

EUROPEAN PARLIAMENT

PRESIDENTIAL ELECTIONS UKRAINE

AD HOC DELEGATION

Election Observation of Rerun Second Round

24-27 December 2004

REPORT

Annex:

List of participants

Programme

**International Election Observation Mission - Statement of Preliminary Findings
and Conclusions**

Saturday, 25 December 2004

Following the well established procedure the European Parliament election observation delegation was integrated into the international observation organisation together with observation teams from the Parliamentary assemblies of the Council of Europe, NATO and OSCE. It was in this framework that all organisational preparation had been done, including the briefing meetings for the International Observation Mission. During the day the delegates present were briefed on the elections by representatives of the Ukrainian political partners, the Central Election Commission and the OSCE/ODIHR (International Election Observation Mission - Statement of Preliminary Findings and Conclusions - annex III).

The ad hoc delegation met at 7 pm at Dnipro Hotel for a Briefing meeting.

Mr. Charles TANNOCK shortly reported on the Briefing Programme of this day, where he had represented the European Parliament's delegation.

The delegation then agreed on its organisation for the actual observation at polling stations. The four observation teams were agreed, their schedule, routing, drivers, interpreters, officials and departure time confirmed. They received the relevant documentation: deployment plan, maps, list of polling stations per section, badges, accreditations, questionnaires and formulas and documentation for interpreters.

The meeting closed at 8 p.m.

Sunday, 26 December 2004

The four observation teams of the European Parliament delegation:

Team 1 - Kyiv CITY: SARYUSZ-WOLSKI - BELOHORSKA

Team 2 - Kyiv CITY: TANNOCK - BIRUTIS - MASTALKA

Team 3 - Kyiv OBLAST: FORD - WEILER - HORACEK

Team 4 - Kyiv OBLAST: BUZEK - STANISZEWSKA

The four teams carried out observations at around a dozen polling stations each in a variety of different areas.

Observations started early, including opening of polling stations at 8 a.m., in different districts of urban and more rural neighbourhoods in and around Kyiv.

It included also a psychiatric institution, a general hospital and Kyiv main prison.

The teams returned the obligatory questionnaires before attending and observing the closing of polling stations and continuing to observe the counting of votes at the level of the territorial election committees and finally at the level of the Central Election Committee until around midnight.

While all the members of the delegation also had frequent contact with media from their member states, the chairman was also invited by Ukraine media to participate on three different TV live programmes between 9 p.m. and midnight in the course of the election night.

Monday, 27 December 2004

The delegation met at 8.30 a.m. and discussed the different teams' experiences and impressions and the results as known to date.

The delegation agreed on a position to be transmitted by the chair to the Meeting of Heads of delegations at 10.30 a.m., and to be taken into account at the Joint Press Conference and Statement.

The delegation agreed on its observation results that

- this election had been up to the international (IEOM) and OSCE standards
- had been free, fair and transparent
- had taken place in a good atmosphere, no aggression or conflicts in voting stations had been observed;
- there was a clear majority for Mr. Viktor Yushchenko.

The European Parliament having been very active and present through its resolutions and ad hoc delegations in the whole process of the "Orange revolution" therefore stated its satisfaction that the democracy had prevailed in Ukraine.

The general political environment on election day had been peaceful in the area observed, the media had been reported as having been impartial, and no aggression or violence had been observed around the polling stations. The voting itself had taken place without any intimidation witnessed, the handling of voters lists, checking of voters identities etc without any shortcomings, the local election committees in the polling stations acting with mutual respect at the two sides.

The secrecy of mobile vote had been observed as established within the very short timescale, even though the transparent ballot boxes gave rise for criticism and should be mentioned as to be replaced by some more opaque material.

The resolution of disputes as observed was handled by the election committees in a satisfactory way.

The delegation agreed to recommend to the President of Parliament an early invitation of the Ukrainian President elect to address a solemn session of Parliament as soon as possible.

The result of the presidential election in Ukraine should be the subject of a debate in the January part session.

On a proposal by Mr. TANNOCK the members of the delegation agreed, further to the chair's report, to address a letter to the President calling for a revision of EU policies towards Ukraine in the light of the firmer establishment of democracy in the country.

The integration of the European Parliament's observation mission within the framework of the OSCE/ODIHR election observation organisation was also the subject of reflections, and a clearer visibility of the EU was strongly recommended.

The essential of the delegations resume was subsequently presented at the meeting of the Heads of delegations by Chairman Mr. SARYUSZ-WOLSKI and Mr. TANNOCK, and also at the joint press conference, where Mr. SARYUSZ-WOLSKI made a statement for the delegation.

