



Office for Democratic Institutions and Human Rights

REPUBLIC OF UKRAINE

PARLIAMENTARY ELECTIONS  
29 MARCH 1998



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## I. INTRODUCTION

Upon invitation from the Central Election Commission of the Republic of Ukraine conveyed in a letter of 6 January 1998 from the Ministry of Foreign Affairs, the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission in Ukraine for the 29 March Parliamentary elections. The Council of Europe Parliamentary Assembly was invited to observe the elections by the Supreme Rada of Ukraine.

Mr. Kåre Vollan was appointed by the ODIHR as the On-site Co-ordinator in January, upon being seconded by the Government of Norway.

Mr. Andras Barsony, Vice President of the OSCE Parliamentary Assembly and member of the Hungarian Parliament, was designated by the OSCE Chairman-in-Office as a Special Co-ordinator to the Election Observation Mission.

This report is based upon the collective findings of observers seconded by 30 countries, by parliamentarians and public officials representing the OSCE Parliamentary Assembly, the OSCE Mission to Ukraine, the Council of Europe Parliamentary Assembly, the OSCE Participating states, local Embassies, as well as a number of NGOs. In total, 16 long term observers and core staff and 243 short term observers were deployed throughout the Republic of Ukraine.

The Election Observation findings will also be part of the Council of Europe Parliamentary Assembly ongoing monitoring of Ukraine.

## II. SUMMARY OF CONCLUSIONS

**The Ukrainian Elections were conducted under a generally adequate legal and administrative framework. However, the campaign was marred by incidents of violence, arrests and actions against candidates and abuse of public office that represents a serious shortcoming in the conduct of the campaign, and raises questions about the neutrality of the state apparatus in the election.**

**Further steps could have been taken to ensure the full participation of returned Tatars in the election, and a better possibility for them to be represented in the Crimean Parliament.**

**The late passage of laws and regulations caused confusion and uncertainty about the electoral process.**

**The media played a critical role in the election campaign, but not a neutral role. Both state and private media clearly promoted particular parties over others. There were a number of disturbing incidents during the campaign of newspapers and TV stations experiencing pressure, such as financial inspections or legal actions, from state authorities, which served to somewhat curtail the freedom of the press.**

**On election day the process was carried out in a generally peaceful and orderly manner. The complexity of the system did, however, cause problems in the polling stations. The**

capacity of voting booths was too low and open voting and family voting is still a common problem. The observers reported a very great effort in polling stations to complete the voting process.

The implementation of the election results was hindered by confusing and unclear election appeal procedures. Parallel appeal processes involving both the judiciary and election commissions provided an opportunity for forum shopping and obstructed the installation of several deputies to Parliament. Legislative reforms in this area and additional training for the judiciary in resolving election disputes will minimize the reoccurrence of future implementation issues.

### III THE LEGISLATIVE FRAMEWORK

#### III.1 General

The late passage of some laws relating to the elections was regrettable, in particular the law on the election to the Parliament of the Autonomous Republic of Crimea, and a number of regulations governing the process, such as the number of choices each voter could indicate on the ballot for the elections to the Oblast and Rayon Councils. The Constitutional Court's late consideration of the appeal against the constitutionality of the law regarding candidates standing in both single-member and multi-member constituencies further increased uncertainty during the campaign.

The Election Observation Mission regrets that the arrangements for electing the mayors of Kyiv and Sevastopol have not been resolved, and that it has not been finally decided how these positions can come under locally elected jurisdiction, instead of being appointed by the central authorities.

The legal framework for the Parliamentary elections, the elections to the Crimean Parliament and to local bodies is extremely complex. Four different electoral systems were in effect, and the systems for the election of the Oblast and Rayon Councils particularly added to the complexity. A consolidation of the law relating to the parliamentary elections and the law relating to the local elections should be considered, and the Central Election Commission should be given a leading role for all elections.

#### III.2 The Electoral System

##### *The Verkhovna Rada*

The Election Law for the Parliamentary Elections was adopted in December 1997. It stipulates that the 450 deputies to the Parliament (Verkhovna Rada) are elected in a mixed system with 225 deputies elected in single member majoritarian constituencies, and 225 deputies elected in a party list based proportional system in one single constituency covering the whole country.

The candidates in the single member constituencies are nominated by parties, blocks or by

citizens as independent candidates. The candidate with the highest number of votes gets elected, without any requirement for gaining more than 50 % of the votes.

Parties and blocs can also nominate lists for the multi-member proportional based constituency. The voters select only one list or bloc. The parties and blocs that receive a number of votes above a threshold of 4% of the total number of votes, take part in the distribution of seats. The distribution is done by the Method of Largest Remainder. This method gives the number of seats each party or bloc will get. The candidates actually elected are then taken from the top of the lists. Only the first five names of each list are listed on the ballot paper.

This so-called mixed system is a clear compromise between a majoritarian system and a proportional system. The two elections are totally separate so that proportionality is not maintained in the Parliament. Alternative systems, practised in other countries, combining both single member majoritarian system with party list system can provide close to full proportionality. In those systems the proportional list based elections would be used to compensate for any non-proportional representation resulting from the majoritarian elections, and thus the proportional distribution would take the already elected single member mandates into account. If proportionality in the representation is important to the Verkhovna Rada, such a system may be considered in the future (eg similar to the German system).

