constitutional Court with this issue and as of February 2013 there was no indication on how this issue would be solved. Furthermore, on February 8, 2013 High Administrative Court of Ukraine adopted controversial judgment to cancel results in single mandate districts # 71 and # 11 and to deprive of parliamentary mandate two MPs elected in October 2012 and order CEC to hold repeat elections in two constituencies.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Observation of 2012 legislative elections in Ukraine was already the sixth time that ENEMO undertook election observation mission to Ukraine after having monitored 2004 and 2010 presidential elections, 2006 and 2007 parliamentary elections and 2006 mayoral elections.

The ENEMO mission for the 2012 parliamentary elections in Ukraine began its work on 23 July 2012 with the arrival of four Core Team members. ENEMO was the first international election observation mission registered. Thirty-five long-term observers arrived to Kyiv on 5 August 2012

and after training they were deployed throughout Ukraine. Long-term observer teams covered one or two oblasts of Ukraine. ENEMO issued first interim report for the period August 5 – September 9 and second interim report for the period September 10 – October 8. Focus of ENEMO long term observers was on the conduct of election campaign, formation and work of election commissions, media situation and official election complaints. On October 25, 2012 ENEMO short term observers arrived to Ukraine. They were briefed and trained on political environment, specifics of the election process and election legislation. Short term observers were paired with long term observers. On the Election Day ENEMO fielded 86 observers paired in 43 short term observation teams that observed opening of polling stations, conduct of voting inside polling stations, environment around polling stations and counting of votes in selected precincts throughout Ukraine. ENEMO observers operated as mobile teams and obtained information from over 550 PS equally dispersed throughout all regions of Ukraine. Moreover ENEMO observers have followed transfer of PEC protocols to the district election commissions and tabulation process at the DECs. On the Election Day focus of ENEMO observation was to assess the work of election commissions, conduct of voting, conduct of tabulation and identification of potential irregularities and violations throughout the Election Day.

ENEMO's 2012 parliamentary election observation mission in Ukraine was conducted with the support of the United States government, the British government, the German Foreign Office, the Kingdom of the Netherlands, the Kingdom of Norway and the Black Sea Trust. ENEMO Mission in Ukraine worked in partnership with the National Democratic Institute for International Affairs

III. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

On 28 October 2012 Ukrainian voters were to elect its 450 deputies to Verkhovna rada (Parliament) of Ukraine according to the re-introduced mixed electoral system in which 225 mandates are elected proportionally from closed party lists and 225 mandates in single mandate districts with a simple majority vote (first past the post). The threshold for political parties to get mandates has been increased from three per cent to at least five per cent of votes in a single nationwide constituency. The change of electoral system was initiated by the ruling party as part of reform process to adopt unified election code. However, electoral system changes were pushed through without public discussion and without attempts to build consensus with other political parties. The drafting process of working group was characterized by a lack of transparency and accountability which resulted of suspension of participation of international organizations (IRI and NDI). The outcome of working group was new parliamentary election draft law instead of originally intended unified election code. Nevertheless, the parliamentary opposition parties and ruling coalition voted for the proposed election bill in November 2011. New law on parliamentary elections prohibited participation of electoral blocs and allowed individual candidate self-nominations in a single mandate district. Ukrainian voters abroad were given possibility to vote in out-of-country polling stations, although they could cast only one

ballot for political party in nationwide multi-mandate district without second choice of ballot for single-mandate district.

The fundamental change of electoral system and adoption of new election law 11 months before Election Day raised concerns about ability of political parties and electoral authorities to cope with new significant challenges in organizing parliamentary elections in Ukraine. On a positive side, the new election law has extended the rights of domestic nonpartisan observers to have right to lodge complaints and to be registered as observers

On July 2, 2012 Ukrainian parliament adopted new legislation introduced by MP from Party of Regions on special aspects of Guaranteeing Open, Transparent and Democratic Elections of MP Candidates during 2012 Parliamentary Elections. This law provided for usage of web-cameras inside polling stations and Internet transmission of voting process.

The implementation of the new law on parliamentary elections with tight deadlines created organizational difficulties with candidate registration at the Central Election Commission. The election law also lacked transparent rules for campaign finances such as income and expenditures oversight, illogical provisions and tight deadlines for election commission lotteries and lacked effective sanctions for campaign violations.

IV. ELECTION ADMINISTRATION

The three-level election administration for the preparation and conduct of the 2012 parliamentary elections in Ukraine consisted of the Central Election Commission, 225 District Election Commissions and 33 769 Precinct Election Commissions (including 116 PECs for out of country voting and 1458 special PECs).

Central Election Commission

The Central Election Commission is the highest-level commission consisting of 15 members appointed for a seven-year term. They are nominated by the president and appointed by the parliament of Ukraine.

According to the law all meetings of the CEC are public and should be announced in a timely manner. The CEC used its website for this purpose as well as for publishing decisions. The CEC staff distributed documents including agenda to all members of the commission and recorded minutes of all meetings. Media as well as local and international observers had full access to the meeting room. Party authorized representatives in advisory capacity and candidate representatives attending the CEC meetings were allowed to make comments and contribute to discussions.

CEC meetings on a daily basis were the only form for political parties' authorized representatives to take part in CEC decision-making and to contribute to discussions. ENEMO welcomed the practice of CEC to provide party authorized representatives with supplementary materials in relation to the resolution considered by the CEC as well as agenda of each CEC meeting. However, these materials and agendas were disseminated few minutes before the start of the meeting. This practice did not place party representatives in the conditions for healthy debate and discussion. It is recommended that the materials be available in advance, at least one hour before the meeting. Also, the projects of the resolutions were not available either for the observers and journalists or for the party authorized representatives until they appeared on the CEC website after the adoption of resolution (usually the following day).

The decision-making of CEC has been rather effective and most of the CEC decisions were taken unanimously (90-95%). Although majority of such decisions were of technical character (registration of candidates and proxies, cancellation of registration, etc), the process of real discussions was in majority of cases absent when it came to other decisions. The CEC meetings was the final stage of adoption of a decision and passing a resolution, drafting process itself did not happen at the CEC meeting and could not be, therefore, observed and assessed. The input of other stakeholders in adoption of decisions was also not visible (unless they present their view during CEC meetings).

The "working" pre-session meetings of the CEC ("naradas") were held regularly before each official public session. According to the CEC, technical issues regarding the agenda were discussed during these meetings. However the actual content could not be assessed as the "naradas" were closed for observers and other entitled representatives. Few interlocutors expressed their concerns to ENEMO mission about the closed character of these pre-session meetings as well as the issues considered during these meetings.

Overall the transparency of CEC work since the beginning of campaign improved greatly, nevertheless more improvements were needed. In particular, ENEMO urged CEC to provide the draft resolutions ahead of CEC meetings and create necessary conditions for sound informed debates on the issues in consideration.

Formation and Changes into DECs (from the CEC perspective)

On August 24, 2012 the Central Election Commission drew a lot to determine the composition of 225 district election commissions. Five political parties with status of parliamentary factions in Verkhovna Rada had the right to place one representative in each DEC. The distribution of remaining positions should have been done by drawing lots. Since the law does not specify whether the lot should be drawn for each DEC separately, CEC decided to draw just one lot for all 225 DECs. 81 political parties that nominated at least one candidate participated in lottery drawing. In addition to 5 parliamentary parties, 19 parties were drawn to nominate members at DECs. Only five of these parties have registered a nationwide party list, and many of them registered only few candidates in single mandate districts. Nevertheless these so called technical

parties obtained possibility for DEC positions in all districts throughout the country. On the other hand some established political parties with high number of candidates such as UDAR and Svoboda will not be represented in even one DEC. Statistically, that would be very improbable in case of separate lottery drawings for each of 225 DECs, however, the CEC explained its decision by time pressure.

The CEC endorsed the managerial positions of the district election commissions two days later, on August 26, 2012. All 24 assigned parties for nominations to DECs have obtained its proportional share of each category of managerial positions. The distribution was done by computer program to ensure proper percentage for each political party. Then some alternations were done by the CEC to reflect the experience of nominated DEC members. Observers did not have access to this part of the process.

Training of Election Administration

CEC organized training for the DEC managers – heads, deputy heads, secretaries of DECs – as well as for system administrators and accountants. The training commenced a month and a half before elections and was held in groups of about 300 people. ENEMO expressed concerns as to sufficiency of the trainings as well as for the communication system between CEC and DEC in relation to the trainings for other DEC members and PEC members. DECs, in its turn, were responsible for organization of the training for PEC members although no consistent approach was used in holding these trainings.

The substantial changes in the DECs composition raises concerns of competencies of newly established DEC members. Although all the necessary materials are being dispersed among new DEC members, they are not going through a special centralized training.

In addition to the trainings CEC organized the website with study materials for DEC officials; the website became available 10 days before elections. Although website is a useful resource for training election officials, it should have been available earlier. CEC also produced handbooks for DECs as well as a compilation of relevant laws which were distributed to every DEC member.

ENEMO welcomed variety of methods used for training of election officials, nonetheless urged the CEC to undertake a more consistent and systematic approach to training election officials at all levels.

Consideration of Complaints and CEC Warnings

ENEMO has analyzed 94 complaints that were adjudicated by the CEC from August 1 to October 27, 2012. According to the official statistics of the Central Election Commission, from July 31 to October 27 the CEC received 503 complaints and 98 of them were adjudicated. Out of those 98

complaints only 4 were fully satisfied and 12 partially satisfied. 39 complaints were not considered on merits and 43 were dismissed. 45 cases were sent to the Ministry of Internal Affairs of Ukraine.

