



Office for Democratic Institutions and Human Rights

UKRAINE

PRESIDENTIAL ELECTION

17 January and 7 February 2010

OSCE/ODIHR Election Observation Mission Final Report



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I. EXECUTIVE SUMMARY

Following an invitation by the Ministry of Foreign Affairs of Ukraine to observe the 17 January presidential election, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) deployed an Election Observation Mission (EOM) on 24 November 2009. The OSCE/ODIHR EOM observed the election in order to assess its compliance with OSCE commitments and other international standards for democratic elections, as well as with domestic legislation. On election day, the OSCE/ODIHR EOM joined efforts with delegations from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament, and the NATO Parliamentary Assembly.

The presidential election met most OSCE commitments and other international standards for democratic elections and consolidated progress achieved since 2004. The process was transparent and offered voters a genuine choice between candidates representing diverse political views. However, unsubstantiated allegations of large-scale electoral fraud negatively affected the election atmosphere and voter confidence in the process.

The deficient legal framework caused most of the problems encountered during the administration of the election and constitutes an immediate challenge for the new leadership. A consolidated election code, drafted through an inclusive process incorporating the recommendations made in this and previous OSCE/ODIHR reports as well as joint legal opinions by the OSCE/ODIHR and the Council of Europe Venice Commission would alleviate most of the problems.

The existing election law, as amended in 2009, constitutes a step backward compared to previous legislation. The legal framework remains unclear and incomplete, and in several cases laws contradict one another. Legal provisions governing the second round left important election administration procedures unaddressed and others open to varying interpretation. Late amendments were introduced between rounds, but failed to address the shortcomings. Last minute court decisions contributed to a lack of procedural clarity.

The Central Election Commission (CEC) mostly operated in a non-partisan and collegial manner, while navigating in a highly polarized political environment. The CEC did not fully address shortcomings in the election law, at times leaving the District Election Commissions (DECs) and Precinct Election Commissions (PECs) without proper guidance. All commissions were generally efficient in meeting tight deadlines while coping with a heavy workload. Some DECs denied access to the data entry to observers, thus decreasing the transparency of the tabulation process. Women were generally well represented in election commissions, including in leadership positions.

A unified, computerized, and centralized State Voter Register (SVR) was established for the first time and considerable efforts were made to improve the quality of voter lists. These

efforts should continue; specifically, voters added to the lists on election days should be included in the SVR before the next election.

Eighteen candidates were registered in an inclusive manner. The election was concluded in a run-off between Ms. Yulia Tymoshenko of the All-Ukrainian Union – Motherland and Mr. Viktor Yanukovych of the Party of Regions, on 7 February. Ms. Tymoshenko was the first woman to enter the second round of a presidential election in Ukraine.

The campaign was conducted in a free and calm atmosphere respecting civil and political rights. Candidates held rallies and conducted street campaigns using billboards and leaflets. A few candidates produced campaign material in minority languages in order to reach out to those communities. In a breach of law, some candidates in official positions misused administrative resources. Legal provisions regulating campaign finance remain inadequate.

Overall, the pluralistic media environment offered voters a range of information about leading presidential candidates and their platforms. Coverage in the electronic media was often a result of candidates paying to appear in the news and current affairs programs, as media owners undermined the editorial independence and ability of journalists to report objectively. The coverage of candidates in the news was determined by political consideration instead of professional considerations of newsworthiness. The state-owned TV station *UTI* failed to provide balance and impartial coverage of candidates, as stipulated by the election law.

In general, the CEC did not address complaints in a transparent manner and failed to adopt a substantive decision in the overwhelming majority of cases, thus denying complainants access to an effective remedy. The administrative courts made the majority of decisions on election-related complaints and adjudicated cases in a timely, efficient and transparent manner.

Transparency was greatly enhanced by the large presence of domestic and international observers. Non-governmental organizations monitored the election, despite the fact that they were not permitted by law to register their members as observers.

Both election days were calm and orderly. This was mostly due to the dedication of the thousands of Ukrainian citizens, who participated in the administration of the election. Voting and counting in polling stations were conducted in an efficient, transparent and honest manner and were overwhelmingly assessed positively by observers, who noted a few problems with the secrecy of the vote. The assessment of homebound voting was in line with the overall assessment of voting, while voting in hospitals and prisons was assessed less positively.

Overall, observers evaluated the handover and tabulation of protocols positively in both rounds. The assessment of the tabulation process was, however, negatively affected by the lack of full access to observe the computer entry of PEC results in some DEC. IEOM observers noted fewer problems during tabulation in the second round; however, more complaints were filed directly with the DEC, questioning even minor procedural deviations. In a few DEC, the process was temporarily stalled due to voting deadlocks over complaints or acceptance of PEC result protocols.

The CEC announced the final results on 14 February and declared Mr. Yanukovych the winner with 48.95 per cent of the vote against Ms. Tymoshenko's 45.47 per cent, with some 4.36 per cent voting "against all candidates". Five of the fifteen CEC members added dissenting opinions, claiming that complaints that were still pending with the courts should be resolved before the results were announced.

The Tymoshenko campaign challenged the final election results in the High Administrative Court (HAC) alleging that the 7 February vote was marred by numerous violations and called upon the court to order a third round. The court hearing commenced with 49 judges sitting in panel. On the second day of the hearing, following the court denying her motion to call PEC and DEC members and observers as witnesses, Ms. Tymoshenko requested her complaint be withdrawn. The HAC halted the hearing and allowed the withdrawal, thus leaving the complaint without consideration. On the same day, President Yushchenko signed a decree for the inauguration of Mr. Yanukovich as the fourth President of Ukraine. Ms. Tymoshenko subsequently reiterated her allegations of fraud, but also stated that she would not challenge the result in any other court.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Ministry of Foreign Affairs of Ukraine to observe the 2010 presidential election, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) in Ukraine on 24 November 2009. It was headed by Ambassador Heidi Tagliavini (Switzerland) and consisted of 23 analysts based in Kyiv and 60 long-term observers deployed throughout Ukraine.

For election day observation, the OSCE/ODIHR EOM joined efforts with observer delegations from the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly (NATO PA) to form an International Election Observation Mission (IEOM). Mr. João Soares (Portugal), President of the OSCE PA and Head of the OSCE PA delegation, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term OSCE observers. Mr. Mátyás Eörsi (Hungary) headed the PACE delegation, Mr. Paweł Kowal (Poland) led the EP delegation, and Mr. Assen Agov (Bulgaria) headed the NATO PA delegation.

On the 17 January election day, over 800 observers from 46 OSCE participating States were deployed, including about 600 OSCE/ODIHR short-term observers seconded by participating States, as well as a 117-member delegation from the OSCE PA, a 45-member delegation from the PACE, a 30-member delegation from the NATO PA and a 10-member delegation from the EP. The IEOM observed voting in some 2,600 polling stations out of a total of 33,695, counting in 196 polling stations and tabulation in 185 out of a total 225 District Election Commissions (DECs).

On the 7 February second round election day, approximately 600 observers from 46 OSCE participating States were deployed, including 413 OSCE/ODIHR short-term observers seconded by participating States, a 69-member delegation from the OSCE PA, a 37-member delegation from the PACE, a 16-member delegation from the NATO PA and a 13-member delegation from the EP. The IEOM observed voting in 2,093 polling stations of the total 33,667, counting in 220 polling stations and tabulation in 181 DECs. The OSCE/ODIHR EOM remained in Ukraine until 21 February to follow post-election day developments.

The OSCE/ODIHR EOM assessed the election for its compliance with OSCE commitments and other international standards for democratic elections, as well as Ukrainian legislation. This final report follows two Statements of Preliminary Findings and Conclusions that were

released on 18 January and 8 February 2010.¹

The OSCE/ODIHR EOM is grateful to the Ministry of Foreign Affairs, the Central Election Commission, as well as to political parties, candidates and civil society for their co-operation. The mission also wishes to express its appreciation to the OSCE Project Co-ordinator in Ukraine, diplomatic missions of OSCE participating States and international organizations in Ukraine for their co-operation throughout the course of the mission.

III. POLITICAL CONTEXT

The 2010 presidential election was the fifth since Ukraine gained independence and the seventh set of elections observed by the OSCE/ODIHR in Ukraine.² The date for the election was only set after a ruling by the Constitutional Court, following a conflict between the president and the parliament regarding the date. The last presidential election was held in December 2004 and brought President Viktor Yushchenko to power in the aftermath of the so called “Orange Revolution”. The OSCE/ODIHR concluded that “while the 31 October (first round) and 21 November (second round) votes failed to meet a considerable number of OSCE commitments, Council of Europe and other international standards, the 26 December 2004 repeat second round vote brought Ukraine substantially closer to meeting them.”

The political landscape prior to the 2010 election was characterized by confrontations between the legislative and executive branches of power, as well as tensions between the president and prime minister. Political divisions within parliament led to frequent deadlocks in the work of the legislative body. The state budget for 2010 had still not been approved by the end of the election period. This also affected the election administration that received only seven per cent of its election budget on time. The political instability was further aggravated by the global economic and financial downturn.

Five political parties (or blocs of parties) are represented in the current parliament: the *Party of Regions* (PoR, 172 seats), the *Bloc of Yulia Tymoshenko* (BYT, 153 seats), *Our Ukraine* (71 seats), the *Communist Party* (27 seats) and the *Lytvyn Bloc* (20 seats). Six members of parliament (MPs) are independent.³ Among the 18 presidential candidates were the incumbent President Viktor Yushchenko, Prime Minister and leader of BYT, Yulia Tymoshenko, Speaker of the parliament and leader of the Lytvyn Bloc, Volodymyr Lytvyn, leader of the PoR, Viktor Yanukovich, leader of the Communist Party, Petro Symonenko, former head of the national bank, Serhiy Tihipko and former Minister of Foreign Affairs, Arseniy Yatseniuk.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The President of Ukraine is elected by the citizens of Ukraine for a five-year term. In case no candidate wins more than 50 per cent of the votes in the first round, a second round takes place three weeks after the election day between the two candidates who won the most votes.

¹ The OSCE/ODIHR EOM also published four interim reports and a post-election report. All reports for the 2010 presidential election are available at: <http://www.osce.org/odihr-elections/40542.html>.

² All previous OSCE/ODIHR EOM reports are available at: <http://www.osce.org/odihr-elections/14658.html>.

³ Following the election, negotiations to form a new governing coalition in the parliament changed these figures.

The legal framework applicable to the presidential election includes the constitution (adopted in 1996 and amended in 2004) and the Law on the Election of the President of Ukraine (adopted in 2004 and amended in 2009). It provides for universal, equal and direct suffrage by secret ballot. The primary legislation is supplemented by the Law on the Central Election Commission, the Law on the State Voter Register, the Law on Political Parties, and some provisions of the Code of Administrative Proceedings and the Criminal Code.

Voting rights are guaranteed both by the constitution and the Law on the Election of the President of Ukraine (hereinafter, election law). Every citizen who has attained 18 years of age on election day is granted the right to vote. Both the election law and constitution restrict persons from voting who have been recognized incompetent by a court decision. Citizens can stand for president if they have attained the age of 35, are eligible to vote, have a command of the state language and have resided in Ukraine for the last ten years.

The amended election law took effect in August 2009, just five months before the scheduled election. In a Joint Opinion (hereinafter, joint opinion), the Council of Europe Venice Commission and OSCE/ODIHR concluded that although the amendments incorporated a number of previous recommendations, many remained unaddressed. The opinion also found that some amendments raised serious concerns, did not comply with OSCE commitments and other international standards, and represented a step backward.⁴ In a ruling issued on 19 October, the Constitutional Court found several of the amended provisions unconstitutional.⁵ The court's decision addressed some of the concerns expressed in the joint opinion, mostly pertaining to limitations on the right to challenge election protocols and results in courts.