### ***The Autonomous Republic of Crimea***

The Parliament of the Autonomous Republic of Crimea has 100 seats, all elected in single member majoritarian constituencies. The quotas for the national minorities which existed in the outgoing Parliament was abolished. The President did not ratify a system originally proposed by the Crimean Parliament to have a mixed system similar to the one in force for the national Parliament. The Tatars, who constitute approximately 11 % of the population in Crimea, have expressed a legitimate wish to be represented in the Crimean Parliament. With the current system this is difficult, due to the fact that the Tatars are rather uniformly scattered across the peninsula. Proportional representation would grant better possibilities for the Tatars to be represented, provided that the Tatars vote for their own ethnic based parties. A system based upon proportional representation should therefore be considered.

### ***The Local Elections***

The structure of local administration is fairly complex. The country is divided in oblasts, which again are divided in either Rayons or Cities-of-Oblast-Importance. Rayons are sub-divided into villages, settlements and Cities-of-Rayon-Importance. Cities-of-Oblast-Importance may be sub-divided into Rayons-in-City.

The following bodies were directly elected, and the elections were held at the same time and in the same polling stations as the Parliamentary elections:

<b>Administrative Level</b>	<b>Bodies to be elected</b>	<b>Method of election</b>
Oblast	Council	Majoritarian multi-member-constituency
Rayon	Council	Majoritarian multi-member-constituency

City-of-Oblast-Importance	Council Chairman	Majoritarian single-member-constituencies Majoritarian
City-of-Rayon-Importance	Council Chairman	Majoritarian single-member-constituencies Majoritarian
Villages/Settlements	Council Chairman	Majoritarian single-member-constituencies Majoritarian
Rayon-in-the-Cities	Council Chairman	Majoritarian single-member-constituencies Majoritarian

Kyiv and Sevastopol did not elect mayors.

The term 'Majoritarian' means in all cases above that the candidate(s) receiving the highest number of votes are elected.

In multi-member constituencies the voters could indicate a number of names out of all candidate names listed on the ballot paper. The law did not limit the number of indications that the voter could give on the ballot paper to the number of seats elected in the constituency.

The count of multi-member majoritarian constituencies was time consuming, and the instruction given to the voter about the number of indications on the multi-member constituency lists varied between the polling stations.

In the villages and settlements one polling station served a number of single member constituencies to the village/settlement council. For example, in a small village with 15 members in the village council, all fifteen were elected in one single polling station. In such cases fifteen different ballot papers were available for the election to the council, and the voter was issued the one that corresponded to the constituency comprising the address of the voter.

It is strongly recommended to simplify the procedures by reducing the number of electoral systems being used at the various levels.

### **III.3 Some Legal Issues**

#### ***The Right to Vote for Crimean Tatars***

Out of a total of 165,000 Crimean Tatar returnees of voting age, only approximately 80,000 were Ukrainian citizens, and thus enjoyed the right to vote. Of the remaining 85,000 non-citizens, approximately 15,000 were stateless and 70,000 were citizens of other CIS states, mostly Uzbekistan. The OSCE Mission to Ukraine and High Commissioner on National Minorities have made efforts to try to simplify procedures for issuing citizenship to all returned Tatars. Unfortunately the initiatives for granting returnees with permanent residence, regardless of citizenship, the right to vote, have failed. Such an arrangement was made for the 1994 parliamentary elections, but it was not repeated this time. If the arrangement had been repeated, the representative nature of the Crimean Parliament would have been greatly increased.

#### ***Directly Elected Mayors***

Contradictions between the law on local elections and the Ukrainian Constitution has led to a legal vacuum on the correct procedure to elect the highest post in the City administrations of Kyiv and Sevastopol. According to the Constitution a special law should define and regulate the two branches of government in these cities - the state administration and the council - but prior to these elections attempts by the Parliament to address the issue were vetoed by President Kuchma and their legal status remained unclear. In both Cities the head of the Administration was actually running the Councils without the consent of the elected representatives. This dispute was ongoing until the elections and thus the elections did not take place unlike the rest of the country.

Leaving aside the lack of transparency of such a crucial issue particularly just prior to supposed elections for these posts, a democratic control, either by direct or indirect vote in the respective City Councils, should be implemented.

### ***Round off errors***

Article 42 of the election law gives the procedure for determining the result in the multi-member all-state constituency. The paragraphs 8 and 9 of the article states that:

8. The quota is calculated by dividing the number of votes in the multi-mandate all-state election constituency cast for the lists of candidates for deputies from political parties, electoral blocs of parties, which received 4, or more than 4, percent of votes cast, by the number of mandates in the multi-mandate all-state election constituency. *Fractional remainders are discarded.*

9. The number of votes cast for list of candidates for deputy from each political party, electoral bloc of parties shall be divided by this quota. The quotient is the number of mandates obtained by this party, electoral bloc of parties. Fractional remainders shall be used for distribution of mandates that remain undistributed.