According to the article 61.1 of the law on elections of People's Deputies of Ukraine "*the Central Election Commission may adopt a decision to issue a warning to a party whose MP candidates are included in the party's electoral list or to an individual MP candidate.*" The CEC in practice has issued warnings only based on a court decision.

The CEC issued warnings in 23 cases from September 6 to October 26, 2012, in all of which it referred to the court decisions. Warnings were issued to MP candidates from the following parties: Batkivshchyna - 6, UDAR - 2, Svoboda - 1, Ruskiy Blok - 1, Velyka Ukraina - 1, Ridna Vitchyzna - 1, United left and peasants - 1. The following parties were issued warnings as well: Batkivshchyna - 1, UDAR - 1, Oleh Liashko's radical party - 1. Six self-nominated candidates also received warnings. The abovementioned warnings can be categorized according to the following violations: campaign violation – 20, indirect vote bribery – 3.

MP candidate Anatoliy Dyriv nominated by Batkivshchyna was issued 4 warnings for campaign violation (spreading of campaign materials with no printing data). However, Mr. Dyriv did not have an opportunity to defend himself at court during corresponding court hearings as he never received any notifications from the court. Mr. Dyriv was only informed about warnings issued to him as the CEC sent copies of resolutions to him.

According to the article 61.5 "*If an election commission discovers a violation provided for by Part two of this Article or any other violation for which a criminal or administrative liability has been established by the law, the election commission shall notify law enforcement bodies of the violation for the purpose of investigation and reaction in accordance with the law.*" When the CEC forwards complaints to the law enforcement bodies, it exercises that legal obligation. However, the CEC just notified them and wasn't responsible for follow up.

There is no information available about investigation and prosecution of such violations. The CEC can only cancel the registration of an MP candidate if there is a judgment of a court finding the MP candidate guilty of committing a deliberate crime and it has come into force. The courts ruled on 3 cases of indirect voter bribery.

On September 12, 2012 Kyiv Administrative Court of Appeal passed a decision which stated that MP candidate nominated by the Svoboda party in SMD#223 Levchenko Y.V. transferred 10.000 hrn on the account of the National Library of Ukraine using money not from his electoral fund. He violated Part 13, Article 74 and Part 6, Article 67 of the Law.

On September 16, 2012 Kyiv Administrative Court of Appeal passed two decisions to stop self-nominated MP candidates in any actions connected with indirect bribery of voters and the CEC issued corresponding warnings. The first decision was passed on David Zhvaniya running for

elections in Odessa region. The second was on MP candidate in SMD#212, Kyiv region Balenko Ihor Mykolayovych. He as a head of supervisory board of PrJSC Furshet initiated a special discount program for pensioners to get a 7% discount card for buying products in Furshet supermarket and in such a way stimulated voters to support him during the elections. Mr. Balenko violated Part 13, Article 74 of the Law.

ENEMO expressed serious concerns about a lack of effective sanctions in cases of voter bribery. The CEC issued only warnings to candidates, but there are no administrative or criminal consequences for those candidates.

CEC Decision on Access to Web-Cameras Recordings

Web-cameras were installed in all polling stations in Ukraine and were recording and transmitting the process of voting from 7.15 until 20.00. The counting process was also recorded however it was not available for public and was not transmitted via Internet.

On October 27, 2012 just one day prior to polling the CEC adopted the decision that regulates the procedure of access to the web-camera recordings. It establishes the term for receiving the recordings by the entitled persons as 2 days (from the regular polling stations in which the transmission was available) and 4 days (from the regular polling stations where the transmission was not available) by filling out written application form to CEC. In the event of an applicant wishing to receive the video from multiple polling stations the term of consideration of such a request can be prolonged but cannot take more than 20 days. As of October 29, 2012 this important CEC decision was not available on the CEC website which made its implementation for entitled persons extremely challenging.

District Election Commissions

Work of district election commissions was often characterized by open confrontations between two camps, mostly a pro-governmental and an oppositional fighting for influence (e.g. DEC #2 AR Crimea, # 175 in Kharkiv oblast, #139 Odessa oblast, #153 Rivne oblast, #200 Cherkassy or #11 in Vinnytsia oblast). A number of DEC's resumed the CEC practice of holding closed working meetings without public access. At least 15 DEC's were reported to work in a non-transparent way, especially DEC's #135 Odessa oblast, #122 Lviv oblast, #97 Kyiv oblast, #2 and # 7 AR Crimea, but also DEC's #104, #112 and #113 Luhansk oblast, #22 and #19 Volyn oblast, #10 AR Crimea, #43 Donetsk oblast, #116 and #117 Lviv oblast and #130 Mykolaiv oblast. Besides holding so-called "naradas", in cases of presence of domestic and international observers these DEC's postponed their official sessions to night hours or adopt agendas with the purpose to "bore" observers and make them leave the sessions. Additionally, in DEC's #68 and #69 Zakarpatya oblast, #67 Zhytomyr oblast, #97 Kyiv oblast commission decisions were not made public or observers had a limited access to them. In DEC's #135 and #141 Odessa oblast, #6 and #10 AR Crimea, #122 Lviv oblast, #67 Zhytomyr oblast, #101 Kirovograd oblast #113, #117

Lviv oblast and #106 Luhansk oblast, even some DEC members nominated by oppositional parties did not have access to all commission documents such as protocols, lists of PEC members, lists of distribution of managerial positions.¹

The composition and frequent replacements of the DEC members raised concerns about the lack of balance of relevant political parties. According to CEC data, political parties replaced 2366 out of 4050 existing DEC members having changed staff composition by 58% until October 23. The amount of replacements in managerial DEC positions was even higher: 471 out of 675 Heads, Deputy Heads and Secretaries were replaced (70%). Analysis of CIFRA monitoring-analytical group from Lviv showed that lowest number of replacements was performed by political parties represented by factions in the Verkhovna rada, while the largest share of replacements was made by six technical parties: “*Rus Yedyna*” (The Only Rus), “*Bratstvo*” (Brotherhood), “*Ruskyy Blok*” (Russian Bloc), “Union of Anarchists of Ukraine”, “*Yedyna Rodyna*” (The Only Family) and *Ruska Yednist*. The total percentage of replacements coming from these technical parties is higher than 100% which meant that even persons substituted were replaced again.

This analysis revealed that 391 members of DEC members as of September 5, 2012 were the same members that in the second round of Presidential Elections 2010 represented the candidate Viktor Yanukovich. Only 79 members of them were officially submitted by the Party of Regions faction, while other 312 members were brought in from other political parties. ENEMO observers found extreme cases of replacement in DEC #119 (Lviv oblast) and #194 (Cherkassy oblast). Members who were representing Batkivshchyna (#119) respectively Party of Regions (#194) at end of August, later became Heads of Commissions nominated by Christian-Democratic Party of Ukraine respectively Union of Anarchists of Ukraine. Their primary parties nominated new members to those DEC members instead of them. Similar rotation happened in DEC #2 AR Crimea where the commission Head nominated by Party of Regions changed to a simple member nominated by Ukraine Forward whereas Party of Regions delegated a new Head. Furthermore UDAR signed a cooperation agreement with Christian-Democratic Party of Ukraine and political party Youth To Power³ which replaced some of their DEC representatives with UDAR members (e.g. in DEC #9 AR Crimea, #42 Donetsk oblast, #76 Zaporozhie oblast and #62 Zhytomyr oblast). This analysis revealed that 391 members of DEC members as of September 5, 2012 are the same members that in the second round of Presidential Elections 2010 represented the candidate Viktor Yanukovich. Only 79 members of them were officially submitted from the Party of regions faction, while other 312 members were brought in from other political parties. ENEMO observers found extreme cases of replacements like in DEC #119 (Lviv oblast) and #194 (Cherkassy oblast). Members who were representing Batkivshchyna (#119) respectively Party of Regions (#194) at end of August, later became Heads of Commissions nominated by Christian-Democratic Party of Ukraine respectively Union of Anarchists of Ukraine. Their primary parties nominated new members to those DEC members instead of them. Similar rotation happened in DEC #2 AR Crimea where the commission Head nominated by Party of Regions changed to a simple member nominated by

¹ In DEC #135 Odessa, PEC secretaries were given PEC contact data before the DEC member for Batkivshchyna

Ukraine Forward whereas Party of Regions delegated a new Head. Furthermore UDAR signed a cooperation agreement with Christian-Democratic Party of Ukraine and political party Youth To Power² which replaced some of their DEC representatives with UDAR members (e.g. in DECs #9 AR Crimea, #42 Donetsk oblast, #76 Zaporozhie oblast and #62 Zhytomyr oblast).

Those facts raised concerns that technical parties were replacing their members with people who were actually not their members or sympathizers, but followed interests of other political parties. Significantly, at least five members of technical parties could not remember which party they officially represented after ENEMO observers asked them (DEC #141 Kharkiv oblast, #187 in Khmelnytsky oblast, #76 Zaporozhie oblast, #7 AR Crimea and #52 Donetsk oblast).