Despite advice against amending the election law between the two rounds of the election, on 3 February the parliament adopted additional amendments that lifted the quorum requirement for election commissions to make legally binding decisions and gave the power to the local councils to replace members who did not appear on election day. The amendments were presented as a reaction to allegations that one of the candidates would consider withdrawing members from some commissions, thus depriving them of a quorum and disrupting the election. On election day, most commission members turned up for work and fulfilled their duties in the commissions.

The enactment of the amendments highlighted the need to review the entire legal framework for elections in Ukraine. Many of the problems related to this election were the result of the legal framework, especially the election law which is ambiguous, inconsistent and incomplete. This led to confusion on election day concerning the procedures applicable to crucial aspects of the electoral process that affected the rights of citizens to vote. Most notably, this involved homebound voting and additions to the voter lists on election day and led to voters being treated differently depending on which polling station they voted in.⁶

The confusion engendered by the ambiguous election law also resulted in court challenges by the candidates, which sometimes led to inconsistent rulings and changes to the procedures on

⁴ See the Council of Europe Venice Commission and OSCE/ODIHR Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine at http://www.osce.org/documents/odihr/2009/10/40858_en.pdf.

⁵ The amendments were challenged by the president and 48 MPs.

⁶ In some cases voters who arrived in the morning were added to the voter list by a Precinct Election Commission (PEC) decision. Because of a DEC intervention, voters at the same PEC who came in the afternoon were sent to court to be added to voter lists.

the eve of the election.⁷ It also allowed candidates to use the law to advance their own agendas and disrupt the electoral process, when it was in their own interest.

Candidates in both rounds challenged attempts by the Central Election Commission (CEC) to clarify some of the vague and inconsistent provisions of the election law, which led to a situation where matters were bounced back and forth between the court and CEC.⁸ In most cases, the CEC eventually cancelled its own clarification and substituted a new one that simply mirrored provisions of the law, thereby not fulfilling its obligation to provide guidance to the DEC, Precinct Election Commissions (PECs) and voters. The role of bodies that provide support for the election commissions including the Register Maintenance Bodies (RMBs), the Security Service and the State Service for Special Communications and Information Protection is not clearly defined by law and rules for their interaction with election commissions and observers are not standardized.

The inadequacy of the legal framework was magnified in the second round due to the lack of clarity as to which sections of the election law would apply for the second round. The provisions in the election law concerning the second round leave important aspects unaddressed and others open to varying interpretations. The law contains only one article specifically concerning the second round.⁹ It outlines the procedures for the formation of lower-level commissions, as well as voting, counting, the announcement of results and sets some new deadlines which are at times inconsistent.¹⁰ A few other articles of the election law have specific provisions concerning the second round; the majority does not.¹¹

This again gave candidates the opportunity to challenge CEC attempts to clarify election procedures in court. The CEC also used the ambiguity of the law to decide which provisions of the election law were applicable to the second round.¹² The CEC took the position that since the election law refers to the second round as “repeat voting”; any article of the election law that did not specifically refer to “repeat voting” was not necessarily applicable to the second round. This led to further confusion about which procedures the PECs and DEC were to apply on election day during the second round.

Many, if not all of these problems could have been avoided, if the law were clear and concise and not amended at the last minute, as the parties attempted to gain a political advantage.

⁷ A last minute court decision led to different procedures being applied for voters who were not included in the voter lists and those who applied for homebound voting. Under article 177.4 of the Administrative Procedures Code, these decisions could not be appealed because they were made between midnight and 06:00 hrs. on election day. Before the second round the Kyiv Administrative Court of Appeals (KACA) made two inconsistent rulings on appeals from both candidates concerning the number of election commissioners that must accompany the mobile ballot box.

⁸ This occurred again with respect to homebound voting and adding voters to the voters list on election day. The CEC adopted a clarification and the court struck down parts of it. The CEC then amended the clarification and this was again appealed to the court. The proportionality principle for appointing DEC members was also an issue that went back and forth between the courts and the CEC.

⁹ Article 85 of the election law.

¹⁰ For example, while the CEC had to publish official first round results by 27 January, second round candidates had to nominate DEC members by 26 January.

¹¹ Articles which do not specify provisions for the second round include those on complaints and appeals, official observers, duties and authorities of the election commissions.

¹² On the morning of the election day, the CEC issued a clarification on homebound voting allowing two members of the PEC to accompany the ballot box, even though the law requires three members. The KACA ruled that the clarification was illegal, but was later overruled by the High Administrative Court.

V. ELECTION ADMINISTRATION

The election was administered by a three-level election administration. The CEC is the permanent body responsible for organizing and conducting general elections. The country is divided into 225 electoral districts for each election, which are served by DEC¹³. For this election, the districts were further divided into 33,695 precincts served by PECs.

A. THE CENTRAL ELECTION COMMISSION

The CEC consists of 15 members appointed for a seven-year term. They are nominated by the president upon consultations with the parliamentary factions and appointed by the parliament. The Law on the CEC and the election law regulate its structure and the status of the commission and its members.

Despite political tension, the CEC generally operated in a non-partisan and collegial manner approving most decisions unanimously without major disputes. As each election day approached the commission became polarized. This first surfaced during discussions on the topic of numbering candidates on the ballot.¹⁴ It continued over the procedures for homebound voting and amending voter lists on election day, when signing the final results protocols and while discussing complaints.

Overall, the CEC was efficient and met the legal deadlines. The CEC performed its work in a relatively open manner and for most part held sessions on a daily basis. While the sessions were open to the media, candidate representatives and observers, the CEC had a practice of holding closed meetings at which the agenda and draft decisions were discussed, so that a coordinated position could be reached and presented in the regular session. These actions violate legal requirements and decreased the transparency of its activities.¹⁵

CEC decisions were published on its website. Although the CEC is responsible for clarifying the application of election-related laws, many clarifications simply repeated provisions of the inconsistent and incomplete law.¹⁶ These clarifications generally lacked operational relevance and many were adopted after the training of commissioners had already been completed. These shortcomings left the DEC¹³s and PEC¹⁴s without proper guidance on certain issues and led to inconsistent procedures being implemented.

The absence of an approved budget for the administration of the election initially affected the CEC and DEC¹³s negatively. The CEC only received the 2009 election funds on 25 December with more than two months delay and after several appeals. Funding for 2010 was approved a few days later.

Despite legal requirements, the CEC did not produce any voter education programs on the rights and obligations of voters, voter list inclusion and verification procedures and voting instructions, including on informing voters to fold their ballot to maintain secrecy.

¹³ The CEC also acts as DEC for out-of-country voting and administers the voting for Ukrainian citizens abroad together with the Ministry of Foreign Affairs.

¹⁴ In the first round candidate Tymoshenko received number 13 in alphabetical order.

¹⁵ Article 28.1 of the election law and articles 2.2, 4.1 and 4.3 of the Law on the CEC all concern the requirements that CEC sessions, deliberations and activities be conducted openly.

¹⁶ For example, the CEC clarifications on the appointment of PEC members, procedures for homebound voting and amendments to voter lists on election day, DEC tabulation and receipt of PEC materials.

The CEC further failed to adopt a decision on the registration of international observers nominated by the Embassy of Georgia to Ukraine within the required three-day deadline. The Kyiv Administrative Court of Appeal (KACA) determined the CEC's inaction to be illegal and ordered the CEC to take a decision on whether or not to register them at their next session. The CEC did not consider the issue again as the court requested and the applicant did not request registration for the second round.

B. DISTRICT AND PRECINCT ELECTION COMMISSIONS

DECs and PECs are temporary bodies, whose members are appointed based on candidate nominations. First round candidates could nominate two members per commission, while second round candidates could nominate seven members per DEC and eight per PEC. Commissions are led by a chairperson, deputy chair (for the first round only) and secretary. Candidates have the right to a proportional share of the leadership positions based on the number of nominations, with a maximum of one such position per commission.

For the first round, most of the 18 candidates were active in nominating representatives to the DECs.¹⁷ On 27 November, the CEC appointed 7,414 members for the 225 DECs, an average of 33 members per commission (maximum of 36). Until election day, 546 DEC members were replaced, including 140 of the 675 members in leadership positions.

The CEC initially respected the rules for proportionally appointing DEC leadership positions. However, the CEC did not always respect the proportionality principle when replacing commissioners. In the first round, the CEC replaced members nominated by a different candidate in 32 cases (20 in leadership positions), causing a slight distortion of the proportionality principle. Following appeals by candidates and upon court decision, the CEC reconsidered three such replacements, but did not alter their initial decisions.

On 25 January, the CEC announced first round results and declared Ms. Tymoshenko and Mr. Yanukovich the run-off candidates. The DECs and PECs were dissolved and re-formed for the second round based on new nominations. Both candidates nominated the maximum 1,575 DEC members allowed. Nearly all of the nominees had previous election experience and many represented other candidates in the first round.¹⁸ Each candidate received an equal share of leadership positions (chairpersons and secretaries). During the second round, 300 members of DECs were replaced upon candidate requests (218 for Ms. Tymoshenko and 82 for Mr. Yanukovich).

The DECs and PECs generally respected tight legal deadlines while coping with a heavy workload. Their decision-making was usually collegial and transparent. Nearly all commissions were co-operative and granted the OSCE/ODIHR EOM access to their sessions and documents. However, the lack of clear CEC guidelines for the DECs on certain issues affected the work of PECs. In the first round, the relative lack of knowledge of electoral procedures by election officials and their large size combined with the fact that sessions were

¹⁷ In case candidates taken together fail to nominate at least nine members to any commission, the CEC can staff the vacant positions with members nominated by the local administration.

¹⁸ Mr. Yanukovich re-appointed 895 DEC members, who had represented candidates Mr. Brodskyi (252), Mr. Ratushniak (240) and Mr. Protyvsikh (229) or other candidates in the first round; 317 of his members had not participated in the first round. Ms. Tymoshenko re-appointed 225 DEC members of whom 38 had represented candidate Suprun in the first round; 997 of her DEC members were new appointees.

not regulated by uniform rules of procedure at times led to chaotic sessions.¹⁹

Funding for the DEC's was delayed until one month after their formation. During this period, the DEC's functioned based on credit and members' own contributions. The lack of funds negatively impacted the activity of commissions.²⁰ While most DEC's and PEC's were satisfied with the level of support and co-operation provided by the local administration, some commissioners expressed dissatisfaction.²¹

In the first round, voting took place in 33,695 polling stations, including 1,497 special polling stations created in hospitals and prisons and 113 polling stations in diplomatic missions and military bases abroad. In the second round voting was conducted in 33,667 polling stations.

For the first round, some 814,000 PEC members were appointed, with an average of 45,000 per candidate; on average each PEC had 24 members (from maximum 36).²² Some 74 per cent of PEC members had previous election experience. While most DEC's followed the CEC instruction to use the *Vybory* system²³ to distribute leadership positions, some did so manually, by drawing lots or as a result of negotiations with candidate proxies.²⁴ In general the proportionality requirement was respected.²⁵

PEC formation in the first round was an ongoing process characterized by the frequent replacement of members, especially in leadership positions, due to members swapping their assignment to a polling station closer to their home or resigning for various reasons.²⁶ Some candidates nominated the same person to multiple PEC's, or both as a PEC member and an observer.²⁷ Some PEC's were not fully operational due to a lack of quorum or absence of chairperson due to resignation.²⁸

For the second round, both candidates nominated near the maximum number of PEC members permitted (534,260 out of a total of 539,360). The formation process went smoothly, with leadership positions divided equally and most PEC's operational before the formation

¹⁹ Observed in DEC's 22, 59, 147, 160, 172, and 176.

²⁰ DEC 160 for delivering the voter lists to PEC's due to a lack of transport; DEC 9, 163 and 164 for purchasing the PEC stamps; DEC 4 for printing or paying for the publication of documents.

²¹ PEC's do not have their own budget and relied on support from the local administration. For the first round, no heating was noted in DEC 206, no safe in DEC 4, no photocopier in DEC's 86 and 185, no Internet connection in DEC's 1 and 59. Similar problems were observed in DEC's 29, 57, 86, 91, 149, 168, 180, 184, 185, 186, 187, 188, 195, 212 and 225. A lack of heating or electricity affected PEC's in DEC's 4, 120, 197 and 210.