The last sentence of Paragraph 8 means that the quota is not calculated exactly, and is actually rounded down, as opposed to rounded up to the closest integer. This has two side-effects that are not intended:

- a. There is a theoretical possibility that the method will give more seats distributed than the number of seats in this part of the Parliament.
- b. There is a (more likely, however not very probable) possibility for a situation where rounding off the quota will give a seat to another list than the one entitled to it based upon exact representation of the quota.

Two examples will illustrate the two points:

*Example a: Too many seats distributed.*

The number of seats in the Parliament is 225.

The distribution of votes is as follows:

Party A:	990 votes
Party B:	600 "
Party C:	500 "
Party D:	458 "
-----	
Total	2,548 votes
=====	

The Quota is:  $Q(\text{exact}) = 11.324444\dots$ , which rounded off is  $Q = 11$ .

Using the rounded off  $Q$ , the seats distribution is:

Party A:	90.000000...	which is rounded off:	90
Party B:	54.545454...	"	54
Party C:	45.454545...	"	45
Party D:	41.636363..	"	41
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Total			230
=====			

In this somewhat artificial case, 230 seats were distributed, even though there are only 225 in the Parliament.

*Example b. Tie Break Situation*

The number of seats in the Parliament is 225.

The distribution of votes is as follows:

Party A:	1,500,000 votes
Party B:	1,000,000 "
Party C:	870,000 "
Party D:	620,000 "
Party E	285,050
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Total	4,275,050 votes
=====	



The Quota is:  $Q(\text{exact}) = 19,000.22222\dots$ , which rounded off is  $Q = 19,000$ .

The seats distribution is, in the two alternatives, with or without rounding off the quota:

	Q rounded off	Q kept exact
Party A:	78 + 0.947368421052632...	78 + 0.946445070817885...
Party B:	52 + 0.631578947368421...	52 + 0.630963380545257...
Party C:	45 + 0.789473684210526...	45 + 0.788938141074373...
Party D:	32 + 0.631578947368421...	32 + 0.631197295938059...
Party E:	15 + 0.002631578947368...	15 + 0.002456111624425...
-----		
Total	222	222
=====		

Three more seats are given to the three parties with the largest remainders. Party A and party C get one each, but the parties B and D have the same remainder. This tie break situation is resolved according to Article 42, paragraph 10 by giving the seat to the party with the highest number of votes, ie party B in the example. If the Quota had not been rounded off, however, the seat would have been given to Party D, and this result would be closer to the proportional one. This situation is not totally unrealistic, and a change should be considered.

It is thus recommended that the quota is calculated exactly, with no rounding up or down.

### ***Local Elections: Different protocols from the ones for Parliamentary Elections***

The protocols for the count of the votes for the local elections have less information than the ones for the Parliamentary elections. That makes the reconciliation of the votes less reliable, and the protocols should therefore be made similar to the ones for the Parliamentary elections.

### ***Candidates elected in single member and in multi member constituencies***

Doubt was raised about the mechanism to handle the situation when a candidate was running both in a single member constituency and on a party list. The Constitutional Court solved the problem by giving priority to the single member mandate, and let the list mandate go to the next candidate on the list. It may be considered to cover this in the law.

### ***Election Implementation.***

After the election, OSCE/ODIHR dispatched a fact-finding mission to Kyiv to investigate complaints surrounding the non-installation of some Deputies to Parliament. The fact-finding mission reviewed the election implementation and election appeals process from the perspective of compliance with OSCE commitments and general rule of law principles.

The fact-finding mission found that Ukraine's election law provides for parallel appeal processes insofar as election related disputes may be resolved by the judiciary and/or various election commissions. In practice, this resulted in confusion over the jurisdiction of the courts and the election commissions to resolve election disputes and provided opportunities to forum shop for a desired result between the courts and commissions which was exploited in several cases causing obstruction and delays in the installation process. For example, although Ukraine's election law provides that complaints for declaring elections void be submitted to the Central Election Commission within 10 days of the results and that appeals may then be filed with the court, in several instances cases were filed directly with the courts and one case was filed outside the 10 day deadline. In the latter case, the court ignored the time limitation and issued a decision invalidating a deputy's election without giving the deputy notice or an opportunity to participate in the proceedings.

Further, it is unclear what standard of review was applied by the judiciary and what evidence was considered when courts invalidated election results particularly given the inability of many candidates to participate in the proceedings. Many results declared invalid by the courts were based on election day violations occurring inside the polling stations (e.g., open voting, family voting, unauthorised personnel present, voter information not posted, ballot confusion etc.). International observers, including ODIHR, noted such irregularities in a majority of polling stations in Ukraine but did not consider them sufficiently serious to merit invalidating the election results.

Unclear election appeal procedures have contributed to the appearance of selective enforcement of election laws. Those deputies who have been the most outspoken of current policies incurred the greatest difficulty in taking their office. At best the appearance of such selective enforcement is the result of confusing parallel appeal processes, at worst it is undermining OSCE commitment to hold accountable and transparent elections as prescribed by the paragraphs 7.6 and 7.9 of the Copenhagen document.