Procedure for Establishing the Precinct Election Commissions (PEC lotteries)

On September 13 five days prior to the deadline of nomination for PEC members, the CEC changed the rules of conducting the lottery for PEC formation. The resolution #895 was passed by the majority votes (8 for, 2 abstained, 2 against) and stated that each of 225 DECs should hold only one lottery for all PECs within the respective district. The CEC created a complicated lottery procedure which was supposed to ensure a larger balance of political subjects in PECs. Nevertheless, opposition parties, domestic and international observers including ENEMO raised concerns about the late change of rules and claimed possible lack of balance of relevant political subjects at the precinct level.

Preparation activities for lot drawings and nomination procedures for PECs proceeded very inconsistently and were full of irregularities. Lists with PEC nominees from oppositional parties were refused due to missing stamp, information data or signature of party chairman in at least four DECs³, while according to Svoboda similar application forms for their party were accepted in other DECs. Batkivshchyna nomination lists was refused initially, but then accepted after DEC consultation with CEC in DECs #135 (Odessa oblast) and #43, #57 and #58 (Donetsk oblast) or after successful court complaints in DECs # 57 and #58 (Donetsk oblast). On the other hand, lists of some parties generally considered to be technical were accepted after the deadline for submissions expired on September 20 at midnight⁴. At least in three DECs, multiple nomination lists were submitted by the same person who did not have the power of attorney for all of them.⁵

The lottery drawing itself was mostly open, the access of observers and media was guaranteed. Nevertheless, in DECs #19 (Volyn oblast), #146 Poltava oblast, #149 Poltava and #24

² <http://klichko.org/ua/news/news/udar-pidpisav-ugodu-pro-spilniy-zahist-rezultativ-viboriv-z-partiyami-molod-dovladi-ta-hdpu>

³ DECs #135 (Odessa oblast; Svoboda, Rukh and Ukrainian People's Party), DEC #107 (Luhansk oblast; Radikalna Partiya, Rukh and Novaya Politika), and DEC #5 (AR Crimea, Svoboda).

⁴ For example 12 political subjects in DEC #21 Volyn oblast, at least 11 political parties in #187 Khmelnytsky oblast, 5 parties DEC #152 Rivne oblast, furthermore at least one party in DECs #218 Kyiv, #165 and #166 Ternopil oblast.

⁵ In DEC #22 (Volyn oblast) one person submitted 20 nomination lists, in #27 (Dnipropetrovsk oblast) another person brought PEC nominations for 7 parties, in #153 (Rivne oblast) four persons brought nomination papers for 44 parties and in DEC #189 (Khmelnitsky oblast) five persons submitted 42 application lists.

Dnipropetrovsk oblast Batkivshchyna, Svoboda respectively UDAR representatives claimed about lot manipulation in terms of different sizes of envelopes, taped or visible lot numbers.

The CEC provided DEC with instruction that “the lottery deals with the numbers of the nominees, and not with candidates who presented the nominees” and that “the number of lots should correspond to the biggest number of nominees for a PEC”. According to it, the lottery should have been implemented referring to the timeline of submitting applications for each PEC. Since not all parties applied for every PEC and some multiple nominees were excluded, the nomination orders were different for each PEC. In this way, the implementation of lottery should have ensured more balanced composition of PECs than the single lottery drawn for DEC.

Despite this information how to handle the concrete procedure of lot drawing, at least 38 DEC violated intended procedure, mostly by drawing lots and implementing its results referring to political subjects which had some similarities with the DEC lottery. 17 DEC⁶ provided ENEMO observers with lists of results connecting drawn numbers with political subjects what was misleading, since they should not refer to them, but to the concrete nominee number on each PEC – and those were different from PEC to PEC. DEC which drew lotteries referring to political subjects had to repeat the lottery after intervention of CEC or to make a new data input to the CEC software⁷ what caused new PEC compositions. In DEC #191 Khmelnytsky oblast and #160 Sumi oblast, lots were drawn for each PEC separately and had to be redrawn according to CEC instructions as well.⁸ Altogether, ENEMO observers reported 18 DEC which had to repeat the lottery procedure,⁹ whereas the number of requests for a new data input was much higher. The reasons for repeated lotteries were wrong number of drawn lots¹⁰ or not excluding double nominated PEC members. High number of CEC interventions with request for corrections showed again that the DEC were not trained and informed enough to arrange a unified lottery drawing and its implementation.¹¹

Formation and Work of Precinct Election Commissions

Every LTO team reported at least one DEC where same persons were nominated by two or even three different political parties. The highest number of multiple nominated PEC representatives were reported from DEC #225 Sevastopol City (3360), #87 Ivano-Frankivsk (3187), #20 Volyn oblast (1630), #205 Chernigiv oblast (853), #123 Lviv oblast (800), #125 Lviv oblast (over 700),

⁶ #221 and #214 Kyiv oblast, #115 Lviv oblast, #19, #21 and #22 in Volyn oblast, #152, #153 and #156 Rivne oblast, #62 and #63 Zhytomyr oblast, #127, #128, #129 and #130 Mykolaiv oblast, #158 and #160 Sumi oblast.

⁷ E.g. DEC #75 Zaporozhzie; #127, #130, #132 Mykolaiv, #183 Kherson, #157 Sumi or #60 Donetsk.

⁸ In DEC #160 CEC interrupted the lottery and instructed the commission to draw just once for all PECs.

⁹ DEC # 194 and 195 Cherkassy oblast; #47 and #51 Donetsk oblast, #11 Vinnytsia oblast, #87 Iv.-Frankivsk oblast, #167 Ternopil oblast, #35 Dnipropetrovsk, #116 and 118 Lviv oblast, #109 Luhansk oblast; #141 Odessa oblast, #191 Khmelnytsky oblast, #22 and #23 Volyn oblast, #132 Mykolaiv oblast, #225 Sevastopol City and #160 Sumi. DEC #27 (Dnipropetrovsk) had to continue the lottery on the next day because just 19 numbers were drawn initially.

¹⁰ For example in DEC #203 Chernivtsi oblast, the number of lots corresponded to the total number of registered political subjects; in DEC 122 Lviv oblast just 21 lots were drawn.

¹¹ The CEC member told ENEMO team that only half of DEC were trained on the proper PEC lottery procedure.

#97 Kyiv oblast (over 600), #175 Kharkiv oblast (432), #179 Kharkiv oblast (over 400) and #38 Dnipropetrovsk oblast (over 300).

There were indications that lists of technical parties were made from one center with the purpose to get as many PEC memberships as possible and to replace them later. In DEC #12 Vinnytsia oblast, ENEMO observers found out that 21 political parties including the faction of Party of Regions have the same phone number as their headquarters contact data.¹² PEC nominations were the reason for an incident in district #22 (Volyn oblast) on September 17 where students of Lutsk pedagogical college confirmed to LTO team that they were forced to stay at school until 11 p.m. and to fill out PEC applications for several political parties. In DEC #5 AR Crimea exactly the same ID copies accompanied by different signatures were used for applications of two different political parties; in DEC #145 Poltava oblast all applications of political party Youth to Power had the same signature. Those examples substantiated suspicions that a number of multiple nominations was done without the knowledge of the nominees.¹³

Additionally there was a tendency to submit a large number of nomination lists shortly before the deadline expired and to flood the commission with paperwork, so the applications could not be checked properly.¹⁴ In DEC #192 Khmelnytsky oblast, applications with the same birth date, phone number and address, but with slight differences within the name spelling (one letter was added or missing) were submitted by different political subjects. Nominations with same names, but different addresses were reported from DEC #126 Lviv oblast. In this way, CEC software “Vybori 2012” could not detect them as multiple nominations. On the other hand, time pressure hindered the commissions to review in detail all applications.

Most DEC's excluded multiple nominees which were detected by CEC software “Vybori 2012” and did not fill out an application where they confirm their intention to represent only one political subject in only one PEC. At least five DEC's did not exclude multiple nominated PEC members and thus violated the electoral law.¹⁵ Multiple sources confirmed to ENEMO observers that the respective computer program did check multiple nominations only within a district and not among different constituencies. As consequence, at least 200 persons were chosen for PEC members both in districts #153 and #154 in Rivne oblast.

¹² Among others "The Only Family" (Edyna Rodyna), "Brotherhood" (Bratstvo), "State" (Derzhava), "Union of Anarchists of Ukraine", "Green Planet", "Russian Bloc", "Solidarity of Women of Ukraine", "The Only Rus" (Rus' Yedyna), "Russian Unity", "Slavonic Party", "Liberal Party", "People's and Labor Union of Ukraine", etc

¹³ The third possible reason is that multiple nominations represented a strategy of certain political parties to disqualify rival PEC nominees. Batkivshchyna representatives in DEC # 136 complained that their application data were stolen from the commission and provided to other political subjects to be nominated again.

¹⁴ For example, in DEC #122 Lviv oblast 41 political subjects submitted their list at the very last day, in DEC #189 Khmelnytsky oblast almost 40 applications lists were submitted within the last two and half hours

¹⁵ Two of them had to repeat the lottery (#141 Odessa oblast and #87 Ivano-Frankivsk oblast), but three DEC's (#22 Volyn oblast, #83 and #84 Ivano-Frankivsk oblast) solved the problem with multiple applications in an unlawful way – retrospectively and without new lot drawing.

