



<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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First Interim Report 5 August – 9 September 2012

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 is the first international election observation mission registered for 28 October 2012 elections. Thirty-five long-term observers arrived to Kyiv on 5 August 2012 and after training they were deployed throughout Ukraine. Long-term observer teams cover one or two oblasts of Ukraine and focus their observation on candidate registration, boundaries delimitation, the conduct of election campaign, formation and work of election administration and election-related complaints and appeals.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

- On 28 October 2012 Ukrainian voters shall 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. 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 fundamental change of electoral system and adoption of new election law 11 months before election day raises concerns about ability of political parties and electoral authorities to cope with new significant challenges in organizing parliamentary elections in Ukraine.
- On a welcome note, the new election law has extended the rights of domestic nonpartisan observers. The Central Election Commission has facilitated registration of observers and its sessions are open to all registered observers and media.

- The process of registration of candidates on party lists at the Central Election Commission has been rather smooth. However the high number of candidates applying for majoritarian seats in combination with extremely tight deadlines and inconsistent 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 allows 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 official campaign started on July 30, 2012 without larger violent incidents. However, tensions increased in second half of August particularly after adoption of language law by regional administrations. Negative campaigning is reported from most of the districts being used against all relevant parties and independent candidates.
- Misuse of administrative resources is widespread. Public financed projects are presented as personal candidate achievements or political party initiatives in order to promote their election campaign. Some independent and opposition candidates complain about being intimidated by tax inspections.
- Recent decisions by cable network operators to stop or limit broadcasting of television channel TVi in certain areas raises serious concerns about restrictions of plurality of political views before elections. Similar removal of TV Kapri by cable operator from digital broadcasting was reported from Donetsk oblast. In Odessa two journalists resigned from MIG TV claiming pressure by local authorities to promote Party of Region and its candidate.
- The process of formation of district election commissions has been negatively influenced by new election law and CEC decision to use inappropriate method of just one lottery for all 225 DECs. The final outcome of lottery did not ensure a balanced DEC composition of all relevant political parties. High number of so called "technical parties" with only few registered candidates were allowed to nominate its members in all DECs, while some established parties with nationwide party list were left without any DEC representation. ***For better representation of the parties in district election commissions the CEC should have drawn lots for each district election commission separately.***

- There has been unusual high number of absence and replacements in DEC compositions across the country mainly caused by some technical parties which raises doubts about their motives for nominating often non-residents of respective districts and persons without experience. *Additional trainings and handbooks for DECs are highly recommended given the situation of DECs composition and with regard to new election law and procedures.*

The Election Administration

The three-level election administration for the preparation and conduct of the 2012 parliamentary elections in Ukraine consist of the Central Election Commission, 225 District Election Commissions and 33 666 Precinct Election Commissions.

Central Election Commission Composition

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 they should be announced in a timely manner. The CEC is using its website for this purpose as well as for publishing decisions. The CEC staff distributes all relevant documents including agenda to all members of the commission and records minutes of all meetings. Media as well as local and international observers have full access to the meeting room and political parties attending the CEC meetings are allowed to ask questions or make comments.

The CEC is holding meetings on a daily basis discussing twenty questions on average per each meeting. As a rule, all members attend all meetings of the CEC and majority of decisions are made unanimously without debates. The CEC met all legal time limits so far and 95 % of its decisions were approved unanimously. However draft decisions or the drafting process itself is not transparent. In fact the CEC meetings are just used for the purpose of formal voting for already made decisions, not to mention the fact that the CEC decisions do not reflect the input of other stakeholders such as political parties.

Formation and Staffing of District Election Commissions

On August 24, 2012 the Central Election Commission draw a lot to determine the composition of 225 district election commissions. Five political parties with status of parliamentary factions in Verkhovna Rada have 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 country¹. 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. The heads, deputy heads, and secretaries represented different nominating parties as it is required by the law. After August 26, 2012, the CEC has been making changes in DEC membership almost on the daily basis upon request of the nominating parties that may even more distort the balance of DEC composition.