To mitigate the opportunity for similar problems in future election implementations, OSCE/ODIHR recommends that the election appeal process be clarified and that election officials and the judiciary receive training in resolving election disputes. Specifically, the Election Law should include a clear legal framework for resolving disputes both before and after the election. Deadlines for resolving complaints and invalidating election results should be clarified to enhance finality of the electoral process. Such deadlines should highlight the importance of resolving election related disputes promptly and fairly by allowing candidates to participate in the proceedings. The electoral appeal process must contain clear lines of demarcation for the judiciary and election commissions to prevent forum shopping and to promote transparency and confidence in the system.

In addition to clarifying the election appeal process, election officials and the judiciary should receive training in the resolution of election disputes. Judges should be introduced to the principles and interests underlying modern election laws. Commonly accepted and applied international standards in reviewing such disputes should be reviewed including the recognition that the citizen's vote should not be hastily overturned.

#### **IV THE ELECTION ADMINISTRATION**

There are separate administrative structures for the parliamentary and local elections. Neither structure enjoys a single line of authority from the central commission down. In both structures each local body enjoys an ‘autonomy’ to implement the electoral legislation as it determines.

For the parliamentary elections there is a three-tiered structure of Central Election Commission (CEC), Constituency Election Commission (one for each of the 225 single-mandate constituencies), and Polling Station Commission (PSC) in each of the 32,500 polling stations.

Members of the CEC are proposed by the President and approved by a vote of the Parliament. There should be 15 such members, however, only 13 were agreed on. Political parties registered for the election have the right to nominate one representative to the CEC, who enjoys a ‘voice’ but not a vote during sessions.

The CEC is responsible for ‘guiding’ Constituency Commissions, but not directly instructing them. This opens the process up to the possibility for a lack of co-ordination, such as with the printing of coloured ballot papers, and inconsistency in application of procedures, such as in the training of officials.

The CEC co-operated with the Election Observation Mission. However, the lack of centralised authority in the overall election administration resulted in the fact that the Constituency Commissions largely held their own information. Therefore, while the CEC made available the documentation at its disposal to the Election Observation Mission, it was not in the position to transmit the material which had not been passed to the central level.

An Election Commission is formed in each constituency. A constituency usually represents some 171,000 voters. A representative from each party with a candidate registered for the elections is included in the membership of the commissions.

As stated above the Constituency Election Commission controls the implementation of legislation within the constituency, is responsible for determining the results of the single-mandate elections on its territory.

Political parties also have the right to nominate representatives to Polling Station Commissions.

At the local level there is technically a commission established for each level holding an election. Thus there was a commission for each village, settlement, city, rayon-in-city, rayon and oblast. In practice some commissions, for example at the rayon-in-city level, dealt with a number of other rayon-in-city territories.

Each local commission is responsible for its own election, including the determining of results.

Appeals against the work of any commission is to be made to the ‘higher’ commission. In the case of the CEC, appeals are to be made to the appropriate local court.

This multi-layered structure with no central authority did not help the process. It created a lack of consistency and co-ordination. There needs to be at least a single, central election authority which can co-ordinate the work of all commissions. The reporting structure should also be simplified.

## **V VOTER AND CIVIC EDUCATION**

In the light of the complex multi-tier elections whereby citizens voted with five or six ballot papers using the positive rather than the negative crossing method as in 1994, a great deal of effort and resources were required to provide voters with sound information. The International Foundation for Electoral Systems (IFES) produced and provided a plethora of materials both for CEC and the electorate which proved invaluable for training purposes. In addition the National Democratic Institute in conjunction with a local non governmental organisation, the committee of voters of Ukraine (CVU), worked hard to recruit, train and deploy some 15,000 local observers. The CVU also worked to promote government accountability and popular political participation, and produced a series of television spots aimed at encouraging people to vote, as well as organising public debates and voter education meetings.

On election day 17 % of observers noted that voters had difficulty in understanding the process. This is in particular due to the variety of elections being performed simultaneously.

## **VI VOTER REGISTRATION**

February 12 was the deadline for compiling and submitting voter lists to polling station commissions for review. These were open for public review and verification by voters until March 14. As of 28 March, there were 37,107,023 eligible voters.

## **VII PARTY AND CANDIDATE REGISTRATION**

Twenty-one political parties and nine coalitions were registered for the elections to Parliament. Two political parties, "Women of Ukraine" and "The Party of Salvation of Ukraine" were refused registration as they failed to gather the requisite number of signatures to participate. To qualify for multi-mandate elections 200,000 signatures were required. 10,000 had to come from each of 14 oblasts while the remaining 60,000 could come from anywhere in the Ukraine. This was supposed to expand the idea of national parties and reduce the influence of regional or "clan" based parties. Parties also had to pay a registration fee of over \$8,000, which would only be refunded, if the party reached the 4% threshold barrier. All these requirements had to be submitted to the CEC 100 days prior to the elections.

Single mandate candidates required 1,500 signatures from voters in their district. These had to be submitted 45 days prior to the elections. No registration fee was required .

In 1994, a fifty per cent turnout requirement was stipulated for all districts in the law. This caused many repeat elections and left a large number of constituencies without representation. No such requirements were necessary for these elections.

As of March 28, 1998, 3,539 candidates were registered in the multi-mandate electoral district (of 3,605 submitted) with 4,116 registered in single mandate districts (of 4,231 submitted). 11% of the total were women. To serve as a deputy, a person must be a citizen of Ukraine, at least 21 years old, eligible to vote and a resident of Ukraine for the previous five years. 1,345 candidates were registered in both single mandate districts and on national lists.