Following the joint press conference the delegation met at a working dinner, hosted by the chairman, and finalised the resume and report.

EUROPEAN PARLIAMENT
PRESIDENTIAL ELECTIONS UKRAINE
AD HOC DELEGATION
KYIV

24 - 27 December 2004

List of participants

Members

Mr Jacek SARYUSZ-WOLSKI <i>Chairman</i>	EPP-DE, Poland
Dr Charles TANNOCK	EPP-ED, United Kingdom
Mr Jerzy BUZEK	EPP-ED, Poland
Mrs Barbara WEILER	PES, Germany
Mr Glyn FORD	PES, United Kingdom
Mr Sarunas BIRUTIS	ALDE, Lithuania
Mrs Grażyna STANISZEWSKA	ALDE, Poland
Mr Milan HORÁČEK	Greens/ALE, Germany
Mr Jiri MASTALKA	GUE/NGL, Czech Republic
Mrs Irena BELOHORSKÁ	NI, Slovakia

Political Group Staff/MEPs Assistants

Mr Rob VAN DE WATER	PES
Mr Lucasz DZIEKONSKI	EPP-ED
Mr Marcin TROJANOWSKI	Ass. to Mr SARYUSZ-WOLSKI

Secretariat

Mr Stefan PFITZNER, Administrator responsible for the delegation
Mr Tim BODEN, Administrator
Mrs Pia VANNESTE, Assistant

Interpreters

Ms Irene SHIMANSKY
Mr Vikentiy SHIMANSKY
Mr Michael TYUTYUNNIK
Mr Valeriy KASHIRSKY

Abbreviations :

EPP-ED	European People's Party/European Democrats	GUE/NGL	European United Left/Nordic Green Left
PSE	Party of European Socialists	ID	Independence/Democratic Group
ALDE	Alliance of Liberal and Democrats for Europe	UEN	Union for Europe of the Nations Group
Verts/ALE	Greens/European Free Alliance	NI	Non-attached

EUROPEAN PARLIAMENT

AD HOC DELEGATION FOR PRESIDENTIAL ELECTIONS UKRAINE KYIV

24 - 27 December 2004

FINAL PROGRAMME

Coordination:

<p>Mr Stefan PFITZNER Brussels, ATR 08K018 Tel: (32 2) 284 26 04 Bxl (33 3) 88 17 25 75 Str Mobile during mission: +32 475 97 70 02</p> <p>Mr Tim BODEN Brussels, ATR 08K017 Tel: (32 2) 284 3459 Bxl (33 3) 88 17 24 59 Str</p> <p>Ms Pia VANNESTE Brussels, ATR 08K035 Tel: (32 2) 284 35 78 Bxl (33 3) 88 17 70 08 Str</p> <p>Mobile during mission - Mr Boden/Ms Vanneste: +32 496 59 94 69</p> <p>Fax: (32 2) 284 68 30 Bxl (33 3) 17 90 20 Str</p>
--

HOTEL ACCOMMODATION (booked via European Commission in Kyiv)

Hotel DNIPRO
1-2 Kreshchatyk Str.
KYIV, 01001
Tel. +380 44 254 67 77
Fax: +380 44 254 67 37

Friday 24 and Saturday 25 December 2004

Individual arrivals of Members and staff

At Members' request and own expense, a VIP service at the airport can be provided (USD 48 each way, to be paid in cash). Please note that under no circumstances can the secretariat pay for this service.

Saturday 25 December 2004

**JOINT PROGRAMME WITH OSCE PARLIAMENTARY ASSEMBLY
AND COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY
(no interpretation)**

09H30 **DEPARTURE FROM HOTEL TO CONFERENCE HALL PRESIDENTIAL HOTEL**

Requested meetings - Conference Hall of the Presidential Hotel
Interpretation available

~~10:00 - 10:50 Meeting with Mr Yanukovych (did not show up)~~

11:00 - 11:50 Meeting with Mr Yuschenko

12:00 - 12:50 Meeting with Mr Davydovych

13H00 **DEPARTURE FROM CONFERENCE HALL TO DNIPRO HOTEL**

15H30 **DEPARTURE FROM HOTEL TO CONGRESS HALL**

15:30	Deployment packs for Kyiv/Kyiv region available	Congress Hall Presidential Hotel Kyivsky
16:00 - 16:30	Briefing Programme begins - Opening remarks of Heads of Delegation Mr. Bruce George, OSCE PA Mr. Tadeusz Iwinski, PACE Dr. Charles Tannock, EP Mr. Pierre Lellouche, NATO PA	Congress Hall Presidential Hotel Kyivsky
16:30 - 17:30	Briefing by OSCE/ODIHR EOM Amb. Geert Ahrens, Head of the ODIHR EOM Mr. Kurt Bassuener, Political Analyst Mr. Riccardo Chelleri, Election Analyst Mr. Jessie Pilgrim, Legal Analyst	Congress Hall Presidential Hotel Kyivsky
17:30 - 18:00	Briefing on election day proceedings	Congress Hall Presidential Hotel Kyivsky
18.00 - 18.30	Meeting with OSCE/ODIHR LTO's for Kiev/Kiev region	Congress Hall Presidential Hotel Kyivsky