The initial meetings of district election commissions were in most of cases affected by absence of high number of members including managers. At least 12 DECs have been reported by LTOs to have postponed first meeting after the deadline since they did not have required number of members. DEC 72 (Zakarpattia oblast), DEC 160 (Sumy oblast), DEC 145 (Poltava oblast) and DEC 106 (Luhansk oblast) held their initial sessions without of the necessary number of members attending. Most of DEC absent members were nominated by Union of Anarchist of Ukraine, The only Rus, Russian Unity, Green Planeta and other small parties. The reasons for absence were usually distant place of residence (mostly living in Crimea), wrong contact data provided by parties or some of them even have not been informed about their appointment. The above mentioned parties are replacing frequently their DEC members and managers with persons from the respective district. Although the overall situation is not clear yet, in some cases the new DEC members for these technical parties are locally known activists for the Party of Regions,²

¹ Political party Youth to Power - 1 candidate, no party list, 225 DEC nominations; All-Ukrainian political party Brotherhood - 1 candidate, no party list, 225 DEC nominations; All-Ukrainian political union Single Family - 1 candidate, no party list, 212 DEC nominations; Political party The Only Rus - 3 candidates, no party list, 225 DEC nominations; Political party The Union of Anarchists in Ukraine – 2 candidates, no party list, 220 DEC nominations; Christian Democratic Party of Ukraine – 3 candidates, no party list, 219 DEC nominations; Political party Russian Unity – 5 candidates, no party list, 221 DEC nominations

² For example in DECs 69 (Zakarpattia oblast), DECs 139 and 140 (Odessa oblast), DECs 170 (Kharkiv oblast) or DEC 187 (Khmelnitsky oblast).

worked as DEC commissioners for this party in 2010 local and presidential elections³ or are even their City and District Councilors⁴. On the other hand, in DEC 42 (Donetsk) the replacement of the Deputy Chairman nominated by Christian Democratic Party of Ukraine is a member of the UDAR party.

Although established parties provided experienced DEC members, awareness about provisions on DEC procedures (quorum, exchange of managers) has been rather low and procedures were applied in different ways. The training for the DEC managers will be organized in Kyiv by the CEC centrally in a one-day briefing format. Additional trainings and handbooks for DEC members are highly recommended with regard to new election law and procedures.

Registration of MP Candidates

For October 28, 2012 elections the CEC registered 5 749 MP candidates (both in the nationwide election district and in single-mandate districts). The CEC refused to register 441 candidates, 300 of them were self-nominated. 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 days for correction, that is guaranteed by the law. 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 candidates complained that the CEC did not use the same consistent approach to all candidates to correct application forms.

More than dozen candidates who were denied registration challenged the CEC decisions in the Kyiv Administrative Court of Appeals and then in the Higher 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.

³ For example DEC 131 (Mykolaiv oblast), DEC 169 and 172 (Kharkiv oblast), DEC 182 and 183 (Kherson oblast) or DEC 77 (Zaporozhie oblast).

⁴ For example in DEC 48, 52 and 60 (Donetsk oblast), DEC 75 (Zaporozhie oblast).

Election Campaign

The intensity of the election campaign increased in the second half of August. Most visible and active parties in campaigning are 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 are running their local election campaigns for majoritarian MP seat.

Almost all teams report the new language law is used as an instrument of voter mobilization by Party of Regions, United Opposition – Batkivshchyna and Svoboda. Meetings of support respectively protests are organized regularly in all regions and accompanied by emotional messages like “Russian language is Odessa’s uniqueness” in Odessa or “Ukrainian language is the greatest treasure of our people” in Lviv. Groups of supporters and opponents got involved in scuffles and disputes over the adoption of the Russian language as official in Oblastna Rada in Mykolaiv, Khmelnytsky, Lutsk and Kharkiv. Beside of that some physical obstructions of campaign rallies were reported by LTOs from Odessa, Kharkiv and Donetsk. In all of these cases, United Opposition – Batkivshchyna rallies were disturbed by not labeled groups of persons or by unannounced meetings of activists of Party of Regions. However, large violence during the rallies stayed away beyond these isolated incidents.