The Election Observation Mission received several complaints from individuals and parties that were refused registration. In some cases these decisions were overturned following legal proceedings, although those candidates often did not benefit from state-allotted campaign benefits as they were registered too late.

## **VIII THE PRE-ELECTION CAMPAIGN**

The campaign for the March 29 parliamentary elections began with the registration of 21 parties and 9 blocs in December 1997, competing exclusively for 225 of the 450 parliamentary seats available under the new mixed proportional-majoritarian system.

For both parties and voters the new election law charted new territory and the campaign reflected new approaches and the beginnings of the galvinisation of the political party system. Those parties which surpassed the 4% threshold had to have a minimum national base, thus reducing the significance of the so-called regional "clans" which have had to deal and make compromises with other factions in order to broaden their appeal and support base.

This campaign differed from previous campaigns due to the adoption of a mixed system for elected representatives to the Parliament. The inclusion of proportional party list voting was expected to encourage party affiliation and enable parties to be full participants and to play a more significant role in political life. It was also seen as a testing ground for the presidential elections due to take place in October 1999.

The Constitutional Court declared twenty-one points of the election law to be unconstitutional. These included the right for a candidate to run for a seat both on a party list and as an independent candidate. The court also decided to lift immunity for candidates and not to allow candidates working in public office to work while standing as a candidate. It was not clear until 16 March that these points would not come into effect until after these elections and thus, for some time, the elections were in jeopardy of being cancelled altogether.

In most parts of the country the campaign was carried out in a relatively peaceful manner. However, there were a number of incidents of violence which constitute an extremely unfortunate background to the election process. In addition, the authorities made arrests and took other actions, ostensibly against criminal activity. The pattern of incidents created a negative atmosphere for conducting an electoral process in several regions. The following list of events gives examples of this atmosphere. The Election Observation Mission has not in any way validated each individual case:

- 10 February: Lviv - Petro Symonenko, leader of the Communist Party attacked during campaign visit.
- 11 February Donetsk - Victor Sheludko, Mayor of Shakharsk and Communist, shot and killed by unknown assailants.
- 2 March Yalta - Mr Shevchuk candidate for Verkhovna Rada (#7) arrested for financial impropriety.
- 10 March Kyiv - Mykhalo Brodsky, Local Councillor and candidate for Kyiv City Mayor, arrested after the law on local councillor immunity is repealed by Parliament. He was charged with a number of counts of financial impropriety.
- 25 March Poltava - The Lubni Mayor and Verkhovna Rada candidate (#147), Koryak is attacked by unknown assailants.

### *Odesa*

The situation in Odesa up to and including election day is of great concern. Since the beginning of the year there has been a series of violent incidents, including the shooting of the Chairman of the Odesa City Election Commission, the kidnapping of the Chairman of a City District Election Commission and the storming of the City Council by armed militia. There have been a number of accusations concerning responsibility for these incidents. The incidents have resulted in an intimidating environment, which does not serve the election process.

The decision by a local court, which was not accepted by the City Election Commission, on the eve of the election to reject the incumbent Mayor of Odesa as a candidate served to increase tension and confusion.

The following is a list of events reported to the Election Observation Mission. The Election Observation Mission did not investigate each event, but they are mentioned here for the purpose of illustrating the general atmosphere.

- August '97 Boris Fodrevich Derevyanko, Editor of Vechernyaya Odessa and strong opposition voice on the City Council shot and killed.
- 15 February Journalist, and head of City Election Commission, Leonid Kapeliusniy shot and wounded.
- 28 February Ihor Svoboda, Council Deputy kidnapped and his driver beaten.
- 11 March Serhiz Korinev, member of Odessa City Council and Deputy head of Rayon administration interrogated at 3 a.m. Though not arrested he was unable to speak to his lawyer.

- 15 March Boris Anikeychyk, who previously testified against Mayor Hurvits on a corruption scandal, shot (died March 17 after accusing Hurvits).
- 22 March Mr. Varlomov, Deputy of administration criminal investigations disappears.
- 23/24 March Odessa City Council building “stormed” (unconfirmed) by militia.

### *Crimea*

The fact that early elections to the Supreme Soviet of Crimea were not announced until 12 February significantly affected the campaign in the region, particularly because the 100 elected positions were to be voted under the majority system with no provisions for minority representation. It was hoped as late as the last parliamentary session on 24 March that Tartars without citizenship would be given the right to vote, but the failure to do so led to violent demonstrations and left 80,000 Tartars without a vote. With only six weeks to organise the elections, the chance to appeal about decisions were diminished.

Since the lifting of immunity for candidates to the Crimean Parliament a wave of arrests and of candidates was reported. The Party of Economic Revival and its candidates were particularly targeted by government authorities. The leader, Vladimir Shevyov, disappeared after the first wave of arrests following threats against him.

The following is a list of events reported to the Election Observation Mission. The Election Observation Mission did not investigate each event.