²² CEC data indicates that nine candidates had more than 60,000 nominees (candidates Tymoshenko, Yanukovych, Yushchenko, Brodskyi, Yatsenyuk, Tihipko, Ratushniak, Protyvskikh and Suprun). Four of them received fewer votes than the number of PEC members representing them.

²³ The *Vybory* online automatic data system is used for standardizing the transfer and data processing between DEC's and the CEC, namely to distribute leadership positions in the commissions, for financial purposes, as well as the transmission of preliminary election results.

²⁴ DEC's 86 and 101 had technical difficulties in accessing the *Vybory* system. DEC's 5, 22 and 197 distributed positions manually. DEC's 4, 6, 9, 100 and 205 drew lots, while DEC's 94, 99 and 135 negotiated distribution.

²⁵ Deviations were observed in DEC 173, where Ms. Bohoslovskaya, Ms. Suprun and Mr. Tihipko each received only two leadership positions, while Mr. Yanukovych received 39, Ms. Tymoshenko 38, and Mr. Yushchenko 33, despite a similar number of nominations.

²⁶ In DEC's 2 and 9, 40 per cent of the PEC members resigned; in DEC's 150 and 192, 30 per cent; in DEC 159, 25 per cent; in DEC's 1 and 104, 20 per cent.

²⁷ Observed in DEC's 4, 37, 39, 69 and 158.

²⁸ Lack of quorum affected 44 out of 176 PEC's in DEC 125; 10 of 83 in DEC 176; and 4 of 78 in DEC 106. No chairperson at 13 out of 229 PEC's in DEC 86.

deadline. Some 88 per cent of the PEC members had previous election experience.

The OSCE Project Co-ordinator in Ukraine (PCU) together with the CEC organized the training of DEC and PEC members in the first round.²⁹ Generally, the training sessions observed were evaluated as efficient, though at times the approach taken by trainers was more legalistic than practical. The video produced for the training erroneously indicated that PECs are not entitled to take a decision to add voters to the voter lists on election day.³⁰ This contributed to the overall confusion surrounding this issue. Some candidates organized separate training for their own PEC members and observers, at times distributing outdated or incomplete copies of the election law. For the second round, the CEC did not organize any training for the newly formed commissions. Some DEC members briefly trained the PECs when they received the voter lists and other materials at the DEC.

VI. VOTER REGISTRATION

For the first time in Ukraine's electoral history a unified, centralized and computerized State Voter Register (SVR) was established and voter lists were extracted from the recently completed SVR.³¹ Previously, voter lists were created anew for every election. The CEC is responsible for the register's content and maintenance. The SVR department of the CEC manages the software, technical support and security of the information on the register, while 755 RMBs throughout the country enter the data.³² Individual citizens may request inclusions, deletions or updates to any record, while regional branches of seven state agencies supply data updates to RMBs regularly.³³ RMBs remove duplicate records within their own territory; however, amendments involving multiple RMBs require a CEC decision.

The SVR database was compiled between February and August 2009 on the basis of voter lists used in the 2006 and 2007 elections. During the period of initial verification voters were sent a notice informing them about the details of their entry with a request to report on inaccuracies. Since activating the automated system, over 9 million modifications have been made, of which 687,513 were deletions of confirmed duplicate entries.³⁴ Some 234,778 voters were registered at a voting address different from their address of residence.³⁵

²⁹ The CEC and the OSCE PCU (<http://oscepcu.org>) produced a training video and comprehensive DEC (5,000 copies) and PEC (100,000 copies) manuals. Approximately 2,600 DEC and 80,000 PEC chairpersons, deputies and secretaries were trained.

³⁰ Art. 32.3 of election law states that "A citizen has a right to apply to a respective PEC... concerning the inaccuracies that occurred during the compilation of a preliminary voter list, including non-inclusion, incorrect inclusion or exclusion from the voter list". Art. 35.2.4 of the election law entitles PECs to add voters to the list by their own decision. However, this message was not uniformly passed to the PECs during training sessions. Furthermore, confusion arose due to a last minute court decision before the first round banning the provision in one DEC. Though the CEC clarified it did not apply to other DEC members, some candidates were actively spreading the message in polling stations, as if the ban applied countrywide.

³¹ The establishment of a permanent voter register was a long-standing OSCE/ODIHR recommendation. The Law on the State Voter Register came into force 1 October 2007.

³² The SVR contains data on the voters' name, place and date of birth, address of registration, election precinct and an indication of those who are homebound. The RMB with the Ministry of Foreign Affairs deals with the registration of voters abroad based on consular records and other data.

³³ The regional departments of the Ministry of Interior and of the Ministry of Justice report information on the general population, while other authorities report separately on military personnel, those incarcerated, the incapacitated, the homeless and the homebound.

³⁴ According to the SVR department, approximately 80 per cent of the 9 million modifications were minor changes (misspellings).

³⁵ The "address of choice" replaces the absentee ballot procedure. However, the voter lists at the place of

Voters have the right to challenge inaccuracies in the voter lists with a RMB, local court, DEC or PEC up to one hour before the closing of polls. Such a late deadline generally lowers the incentive for voters to check and correct their entries in the voter lists prior to election day. The election law provides for the registration of voters on election day. Within the period of observation the number of voters on the SVR increased by 236,088, which is less than 1 per cent of the total number of registered voters.

Voter lists for the first round were compiled in three phases as envisaged in the CEC clarification of 12 December 2009. Preliminary voter lists were extracted from the SVR database and sent to the PECs to be made available for public scrutiny from 28 December. Final voter lists were printed by 10 January and included corrections and updates submitted by citizens and institutions by that date. In the final phase, from 13 January until the end of the vote on 17 January, PECs introduced changes based on citizens' applications and the number of voters increased by some 666,000 or 1.8 per cent.³⁶

Increase in number of voters on the voter lists, first round.

| Voters on printed voter lists for the first round 10.01.2010 | Voters on the voter lists at the time of opening, 8:00 hrs., 17.01.2010 | Voters on the voter lists in the CEC result protocol, first round, 25.01.2010 |
|---|--|---|
| 36,302,473 | 36,578,590 | 36,968,041 |

Three categories of voters contributed to the increase in the final number: voters omitted during previous periodic revision of the register, voters included into special polling stations voter lists³⁷ and members of PECs serving outside their home precinct who were appointed late.³⁸

Before the compilation of the voter lists for the second round, the CEC decided that updates introduced by the PECs during the first round should be included in the new voter lists.³⁹ The late adoption of the CEC clarification prevented the implementation of the decision.⁴⁰ Two copies of the new voter lists for the second round were printed and delivered to the DEC by 29 January and were made available for public scrutiny.

residence do not contain any indication about the voters who registered at the different address. Such voters may potentially vote at both addresses.

³⁶ There were discrepancies between the legal and technical deadlines. According to the law, institutions could submit updates for the first round until 10 January, while the SVR database was technically closed for updates by 9 January. In the second round, PECs were to facilitate public scrutiny of voter lists in polling stations before the deadline for the appointment of PECs expired.

³⁷ The CEC clarification stipulates that voters included in special polling station voter lists at hospitals and prisons should be deleted from the voter list at the precinct where they reside. This also applies to PEC members serving and therefore voting at a precinct away from home. The tight deadline for compiling the voter lists in hospitals and the late replacements of appointed PEC members allowed for only partial implementation of this provision.

³⁸ Certain number of voters was added to the voter list on election day though their names were in fact present in the list. PEC members were not able to trace the address so voters were asked to come back with a court decision. Though the total number of such cases is likely to be small, media reported a number of such high profile cases.

³⁹ CEC decisions of 19 January 2010 on clarification on the compilation of voter lists and of 1 February 2010 on clarification on the rules for updating the voter lists.

⁴⁰ Only partial data was reported from 20 out of 225 DEC. Cases that needed confirmation from the Ministry of Interior remained largely unaddressed due to time constraints.

The number of voters included in the voter lists in the second round increased for the same reasons as during the first round.

Increase in number of voters on voter lists, second round.

| Voters on the printed voter lists for the second round 29.01.2010 | Voters on the voter lists after the opening of the polls as of 11:00 hrs., 07.02.2010 | Voters on the voter lists at the CEC result protocol, second round, 14.02.2010 |
|--|--|--|
| 36,518,290 | 36,566,335 | 37,051,449 |

The accuracy of the voter lists is dependent on voter feedback and the quality and timely submission of data to the SVR by the institutional suppliers. Further improvement of the SVR therefore needs to focus on improving capacity and procedures in the institutions that supply data. The Ministry of Interior (MoI) passport departments may have been a potential source for slow processing of requests, as most still only maintain hard copy files of their data.

The number of voters indicated as homebound in the SVR database remained stable: 750,104 voters in the first to 764,533 voters in the second round. An additional 462,448 voters in the first round and 662,759 in the second applied for inclusion into the homebound voter lists with the PECs. In the second round, the total amount of homebound voters was 1,427,299 or 3.89 per cent of the electorate.⁴¹ Of these, some 1,379,474 homebound voters cast their ballots using the mobile boxes. CEC data shows there was considerable regional variation in homebound voting, with the lowest number of ballots cast in Kyiv city (1.56 per cent) and the highest in Chernihiv oblast (9.92 per cent).

VII. CANDIDATE REGISTRATION

Candidate registration started on 20 October and concluded on 13 November 2009. The registration process was inclusive and resulted in a diverse field of candidates representing alternative political views and offering a genuine choice to voters. In order to be registered, each presidential candidate had to submit a comprehensive list of documents to the CEC, along with a financial deposit of 2.5 million UAH (approximately 227.300 EUR). As per law, the deposit was only refunded to the two candidates who qualified for the second round.⁴²

Within the legal deadlines, the CEC registered 18 candidates: Inna Bohoslovska, independent; Mykhailo Brodskyi, independent; Anatoliy Hrytsenko, independent; Yuriy Kostenko, Ukraine People's Party; Volodymyr Lytvyn, People's Party; Oleksandr Moroz, Socialist Party of Ukraine; Oleksandr Pabat, independent; Vasyl Protyvsikh, independent; Serhiy Ratushniak, independent; Oleh Riabokon, independent; Lyudmila Suprun, People's Democratic Party; Petro Symonenko, Bloc of Left and Left of Centre Parties; Oleh Tiahnybok, All-Ukrainian Union – Freedom; Serhiy Tihipko, independent; Yulia Tymoshenko, All-Ukrainian Union – Motherland; Viktor Yanukovich, Party of Regions; Arseniy Yatsenyuk, independent; Viktor Yushchenko, independent.

The CEC rejected 50 out of the 68 nominees who applied for registration, mainly based on improper documentation or a failure to submit the deposit. Eighteen individuals challenged their rejections in the KACA; all complaints were rejected.

⁴¹ In the first round, the same figures were 1,212,552 or 3.28 per cent.

⁴² The law is silent about the return of deposits should a second round not be required.

VIII. ELECTION CAMPAIGN

A. CAMPAIGN

Overall, the campaign presented voters with a broad range of political views. Candidates campaigned freely throughout the country, holding rallies, using billboards and posters, setting up tents and distributing leaflets. The campaign was generally low-key, and the atmosphere remained mostly calm. The OSCE/ODIHR EOM observed a total of 110 election rallies around the country.

Towards the end of the campaign in both rounds, the leading candidates traded mutual accusations and the campaign atmosphere became strained and characterized by suspicion and mistrust.⁴³ This polarization was more of a personal nature rather than politically substantive.