Cases of negative campaigning were recorded by majority of ENEMO teams. Mostly disinformation in form of flyers is spread out in the name of a certain candidate, but there are billboards and graffiti discrediting political parties as well. In majority of cases it is impossible to trace the initiators; parties are usually accusing their rivals. Significant examples of negative campaigning appeared in district 115 (Lviv oblast), 101 and 103 (Cherkasy oblast) against candidate from UDAR party; in districts 99 and 103 (Kirovograd oblast) against candidates of United Opposition; in Simferopol against the Communist Party of Ukraine, United Opposition and UDAR; in Krasyliv (Khmelnytsky oblast) against Svoboda, in Gorohiv (Rivne oblast) against a candidate of Party of Regions; in district 152 and 154 (Rivne oblast) and district 38 (Dnipropetrovsk) against self-nominated candidates. Although the President of Ukraine Victor Yanukovitch is not running as a candidate in parliamentary elections, negative campaign is used against him as well, especially in Lviv, Volyn oblast and Simferopol.

In some regions – especially in Western and Southern Ukraine, but in Sumy and Cherkasy oblast as well – churches and priests are used for campaigning and promoting political parties and candidates. In district 122 (Lviv oblast) for example, self-nominated candidate Taras Romanovych Kozak sponsored the renovation of a chapel and used its reopening for campaigning. Prayer books were distributed with pictures of Jesus and the candidate side by side. In Sumy there was a similar situation with Party of Region candidate Alexander Saenko. In Ostroh (Rivne oblast), Simferopol and Odessa, local chaplains campaigned for the Party of Region candidates, whereas in Cherkasy they held a solemn prayer organized by United Opposition – Batkivshchyna and Svoboda.

ENEMO observers received numerous allegations about voters bribery from different political parties and candidates. Due to the nature of such violations ENEMO observers were not able to verify them. However, number of claims raise serious concerns and ENEMO would like to strongly encourage all political contestants to refrain from using illegal methods of campaigning, in particular voters bribery.

Abuse of Administrative Resources

Abuse of administrative resources is reported from oblasts where projects of local authorities financed by public budgets are 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 Konstanti 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” initiated by the Party of Regions. People’s Budget is 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 as well. 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 theaters, public transport vehicles and stations are often used for endorsing candidates or political party propaganda (flags and posters). Such violations promoting Party of Regions and their candidates were reported from Simferopol, Odessa, Cherkasy, Mykolaiv, Zaporozhie and Donetsk. The Communist Party of Ukraine is campaigning with official posters in the Kyiv metro, whereas Svoboda posters were seen at bus stations in Lutsk. In Crimea, Kharkiv and Dnipopetrovsk oblast, official websites of regional or municipal administration are openly promoting Party of Regions candidates, reporting on their campaign rallies and publishing pictures with party flags and symbols.

In Odessa, Zaporozhie, and Vinnytsa oblast ENEMO teams were reported about enforcing administrative regulations in a biased way, namely enforcing tax inspections to put indirect pressure on candidates with business background. Frequent tax inspections and phone threats resulted in the withdrawal of an UDAR candidate in district #83 (Zaporozhie oblast). An extreme case appeared in district 16 (Vinnytsia oblast) where self-nominated candidate Ruslan Domchek was arrested on tax fraud charges on 31 August 2012. Additionally, the server with his bank account containing the campaign finances was confiscated by the police, so his staff had to stop the election campaign.