- 5 February Olexandr Safontsev, first deputy of the Crimean Cabinet of Ministers wounded and later died (23/2) after a bomb blast near his home.
- Early March Serhiy Voronkov (arrested).
- 13 March MP Vasyl Shpylkin arrested for allegedly giving illegal credits.
- 11 March Mr. Shaiderov arrested for 72 hours without charges.
- 17 March Yuriy Podkopayev Crimean Education Minister arrested on financial impropriety charges.
- 18 March Mr V. Lutyev arrested in Yevpatoria, accused of spreading false accusations against the Mayor.
- 18 March Soyuz Party claims that one of its candidates, Mr Trunov, was brutally beaten because he opposes the candidacy of the incumbent Mayor .
- 24 March violent clashes break out in Simferopol after Parliament failed to solve the Tatar citizenship issue.
- 25 March Pavel Vyalov (Independent) arrested - no charges raised. Released after 72 hours
- 28 March Sergei Konratyevsky, candidate to Verkhovna Rada and Sevastopol City mayor, arrested - reason unknown.

### *Appeals/Complaints*

By the 17 March the CEC had already received some 2,000 election related complaints and appeals. A parliamentary commission was also set up to take and investigate complaints. It was

promising to note that the vast majority of the members were outgoing deputies who seemed to show a genuine will to ensure the rights of candidates were upheld. The commission also had a member on the CEC and was thus able to present their analysis and findings.

### ***Financing***

No limits were placed on contributions or spending for the campaign, although parties were to set up special bank accounts for the purpose of campaigning and submit records to the CEC a week prior to the elections. Of the 30 parties and blocks registered, 23 timely informed the CEC about the opening of bank accounts and their financial reports. The People's Democratic Party spent the most, 1,915,936 Hr. The Green Party also spent significant sums, 1,128,487 Hr, whilst the largest party, the Communists only reportedly spent 24,934 Hr.

### ***Abuse of power by state authorities***

Unfortunately, one of the characteristics of the campaign has been abuse of public office by some officials in order to promote one particular candidate, sometimes themselves. Whilst the ruling of the Constitutional Court on public officials running as candidates does not foresee their forced resignation, it should be ensured that state resources and position are not abused.

Another striking aspect of the campaign was the obvious power struggle prevalent between elected councils (or "radas") and their respective administrations. This was noticeable in every strata of the Ukrainian power structure and caused severe problems in certain areas. A number of examples are noteworthy:

In January 1998 the Yalta Mayor was replaced with Cabinet Minister Marchenko, by direct intervention from President Kuchma who changed the law so that, in the case of a lack of elected Mayor, the President can directly appoint his representative.

Heads of Oblast Administrations standing for Verkhovna Rada seats were reported to use their positions to promote themselves and to use their access to state premises to display their campaign materials (Constituencies Nos 213, 214, 31, 12). Several abuses were noted by local and international observers as well as by candidates about the role of candidate and head of presidential administration Tabachuk in constituency 91 on election day. It was claimed that members of the oblast and rayon administrations were present in many polling stations pressuring voters. They also allegedly used their authority and state resources to promote his campaign prior to election day.

A co-ordinated and systematic campaign seemed to be orchestrated against the Hromada party. This ranges from the Prosecutor General showing "proof" of Lazarenko's financial scandals on UT-1's seven days programme and publicly requesting that his parliamentary immunity be taken away, the raiding of the Hromada District office, the seizure of their campaign warehouse, the closure of *Pravda Ukrainy* (and *Vseukrainskiye Vedomosti*).

There were many complaints about constituency election commissions failing to register



candidates, failing to print candidate posters and publishing biographies and platforms as set out in the law.

On 12 February the Crimea elections were announced, not by their Parliament, as stated in the law. but by the Verkhovna Rada.

### *The provisions of goods/services*

On 17 March the CEC announced that it had received more than 400 complaints about candidates accused of providing voters with food and commodity products for free or privileged prices. One example was in Vinnitsia (No 12) where the Oblast Newspaper was accused of actively campaigning for Head of State Administration and No.2 on PDP list, Matvienko. A free campaign “supplement” was included recently. The court case brought by several candidates is blocked.

### *Public opinion polls*

Opinion polls were banned two weeks prior to the elections, but a worrying trend in those published before, was the lack of trust the electorate had in its leaders and the process itself.

## **IX THE MEDIA**

Television was the most influential means of communication during the election campaign in Ukraine. The European Institute for the Media commented that a noticeable change since 1994 was the increasing professionalism of both political parties and some sections of the media in their participation in the media campaign. There were also far more non-state media outlets, allowing for greater possibilities for candidates to reach the electorate. However, the level of balanced information and analysis available to voters, enabling them to make an educated assessment of the thirty registered parties, was unsatisfactory. This was partly due to the strong party affiliation of most media, which whilst completely legal, does have implications in this instance on the level of journalistic standards and objectivity.

The closest that the campaign came to reaching the programme competition stage was on a private television debate series which some parties boycotted claiming it was vulgar and insulting. The population thought differently and it was widely watched. Success, however, largely depended on funds available and image, especially on television.