The intense political struggle between the frontrunners negatively affected state institutions that played a role in the election. The politicization of these institutions jeopardized their impartiality and their role in providing checks and balances in the process. Anticipating a second round, both frontrunners indicated that they expected their respective opponent to engage in large-scale fraud during the run-off.⁴⁴ In this context, both sides entered a political struggle around the leadership of the printing house “*Ukraina*”, where ballot papers were to be printed. On 25 January, masked individuals seized the printing house; however, troops from the MoI eventually took control of the building.⁴⁵ Following this event, the parliament dismissed the Minister of Interior, but just a few hours later the Cabinet of Ministers reappointed him as Acting Minister of Interior.

The parliament became engulfed in this polarized struggle when amendments to the election law were adopted two days prior to the second round vote.⁴⁶ Both candidates used the amendments, one claiming that they would undermine any chance of holding a democratic election and the other, on the contrary, that they would salvage the process.

With the atmosphere worsening, campaign materials including defamatory language appeared. Two first round candidates used xenophobic and anti-Semitic rhetoric in their campaign.⁴⁷ In the second round, anonymous leaflets with anti-Semitic content targeting Ms. Tymoshenko were circulated in Rivne, Lutsk and Mykolaiv oblasts. While such forms of expression remained clearly at the margins of the campaign, no clear public statements by other candidates or the political leadership of the country were made condemning them.⁴⁸

On the eve of the second round, the judiciary came under pressure from the General Prosecutor’s Office and the High Judicial Council, when several investigations into election-related rulings of the Kyiv Administrative Court of Appeals (KACA) were initiated. Judges

⁴³ Three cases of arson targeting Yanukovych campaign premises in Zaporizhzhia, Ivano-Frankivsk and Poltava, and a burglary of a Tymoshenko campaign office in Dnipropetrovsk were reported during the first round.

⁴⁴ There were unproven claims that 1.5 million extra ballots were to be printed illegally.

⁴⁵ The State Security Service subsequently monitored the printing, storage and distribution of ballot papers. The OSCE/ODIHR EOM has no indication that any illegal ballot papers were printed.

⁴⁶ The amendments were introduced after allegations were made that Ms. Tymoshenko would withdraw her PEC or DEC members, thus depriving the commissions of a quorum and disrupting the election.

⁴⁷ Candidate Tiahnybok conducted a xenophobic campaign, while Mr. Ratushniak made anti-Semitic accusations against another candidate.

⁴⁸ Paragraph 40 of the Copenhagen Document obliges the OSCE participating States to clearly and unequivocally condemn anti-Semitism and xenophobia.

were “invited” to the prosecutor’s office to explain their decisions on cases where Mr. Yanukovych’s claims were rejected and proposals were made by the High Judicial Council to dismiss five of the judges for violating their oath.

During both rounds, Ms. Tymoshenko misused administrative resources for campaigning, thus blurring the line between her roles as candidate and state official and skewing the playing field in her favour.⁴⁹ For instance, while campaigning, Ms. Tymoshenko distributed land certificates, ambulances or school buses.⁵⁰ The KACA and the CEC each issued one warning to Ms. Tymoshenko for violating the election law in this respect.⁵¹

Prior to the first round and in violation of the campaign regulations, the governmental Pension Fund of Ukraine sent official letters to all pensioners, explaining that the law sponsored by the opposition Party of Regions would not raise pensions to the extent they claimed. The letter then explained that the current government, led by Ms Tymoshenko, was able to preserve the increase even during the economic crisis and promised further increases in 2010. There was also a letter sent to depositors of Rodovid Bank, recently nationalized, which contained campaigning on behalf of Ms. Tymoshenko. This blurred the distinction between state and political party that is prescribed by paragraph 5.4 of the 1990 OSCE Copenhagen Document.

B. CAMPAIGN FINANCING

The election law does not adequately regulate campaign financing. Campaign funds may be established from candidates’ private funds, funds donated by the party or bloc that nominated the candidate and from voluntary contributions from individuals; importantly, independent candidates may not receive donations from political parties. A party may finance campaigning only of its own candidate. These contributions are unlimited, while individual donations are limited to 350,000 UAH (around 31,600 EUR). Donations from anonymous sources, foreign citizens and legal entities are not permitted.

The reporting requirement for campaign financing is inadequate as it does not require any public reporting until after the election, thus denying voters this information while making their decision. The candidates should submit a financial report about the receipt and use of funds to the CEC not later than on the fifteenth day after election day.⁵² The law, however, does not stipulate what should be included in the financial report, leaving it to the CEC to decide the form and the content of the report.

According to data published by the CEC, the 16 candidates defeated in the first round collectively spent a total of 380 million UAH (around 34.6 million EUR) for campaigning. The two second round candidates spent a total of 612.5 million UAH, or 55.7 million EUR, for both rounds (29.3 million EUR for Mr. Yanukovych, 26.4 million EUR for Ms. Tymoshenko). While the eight first round candidates nominated by a party or bloc could transfer unused funds back to party accounts, the State Budget of Ukraine absorbed unused

⁴⁹ This practice runs contrary to paragraph 7.6 of the 1990 OSCE Copenhagen Document.

⁵⁰ The OSCE/ODIHR EOM observed the distribution of ambulances or school buses on 24 January in Cherkasy, on 27 January in Khmelnytsky and on 28 January in Kherson; on 16 December the OSCE/ODIHR EOM observed Ms. Tymoshenko presenting land certificates to village councilors in the Kyiv region.

⁵¹ The CEC on 24 December 2009 and the KACA on 27 January 2010.

⁵² The CEC and the banking institution in which the campaign fund account was opened shall exercise control over the receipt, records and use of funds from the campaign funds according to the procedure established by the CEC jointly with the National Bank of Ukraine.

funds from the ten candidates who ran as independent and thus were not entitled to any reimbursement.⁵³

IX. MEDIA

A. LEGAL FRAMEWORK FOR THE MEDIA

Three interrelated rights are essential for the media coverage of elections: the right of voters to receive comprehensive and diverse information about political alternatives; the right of all contestants to have unimpeded access to the media on a non-discriminatory basis; and the freedom of the media to spread information without undue interference by government officials or by any other subjects, including media owners.

A specific chapter in the election law regulates campaigning in the media and by other means. While provisions of this law provide candidates with direct access to media through paid and free air time, few articles exclusively refer to editorial coverage of the campaign in the media. Key aspects on how to cover the campaign in the media remain unclear, allowing candidates to interpret the law to their benefit. The election law prohibits state and municipal mass media from giving preference to candidates in any form. It is not explicit in requiring broadcast media to follow widely accepted principles of a fair, balanced and impartial coverage of the election process. The coverage of candidates in news and current affairs programs, as well as the allocation of air time to candidates in these programs, is inadequately addressed by the legal framework.

The media lack clear guidance on the issue of covering candidates holding official positions. Media monitoring results of campaign coverage within newscasts have revealed different approaches in how TV stations determined when a candidate was acting in an official capacity versus as a candidate; the same event was presented on one TV station as campaigning, in another one as regular news. This had a significant impact on the total amount of air time devoted to campaign coverage in newscasts for candidates with institutional roles. The lack of clear guidance in the election law encouraged candidates with official roles to label campaign activities as official functions to gain unfair additional media coverage.⁵⁴

Paid advertising in broadcast media is permitted in Ukraine and there is no limit on the amount of paid political advertising that is only constrained by the candidate's financial resources. This contributed to an uneven playing field⁵⁵ that was partly compensated by the allocation of free airtime to all candidates regardless of their financial resources. The state-owned TV station *UTI* offered free air time and debates to all presidential candidates, as required by law. The impact may however have been limited by the low viewership of *UTI* and the fact that five leading candidates refused to participate in the TV debates during the first round.⁵⁶ During the second round, Mr. Yanukovich declined to participate in a scheduled

⁵³ This provision has been criticized in the Venice Commission and OSCE/ODIHR Joint Opinion, see point 51.,

⁵⁴ Article 58.3 states that official notices during the election process (which are not of a campaign nature) about the activities of candidates carrying out their official duties shall not be considered part of the pre-election campaign. The law does not define "campaign nature".

⁵⁵ During the monitored period in the first round from 4 December – 15 January, 10 of 18 candidates purchased air time for political advertising on monitored by OSCE/ODIHR EOM TV stations with nation-wide coverage.

⁵⁶ Mr. Lytvyn, Ms. Tymoshenko, Mr. Yanukovich, Mr. Yatsenyuk and Mr. Yushchenko.

debate with Ms. Tymoshenko.

The National Broadcasting Council (NBC) is the only regulatory authority for the electronic media. It is the supervisory body vested with the resources and mandate to oversee the electronic media during the election, but is not empowered to provide effective remedies or impose sanctions when media-related violations occur. According to the election law, the implementing body for the election period with regard to media issues is the CEC; however, it referred media related complaints to the courts. Furthermore, the NBC did not report to the CEC on a regular basis, which would have enabled the CEC to act when the NBC recorded a violation, regardless of whether the CEC received any complaints.

B. MEDIA ENVIRONMENT

The media environment is pluralistic with a high number of electronic and print media outlets operating in a limited and shrinking advertising market. TV stations relied on subsidies from business interests aligned with candidates. Candidates had direct access to the content of newscasts based on an agreement between the candidate and the TV station's management.⁵⁷ This practice, rather than professional considerations of newsworthiness, determined which candidates received coverage in the news. This undermined the fundamental principles of fairness, balance and impartiality in the news, in contradiction with professional ethics and international principles.⁵⁸ Furthermore, the pattern of politicians paying to appear in news and current affairs programs negatively impacted the pluralism displayed by the electronic media and clearly breached articles 5.3 and 59.1.c of the Law on Radio and TV Broadcasting, which requires broadcasters to disseminate unbiased information and prohibits owner interference in the professional activities of broadcasters.

Public service broadcasting could supplement the market driven by the private broadcast sector in order to ensure pluralism.⁵⁹ Attempts to establish a public service broadcaster have thus far failed.⁶⁰

C. OSCE/ODIHR EOM MEDIA MONITORING

The above mentioned concerns regarding candidate coverage were substantiated in the quantitative and qualitative monitoring results during nationwide prime-time newscasts from 4 December to 15 January and from 26 January to 5 February.⁶¹ During these periods most TV stations with nation-wide coverage favored Ms. Tymoshenko and Mr. Yanukovych in their newscasts. This was seen both in terms of the amount of air time devoted to covering their campaign and the tone of the coverage.

The state-owned TV station *UTI* failed to provide balanced and impartial coverage, as

⁵⁷ Editors-in-chief reported this practice as widespread and frequent in other formats, such as current affair and political discussion programs as well.

⁵⁸ See Recommendation 15 (2007) of the Committee of Ministers of the Council of Europe to member states on measures concerning media coverage of election campaigns. See also The Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression, no. 190, December 2002, which state that it is the responsibility of media owners to respect the right to freedom of expression and, in particular, the editorial independence of journalists.

⁵⁹ Public service media is considered a publicly accountable source of information and has a particular responsibility to ensure the fair, balanced and thorough coverage of elections.

⁶⁰ An attempt to transform *UTI* into a public service broadcaster failed in parliament in July 2009.

⁶¹ The OSCE/ODIHR EOM monitored the TV stations *Channel 5*, *ICTV*, *Inter*, *Ukraina TV* and *UTI*.

stipulated by law. In the second round, *UTI* devoted 65 per cent of the campaign coverage⁶² in newscasts to Ms. Tymoshenko, while Mr. Yanukovich received 35 per cent coverage.⁶³ *Channel 5* significantly favored Ms. Tymoshenko by devoting 66 per cent of its campaign coverage to her.⁶⁴ *Ukraine TV* displayed a bias in favor of Mr. Yanukovich, devoting 63 per cent of campaign air time to him.⁶⁵ While *Inter* showed a more balanced approach, *ICTV* devoted more campaign coverage to Mr. Yanukovich due to the fact that its news did not distinguish coverage between Ms. Tymoshenko's institutional role and her role as a candidate.⁶⁶ The OSCE/ODIHR EOM monitoring also revealed that in the last three days of the second round election campaign the monitored TV stations devoted significantly more air time to Mr. Yanukovich.