+/- 18H30 **DEPARTURE FROM CONGRESS HALL TO DNIPRO HOTEL**

19h00 Meeting of EP delegation
Venue : Dnipro Hotel

Sunday 26 December 2004

DEPARTURE FROM HOTEL FOR ELECTION OBSERVATION

All day	Observation of opening, voting and vote count	Various polling stations
---------	---	--------------------------

Deployment of EP delegation as follows :

07:30 **Team 1**

SARYUSZ-WOLSKI - BELOHORSKA

PFITZNER - TROJANOWSKI - DZIEKONSKI - Mr SHIMANSKY (interpreter)

08:30 **Team 2**

TANNOCK - BIRUTIS - MASTALKA

BODEN - Mrs SHIMANSKY (interpreter)

08:45 **Team 3**

FORD - WEILER - HORACEK

VAN DE WATER - Mr TYUTYUNNIK (interpreter)

08:00 **Team 4**

BUZEK - STANISZEWSKA

VANNESTE - Mr KASHIRSKY (interpreter)

21h30 Interview Mr Saryusz-Wolski (interpreter needed)

21:30 ICTV Channel

Talk Show (10' live)

22:30 NovyKanal TV

Talk Show (10' live)

23:30 National TV 1+1 (30' live)

incl. Mr Tannock

Monday 27 December 2004

08:30-10:00 Meeting of EP Delegation to evaluate elections

Venue : Dnipro Hotel

10:15 Meeting with Heads of Delegations to discuss statement

Venue : OSCE Headquarters - 25 Turhenevska St. - 3rd floor

15H30

DEPARTURE FROM DNIPRO HOTEL TO TEACHERS' HOUSE

VLADIMIRSKAYA 57

16:00	Press Conference	Teachers' House
Afternoon / Evening	Departures	

+/- 18:30

DEPARTURE FROM TEACHERS' HOUSE TO DNIPRO HOTEL

20:00

Departure for Dinner of EP delegation - *Venue : Restaurant Kazdek*



INTERNATIONAL ELECTION OBSERVATION MISSION

Presidential Election (Repeat Second Round), Ukraine

26 December 2004

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Kyiv, 27 December 2004 - The International Election Observation Mission (IEOM) for the Ukrainian presidential election is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly.

This statement should be considered in conjunction with the IEOM's two previous statements released on 1 and 22 November 2004, after the previous election rounds. It is issued before the announcement of final results and resolution of possible complaints and appeals. The OSCE/ODIHR will issue a comprehensive Final Report approximately six weeks after completion of the process.

Preliminary Conclusions

The conduct of the 26 December election process brought Ukraine substantially closer to meeting OSCE election commitments and Council of Europe and other European standards. In the run-up to the keenly contested repeat second round, campaign conditions were markedly more equal in contrast to previous polls. The main media provided voters with a balanced coverage of the campaign and observers received few reports that voters were pressured to support one of the candidates. The re-composed electoral administration conducted the election much more transparently. The civil society demonstrated a high level of interest and engagement in the democratic process.

The circumstances following the second round of the presidential election led the Parliament to adopt temporary amendments to the election legislation on 8 December. Although it is unusual that election legislation be amended during the course of an election process, apparently the aim of the Parliament was to lessen the potential for the type of fraud that previously occurred and remedy deficiencies in the election administration.

Overall, the vast majority of observers assessed the process much more favourably than the two previous rounds. On the whole, polling was conducted in a calmer atmosphere, with far fewer candidate observers or members of Polling Station Commissions (PSCs) ejected or dismissed on 26 December than on both previous polling days. Yet, the atmosphere among some of the PSCs deteriorated during the count with disputes occurring in 19% of polling stations observed.

The local executive authorities and election administration had insufficient time to correct errors in voter lists noted during the two previous election rounds. Once again some citizens were turned away from polling stations because their names did not appear on voter lists. However, observers noted that the number of citizens adversely affected was fewer than on 31 October.