Although there are over 5,000 newspapers, 300 television companies, and 150 radio stations in Ukraine, it was near to impossible for a citizen to find one media source for objective or neutral political information. State television was clearly under the control of the government, which used both state channels for the promotion of the party of power. Private television channels used their time to broadcast entertainment programs instead of political programs. The majority of popular newspapers were financially controlled by political parties, thereby lowering their ability to report in an unbiased manner.

The government did not fulfil its obligation to maintain and cultivate a media environment whereby media outlets could freely inform the public about political parties, candidates, campaign issues, voting processes and other matters relevant to the election.

However, the campaign period is highly sensitive and any actions against media representing opposition to the executive authority created tension and suspicion. The legal measures taken against the newspapers *Pravda Ukrainy* and *Vseukrainkiye Vedomosti* are indicative of the financial and structural vulnerability of the media in Ukraine to pressure from the state authorities. These cases call into question Ukraine's commitment as an OSCE participating State and its obligation as a Council of Europe member state to respect the rights and freedoms of the press. The charges against *Pravda Ukrainy* were based partly upon the Election Law Article 35, paragraph 11 that states: "the conduct of pre-election campaign publicity, followed by providing of voters with goods, securities, credits, lotteries, money and services free-of-charge or under privileged conditions, is prohibited", and partly upon the restrictions in Article 37, para 3 on contribution to the campaign from foreign sources. Subscriptions of the newspaper were given for free to voters. It is not obvious that this would be against Article 35,11, but if the sources of the funding can be traced to foreign entities, it may well be against the law. However, the procedure of immediately closing down the newspaper, cannot be justified.

Opposition newspapers with wide distribution including Kievsky Vedomosti, Den, Vseukrainsky Vedomosti, and Pravda Ukrainy all reported multiple incidents of visits from authorities which were seen by the newspaper to be harassment and thus unwarranted. A number of print media faced investigations by the authorities during the election campaign. If any illegal activities are proven to have taken place, then appropriate action should be taken.

Journalists reported on instances of assaults, particularly in Odesa, Kyiv, and Crimea.

State media, which is reliant on public funds, has an obligation to neutrality. On state television, the election law was adhered to with respect to free time offered for candidates. But the government also had a duty to be balanced and impartial in their election reporting and to grant equal access to airtime beyond the allotted free time. The party of power in combined coverage (news, advertisements, other programming) received the greatest amount of time with 102 minutes, of which most was positive. The second most covered party was the Rukh party, with only 63 minutes of coverage, of which the main part consisted of advertisements. Other parties received from 56 minutes to only 7 minutes of coverage.

The news programs on Channel 1 were used as a means to advertise the activities of government officials who were active in the political campaign. In news coverage, the party of power received 24 minutes of coverage on the news, all of which was positive coverage. Alternatively, Hromada received more time with 28 minutes, but almost all of this time was negative coverage.

Positive broadcasting on state television was severely restricted for two specific parties, Hromada and the Communists. Although Hromada was given 36 minutes of coverage on Channel 1, this coverage was almost entirely negative. Hromada received a bit more news coverage on Channel 1 than PDP, but again Hromada's coverage was disproportionately negative compared to PDP's overwhelmingly positive coverage. Additionally, on Channel 2, Hromada and the Communists were only given approximately six minutes of coverage during the entire pre-election campaign.

PDP received 23 minutes.

According to the election law, political parties and electoral blocs were given free publishing space in the two state newspapers, both of which printed all information in accordance with the election law. However, the political orientation of many private newspapers reflected financial ties to political parties.

Coverage of party campaigns using paid airtime varied significantly. This may in a large part be due to the cost of airtime being prohibitive to many. However, it would be highly disturbing if the claims of some parties being denied the ability to purchase airtime were proven to be founded.

According to qualitative results from the European Institute for the Media, there “was a significant trend towards hidden advertising in the form of articles.” That is, it was almost impossible to distinguish political advertising in most newspapers. Certainly every paper printed approximately 3-4 articles per day promoting their party interests, but most of these articles were not in the form of advertisements. To obtain neutral information about the election campaign, a voter would have had to purchase 3-5 newspapers per day.

The mass media provided voters with neither full and impartial information about the choices available to them, nor provided a service designed to help them understand the complexities of new voting practices.

## **X OBSERVATION ON POLLING DAY**

On election day observers visited more than 1,200 polling stations (3.7%), covering more than 60% of the Oblasts in the country.

The general conclusion on the voting process was that it was carried out in a peaceful and orderly manner. Polling station officials made a great effort, often under difficult circumstances, to ensure that the process was completed satisfactorily.

Several observers (23.3% of observations) reported that the premises were inadequate for the task of voting. This had implications for the general organisation of the polling process.

Prior to the election the observation mission had concerns regarding the complexity of the voting process and particularly the multiple and varied ballots which voters would have to deal with. On election day observers found that there was some confusion among voters, with 16.9% of observers reporting that voters had problems understanding the process, and in 11.5% of observations there were problems incurred in the issuing of ballot papers. However, this factor was alleviated by the positive role played by polling station officials. Observers reported that in some 95.5% of instances polling station officials had a good understanding of the process.

The observation mission is concerned over the high rate of family and open voting observed. In 59.0% of polling stations visited family voting was observed, and in 59.0% of polling stations

open voting was observed. These levels are very high and all efforts should be made in future to ensure that such practices are curtailed. It is recognised that some of these instances, particularly in the larger cities, may have been due to the inadequate capacity of polling stations to deal with the number of voters assigned to them.