United Opposition – Batkivshchyna and UDAR representatives complain about difficulties with billboard placing. They blame local authorities to disadvantage oppositional parties at the distribution of official advertisement places and provide them with less visible campaign

locations. Furthermore, in Mykolaiv, Odessa, and Zaporozhie billboard companies and newspapers canceled already signed contracts about election advertisement of UO Batkivshchyna and UDAR. Even though it is difficult to verify, the number of these claims is disturbing.

Abuse of administration resources during the Independence Day was reported by a large number of ENEMO teams across of Ukraine. Public manifestations organized by the local administration such as visiting Shevchenko's monuments and celebrations at main squares were used for campaigning by local ruling parties. Party flags were part of official celebrations in Kharkiv, Odessa, Mykolaiv, Sumy, Zaporozhie, Kirovograd and Donetsk (Party of Regions) as well as in Lviv (Batkivshchyna and Svoboda). Officials running as candidates in upcoming elections used often the chance to advertise the public to vote for them. 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.

The opening of the school year was used for election 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 by donating busses, uniforms, computers or books to schools respectively other children gifts supported by high media coverage. In Odessa, two lawsuits were filed by United Opposition – Batkivshchyna against the self-nominated candidate David Zhvaniya accusing him of free distribution of 275 school uniforms to high school students in Troitskoye village. The Odessa Appeal Administrative Court satisfied one of the lawsuits and found Mr. Zhvaniya guilty in violation of Art. 74, § 12 of Electoral Law. So far this was the only known case of court recognizing indirect vote buying although UDAR and United Opposition have filed high number of lawsuits for abusing administrative resources and violations of campaign rules in Odessa, Kirovograd, Chernivtsy, Donetsk, Volyn and other regions.

ENEMO urges local authorities, political parties and candidates to refrain from misusing public resources to promote their candidacy and election campaign.

Media

The media environment in Ukraine is dominated by private television channels which in previous elections offered a rich variety of political views. Media watchdog organizations note that the diversity of political opinions expressed on television stations has decreased significantly

due to reluctance of media owners to come into conflict with the government. Interlocuters and media experts warn about increased self-censorship, secretly sponsored news items and overall concentration of media outlets by small group of businesspersons that reduces space for pluralism in media.

There has been adverse tendency of a number of cable network operators disconnecting broadcasting of TVi channel in eastern regions of Ukraine or transferring TVi to the most expensive package (Volia in Kyiv) and thus reducing its audience dramatically. Actions against TVi prompted protest demonstrations in Kyiv, Poltava, Donetsk and Dnipropetrovsk.. Another case was reported from Kurachovo town (Donetsk oblast) where local TV channel Kapri TV was removed from the digital broadcast. Inhabitants of Kurachovo have complained to the National Council for TV and Radio Broadcasting but no official response was received.

In Odessa, the Chief Editor and journalist were put under pressure to resign from their positions at the municipal TV station MIG TV after they refused to promote the image of Party of Regions and the MP candidate Presman. Local authorities blocked the channel budget and both journalists resigned under pressure to take responsibility of twenty channel employees staying without income.

ENEMO appeals to broadcasting providers and supervisory bodies to refrain limitations and restrictions on any media to freely operate and express opinion.

This report was written in English and remains the only official version.

The European Network of Election Monitoring Organizations (ENEMO) is an international network of nongovernmental organizations founded in 2001. It consists of 22 leading domestic monitoring organizations from 17 countries of Central and Eastern Europe and Central Asia, including two European Union countries.

ENEMO endorsed the 2005 Declaration of Principles for International Elections Observation. All ENEMO member organizations endorsed the 2012 Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations. All ENEMO observers have signed the Code of Conduct for International Election Observers. The ENEMO mission in Ukraine for the October 2012 parliamentary election began its work on July 23, with the arrival of four Core Team members. Thirty-five long-term observers arrived to Kyiv on August 5, have been briefed and trained on August 6 and 7, and deployed to the region on August 8. The long-term observers are paired into LTO teams, which cover one or two oblasts on average. ENEMO is the first international mission registered October 28 elections.

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