Regional media monitoring results showed a bias displayed in favor of the regional political force in power.⁶⁷

Although the election law prohibits the two state-owned newspapers *Holos Ukrainy* and *Uryadoviy Kuryer* from giving preference to candidates, the latter displayed a clear bias in favor of Ms. Tymoshenko.

X. COMPLAINTS AND APPEALS

The right to challenge decisions, actions or inactions of election commissions and other actors involved in the electoral process is granted to all electoral subjects.⁶⁸ Depending on its type, a complaint may be filed with a DEC, the CEC or a court at the complainant's discretion.

Decisions, actions or inactions of a PEC are contested in a DEC or in the administrative court in the locality of the PEC. Decisions, actions or inactions of a DEC are contested at the CEC or in the district administrative court in the locality of the DEC. Decisions, actions or inactions of the CEC are challenged at the KACA. All disputes concerning final election results are contested in the High Administrative Court and its decisions are final.⁶⁹ In the

⁶² The figures in this section refer to candidates' campaign coverage, excluding candidates' coverage of institutional duties.

⁶³ During the monitored period in the first round *UTI* devoted 30 per cent of the total campaign coverage in newscasts to Ms. Tymoshenko and 28 per cent to Mr. Yushchenko. Mr. Yanukovich received 8 per cent of the campaign coverage in newscasts on *UTI*.

⁶⁴ *Channel 5* devoted 25 per cent to Ms. Tymoshenko and 25 per cent to Mr. Yushchenko respectively, while Mr. Yanukovich received 12 per cent of the total air time devoted to campaign coverage within newscasts during the monitored period before the first round.

⁶⁵ In the first round, *Ukraine TV* devoted 37 per cent of its campaign coverage to Mr. Yanukovich.

⁶⁶ This confirms that newsworthiness is not the only criteria for providing coverage and that the practice on how to cover candidates with institutional roles differed among TV stations. When taking institutional and campaign coverage into account, *ICTV* displayed a more balanced approach.

⁶⁷ The OSCE/ODIHR EOM monitored the regional TV stations *Donetsk ODTRK* and *Channel 27* (Donetsk), *Odesa ODTRK* (Odesa), *Lviv ODTRK* and *UT3 Zakhid* (Lviv), and *DTRK Krym* and *TRK Chernomorskaya* (Crimea). TV stations *Donetsk ODTRK* and *Channel 27* displayed a significant bias in favor of Mr. Yanukovich and devoted 67 and 76 per cent air time within their newscasts to him. In Lviv, the private *UT3 Zakhid* favored Ms. Tymoshenko with more than 90 per cent total news coverage devoted to her, while the state regional channel showed a balanced approach. *DTRK Krym* slightly favored Mr. Yanukovich with 54 per cent news coverage devoted to him.

⁶⁸ Presidential candidates, parties (blocs) that are subject of election process, election commissions, as well as voters whose rights have been violated can file complaints.

⁶⁹ Even though the law stipulates that a decision of the HAC on election results is final and cannot be appealed, the constitutional court can still hear complaints concerning election results if they concern constitutional issues or the interpretation of the law.

event that the same complaint is filed with both the election commission and the courts, the election commission suspends consideration until the court decision comes into force.

A. THE COURTS

Two internal disputes arose involving the administrative courts during the election period. The first was between the KACA and the HAC regarding the number of judges that should hear election disputes in the KACA.⁷⁰ The HAC took the position that election disputes must be heard by a panel of three judges, the KACA took the position that only one judge was necessary. The ongoing dispute caused confusion and resulted in several KACA decisions being annulled by the HAC due to only one judge hearing the cases.⁷¹

The second dispute concerned the head of the HAC. The term of the incumbent, Mr. Pasenyuk, expired on 24 December and some believed the deputy head should have taken over as acting head until a legal nomination process for the position was created. The issue became politicized towards the end of the election period, as each candidate sought to gain an advantage in court. The Judicial Council voted to re-nominate the incumbent head of the HAC, but the Supreme Court publicly challenged this authority and called for a new head to be nominated.⁷² For the purposes of hearing the challenge to the election results filed by Ms. Tymoshenko, an agreement was reached that Mr. Pasenyuk would act as head of the court.

The majority of the decisions on election-related complaints were made by the administrative courts. They adjudicated cases in a timely, efficient and transparent manner; adhering to the two-day timeframe for deciding cases. Most complaints involved challenges to CEC decisions on procedural or administrative matters and very few dealt with alleged campaign violations by the candidates. The KACA and HAC acted in a transparent manner and provided access to the majority of documents required by the OSCE/ODIHR EOM. However, many of the regional administrative courts did not provide access to relevant documents.

Twenty-one cases were filed with the KACA after the first round concerning violations of the campaign silence period imposed by the election law. All but one were rejected on technical grounds, the other was rejected for failing to state a specific violation of an affected right. No complaints were filed challenging the first round results.

B. CEC AND DECS

In general, the CEC did not address complaints in a transparent manner and responded to most of them without making a formal decision, thus denying access to effective remedies.⁷³ According to the CEC, 260 complaints were filed before 7 February and 22 resolutions were adopted. The remaining complaints were rejected or answered by letter because they did not

⁷⁰ The dispute concerns the interpretation of Articles 23 and 24 of the Administrative Procedure Code.

⁷¹ The judges reached an agreement that only one judge needs to hear disputes in the KACA and a panel of three judges would hear the cases in the HAC.

⁷² The Constitutional Court ruled that the Judicial Council did not have the authority to appoint the new head and further stated that none of those who claimed to be the head had the authority under the current legislation. The Court urged the parliament to resolve the issue. Mr. Pasenyuk, whose term expired, was supported by the PoR, General Prosecutor's office, and Presidium of the HAC. The first deputy of the HAC, Mr. Sirosh, was supported by the BYT, KACA, Supreme Court, Association of Judges and Council of Judges.

⁷³ See Paragraph 5.10 of the 1990 OSCE Copenhagen Document "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".

comply with the technical requirements for filing a complaint or were submitted too late. The short timeframe for filing election-related complaints was a continuing problem and resulted in many complaints being rejected outright. The CEC's strict interpretation of the requirements for filing complaints was problematic and led to many complainants not being heard.

The CEC and some DEC's appeared to place administrative hurdles in the way of complaints being heard.⁷⁴ This abdication of responsibility for resolving complaints meant that most substantive complaints were resolved by the courts. On several occasions the courts ordered the CEC to act on complaints that they ignored totally or answered in an informal manner.

The DEC's mostly dealt with complaints about the procedures for conducting the elections. According to OSCE/ODIHR EOM observations, very few complaints were filed concerning campaign activities. Topics of the complaints filed included the borders of electoral precincts not being delineated on time, DEC chairpersons not notifying members of meetings and mistakes in PEC membership applications. The lack of procedural rules for dealing with complaints at the DEC and PEC level sometimes led to chaotic hearings and a lack of uniformity in resolving complaints.

Due to the large margin between the top two candidates and the rest in the first round, very few complaints were filed concerning the conduct or results of the first round. Several candidates' campaigns informed the OSCE/ODIHR EOM that there was an informal agreement not to file complaints against each other concerning campaign activities in the first round.

C. LAW AND ORDER

Through the election period, the Prosecutor General and regional prosecutors received over 2,000 applications.⁷⁵ The majority was filed by party representatives, yet some were initiated by election commission members or voters. Among them were cases concerning campaign violations, bribery of voters, irregularities in compiling voter lists, abuse of office by state authorities, counterfeit campaign materials and three arsons of campaign offices. Fifty cases were initiated on criminal offences and disciplinary proceedings were issued in three of them, while five cases were sent to the courts.

The MoI registered over 150 election-related violations before the first round election day. They included violations for hooliganism, campaign material published in violation of the law, arsons, bribery of voters, loss or theft of an official PEC stamp and damage of property. On the second round election day, 364 reports of election-related violations were registered. The majority came from the Donetsk and Kharkiv oblasts, Crimea and city of Kyiv. There were 59 cases of public disorder, 44 cases of illegal campaigning, 28 attempts to smuggle ballots out of polling stations, 26 cases of pens with vanishing ink found in voting booths, 16 cases of bribery of voters and 12 bomb threats. The MoI initiated six criminal cases. They found no systematic violations, which might have influenced the will of voters or infringed upon the electoral process.

⁷⁴ For example, delaying the publication of decisions, the provision of documents necessary for filing complaints, and delaying notifying the complainant that a response existed until the day of the deadline.

⁷⁵ Data provided by the Prosecutor's office covering the election period from its start to 22 February 2010.

XI. PARTICIPATION OF WOMEN

The Constitution and the Law on Ensuring Equal Rights and Opportunities of Women and Men (hereafter, the equal opportunity law) provide for a solid legal basis to secure equality between women and men in public and political life.⁷⁶ The equal opportunity law encourages the adoption of affirmative action; however efficient mechanisms for its implementation and enforcement are not fully in place.

Women are underrepresented in the legislature, with only eight per cent female representation in the current parliament. Ukraine has committed itself under the UN Millennium Development Goals to achieve a minimum 30 per cent of either gender represented in legislative and executive offices by 2015.⁷⁷ Within the election administration, women were generally well represented. At the CEC, 4 out of 15 members are women, including one of the two deputy chairpersons and the secretary. Of the 225 DEC, women chaired 44 and 41 percent of the DEC in the first and second rounds respectively and headed two thirds of the PECs visited by IEOM observers on election day.

Three women among the 18 registered presidential candidates contested the first round. The incumbent prime minister was the first woman to enter the second round of a presidential election. While negative campaigning by the presidential candidates was frequent, Mr. Yanukovich made gender stereotyped comments about his opponent.⁷⁸

XII. PARTICIPATION OF NATIONAL MINORITIES

The majority of Ukraine's 48 million citizens is ethnic Ukrainian (77.8 per cent), while Russians form the largest minority (17.3 per cent). The remaining five per cent of the population is composed of smaller minorities including Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles, Jews and Roma.⁷⁹

Full enjoyment of all the political and social rights by minorities, including political participation, as well as equality between citizens is guaranteed by law and further safeguarded by international commitments.⁸⁰ Ukraine is party to both the Council of Europe Framework Convention for the Protection of National Minorities (ratified in 1998) and the European Charter for Regional or Minority Languages (ratified in 2006).⁸¹

⁷⁶ Article 24 of the Constitution, and articles 15 and 16 of the Law on Ensuring Equal Rights and Opportunities of Women and Men.

⁷⁷ Goal 6, target 6.1, Human Development Report Ukraine, UNDP 2008.

⁷⁸ When declining to meet Ms. Tymoshenko in a televised debate, during a rally held in Kharkiv on 21 January and observed by the OSCE/ODIHR EOM, Mr. Yanukovich stated: "I personally think that she, as a prime minister has to bear responsibility for her word. If she is a woman, she should go to kitchen and show her whims there."

⁷⁹ Official figures from the 2001 census. Unofficial estimates mark the number of Roma citizens at 250,000-300,000 and the actual figure for Jews is several times higher than the official figure of 103,000 as well.

⁸⁰ Articles 11 and 24 of the Constitution; Articles 1, 6, 8, 9 and 14 of the Law on National Minorities; UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

⁸¹ In Ukraine, the provisions of the European Charter for Regional or Minority Languages apply to the languages of 13 national minorities: Belarusian, Bulgarian, Crimean Tatar, Gagauz, German, Greek, Hungarian, Jewish, Moldovan, Polish, Russian, Romanian and Slovak.

In the most recent census, 67.5 per cent of the population declared Ukrainian as their mother tongue, while 29.6 per cent named Russian. As official voter information and election material was available only in Ukrainian, an insufficient command of Ukrainian may have formed an obstacle for minority voters to gain full access to election related information.⁸² On a positive note, some candidates produced campaign material in minority languages in order to reach out to those communities.⁸³ Mr. Yanukovych signed an agreement prominently addressing the right to use minority languages with three non-governmental organizations representing Hungarian, Romanian and Russian speaking minorities.