Due to the fact that many PEC nominees were not aware of political subjects nominating them, a large wave of replacements started already in the first DEC sessions after the establishment of PECs. The highest number of replacements was reported from district #165 Ternopil oblast (over 4000), #110 Luhansk oblast (2820 replacements), #184 and #185 Kherson oblast (1800 respectively 1280), #21 and #19 Volyn oblast (1800 respectively 1500), #78 Zaporozhie oblast and #52 Donetsk oblast (both over 1500), #225 Sevastopol City (1413), #153 Rivne oblast (1300), whereas over 1000 PEC members were exchanged in district #129 Mykolaiv and #6 AR Crimea.¹⁶ Replacements were done both by technical parties like Youth to Power, Zelena Planeta, Union of Anarchists and well-known parties like UDAR, Party of Regions and Batkivshchyna.

The very majority of DECs used the CEC computer program “Vybori 2012” on distribution of managerial positions, but some software bugs which provided disparities were detected.¹⁷ At least 17 DECs used other procedures for the distribution of managerial positions. Eight of them were done manually by the Head, Deputy Head or Secretary of DEC and mostly in a non-transparent way.¹⁸ Distribution of PEC managerial positions was often the reason for large disputes within the DECs and caused breaking deadlines for the PEC establishment, especially in Kyiv oblast and Autonomous Republic of Crimea. ENEMO observers attended an incident at DEC #2 (AR Crimea) where police and state security service SBU interrupted the commission session about managerial position distribution just after the midnight of September 26 when the deadline for PEC establishment expired. Observers and party representatives were forced to leave the session; their cell phones were reportedly made unable to function and just security authorities wanted to stay in the room with DEC members.

Delayed start of PEC functioning was caused also due to wrong contact data of PEC members and submitted applications without of their knowledge. Especially in Lviv oblast, Volyn oblast and Kyiv City, many PECs did not have a quorum for the opening session and they had to wait for replacements. ENEMO observers visited over 100 PEC addresses without finding anyone present, even though the deadline for their first meeting expired. The late starts have shortened the time for election preparations and essential PEC member training.

Although representatives of established political parties had mostly worked at same positions in previous elections, the PECs work was characterized by a lack of experience, especially of

¹⁶ All DECs visited by ENEMO teams after the PEC lottery reported changes in PEC membership. Other extreme cases with over 900 were found in district #115 Lviv oblast, #202 Kyiv City and #189 Khmelnytsky oblast. Over 500 replacements happened in districts #203 and #204 Chernivtsi oblast, #12 Vinnytsia oblast, # 116, #117 and #118 Lviv oblast and about 500 in district #127 Mykolaiv oblast.

¹⁷ E.g. in district #68 Zakarpatya oblast European platform has got 49 PEC members and 6 managerial positions, European Party of Ukraine 43 PEC members and 7 managerial positions. Solidarity of Women of Ukraine with 19 PEC members allocated 2 managerial positions, but Zelena Planeta with 15 PEC members got 3 senior positions.

¹⁸ DECs #116 and #122 Lviv oblast; #130, 131 Mykolaiv oblast; #135 Odessa oblast, #97 Kyiv oblast, #200 Cherkassy oblast and #42 Donetsk oblast. Six DECs allowed political subjects to submit proposals and voted for a compromise solution (DECs #137 Odessa oblast, #167 Ternopil oblast; #188 Khmelnytsky oblast, #131 Mykolaiv oblast and #2 AR Crimea), whereas DECs #165 and #166 (Ternopil oblast) drew a lot even for PEC senior staff.

representatives of smaller political subjects. There was no consistent plan for PEC trainings as the situation was different from DEC to DEC. While ENEMO observers reported satisfactory trainings in Kharkiv and Luhansk oblast, in the most of other regions trainings were disorganized and insufficient. On-going replacements caused that some of PEC members did not attend any official training at all.

PEC members were additionally trained by political parties. In AR Crimea, an audio recording of training for Party of Regions PEC members held by Boris Frotman was published in media. Frotman instructed commissioners how to ensure majority in PECs by cooperating with members of technical parties, pressuring oppositional commission members and expelling their chairmen. Separately he explained the reporting system with Party of Region curators who will coordinate the massive transportation of voters to the polling stations. Special training in AR Crimea was held in public administration rooms by Vladimir Sidorov advising Party of Regions agitators how to illegally register voters which are not in voter register and how to destroy rival agitation materials. OPORA reported that similar training was provided by Party of Regions in Volyn oblast where PEC members were instructed how to falsify election results by incorrect data input at counting procedure. In PECs #070297 (Volyn oblast) and #618553 (Khmelnitsky oblast) PEC members nominated by other parties stated that they were trained by Party of Regions.

17 PEC members could not answer to ENEMO observers which party they were actually representing.¹⁹ Seven members said that they represented Party of Regions at first and had to correct themselves or even stated openly ruling party affiliation although they were aware of their official nomination by another political subject.²⁰ In districts #18 Vinnytsia oblast and #141 Odessa oblast, local branches of People's Party respectively Ukrainian National Party and Our Ukraine did not know their PEC representatives nominated by their headquarters in Kyiv. Those facts supported indications that certain political parties delegated election commissioners who actually followed interests of other political subjects.

V. VOTER REGISTRATION

The right to vote is granted to Ukrainian citizens that are at least 18 years old or reach that age on Election Day with the exception to those citizens declared legally incompetent by a court. The registration of voters was maintained by the State Voter Register - centralized voter database regularly updated. SVR unified voter database administered by the CEC represents improvement in accuracy compared to previous system of temporary voter lists used for the 2007 parliamentary elections. 754 Register Maintenance Bodies reviewed and updated personal information of all

¹⁹ #121294 Dnipropetrovsk oblast, #011186 and #011177 AR Crimea; #480860, #480818, #480773, #480859, #480772, #480821, #480822, #480841 Mykolaiv oblast, #681507 Khmelnytsky oblast, #531144 Poltava oblast, #070499 and 070522 Volyn oblast, #461900 Lviv oblast, #440740 and #440741 Luhansk oblast

²⁰ #681486 and #681421 Khmelnytsky oblast, #611108 Ternopil oblast, #070297, #071043 and #070019 Volyn oblast; #560669 Rivne oblast

voters in local administration units based on information from government institutions and agencies. Voters were given opportunity to check their data on preliminary voter lists at the PECs and request inclusion or corrections of errors during verification period.

ENEMO noted that there is a need to further improve quality of voter lists and offer voters and public more flexible means for inspection and data verification (e.g. online methods).

According to the CEC, the State Voter Register received unusual high number of applications for changing voting places to specific single-mandate districts in the period from September 13 to September 22. Various interlocutors raised concerns to ENEMO Mission about legal opportunity for majoritarian candidates to transfer large number of voters from other districts to affect the outcome of election in their single mandate district.

On 22 September 2012, the Central Election Commission (CEC) has changed the September 13 resolution # 893 by the resolution #1046. The maintenance body of the State Voter Register was allowed to only change the voting place of electors within the borders of the same single-mandate district. Exception was done only for the members of district and precinct election commissions that performed their duties on Election Day. All other voters could request change of address for voting in another polling station just for the same district and thus no massive migration of voters was permitted from one election district to another.

ENEMO welcomed decision of the Central Election Commission to restrict possible massive voter migration from one majoritarian district to another.

According to the CEC official data there were 36 213 010 voters²¹ included on the voter lists for proportional part of the October 28, 2012 elections including 1 065 634 voters on excerpts of voter lists for mobile ballot boxes. CEC protocol included 424 932 voters on the voter lists for out-of-country proportional part of elections. On Election Day ENEMO observers reported cases of some voters who were not found on the voter list in 16 % of observed polling stations. In Kyiv electoral district 221 and 223 a number of voters complained they could not vote as they were not on the voters' lists even though some of them received invitations for the respective precinct. They filed statements of claim to Shevchenkivskyi District Court which were all dismissed as the court stated that deadline for such cases expired and the court could only register them but not decide on Election Day.

There seems to be a lack of effective legal remedy for disenfranchised voters due to omissions in voter lists.

²¹ Total number of voters on voter lists in 2012 elections was lower than in 2010 presidential elections (36,968,041 in first round and 37,051,449 in second round) and lower than SVR total as of December 31, 2012 (36,725,686).

VI. CANDIDATE REGISTRATION

Right to stand for elections to Ukrainian parliament was granted to citizens of Ukraine with right to vote who were at least 21 years old and had been residing in Ukraine for previous 5 years. Citizens convicted of deliberate crimes were not eligible as candidates unless their criminal record had been cleared or cancelled. Candidates for deputies in Verkhovna Rada were nominated either by political parties or through self-nomination. Parties and self-nominated candidates were required to submit required set of various documents and financial deposit to the CEC before August 13, 2012.²²

For October 28, 2012 elections the Central Election Commission received 6190 applications for registration of candidates by parties and self-nominated persons. In total the CEC registered 5773 MP candidates (2643 candidates on lists of 22 parties in the nationwide district and 3130 majoritarian candidates in single-mandate districts). The CEC refused to register 441 applications out of which 300 were self-nominations. The reasons for denials were almost always technical. The most common reason was a failure to submit all documents required by the law or the documents that were not compliant with the legal requirements.

Although the law stipulates that the errors and inaccuracies should be subject to correction and should not be a reason for refusal, candidates were not always given two day correction period guaranteed by the law. Minor errors in autobiographies, nonpayment of the deposit within time limits, using unofficial submission forms, failure to submit a statement of self-nomination, with acknowledgement of the obligation to terminate any activities incompatible with the mandate of an MP were also grounds for denials of registration. Some of refused nominees complained that the CEC did not use the same consistent approach to all nominees to allow for corrections of submitted application forms. Disputed issue in candidacy eligibility turned to be 5 year residency requirement which lacked clear explanation and equal implementation in practice.