Unauthorised persons, and particularly police or local officials, were present in polling stations in an unacceptable number of instances. In 14.1% of polling stations observers found such unauthorised persons to be present. Further, observers reported that such officials were often playing an intrusive role, which is of concern to the Observation Mission.

The conclusion of the observation mission regarding the voting process is that, despite the problems outlined above, the process was generally carried out to a satisfactory level. Although the issues of concern mentioned need to be seriously addressed prior to future elections.

## **XI OBSERVATION OF COUNTING**

In general observers felt that the count was not so well handled as the voting process. This was partly due to the complexity of the elections and partly due to the inadequate instructions on reconciling votes given to polling station officials. The result was often a rather chaotic and very slow counting process. However, observers did not raise any serious concerns regarding the actual results attained, concerns were rather linked to the efficiency of the process of determining the results.

The following extract of results of the observation highlight the point that whilst the counting process was not too bad it often failed to follow the prescribed format.

Question	% answered 'No'
Did the PSC use voters lists to determine number of registered voters for polling station	8.9%
Did the PSC use the control checks to determine number of participating voters	12.1%
Did PSC pack, seal and identify control checks and unused ballots prior to opening ballot box	17.0%
Were three copies of the minutes completed and signed by all PSC members	24.1%
Was the count generally well organised	26.3%

In addition, some 15.4% of observations reported that complaints were raised during the count.

Our conclusion was that many of the problems incurred were due to a lack of clear procedure in the count rather than anything more serious. However, for future elections a stricter application of the procedure, achieved by a more thorough and consistent training of polling station officials, needs to be ensured.

## **XII AGGREGATION AND VERIFICATION OF RESULTS**

The CEC had planned to issue results of the party list election as and when these results were reported from Oblast level. However, the information system did not seem to work as originally intended, and the results service therefore was based upon reports of official protocols only. In the future more effort should be put into offering the public provisional results based upon direct aggregation of intermediate results sent in from the constituencies.

There is no procedure for direct scrutiny of the results from polling station level to national level. The tabulation of polling station results was only available at constituency level. Since this information is important for the parties, the observers and the public, the detailed tabulation should be made publicly available as soon as possible after the elections.

The Election Observation Mission was able to check the results of the Polling Stations observed during the counting only to a limited extent, since it could only be done at the constituency level. Only few constituencies were able to provide detailed tabulation upon requests of the observers.

A major point in the transparency of the process is that it is easy for all observers, in particular those from the parties, to check that the results observed by them on polling station level have been correctly tabulated. Therefore this process should be improved.

The observers submitted 65 forms from the count. An unweighed comparison (not adjusted for over-representation of certain areas) shows a fairly good correspondence between the results of the multi-member constituency results and the observed sample. The deviation is at most within one percent, and never above four percent.

## **XIII RECOMMENDATIONS**

The following is a summary of the main recommendations for improvement of the electoral process in future elections:

- i) It is an obligation of all parties to refrain from harassment, violence and intimidation both during election period as well as in general. As the overall election period was characterised by violence and criminal activity, measures should be taken to improve the general climate for elections
- ii) Every effort should be made to avoid a situation where allegations can be raised about

politically motivated investigations, charges and court decisions.

- iii) State media should develop a neutral, independent editorial line, and more emphasise should be put on balanced reporting, which should include balanced reporting even on government activities during election periods.
- iv) Legal actions against opposition media should follow strict procedures so that no allegations of drastic, politically motivated, actions can be substantiated. The authority of making administrative decisions on closing media that are under investigation, should also be re-assessed.
- v) There needs to be clarification of the election appeals process, particularly with regard to the jurisdiction of election commissions and the judiciary in resolving election disputes. This includes clarifying deadlines for bringing and resolving complaints and providing notice of such complaints to candidates to allow their participation in the process.
- vi) Election officials and the judiciary would benefit from additional training in the resolution of election disputes. Commonly accepted and applied international standards in reviewing such disputes should be reviewed emphasising the principle that the citizen's vote should not be hastily overturned.
- vii) The electoral system for the Parliament of Crimea should give better possibilities for the Tatars to be represented. This can be done by introducing proportional elements to the election system.
- viii) The right to vote for the Crimean Tatars with permanent residence in Crimea and with a will to gain citizenship should be granted before the next election.
- ix) The Central Election Commission should be given decisive authority over the election administration structure even for the local elections.
- x) The electoral systems for local bodies should be uniform, and the administration and reporting system should be simplified. In particular, the multi- member constituency majority system should be re-evaluated, and, as a minimum, clarified as to how many indications each voter can give on the ballot paper.
- xi) Transparent provisions for the CEC's scrutiny of the results from polling station level up to national level should be defined.
- xii) Provisional results should be published based upon partial results from local level, and the final results should be made readily available to the public tabulated from polling station level.
- xiii) The mayors of Kyiv and Sevastopol should be elected officials.
- xiv) The powers of the bodies of the Autonomous Republic of Crimea should be provided for by the law, such as the authority to set the date for elections to the Crimean Parliament.