A number of Roma voters may have been disenfranchised due to a lack of proper identification documents.⁸⁴ According to the OSCE/ODIHR EOM interlocutors, due to their general vulnerability, poverty, social exclusion and often a lower level of education, Roma voters became easy targets for attempts of undue influence, including vote-buying or other forms of pressure. Some interlocutors brought to the attention of the OSCE/ODIHR EOM that there were few cases of candidate representatives contacting Roma community leaders, including making offers to buy their vote, however no candidate addressed Roma issues in the campaign.

Crimean Tatars are indigenous to Crimea, where they constitute about 13 per cent of the population and number some 165,000 voters. After not specifically endorsing any one candidate in the first round, the Mejlis (Council) of the Crimean Tatar People called on the Crimean Tatar voters to vote for Ms. Tymoshenko in the second round.⁸⁵ The Crimean Tatars are pursuing the status of an indigenous nation with their respective means of representation.⁸⁶

XIII. DOMESTIC AND INTERNATIONAL OBSERVERS

The election law provides for domestic observers from political parties, as well as observers from foreign states and international organizations but does not include provisions for non-party domestic observation by civil society organizations in a presidential election, contradicting paragraph 8 of the 1990 OSCE Copenhagen Document.⁸⁷ As in past presidential elections, such observers registered as journalists to cover the electoral process in a manner similar to that of accredited observers.⁸⁸ During the 2010 presidential election the DEC's registered approximately 160,000 candidate and party observers. The CEC accredited 3,449

⁸² Several international instruments and guidelines for minority protection refer to the right to use or have access to information in minority languages in the electoral process. The UN Human Rights Committee, for example, recommends that "information and materials about voting should be available in minority languages", see General Comment 25 on Article 25 of the ICCPR. The OSCE/ODIHR Guidelines to Assist National Minority Participation in the Electoral Process recommend that "steps should be taken to ensure that persons belonging to a national minority are made aware in their language of their rights..."

⁸³ The OSCE/ODIHR EOM noted campaign material produced in Crimean Tatar, Hungarian, Romanian and Russian languages.

⁸⁴ According to the Ombudsman's estimates 50 per cent of the Roma in Zakarpattia do not possess proper ID.

⁸⁵ Appeal from the Crimean Tatar Mejlis on 22 January 2010 determined that Ms. Tymoshenko had the most favorable program for their group. While the Kurultay (Grand Assembly) and Mejlis have no officially recognized status, they are widely considered as legitimate organs of the Crimean Tatar nation.

⁸⁶ The status of indigenous people is stipulated in article 11 of the Constitution, but no minority has yet been assigned this status.

⁸⁷ The Law on Elections of People's Deputies contains provisions on domestic non-party observation.

⁸⁸ Journalists do not have the right to receive a copy of the protocol in polling stations.

international observers from international governmental and non-governmental organizations as well as individual states.

XIV. ELECTION DAYS

A. OPENING AND VOTING

Voting was conducted in an orderly, professional and transparent manner across the country on both election days. Commission members managed the process in an efficient manner without serious violations or incidents.⁸⁹ In the first round, one in six polling stations visited opened with minor delays, mainly due to protracted opening procedures. Significant delays were noted in a few polling stations due to the unauthorized and incorrect use of stamps showing a candidate had withdrawn on ballots (Sumy oblast) or a lack of quorum (Kyiv oblast).⁹⁰

The overwhelming majority of IEOM observers positively reported on the polling stations they visited. Observers assessed the voting process as 'bad' in just two to three per cent of visits in both rounds. This positive evaluation was noted across the country with negligible variation between the regions or rural and urban areas. However, voting at special polling stations (prisons and hospitals) was assessed less positively.⁹¹

In both rounds, the PECs were observed consistently checking voter identification and signing the ballots. Observations of family or group voting dropped from five to two percent between the rounds and proxy or multiple voting was not observed in the second round at all. In three cases during the first round voters were observed taking photos of their ballot inside the voting booth, which could indicate a vote buying scheme.⁹² IEOM observers noted only minor problems with the secrecy of the vote. The smaller ballots used in the second round were often left unfolded by the voters, thus not fully protecting the secrecy of the vote.

During the second round, IEOM observers noted several allegations of pens with disappearing ink being placed in the voting booths.⁹³ Observers also noted that DEC's were inconsistent in their decisions of whether or not to count ballots allegedly completed with such pens.⁹⁴

The IEOM noted problems in both rounds with voters finding their names on the voter lists.⁹⁵

The large presence of domestic and international observers during polling enhanced the transparency of the process. Party or candidate observers were present in 9 out of 10 polling

⁸⁹ On 7 February voting was briefly interrupted in polling stations 88, 95, 120 and 121 within DEC 111 following bomb threats. In DEC 134, polling station 54 changed location due to a lack of heating. The secretary of PEC 26 in DEC 85 was found deceased outside the polling station in the morning, presumably after suffering a heart attack.

⁹⁰ On 17 January, 20 polling stations in DEC 91 (Bila Tserkva) opened after 12:00 hrs.

⁹¹ Voting in special polling stations visited during the two rounds was assessed as negative in two and seven per cent respectively. IEOM observed voting in 109 special polling stations in the first round and 96 special polling stations, in the second round.

⁹² Observed in polling stations 24 in DEC 221, 16 in DEC 217 and 13 in DEC 36.

⁹³ This included polling station 45 and 56 in DEC 92, and polling station 320 in DEC 42.

⁹⁴ In both DEC 91 and 198 decisions of whether to accept protocols where such pens were allegedly used were inconsistent; in some cases a recount was ordered examining the "blank" ballots, in others the original PEC decision was accepted.

⁹⁵ In 14 per cent of polling stations visited during the first and 12 per cent during the second round.

stations visited, and observers from civil society in 4 out of 10. Unauthorized persons were noted in 5 and 6 percent of polling stations visited in the first and second round respectively, at times interfering or directing the work of the PECs.⁹⁶

B. VOTE COUNT

The IEOM observed the vote count in 196 polling stations across the country in the first round and in 220 polling stations in the second round and rated it positively, with negative assessments from only 8 polling stations in the first and 13 in the second round and no regional disparity. All polling stations visited closed on time and voters waiting inside were allowed to vote.

Generally, procedures to safeguard the integrity of the count were implemented properly and commission members displayed a good understanding of the procedures. Procedural errors observed during the count did not appear to have an impact on the process.⁹⁷ Counting was transparent and nearly always attended by observers.⁹⁸ Questions concerning the validity of the ballots cast were mostly decided upon in a consistent manner.⁹⁹ While unauthorized persons were at times present, they were not observed interfering in the counting process. In most polling stations visited, observers received a copy of the results protocol upon request.

Contrary to the law, results were not put on display in 11 per cent of the polling stations visited in the first and 7 per cent in the second round. In almost all cases observed, the protocol was taken directly to the DEC by the required number of PEC members and the chair.

C. TABULATION

Overall, the IEOM evaluated the handover and tabulation of results protocols positively in both rounds.¹⁰⁰ In the first round the tabulation was assessed as ‘good’ or ‘very good’ in 89 per cent of DEC visits and ‘bad’ in 10 per cent. In the second round, the respective figures were 90 per cent and 8 per cent. In a few DEC visits the process was poorly organized and at times chaotic. IEOM observers noted overcrowding in some DEC visits due to small premises.

The IEOM noted fewer logistical and procedural problems at the DEC visits in the second round. The number of PEC members observed correcting protocol figures without a PEC session as required by law dropped from seven to four per cent between the rounds. In the first round the DEC visits ordered a few recounts and invalidated the results from two PECs.¹⁰¹ While the number of complaints attached to PEC protocols was generally low, dissenting opinions to the PEC

⁹⁶ Reports of undue interference by unauthorized persons increased from 1 incident to 11 between rounds.
⁹⁷ Observers noted that procedural steps were not sequential in 14 per cent of the polling stations visited in the first round and 19 per cent in the second. Protocol forms were pre-signed by PEC members in 11 and 8 per cent respectively, and the revising of protocol figures observed in 12 and 6 per cent.

⁹⁸ Party domestic observers were present in every polling station observed. In the second round non-party observers were noted at 31 per cent of the counts observed, an increase from 11 per cent in the first round.

⁹⁹ Ballots missing the signature of the PEC member who issued them were not handled consistently. In the few cases observed during both rounds, some PECs voted to accept such ballots as valid, while other PECs followed the letter of the law and counted them as invalid.

¹⁰⁰ Out of the 225 DEC visits, the IEOM observed the protocol handover and tabulation process in 185 DEC visits in the first round and 181 DEC visits in the second.

¹⁰¹ PEC 44 in DEC 120, (some 100 voters): more than 10 per cent of the ballots cast lacked the PEC stamp; PEC 27 in the same DEC (some 2,300 voters) delivered the ballots to the DEC unsealed.

results, as well as complaints filed directly with DEC's, were more frequent in the second round, particularly in the east and southern parts of the country.¹⁰² In some DEC's tabulation was temporarily delayed due to deadlocks over how to deal with complaints¹⁰³ or proceeded slowly as some members, proxies or observers were questioning all procedural deviations, which at times were very minor.¹⁰⁴ Some deadlocks were rectified late, after recounts or the involvement of a court.¹⁰⁵ According to the CEC, in the second round 14 PEC's had their results changed as a result of a recount ordered and performed by the DEC. The results of the vote in three polling stations were invalidated.¹⁰⁶

The IEOM assessment of the tabulation process was negatively affected by the lack of full access to observe the entry of PEC data into the *Vybery* system. Initially, the CEC instructed DEC's to provide observers full access, but a CEC circular sent to DEC's on 15 January stated that observation in the computer room must comply with information protection acts and left the decision on access to the discretion of the DEC chair.¹⁰⁷ DEC chairs interpreted the CEC circular differently, and 46 of 185 DEC's visited during the first round tabulation and 60 of the 181 visited during the second round denied IEOM observers full or partial access to observe the computer entry of PEC results. This reduced the transparency of the election process.

XV. ANNOUNCEMENT OF ELECTION RESULTS

In both rounds, the CEC began releasing preliminary results on its website on election night. As in previous elections, the CEC posted only partial figures from the PEC result protocols. Figures on votes received by the candidates and invalid ballots were posted, but the number of registered voters and unused ballots were not. Although not required by law, publishing all the PEC protocol figures would allow observers to fully verify their copies of the protocols and increase transparency and confidence in the process.

In both rounds, all DEC's submitted their tabulation protocols to the CEC within the five-day deadline. The CEC stayed in permanent session from election day until the announcement of official results, receiving results protocols from the DEC's. The session was suspended several times, when candidate representatives, media and observers were asked to leave so the commission could discuss the protocols in private. The CEC announced the results within the 10-day deadline and, as required by law, published the national result protocols with a

¹⁰² For example, DEC 3 received 21 complaints; DEC 10 received almost 300; DEC 129 received 130.

¹⁰³ DEC 136 did not process any PEC protocols until 03:30 on election night due to a voting deadlock on whether to consider complaints before or after accepting PEC protocols.

¹⁰⁴ In DEC 3, some members called for rejecting PEC protocols, if the PEC chairs signed it with the Russian rather than Ukrainian form of their name or if the safety envelope containing ballot materials had even a small scratch. In DEC 110, some members refused to receive the protocols, if the PEC had included voters to the voter lists by their own decision or conducted homebound voting without requiring medical certificates, both of which they considered to be illegal.

¹⁰⁵ DEC 1 only concluded its tabulation on 13 February, following a disagreement over the results from polling station 45. PEC 45 had initially invalidated 150 ballots allegedly marked with disappearing ink. Ms. Tymoshenko's representatives in the DEC requested the invalidation of the entire vote, but the Simferopol court ruled against the request and obliged the DEC to do a recount. As a result of the recount, some 155 ballots were invalidated.