A number of nominees who were denied registration challenged the CEC decisions in the Kyiv Administrative Court of Appeals and then in the High Administrative Court of Ukraine. The court overturned only two decisions of the CEC, nevertheless these two positive rulings didn't set a precedent for other similar cases. The system of electoral dispute resolution does not provide clear division of jurisdiction between electoral authorities and the courts.

After withdrawals of 566 candidates (89 in proportional race and 477 in single-mandate districts) the total number of MP candidates in the October 28 elections reached 5 207. Voters were offered choice of 2653 candidates running in 225 single-mandate districts, while for a nationwide ballot voters could choose among 21 party lists with 2554 candidates. Political party *Sabor* withdrew its proportional list stating support for the opposition.

²² Deposit required for majoritarian candidate was 12 minimum monthly salaries (approx. EUR 1300) and for party nationwide list 2000 minimum monthly salaries.

VII. ELECTION CAMPAIGN

The official campaign started on July 31 and was intense as reflected in big rallies and meetings all over the country, billboard, poster and tent installations, distribution of leaflets and door-to-door activities both in urban and rural areas. Most visible and actively campaigning parties were Party of Regions, United Opposition – Batkivshchyna, Communist Party of Ukraine, Ukraine Forward, UDAR and Svoboda. Additionally, in most constituencies self-nominated candidates with a business background ran their local campaigns for majoritarian MP seat.

Obstructions of campaign rallies of Batkivshchyna and UDAR were reported by ENEMO observers from Odessa, Kharkiv, Donetsk, Kirovograd, Cherkassy and Simferopol. In all of these cases, rallies were disturbed by not labeled groups of persons or by unannounced meetings of activists of Party of Regions. In Luhansk oblast, Communist Party and Party of Regions did disturb rallies of each other; a communist rally was accompanied by a counter-rally of Radical Party including inflammatory language and harassment. Local authorities in Zaporozhie oblast were very active in limiting campaign possibilities, especially for political party UDAR. On October 5 an UDAR rally with its party leader Vitaly Klitchko was announced in district #82, the city council was informed about the meeting one day before it. On the same day, the local authorities adopted a resolution to reconstruct the respective square and started the works on the morning of the rally.

Many political parties complained about illegal campaigning against their candidates. ENEMO teams reported 71 such cases, among that 19 against Party of Regions candidates, 17 against candidates of United Opposition, 12 against self-nominated candidates and 9 against UDAR candidates. In most cases disinformation in form of flyers or fake newspapers was spread out in the name of a certain candidate, but there were also billboards and graffiti discrediting political parties. Internet was used for negative campaigning as well, especially in AR Crimea. In majority of cases it was impossible to trace the initiators; parties were usually accusing their rivals. Although the President of Ukraine Victor Yanukovich was not running as a candidate in parliamentary elections, negative campaign was used against him as well, especially in Lviv, Volyn oblast and Simferopol.

UDAR party claimed damage on their billboards (Sevastopol City, AR Crimea, Cherkassy, Kirovograd, Lviv, Zakarpatya and Zaporozhie oblasts). Batkivshchyna, Svoboda and UDAR complained about difficult access to media and billboard places. In Zaporozhie (UDAR), Odessa (Batkivshchyna and UDAR), Kharkiv (Batkivshchyna and Svoboda) and Poltava (Svoboda) oblast ENEMO observers confirmed that those parties had just few billboards or got less visible advertisement places in some districts. An owner of a billboard company in Zaporozhie oblast admitted to ENEMO observers that Party of Regions was telling him how many billboard places he could allocate to other parties (reportedly 20-30 spots for Batkivshchyna and Communist Party, no billboards for UDAR) and he was pressured to deny access to oppositional parties

despite having available billboards locations. Furthermore, in Mykolaiv, Odessa, and Zaporozhie billboard companies and newspapers cancelled already signed contracts about election advertisement of UO Batkivshchyna and UDAR.

Harassment and intimidation of candidates increased significantly in the last month of the election campaign. In district #18 (Vinnytsia oblast) the self-nominated candidate Ruslan Demchuk was arrested after an investigation of tax administration. In district #9 the charge against a candidate of Batkivshchyna was increased from hooliganism to attempted murder. In both cases, the arrested candidates were challenging candidates of Party of Regions. In district #72 Zakarpatya oblast, a self-nominated candidate was arrested and charged for several crimes from the period of 2008-2010. ENEMO observers reported four cases of candidates hiding from security authorities after investigations on them has been opened: in districts #82 Zaporozhie oblast (candidate Kryvohatka from UDAR, first 2008 incident at his factory then tax investigation), #107 Luhansk oblast (self-nominated candidate Shahov, charged for hooliganism case from 2011); #30 in Dnipropetrovsk oblast (self-nominated candidate Kupryi) and #132 Mykolaiv oblast (candidate Kornackiy from Batkivshchyna). UDAR candidate Sabashuk has already paid a bail in district #74 (Zaporozhie oblast), whereas candidate Struk was facing several charges after his announcement not to for Party of Regions, but as a self-nominated candidate in district #104 (Luhansk oblast). In district #4 AR Crimea, the prosecutor opened a 16 years old case against the self-nominated candidate Kotlearevski. Police attendance in candidate headquarters was reported from district #122 Lviv oblast (Batkivshchyna candidate). In Luhansk oblast, especially self-nominated candidates cooperating in so-called “Kommanda Serhia Shahova” were pressured by police. Besides Shahov himself, security authorities were regularly visiting the headquarters and apartments of candidates Juchenko (district #110) and Makarov (#109). In latter case, police could not present a stamped search warrant to ENEMO.

ENEMO observers reported United Opposition candidates being seriously physically attacked in districts #120 Lviv oblast (a female candidate and investigative journalist) and #169 Kharkiv oblast as well as their head of campaign office in district #222 (Kyiv city). In district # 167 Ternopil oblast, #92 Kyiv oblast and #159 Sumi oblast, candidates of Our Ukraine, UDAR respectively Svoboda have been beaten, whereas in district #47 Donetsk oblast the car with candidate of Green Party Cypin was shot at. Additionally, in Donetsk a candidate from People’s Party was shot at, her husband was hit. In district #132 Mykolaiv oblast a Batkivshchyna candidate had to bring his family abroad after harassment.

There were four cases of candidates who resigned after arrests or pressure: mentioned candidates Demchuk and Cypin withdrew after being arrested respectively shot at; furthermore multiple sources confirmed withdrawal of governor of Volyn oblast and candidate in district #22 being pressured by influential self-nominated candidates in their constituencies; in district #80 Zaporozhie oblast UDAR candidate resigned after pressure by tax administration and threats.

It is remarkable that no pressure was reported on candidates of Party of Regions, Communist Party and Ukraine Forward.

Domestic observer groups (OPORA, CVU) reported on a high number of cases of voter bribery by candidates. ENEMO observers noted indirect voter bribery, for example in district #135 Odessa oblast where the Charity Foundation of the Party of Regions candidate Sergey Kivalov launched a social program “Odessa by other eyes” that offered glasses for free for elderly people. In district 138 Odessa oblast, the organizers of the Teachers Day distributed cognac and chocolate to elderly teachers in bags with the sign of the Fursin Foundation, founded by local Party of Regions majoritarian candidate. In district #201 Chernivtsi oblast ENEMO observers were denied entry to a concert sponsored by the Party of Regions candidate Mihailishin where visitors were given gifts with campaign materials. Charity funds and social initiatives of candidates Azarov (#47 Donetsk oblast), Kulinich (#147 Poltava oblast) and Zaluzhny (#144 Poltava oblast) were also active in distributing gifts for students and poor people during the campaign period. The appeals lodged in most of these cases were rejected by district and appellate administrative courts.

VIII. ABUSE OF ADMINISTRATIVE RESOURCES

Abuse of administrative resources was reported from oblasts where projects of local authorities financed by public budgets were directly presented as personal achievements of candidates e.g. road and building constructions. Such cases were recorded to promote Party of Regions candidates Irina Bereznaeva (Kharkiv), Oleksandr Presman (Odessa) and Konstantin Gudzenko (Dnipropetrovsk), self-nominated candidates Irina Gorin (Kharkiv), Aleksandar Momot (Dnipropetrovsk) and Galina Gereda (Kyiv). In Odessa, a large-scale “People’s Medical Checkup Initiative” was launched recently financed from the so called “People’s Budget”. People’s Budget was widely publicized in municipal media with reference to the Party of Regions, claiming projects financed by the official public budget to be a part of the partisan initiative. For example, street construction workers in Odessa were recorded by wearing vests of Party of Regions during the work.

Administrative and public buildings such as theatres, public transport vehicles and stations were often used for endorsing candidates or political party propaganda (flags and posters). Such violations promoting Party of Regions and their candidates were reported from eight regions: AR Crimea, Simferopol City, Cherkassy, Zaporozhie, Odessa, Mykolaiv, Zaporozhie and Donetsk oblasts. In Odessa, Vinnytsia, Cherkassy and Dnipropetrovsk oblast, firefighters’ vehicles were openly used for installation of Party of Region billboards. In contrast to that, public transport vehicles and bus stops were used for campaigning not just by Party of Regions, but also by Svoboda, Communist Party, Batkivshchyna, political party Soyuz Crimea and at least 15 self-nominated candidates. Mayors and Governors were reported in at least 24 districts to support candidates of Party of Regions openly and even on billboards. However, these cases were not

recognized by courts to be a violation of electoral law since it is not clear if they were doing that during their work hours.