¹⁰⁶ PEC's 159 in DEC 82 and 13 in DEC 120 (impossible to determine the will of voters) and PEC 63 in DEC 198 (the cases of illegal voting exceeded ten per cent of the number of voters who took part in the vote in the election precinct).

¹⁰⁷ According to the election law, observers can be present during the determination of the results by the DEC's. Point I, 3.2, xiv of the Council of Europe Venice Commission's Code of Good Practice in Electoral Matters stipulates "... results must be transmitted to the higher level in an open manner."

breakdown by DEC. The CEC initially rejected 51 DEC tabulation protocols in the first round and 26 in the second because of technical mistakes; these DECs amended their protocols within the one-day legal deadline.

The CEC announced the first round final results on 25 January, according to which Mr. Yanukovich received 35.32 per cent of the vote and Ms. Tymoshenko 25.05 per cent with a turnout of 66.51 per cent. Mr. Tihipko came third with 13.05 per cent, followed by Mr. Yatsenyuk with 6.96 per cent and Mr. Yushchenko with 5.45 per cent.¹⁰⁸ Some 2.2 per cent chose to vote “against all candidates”. Of the 25,588,268 ballots cast, 405,765 or 1.65 per cent were declared invalid. Since no candidate received more than 50 per cent of the vote, the CEC called a second round (repeat voting) between the two candidates with the most votes. Five of the CEC members added dissenting opinions to the results protocol.

Following the second round, the CEC declared Mr. Yanukovich the winner with 48.95 per cent of the vote against Ms. Tymoshenko’s 45.47 per cent. Some 4.36 per cent voted “against all candidates”; more than double that of the first round. Turnout was 68.81 per cent and of the total of 25,493,529 ballots cast, some 1.2 per cent were declared invalid.

The CEC announced the final results on 14 February. Following the announcement, the CEC went into a closed meeting and upon return all 15 members signed the final results protocol, while five of them added dissenting opinions.¹⁰⁹ The main issues raised by the dissenters were: the CEC not considering all the complaints submitted; the CEC announcing the results while complaints were still to be decided by the courts; and the CEC not having properly considered 226 dissenting opinions to 53 DEC tabulation protocols. The results were fully endorsed by the CEC chairperson and nine members.¹¹⁰

XVI. POST-ELECTION DEVELOPMENTS

In the post election period, Ms. Tymoshenko’s campaign filed hundreds of complaints against the actions of the PECs and DECs in areas where Mr. Yanukovich received a majority of the vote.¹¹¹ The complaints asked for recounts of specific PECs, the recount of every PEC in some DECs and the invalidation of the entire vote in some PECs.¹¹² The basis for the complaints included: the adding of voters to the voters list on election day by the PECs, which this candidate claimed was illegal;¹¹³ the CEC clarification on homebound voting, which was adopted at 08:00 on election day and allowed two commissioners to accompany the mobile ballot box even though the election law called for three;¹¹⁴ the failure of some PECs to require a medical certificate from homebound voters; and the organized bussing of voters to the polls.¹¹⁵

¹⁰⁸ The other 13 candidates received less than 4 per cent of the total votes.

¹⁰⁹ As in the first round, dissenting opinions were given by those nominated by the BYT and Our Ukraine.

¹¹⁰ CEC members nominated by the PoR, Communist Party, Socialist Party and Lytvyn Bloc.

¹¹¹ Autonomous Republic of Crimea, Donetsk, Dnipropetrovsk, Kirovograd, Luhansk, Mykolaiv, Odesa, Zakarpattia and Zaporizhzhia oblasts.

¹¹² This claim was based on alleged violations of Article 80.1 of the election law, which allows for the invalidation of the vote in a PEC when there is a 10 per cent margin of alleged fraud.

¹¹³ According to the election law PECs are allowed to add voters to the voter lists on election day.

¹¹⁴ Both candidates challenged this clarification in the KACA, which resulted in two opposing decisions. The HAC ruled that it was legal to have two commissioners.

¹¹⁵ The claim was that this was tantamount to offering a bribe to the voter in violation of Article 64.6 of the election law.

Most complaints were rejected by the PECs and the DEC or were left without consideration. Subsequently, Ms. Tymoshenko filed the complaints with the CEC. On 14 February, the same day official results were announced; the CEC rejected all the complaints in one consolidated decision; some on technical grounds and others due to a lack of sufficient evidence.

Consequently, Ms. Tymoshenko filed 46 complaints with the KACA asking the court to order the CEC to reconsider its decisions and grant the relief requested. She argued that the failure of the CEC to consider the substance of the complaints amounted to inaction by the CEC. The court consolidated the 46 complaints for one hearing and rejected them on 15 February. The HAC upheld the decision of the KACA in rejecting the complaints.

On 15 February, the Tymoshenko campaign filed a challenge to the final election results with the HAC and the next day the HAC suspended the CEC announcement declaring the final results. This decision had no practical effect and was routine for courts to make when considering complaints.¹¹⁶ The court did not grant the request to cancel Mr. Yanukovich's inauguration scheduled for 25 February.

In her complaint Ms. Tymoshenko alleged that it was impossible to establish the results of the 7 February countrywide vote reliably because of the many violations of the electoral process and therefore the court must order a third round. She also claimed that the secrecy of the vote was violated in homebound voting because of the presence of two commissioners and observers; that the CEC continually acted illegally in issuing instructions and clarifications that either violated or expanded the election law and in not considering all of the complaints filed against the DEC and PEC protocols before announcing the results.

The hearing on the complaint filed by Ms. Tymoshenko commenced on 19 February in the HAC with 49 judges sitting as a panel. In a sign of transparency, the entire hearing was to be broadcast live on TV. The first part of the hearing was broadcast, but was then suspended after an objection from the representatives of Mr. Yanukovich.

On 20 February, Ms. Tymoshenko filed a motion requesting that her complaint challenging the election result be withdrawn. This was after the HAC had denied her request to call members of PECs, DEC and observers as witnesses. After five hours of deliberations, the HAC granted Ms. Tymoshenko's motion to withdraw her complaint, thus leaving it without consideration.¹¹⁷ On the same day, President Yushchenko congratulated Mr. Yanukovich as the legitimately elected President of Ukraine and signed the decree for his inauguration. In a public statement broadcast on TV on 22 February, Ms. Tymoshenko reiterated her allegations of fraud in the second round, but also stated that she would not challenge the result in any other court.

Despite the pending court decision on Ms. Tymoshenko's challenge to the election result and amidst a deepening rift between the two main political forces in the country the parliament voted to hold Mr. Yanukovich's inauguration on 25 February.¹¹⁸ Ms. Tymoshenko's parliamentary coalition lost a vote of no confidence on 3 March. On 11 March, a new

¹¹⁶ It is unclear whether the court could suspend the final result announcement as it is not a CEC decision and therefore should have no legal effect. See Venice Commission and OSCE/ODIHR Joint Opinion.

¹¹⁷ The HAC quoted Article 155 of the Code of Administrative Proceedings, according to which the court can suspend a case if the plaintiff has filed a motion to withdraw it or leaves the court without due reason. Ms. Tymoshenko and her lawyers left HAC shortly after filing the motion.

¹¹⁸ On 19 February the parliament terminated Mr. Yanukovich's parliamentary mandate at his own request with a view to his upcoming inauguration as President of Ukraine.

coalition consisting of the PoR, Communist Party, Lytvyn Bloc and more than a dozen defecting MPs from the BYT and Our Ukraine was officially formed. Prior to the coalition being formed, Mr. Yanukovych signed a law allowing for individual MPs to break away from their parliamentary factions. This was previously not permitted and was seen by some as a violation of the Constitution, which only allows factions to join coalitions in parliament.¹¹⁹ On 8 April, the Constitutional Court ruled that the parliamentary coalition supporting the newly-elected President had been formed legally. Just after the new coalition was announced, Mr. Mykola Azarov, Mr. Yanukovych's campaign manager, was appointed to succeed Ms. Tymoshenko as the new Prime Minister.

XVII. RECOMMENDATIONS

The following recommendations are offered for consideration by the authorities, political parties and civil society of Ukraine in further support the conduct of democratic elections. These recommendations should be read as supplementary to previous OSCE/ODIHR recommendations. The OSCE/ODIHR stands ready to assist the authorities to further improve the electoral process.

A. PRIORITY RECOMMENDATIONS

1. As previously recommended by the OSCE/ODIHR, the electoral legal framework should be fully reviewed and harmonized. Consideration could be given to consolidating all election laws into a unified code applicable to all elections long before the next election. This should be a comprehensive process that builds on the work done by the existing parliamentary committee. The process should be inclusive of representatives from political parties, the election administration, civil society and academia so as to build a broad consensus. During the consolidation process other laws, such as the Law on the CEC, the Administrative Procedures Code, the Criminal Code and the Law on State Voter Register, should be made consistent.
2. Electoral contestants should not politicize state institutions that play a role in elections and provide checks and balances in the process. On the contrary they should act responsibly and defend their independence and impartiality.
3. The election code should allow domestic non-governmental organizations to observe all elections, in accordance with paragraph 8 of the Copenhagen Document. Such observers should be accorded the same rights as other domestic and international observers.
4. The election dispute resolution mechanism should be reviewed. The election law should clarify which cases can and cannot be filed and with which body, including where they can be appealed. The complainant should not be allowed to choose the venue for filing a complaint. Deadlines for filing and considering complaints and appeals should be reconsidered; they should not be used as tools to deny legitimate complaints on technical grounds. The law should specify that election commissions cannot dismiss complaints on purely technical grounds, if the substance can be

¹¹⁹ In 2008 the Constitutional Court defined a parliamentary coalition as an alliance of parliamentary factions that consists of at least 226 parliamentary deputies.

ascertained from the papers filed by the complainant, and that a formal decision must be taken on all complaints.

5. The election law should explicitly stipulate that state media and private broadcasters should provide fair, balanced and impartial coverage of campaigns in their news and current affairs programs, including discussion programs, interviews and debates.
6. Regulations covering campaign financing should be strengthened to improve the transparency of the funding of candidates' election campaign, with data on donations and expenditure made publicly available. An independent body for overseeing and monitoring the campaign financing should be designated, with the possibility to sanction parties for violations of the regulations. Consideration could be given to requiring that candidates report campaign finance during the pre-election period.
7. A wider range of sanctions for violations of campaign regulations including fines should be available beyond the current possibilities of warnings or candidate de-registration.
8. Further efforts are needed to improve the SVR's quality and eliminate remaining inaccuracies in voter lists. Addition of voters after final lists have been printed should be done on separate supplementary voters lists. These voters should be systematically added to the SVR after elections. The introduction of a deadline should be considered, after which additions to voter lists would only be allowed with the consent of the RMBs. Voter list updates made by PECs should be restricted to clearly defined cases and should follow uniform procedures.
9. The CEC should provide better guidance to DEC and PECs on both procedural and operational matters and ensure their uniform application throughout the country. Clarifications and instructions should be adopted with a view to their practical implementation and prior to the training of commissioners.
10. The CEC should publish all figures included in PEC results protocols, including the number of registered voters and unused ballots. This would allow observers to crosscheck the official results with their copies of protocols and confirm the accurate and honest reporting of results. This measure would increase transparency and confidence in the process.

B. OTHER RECOMMENDATIONS

ELECTION ADMINISTRATION

16. Despite the fact that they are appointed by political parties, commission members should be solely guided by the law and principles of transparency, professionalism, impartiality and independence, and not by partisan interests. Election commissions could be made smaller to ensure better administration of elections. Rules regarding proportionality and the possibility of candidates indiscriminately replacing their members should be clarified to ensure the stability of election commissions.
17. A mechanism to avoid deadlocks in election commissions should be developed, such as granting the chair the decisive vote or by having an odd number of commissioners.

18. The CEC should organize comprehensive and consistent training for PEC and DEC leadership, who should, in turn, train their members with the same materials.
19. The CEC should implement comprehensive voter information and education programs, as required by law, especially encouraging citizens to check and update their voter information, and address issues such as secrecy of the vote.
20. The role of bodies supporting election commissions, such as RMBs, the Security Service and the State Service for Special Communications and Information Protection should be clearly defined and rules for their interaction with commissions and observers should be standardized. The current regulations regarding the police could serve as a model.