Abuse of administration resources during the Independence Day was reported by a large number of ENEMO teams across Ukraine. Public manifestations organized by the local administration were used for campaigning by local ruling parties. Party flags were part of official celebrations in Kharkiv, Odessa, Mykolaiv, Sumi, Zaporozhie, Kirovograd and Donetsk (Party of Regions) as well as in Lviv (Batkivshchyna and Svoboda). Inflammatory language during the celebration was reported from Lviv oblast where United Opposition and Svoboda exploited the opportunity to raise historical conflicts from Second World War and to compare them with the current situation. In addition, political party Svoboda representatives in Zhovkva (Lviv oblast) were distributing school diaries with their party symbols and xenophobic messages related to the Ukrainian history among pupils openly. Svoboda used a very inflammatory language in their leaflets in Volyn oblast demanding death-penalties for the leader of Ukraine Forward Natalia Korolevska and “Russians and Jews who do not let Ukrainians to live freely”.

The opening of the school year was used for campaigning in a similar way as the Independence Day. Local officials, mostly running as self-nominated or Party of Regions candidates misused celebrations attended by parents of pupils to promote their own political program. In Odessa, Donetsk, Kharkiv, Simferopol, Lutsk, Dnipropetrovsk, Hudlyovo (Zakarpattia oblast) and Luhansk candidates were recorded donating busses, uniforms, computers or books to schools or children getting high media coverage. ENEMO observers registered over 47 cases of election agitation in universities, schools, and even kindergartens, especially in Volyn oblast. Day of Teachers and other comparable events were largely accompanied by campaign activities of local ruling structures – for example Party of Regions in Donetsk, Odessa oblasts and AR Crimea.

IX. MEDIA

The ENEMO Mission has not carried out a full scale media monitoring. All comments in this section are therefore based on reports of observers, interviews with media actors and media monitoring reports.

Media monitoring report by the Council of Europe²³ highlighted that overall nationwide media did not provide ample information on election campaign in their news and current affairs programs. Dominance of the ruling party members both in official capacities and as candidates did not provide equal access for all contestants in most of TV channels and print media especially state-owned. Slight improvement in terms of a bit more balanced coverage of campaign was noticed in the last month prior to elections. Internet news websites provided a plurality of views and had been the best source of objective information on elections.

²³ Final report of the Project Promotion of European Standards in the Ukrainian Media Environment funded by Council of Europe and EU monitored coverage of 2012 parliamentary elections in national and regional media.

ENEMO noted that public access to pluralistic sources of information has dramatically worsened in 2012 compared to campaign coverage in 2006-2010. Diversity of political opinions expressed on television stations has decreased significantly comparing to previous elections when private television broadcasters offered a rich variety of political views. Reduced space for pluralism in media was result of self-censorship, secretly sponsored news items and overall concentration of media outlets by small group of business persons and political patrons. “Eight out of the Ukraine's ten biggest channels had decided to abandon their political programs, resulted in the lay-off of prominent journalists. Instead of political news the channels focus on sensationalism, creating a “parallel reality”²⁴. Overall campaign coverage was not balanced and lacked analytical coverage, candidate debates and vibrant political discourse facilitated by media. Majority of broadcast political communication thus remained paid advertisements by parties and candidates.

Freedom of media was not fully protected as cable network operators decided to stop or limit broadcasting of television channel TVi in certain areas which raised serious concerns about restrictions of plurality of political views before elections. In the period July – September 2012, TVi lost almost three millions of viewers from cable networks, thus retaining only about two thirds of its audience during almost entire election campaign period. Even though authorities called on operators to restore broadcasting of TVi, the situation remained unresolved. Other local TV stations and newspapers also reported facing pressure from the authorities, the tax service and the law enforcement bodies (Mykolaiv, Kherson, Odessa).

Intimidation and harassment of independent journalists were reported throughout the electoral period. In particular, cases of physical attacks on journalists were registered in Mykolaiv and Lviv. During the long-term observation ENEMO Mission raised concerns about the difficulties of candidates in rural areas that complained about denied access to media. In addition, independent media were often prevented from access to public places and reporting on activities of the ruling party. Special concerns were raised in the case of Mustafa Nayem, journalist of *Ukrainska Pravda*, who was beaten in his attempt to report from assembly of Party of Regions in Kyiv.

Negative campaigning or black PR has been noticed in all regions and practiced by most parties in many forms such as negative messaging on billboards, ads in newspapers and paid agitators at election meetings and rallies.

On the Election Day, major opposition websites Tymoshenko.ua, Frontzmin.ua, Svoboda.org.ua, Klichko.org and Byut.com.ua reported experiencing distributed denial-of-service (DDoS) attacks. Party of Regions also reported hackers’ attack on their website. In the afternoon, websites of domestic election monitoring groups (OPORA, Committee of Voters of Ukraine, Maidan, ElectUa) also became inaccessible due to massive DDoS attacks.

ENEMO Mission welcomed the decision of the Ukrainian Parliament to stop the adoption of draft law to introduce re-criminalization of defamation after public protests.

²⁴ Mustafa Nayem for EurActiv, 27th November 2012, available at <http://m.euractiv.com/details.php?aid=516270>

X. ELECTION DAY – 28 OCTOBER 2012

On Election Day, 86 ENEMO observers were deployed to follow opening, voting and counting procedures. Observers in total made 546 visits to polling stations and followed the counting in 42 polling stations and transfer of results to 40 DECs.

Based on the sometimes negative experience of the process in previous elections, and given a competitive environment for this election, most parties visited in the run up to the elections emphasized that they would have large amounts of well-trained observers. In combination with the emergence of a number of new political subjects the CEC registered 146 394 candidate observers and 177 330 political party observers. Additionally, NGOs accredited 38693 observers. In total, 362 417 domestic and 3 797 international observers were registered by CEC.²⁵ Unlike the ENEMO mission, domestic observers were stationary and followed the process in particular polling stations throughout the day.

Opening

The opening process was calm in most observed Polling Stations (PS). However, ENEMO observers reported some irregularities: poster with information on voting procedures were missing at the opening in 29% of visited PSs and opening protocols were not filled out in at least six cases. In 7 precincts out of 42 visited the opening procedure was evaluated as “bad” or “very bad” by ENEMO observers.

Voting

ENEMO observers followed the voting process in 462 polling stations. The secrecy of voting was not respected in 37 cases, mostly because of the attendance of few persons in booths, but also caused by a bad set-up of the PS, especially in Kharkiv and Volyn oblast. In total, 4% of visited PSs the precinct set-up was evaluated as unacceptable. Unauthorized persons, mostly police officers, but also local authorities were present at the polling stations in more than 10% of observed cases, what might have an impact on the voting behavior as well. ENEMO observers were asked for names and documents by unauthorized persons at three polling stations in Kyiv, Zaporozhie and Volyn oblast.

In 16% of observed polling station, ENEMO registered some voters who were not on the voter list. A significant violations connected with voters' lists happened in election districts #221 and #223 in Kyiv city. In particular, around 50 people at polling stations #801001, #800982, #801026 and #801028 complained they could not vote as they were not on the voters' lists and some of them even received invitations for the respective precinct. They filed statements of claim to Shevchenkivskyi District Court which were all dismissed.

²⁵ Media delegated 180 journalists and 908 supporting staff.

At the polling station #681168 Khmelnytskyi oblast, Svoboda was stamped as having withdrawn on party list ballots instead of political party Sobor by mistake of the PEC. Therefore, the PEC had to declare all party list ballots as invalid during the counting procedure. Candidate information posters in all polling stations in district #174 Kharkiv oblast contained completely wrong data about the majoritarian candidate from UDAR party, including his political program.

ENEMO observers noticed one case of rotating ballot, so-called “carrousel” at PS #230941 Zaporozhzhie oblast. Furthermore, indications for vote buying were observed in precincts (#350877 Kirovograd oblast, #210724 Zakarpattia oblast and in district 109 Luhansk oblast). In district #133 Odessa, representatives of oppositional parties claimed that pens with ink disappearing were used to mark ballots at 4 polling stations visited by ENEMO observers. PEC members exchanged those pens and informed DEC and police, but until then, hundreds of voters had already voted. Nevertheless, in polling station #511092 where ENEMO team followed the counting process, the ink did not disappear.

Organized transport of voters to polling stations by vehicles with Party of Regions symbols or coordinated by members of Party of Regions were noticed in five precincts (#631383 Kharkiv oblast, #230941 Zaporozhzhie oblast, #480332 Mykolaiv oblast, #510200 Odessa oblast and #011111 AR Crimea). In both latter cases, ENEMO observers were intimidated during their observation activities by the drivers or coordinators of the organized transport.

In total, most violations during the voting process were reported by ENEMO observers in AR Crimea, Odessa and Zaporozhzhie oblast.

Counting and Handover of Materials to DECs

The counting process was assessed negatively in 7 out of 42 observed cases (#210285 and #210697 Zakarpattia oblast, #711046 Cherkassy oblast, #510247 Odessa oblast, #321331 Kyiv City, #111112 AR Crimea, #121093 Dnipropetrovsk oblast). Especially in Zakarpattia and Odessa oblast, the counting procedure was very disorganized and non-transparent. Transfer of protocols and voting materials was made in an orderly proper manner in all 38 observed cases, although PEC #681168 tried to delay the transport in order to get rid of ENEMO observers.

The handover of ballots and PEC protocols was evaluated negatively in seven cases, where DEC activities was disorganized, confusing and chaotic (DECs #140 Odessa oblast, #19 Volyn oblast, #192 Khmelnytskyi oblast, #99 Kirovograd oblast, #122 Lviv oblast, #133 Odessa and #109 Luhansk oblast). ENEMO observers had restricted access to monitor DEC procedures properly especially in DECs #19 Volyn oblast, #133 Odessa oblast and #99 Kirovograd oblast. Another team even could not enter DECs due to huge crowds in front of them (#95 Kyiv oblast). In DEC #99 Kirovograd oblast, ENEMO observers noticed inefficient work of DEC, the Head nominated by Party of Regions left the session for unknown reason after sending an unusual high number of PECs to correct PEC protocols.

XI. TABULATION AND ANNOUNCEMENT OF RESULTS

Although most of DEC's finalized the tabulation of PEC materials notwithstanding overcrowding and chaotic conditions, at least nine DEC's did not convey their final results to CEC in a reasonable time.²⁶ During the tabulation process, ENEMO observers registered an alarming number of violations and irregularities, especially in highly competitive single-mandate districts.

Observers reported cases where the law enforcement agencies and unknown persons stopped the functioning of DEC's, intimidated election commission members, spoiled ballot papers, illegally withdrew the protocols of PEC's, prevented and impeded the ordinary work of commissioners. Incidents occurred mostly in single-mandate constituencies where the difference between oppositional and pro-governmental candidates was narrow such as in districts #211 and #223 (Kyiv City), #95 (Kyiv oblast), #132 (Mykolaiv oblast), #20 and #21 (Volyn oblast), #11 and #14 (Vinnytsia oblast) and #189 (Khmelnitsky oblast).

In highly competitive districts, recounts were ordered by DEC's and unusual high number of PEC's was sent back for correction of PEC protocols due to minor procedural mistakes. As consequence, final results proclaimed pro-governmental candidates winning majoritarian mandates instead of primarily leading oppositional candidates. At the same time, there were strong indications that corrections in some single mandate constituencies were manipulatively changed in favor of certain candidates. In districts #223 (Kyiv City), #11 and #14 (Vinnytsia oblast) unusual high number of ballots primarily counted in favor of Batkivshchyna candidates was proclaimed invalid because marks for an additional candidate appeared on them during the recalculation process. Furthermore, more than 30.000 ballots from 27 polling stations were declared invalid by DEC in district #94 (Kyiv oblast). In all of these cases, corrections or alteration of results led to slight wins of pro-governmental candidates.

Artificial delays, disruptions and limited access of domestic and international observers to tabulation rooms raised doubts about the transparency of DEC activities and validity of result tabulations in those constituencies. Lack of transparency was often caused by a strong presence of law enforcement agencies and groups of unknown persons who hampered access to DEC's and in some cases interfered the work of commissioners (for example at DEC's #11 Vinnytsia oblast, #21 Volyn oblast, #94 and #95 Kyiv oblast, #211 and #223 Kyiv city). In DEC 132 Mykolaiv oblast, special police forces confiscated PEC protocols following court decision.

Multiple sources claimed mismatches between protocols filled out at PEC's and results published at the website of the CEC.²⁷ Furthermore, in at least two cases preliminary results of single-mandate constituencies published on CEC website were changed in favor of Party of Regions

²⁶ DEC's #94 and #95 (Kyiv oblast), #11 (Vinnytsia oblast), #132 (Mykolaiv oblast), #211 and #223 (Kyiv City), #197 (Cherkassy oblast), #186 and #189 (Khmelnitsky oblast).

²⁷ OSCE/ODIHR observing mission reported about 45 such cases out of a sample of 300 protocols, including "some strong indications of manipulation of results in favor of certain contestants." <http://www.osce.org/odihr/97077>

candidates. On its internet website, CEC announced at first Batkivshchyna candidates winning in districts #14 (Vinnytsia oblast) and #132 (Mykolaiv oblast) with remark that 100% of protocols had been processed. New results published few days later contained significant changes in favor of Party of Region candidates who were proclaimed final winners.

Given the unusual high number of violations and irregularities, ENEMO and other international and domestic observing missions called the authorities to preserve the will of the voters as to reflect it fully at the tabulation process. However, the CEC took quite passive approach and did not solve artificial delays in the work of problematic DEC members not using all its powers. Unusual high number of DEC members was replaced during the extended tabulation²⁸ and technical parties played their role yet again²⁹.

Given highly disputed circumstances when three opposition parties claimed fraud in 13 majoritarian districts, on November 5 CEC adopted a resolution stating the impossibility to establish verifiable balloting results in districts #94 (Kyiv oblast), #132 (Mykolaiv oblast), #194 and 197 (Cherkassy oblast) and 223 (Kyiv City) and asking Verkhovna Rada to provide legal basis for re-elections in those five single-mandate constituencies. On November 10, the CEC announced election results for the proportional part of elections and promulgated list of 445 elected deputies on November 11. Final CEC protocol on election results of 220 single-mandate constituencies was published on November 15. CEC published on its website breakdown of election results by polling stations, although some information such as number of invalid ballots in precinct or reasons for nullified results in certain precincts was missing.

XII. COMPLAINTS AND APPEALS

The election dispute resolution as stipulated by the election law provides two ways for addressing election disputes: election commissions and the courts. Decisions, actions or inactions of election commissions and other actors in electoral process is granted to candidates and their proxies, political parties with electoral lists and their representatives, candidate and NGO observers, election commissions and voters. Complaints regarding decisions, action or inaction of PEC might be filed with the respective DEC and/or with local general courts. Complaints regarding a decision, action or inaction of a DEC might be challenged before district administrative court and complaints about inaction of DEC might be filed with the CEC. The CEC decisions, action or inaction can be challenged before the Kyiv Administrative Court of Appeals and appealed at the High Administrative Court of Ukraine.

²⁸ For example In DEC 197 eight DEC members exchanged by parties on 1/11, two replaced on 2/11, two on 3/11 and two on Nov.8. In DEC 194 nine replacements made on 6/11, ten on 7/11 and two on 8/11, In DEC 198 seven members replaced on 1/11, in DEC 216 six replacements on Nov. 2-3 and in DEC 71 six replacements on 8/11.

²⁹ E.g. Party *Edyna Rodyna* fielded only one candidate who withdrew on October 12. Nevertheless *Edyna Rodyna* fielded 211 DEC members and continued to replace them even during tabulation in DEC 71,194,197,198 and 216.

According to the official statistics of the Central Election Commission, from July 30 to November 26, 2012 the CEC received 43,510 documents including 706 complaints. The CEC received 584 complaints in the pre-election period (30/7/2012 – 27/10/2012) one complaint on Election Day (28/10/2012) and 121 in post-election period (29/10 – 26/11/2012). Vast majority of complaints were returned and according to the CEC data 132 complaints were adjudicated and as result 107 resolutions were adopted.³⁰ Only one complaint was fully satisfied and eleven were partially satisfied, 61 complaints were not considered on merits and 46 were dismissed. These statistics showed the fact that the CEC decided to refuse vast majority of complaints and only few complaints were partially satisfied. Fifty four cases were sent by the CEC to the Ministry of Internal Affairs of Ukraine and seven cases were forwarded to the Prosecutor General for investigation of potential criminal liability.

ENEMO has analyzed 414 complaints adjudicated by district administrative courts, courts of appeal, DEC's and local police departments in the pre-election period from August 19 to October 21. ENEMO information on decisions passed in 252 complaints was categorized according to the following violations: abuse of administrative resource - 17, campaign violation - 57, indirect vote bribery - 12, candidate registration - 34, DEC activity - 65, PEC activity - 4, lottery at PECs - 17, other (recognition of illegal actions) - 46. Out of 252 complaints 51 were fully satisfied, 24 partially satisfied, 166 rejected and 11 dismissed. Out of 51 satisfied complaints 19 were related to campaign violation, 19 to DEC activity, 3 to PEC activity, 10 other (e.g. negative propaganda by newspapers).³¹

High numbers of complaints were filed with the courts by candidates or political parties claiming violations on Election Day or challenging PEC results during the tabulation process. Some self-nominated candidates and political parties, mostly Party of Regions used courts to push for invalidation of results at precincts with strong voter preference for their opponents. Complainants alleged that certain PECs did not allow candidates or their proxies, political party representatives or observers to enter polling stations especially during the time of PEC vote count. Some courts stated in their ruling that denial of entry to polling stations did influence the objectivity of electoral process, while other courts ruled that it had no impact on the outcome of the vote count as reflected will of voters. In some cases appeal courts overturned invalidation of PEC protocols as those who were denied access to the vote count arrived late after the closing time of polling stations. As the invalidation of PEC protocols was at discretion of the DEC's, some district commissions annulled PEC protocols³², while other DEC's did not.

³⁰ Thirteen CEC resolutions dealt with post-election complaints, of which only one was partially satisfied.

³¹ Among satisfied complaints on campaign violations 7 were against the Party of Regions, 2 against Batkivshchyna, 2 against self-nominated candidates, 1 against UDAR. Among 19 complaints on DEC's activity 5 were filed by representatives of the Party of Regions, 9 by Batkivshchyna representatives, 5 by representatives of other parties (Liberalna Ukraina, Svoboda, and European Party of Ukraine).

³² District Election Commission # 94 (Kyiv oblast) on 27 PEC protocols.