VOTER REGISTRATION AND VOTER LISTS

21. Consideration could be given to the establishment of a centralized, computerized state population register that could considerably improve the quality of the SVR.
22. All voter lists including those prepared for special polling stations should be printed by RMBs. A mark could be added next to the names of voters who cast their ballots in special polling stations, as well as next to the names of PEC members voting at a precinct away from home, in the voter list at the precinct where they reside. Similarly, all voter lists should include notes on which voters are registered with a second voting address. This would safeguard against possible multiple voting.
23. The quality of the voter lists depends on the quality and timely submission of data to the SVR by institutional suppliers. In order to further ameliorate voter lists, consideration could be given to improving capacity and procedures in the institutions that supply data; for instance the MoI passport departments could consider digitalizing their files for easy and fast processing.
24. Consideration could be given to listing voters alphabetically by surname in order to ease finding the voters' name in the voter list on election day.

CANDIDATE REGISTRATION AND ELECTORAL CAMPAIGN

25. Reducing of the financial deposit required for a candidate to register and the threshold of votes needed for a refund of that deposit should be considered.
26. A spending limit for campaign expenditure could be considered, which can help to ensure a level playing field while being sufficiently high to allow for a meaningful campaign.

MEDIA

27. Rules on covering candidates with institutional roles in the news should prevent broadcasters from providing them privileged treatment. Consideration could be given to regarding media appearances by any candidate holding official positions as election campaigning and as such calculated as air time allocated to that candidate.

28. The NBC should adopt detailed rules for the coverage of candidates in news programs aimed primarily at protecting voter and candidate rights to freedom of expression. Consideration could be given to empowering the NBC by law to act upon complaints or recorded violations during an election period. It should provide remedies in a timely manner and sanctions should not prevent the media from carrying out their activities.
29. The state-owned National Television Company of Ukraine should be transformed into a public service broadcaster. Public service media is considered a publicly accountable source of information with an obligation to ensure the fair, balanced and impartial coverage of election campaigns.

PARTICIPATION OF MINORITIES

30. Consideration should be given to providing election-related information in minority languages, which would enhance overall understanding of the electoral process.
31. Comprehensive measures should be adopted to effectively address the lack of identification and other relevant documents among Roma people. The removal of administrative fees and bureaucratic requirements to attain these could be considered.
32. A civic education programme targeting minority communities should be envisaged and conducted in co-operation with relevant civil society organizations. In particular, attention should be paid to the empowerment of minority women.

ELECTION DAY

33. Action is required to ensure that the secrecy of the vote is uniformly respected in accordance with paragraph 7.4 of the 1990 OSCE Copenhagen Document. Requiring voters to fold their ballots in the polling booth may improve ballot secrecy.
34. The '10 per cent violation threshold' established by Article 80 of the election law is arbitrary and should be abandoned. Invalidation of PEC election results should be envisaged when violations prevent the determination of the will of the voters in a given polling station. The election law should clearly stipulate when recounts are necessary and what procedures should apply, so that full transparency is assured.
35. Consideration could be given to the reintroduction of the absentee voting certificates in the election process for voters involved in the administration of elections away from precinct of their registration or other groups of voters defined by law. With the SVR in place the RMBs have the necessary capacity to issue absentee voting certificates with sufficient safeguards in place to avoid possible double voting.
36. The PEC protocol should reconcile the number of signatures against the total number of ballots found in the ballots boxes, not just against counterfoils. It should provide for more specific information on homebound voting, including the number on the printed voter list, the number of requests received and of requests granted.
37. The election law should limit the right to take photos and video recordings in polling stations to the area outside voting booths in order to reduce the possibility of using vote buying schemes.

ANNEX 1 – FINAL RESULTS

| 2010 Ukraine Presidential Election, Final Results Protocol | First round 17 January (number or %) | | Second round 7 February (number or %) | | Difference between 2nd and 1st round (number or %) | |
|--|---|-------|--|-------|---|-------|
| Number of printed ballots | 37,025,184 | | 37,353,160 | | 327,976 | |
| Number of ballots received by District Election Commissions | 37,024,776 | | 37,353,160 | | 328,384 | |
| Number of ballots received by Precinct Election Commissions | 37,010,927 | | 37,349,142 | | 338,215 | |
| Number of ballots produced as an exception by permission of the CEC by PECs on ships | 1,159 | | 1,100 | | -59 | |
| Number of voters included in voter lists at precincts | 36,968,041 | | 37,051,449 | | 83,408 | |
| Number of unused ballots | 12,420,350 | | 11,854,175 | | -566,175 | |
| Number of voters who received ballots | 24,591,687 | | 25,496,008 | | 904,321 | |
| Number of voters who took part in voting | 24,588,268 | 66.51 | 25,493,529 | 68.81 | 905,261 | 2.29 |
| Number of ballots declared invalid | 405,765 | 1.65 | 305,837 | 1.20 | -99,928 | -0.45 |

| Votes cast for each candidate | Number | % | Number | % | | | | | |
|--|-----------|-------|------------|-------|-----------|------|------------|-------|-----------|
| Bohoslovska | 102,435 | 0.41 | | | | | | | |
| Brodskyi | 14,991 | 0.06 | | | | | | | |
| Hrytsenko | 296,412 | 1.2 | | | | | | | |
| Kostenko | 54,376 | 0.22 | | | | | | | |
| Lytvyn | 578,883 | 2.35 | | | | | | | |
| Moroz | 95,169 | 0.38 | | | | | | | |
| Pabat | 35,474 | 0.14 | | | | | | | |
| Protyvsikh | 40,352 | 0.16 | | | | | | | |
| Ratushniak | 29,795 | 0.12 | | | | | | | |
| Riabokon | 8,334 | 0.03 | | | | | | | |
| Symonenko | 872,877 | 3.54 | | | | | | | |
| Suprun | 47,349 | 0.19 | | | | | | | |
| Tymoshenko | 6,159,810 | 25.05 | | | | | 11,593,357 | 45.47 | 5,433,547 |
| Tihipko | 3,211,198 | 13.05 | | | | | | | |
| Tiahnybok | 352,282 | 1.43 | | | | | | | |
| Yushchenko | 1,341,534 | 5.45 | | | | | | | |
| Yanukovych | 8,686,642 | 35.32 | 12,481,266 | 48.95 | 6,321,456 | | | | |
| Yatsenyuk | 1,711,737 | 6.96 | | | | | | | |
| Voters who did not support any candidate | 542,819 | 2.2 | 1,113,055 | 4.36 | 570,236 | 2.16 | | | |

Source: CEC website <http://www.cvk.gov.ua/>

ANNEX 2 – TURNOUT AND RESULTS BY REGION

| | Registered voters | | Voters who participated in voting | | Turnout % | | Round 1 winner % | | Round 2 winner % | |
|---------------------------|-------------------|-------------------|-----------------------------------|-------------------|--------------|--------------|------------------|--------------|------------------|--------------|
| Region | Round 1 | Round 2 | Round 1 | Round 2 | Round 1 | Round 2 | Yanukovich | Tymoshenko | Yanukovich | Tymoshenko |
| Crimea | 1,551,172 | 1,559,474 | 981,922 | 1,049,591 | 63.30 | 67.30 | 61.13 | | 78.24 | |
| Vinnitsa | 1,312,138 | 1,316,957 | 899,734 | 938,232 | 68.57 | 71.24 | | 46.90 | | 71.10 |
| Volhynia-Lutsk | 786,731 | 785,998 | 586,568 | 600,853 | 74.56 | 76.44 | | 53.78 | | 81.85 |
| Dnipropetrovsk | 2,752,109 | 2,748,601 | 1,833,458 | 1,840,682 | 66.62 | 66.97 | 41.67 | | 62.70 | |
| Donetsk | 3,487,520 | 3,483,158 | 2,439,002 | 2,692,815 | 69.94 | 77.31 | 76.04 | | 90.44 | |
| Zhytomyr | 1,019,555 | 1,027,246 | 691,123 | 704,776 | 67.79 | 68.61 | | 32.64 | | 57.50 |
| Zakarpattia - Uzhgorod | 952,336 | 954,000 | 540,736 | 541,245 | 56.78 | 56.73 | 29.65 | | | 51.66 |
| Zaporizhzhia | 1,479,246 | 1,483,582 | 1,010,500 | 1,023,624 | 68.31 | 69.00 | 50.83 | | 71.50 | |
| Ivano-Frankivsk | 1,085,684 | 1,085,590 | 774,146 | 823,292 | 71.30 | 75.84 | | 38.98 | | 88.89 |
| Kyiv Region | 1,453,814 | 1,460,941 | 944,893 | 973,261 | 64.99 | 66.62 | | 42.29 | | 69.71 |
| Kirovohrad | 801,343 | 804,218 | 508,754 | 514,946 | 63.49 | 64.03 | | 34.58 | | 54.66 |
| Luhansk | 1,862,041 | 1,862,230 | 1,313,664 | 1,391,438 | 70.55 | 74.72 | 71.07 | | 88.96 | |
| Lviv | 1,993,721 | 2,002,239 | 1,475,124 | 1,524,246 | 73.99 | 76.13 | | 34.70 | | 86.20 |
| Mykolaiv | 940,801 | 942,892 | 601,126 | 623,570 | 63.90 | 66.13 | 51.27 | | 71.53 | |
| Odesa | 1,840,964 | 1,841,248 | 1,160,126 | 1,171,349 | 63.02 | 63.62 | 51.12 | | 74.14 | |
| Poltava | 1,212,785 | 1,219,068 | 803,708 | 816,534 | 66.27 | 66.98 | | 32.02 | | 54.20 |
| Rivne | 862,797 | 863,629 | 623,112 | 642,081 | 72.22 | 74.35 | | 43.85 | | 76.24 |
| Sumy | 955,830 | 956,069 | 627,338 | 640,101 | 65.63 | 66.95 | | 36.78 | | 62.89 |
| Ternopil | 867,476 | 867,107 | 646,679 | 678,403 | 74.55 | 78.24 | | 35.67 | | 88.39 |
| Kharkiv | 2,232,651 | 2,238,319 | 1,455,120 | 1,509,246 | 65.17 | 67.43 | 50.18 | | 71.35 | |
| Kherson | 885,089 | 884,218 | 538,431 | 538,799 | 60.83 | 60.94 | 40.37 | | 59.98 | |
| Khmelnysky | 1,066,784 | 1,071,438 | 748,056 | 767,646 | 70.12 | 71.65 | | 40.06 | | 69.74 |
| Cherkasy | 1,061,722 | 1,065,345 | 681,265 | 702,144 | 64.17 | 65.91 | | 41.21 | | 65.37 |
| Chernivtsi | 702,051 | 703,315 | 434,568 | 439,149 | 61.90 | 62.44 | | 32.31 | | 66.47 |
| Chernihiv | 905,906 | 906,939 | 602,599 | 626,985 | 66.52 | 69.13 | | 42.74 | | 63.63 |
| Kyiv City | 2,157,489 | 2,164,965 | 1,430,356 | 1,462,070 | 66.30 | 67.53 | | 35.74 | | 65.34 |
| Sevastopol City | 309,938 | 311,925 | 204,145 | 211,258 | 65.87 | 67.73 | 56.09 | | 84.35 | |
| Out of Country | 428,348 | 440,738 | 32,015 | 45,193 | 7.47 | 10.25 | 29.57 | | | 60.57 |
| TOTAL | 36,968,041 | 37,051,449 | 24,588,268 | 25,493,529 | 66.51 | 68.81 | 35.32 | 25.05 | 48.95 | 45.47 |

Source: CEC website <http://www.cvk.gov.ua/>

ABOUT THE OSCE/ODIHR

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

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

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

More information is available on the ODIHR website (www.osce.org/odihr).