Courts quite often refused to consider election complaints on formalistic grounds or did not admit clear evidence such as PEC protocols or video recordings. Such approach did not provide for effective legal redress to establish collective will of voters and raised serious concerns about impartiality of the courts. There were examples when different courts or even the same court passed conflicting verdicts in similar cases.

XIII. POST-ELECTION DEVELOPMENTS

On November 5 The Central Election Commission adopted a resolution that it was not able to establish election results and winners in five single mandate districts due to tampering of PEC protocols and PEC results posted on CEC website or invalidating results from election precincts. Thus the CEC announced results for the proportional part of elections with 225 MPs elected and 220 MPs elected in single mandate districts. Although the CEC addressed the Ukrainian Parliament requesting law amendments required for organizing repeat elections in 5 districts, group of 54 MPs turned to the Constitutional Court on December 29 regarding the official interpretation of a number of provisions of the law on election of people's deputies of Ukraine concerning the procedures for appointing repeat elections. However, as of February 2013 there was no indication on how and when the issue of re-election could be resolved.

On February 8, 2013 High Administrative Court of Ukraine adopted a ruling on a lawsuit³³ against the CEC in which court declared election results in districts # 71 and # 11 inaccurate and deprived of parliamentary mandates two deputies elected on October 28, 2012. The Court also ordered the CEC to hold repeat elections in those two districts. The disputed mandates belonged according to the CEC registration to two majoritarian candidates: Pavlo Baloha of United Center party, MP in Zakarpatya SMD #71 and Aleksander Dombrovsky, self-nominated candidate, MP in Vinnytsia SMD #11. United Center party condemned this verdict as unlawful attempt of the government to punish the party and its candidate Baloha for his withdrawal from Party of Regions faction. On February 14, Ukraine's Constitutional Court received a query by 61 lawmakers challenging the constitutionality of the disputed ruling of the High Administrative Court to deprive Pavlo Baloha and Oleksandr Dombrovsky of their seats in parliament.

XIV. RECOMMENDATIONS

Based on observations and analysis of various parts of election process ENEMO proposes the following recommendations for improvement of election legislation and electoral process in general. These recommendations address various stakeholders in accordance with their powers.

³³ On February 1, 2013 former MP Karmazin filed lawsuit along with two voters from districts 11 and 71.

Proposal for the Law Enforcement Bodies and General Prosecution

Prosecution of perpetrators of electoral offences

It is of utmost importance to investigate impartially all election offences, timely prosecute and hold accountable perpetrators of fraud and gross violations during 2012 parliamentary elections. Atmosphere of impunity for election offences does not contribute to the rule of law and undermines public confidence in election process.

Proposals for the Parliament, Government, Political Parties, NGOs

Legal Framework for Elections

Election Law Improvements

There is an urgent need to pass amendments to the Law on Parliamentary Elections in order to allow holding repeat elections in single mandate districts. There shall be more options to repeat voting or re-run of elections partially or fully on levels of constituency or districts in cases of invalidation of results when gross violations, rigging or other circumstances make impossible to determine collective will of voters.

Electoral System and Unified Election Code

Election stakeholders shall review 2012 experience with re-introduced mixed electoral system and flaws related to majoritarian part of elections in single-mandate districts. Election reform discussion shall be inclusive, transparent and open to participation of relevant political parties, NGOs and independent experts. Prospect of election code regulating all types of elections and referenda might be discussed to unify procedures and correct flaws in municipal election law and parliamentary election law. Major election reform shall be adopted on a consensus basis well ahead of next elections (at least one year before).

Election Districts

In case of retaining single mandate districts, boundaries delimitation process shall be clearly defined in the law. Publicly known criteria for transparent re-drawing of district boundaries shall be defined to ensure continuity of electoral districts and protection of national minorities.

Right to Stand as MP Candidate

Requirement of 5 year residency on territory of Ukraine is excessive and difficult to enforce. Ineligibility of citizens convicted of deliberate crimes to run for MP shall be reconsidered in

proportion to gravity of crimes. Signatures collection requirement might be suggested to minimize candidacy of technical parties and virtual candidates.

Election Dispute Resolution

Dual system of handling election disputes by election commissions and administrative courts resulted in overlapping, conflicting decisions and confusion especially during tabulation period. Clear system of handling election complaints and appeals with deadlines is required for various stages of electoral process: candidate registration, voter lists, campaign, media, election day, tabulation. Special attention shall be given to protection of protocols and ballots during hearings of election disputes. Courts need to be specially trained in adjudication of election disputes to protect the will of voters. There shall be a scale of sanctions for various breaches and campaign violations especially voter bribery and abuse of administrative resources. Sanctions shall be proportional to the severity of violations committed.

Proposals for the CEC

Transparency of the Central Election Commission

Even though the CEC increased the transparency of its work, additional improvements are needed. In particular, CEC shall provide the draft resolutions ahead of CEC meetings and create necessary conditions for sound informed debates on the issues in consideration.

Professionalization of Election Administration

It is recommended to continue in professionalization of election administration. There should be a greater emphasis on education, training and professionalism. Election commissioners at least on district management level should be hired on a professional competence basis. Terms of reference should be developed for political parties in the legislation specifying requirements.

Establishing and Formation of Election Commissions

Formation of election commissions through political party nominations shall ensure political balance and membership shall be limited to political parties running on nationwide level. Replacement of election commissioners shall be subject to reasonable restrictions to ensure competence, impartiality and training of election commissions.

Training of Election Commissioners

CEC should undertake a more consistent and systematic approach to training election officials of DEC and PEC. Increased efforts and special emphasis shall be put in place to train election

commissioners by progressive training methods to avoid most common errors and breaches of procedures at the PEC and DEC level. Training modules and handbooks should be designed to train election commissioners practically on polling day simulations especially on how to fill out PEC protocols properly, protection of secrecy of vote, transparent vote counting, transfer of election materials, storage of PEC protocols, reliable DEC data entry into the system and when and how to conduct recounts at the DEC.

Candidate Registration

The time frames for submission, approval and correction period for candidate registration shall be extended at the CEC. Central Election Commission shall make arrangements to comply with the law as errors and inaccuracies should be subject to correction and should not be a reason for refusals. Notification of candidates and correction procedures need to be standardized by the CEC as to minimize formal grounds for denials of candidate registration.

Invalidation and Publication of Election Results

There shall be possibility to nullify election results at various levels in the entire elections, particular constituency or precinct where fraud or gross violations made impossible to determine voters' collective will. The publication of results by polling station on the CEC website provides for transparency and shall be mandatory. In addition, there is a need to post complete data sets including number of invalid ballots and corrections made in PEC protocols.

Organizing Repeat Elections

Legal provisions for rerun of elections or repeat voting shall be adopted for various possible scenarios³⁴ and timelines of final resolution of election disputes and appeals. Repeat voting shall be possible to organize on various levels of constituencies fully or partially.

Voters Lists Verification

More flexible approaches are needed for verification, data corrections and accuracy of voter lists that would increase public confidence in the election process. More flexible approaches such as web-based tools for voter data verification may be developed. Effective remedies shall be available for voters who are not found on voter list at the polling station even though they received notification. For home-bound voting additional safeguards against fake applications shall be taken. For the voters who are temporarily outside of their district, there should be discussion on how they can participate in elections at least in proportional part under the condition of additional measures against multiple voting.

³⁴ The election law allows repeat voting in single-mandate district only in case of 2 leading candidates getting exactly the same number of votes. Repeat elections provide for special case of having none or only one registered candidate in single-mandate district and if such candidate fails to get majority of votes cast (Art. 103, 104, 62).

Proposal to Media, Government, Parliament and Broadcasting Council

Media Monitoring and Media-Related Complaints

Media provisions in election law shall provide definition of balanced coverage and specify monitoring body to assess compliance with the rules. The National Television and Radio Broadcasting Council of Ukraine shall be transformed into independent body that would monitor compliance of electronic media with election law provisions, sanction violators and handle media-related disputes. There is also need to transform state-run National Television Company into public-service broadcaster, protect journalists and media freedom, fight against “jeansa” (paid PR stories disguised as news) and promote transparent rules in media ownership.

Proposal to Government, Parliament, Political Parties

Transparency of Campaign Finance

There is lack of regulations of transparent campaign finance for political parties and candidates. Sources and expenditures of campaigns shall be publicly known before and after elections and there is a need for institutionalized campaign finance monitoring, oversight and sanctions.

ABOUT THE ENEMO

The European Network of Election Monitoring Organizations (ENEMO) founded in 2001 is an international network of 22 leading election watchdog organizations from 17 countries of Central and Eastern Europe and Central Asia. ENEMO endorsed the 2005 Declaration of Principles for International Election Observation and ENEMO observers signed the Code of Conduct for International Observers. The ENEMO Mission in Ukraine for the 2012 parliamentary election began its work on July 23, with the arrival of Core Team. Thirty-five long-term observers arrived to Kyiv on August 5 and after training were deployed to the regions on August 8. Paired into LTO teams they covered one or two oblasts on average. ENEMO was the first international observation mission registered by the CEC for the 2012 elections.

ENEMO’s 2012 parliamentary election observation mission in Ukraine was conducted with the support of the United States government, the British government, the German Foreign Office, the Kingdom of the Netherlands, the Kingdom of Norway and the Black Sea Trust. ENEMO Mission in Ukraine worked in partnership with the National Democratic Institute for International Affairs.