A lack of uniformity and a degree of confusion was noted by observers in PSCs handling of voting by homebound voters. However, observers also reported ad hoc solutions to the problem by Territorial Election Commissions (TECs), PSCs, local government administration, volunteers and even local businesses providing transportation to the polling stations for elderly and immobile voters

The repeat second round of the presidential election contained a number of features that positively distinguish it from the 31 October and 21 November contests including:

- The Supreme Court's 3 December ruling, reached through open and transparent proceedings, which repealed the decision of the Central Election Commission (CEC) on the 21 November election results due to evidence of systematic fraud making it impossible to determine the will of voters;
- A newly composed CEC that endeavoured to conduct the repeat election with significantly more transparency, including the posting on the CEC website of results by polling station, and according to a very short timeframe;
- A significant reduction in the number of reports received by observers that State employees, and other groups dependant on the State for their livelihood, were pressured in their choice of candidate;
- A marked decline in the misuse of State resources during the campaign;
- The absence of so-called *temnyky* (guidelines on media content) on the main media channels, which had been used previously to censor or otherwise distort information presented in the media;
- The media's coverage of the campaign, which in general was significantly more balanced, giving citizens access to a plurality of views;
- A televised debate between the two main contestants, broadcast live by several national TV channels, provided both candidates with a real opportunity to directly exchange views and opinions, and share them with the electorate.

However shortcomings remain, including:

- The failure to incorporate provisions in the newly, although temporarily, amended electoral legislation that: clarify the role of the police on election day; require the CEC to publish all Polling Station results promptly; and permit non-partisan election observation by domestic groups;
- Poorly prepared voter lists that are a legacy from the past;
- Isolated disruption of opposition campaign events, in a few cases with violence, which impinged on the freedom of assembly;
- The distribution of inflammatory campaign material;
- A late decision by the Constitutional Court with regard to mobile voting, which the CEC attempted to implement, although the lateness of the decision created some confusion as to which citizens were entitled to vote with the mobile ballot box and implementation was inconsistent;
- Some instances in which implausible preliminary results (100 % turnout) were reported by a few polling stations throughout the regions of Ukraine.

As stated previously, the transparency of the tabulation and announcement of official election results, and the effective and impartial resolution of any election day and subsequent complaints

and appeals, will be of crucial importance in forming a final assessment of the 2004 presidential election.

OSCE/ODIHR observers will remain in Ukraine to assess the tabulation of results at TECs and the CEC as well as the post-election complaints and appeals processes.

The IEOM wishes to thank the Ministry of Foreign Affairs, the Central Election Commission and the Interdepartmental Working Group of the Cabinet of Ministers and other national and local authorities for their assistance and cooperation.

Preliminary Findings

Background

The second round of the presidential election, which took place on 21 November 2004, was marred by serious violations.¹ On 24 November, during a particularly chaotic session, the CEC announced final election results giving Mr. Yanukovych 49.46% of the vote to 46.61% for Mr. Yushchenko. The CEC failed to consider a large number of official complaints filed by the opposition. Four CEC members refused to sign the official protocol of these results.

Previously, Mr. Yushchenko had called his supporters to congregate in Kyiv's Independence Square and other locations around the country on the night of the election. As preliminary results showing a Yanukovych lead were released by the CEC, the crowds were requested by Mr. Yushchenko to remain in Independence Square. The CEC's decision on 24 November to declare Mr. Yanukovych the winner deepened the emerging political crisis. Meanwhile, ruling on a complaint lodged by Mr. Yushchenko, the Supreme Court forbade the CEC to proceed further with the publication of the results.

During the crisis, the Parliament of Ukraine (the Verkhovna Rada) met frequently. On 27 November, it adopted a Resolution that the official election results as announced by the CEC should be considered void because they did not reflect the will of the people. It also passed a motion of no-confidence in the CEC. It then adopted a Resolution calling on President Kuchma to dismiss the Government of Prime Minister Yanukovych.

As the crisis unfolded, senior international mediators assisted in efforts to resolve the situation.² On 1 December the participants signed a document *inter alia* committing the parties to abide by the Supreme Court's ruling on a complaint brought by Mr. Yushchenko against electoral manipulation, to set up an expert group to assess the election legislation and adopt, together with amendments to the Election Law, changes to the Constitution of Ukraine regarding the division of power between the President and Parliament.

On 3 December 2004, after a five-day public hearing, the Supreme Court repealed the CEC resolution on the election results and directed the CEC to conduct repeat voting on 26 December.

¹ See the Statement of Preliminary Findings and Conclusions, issued by the IEOM on 22 November 2004.

² Mr. Javier Solana, EU High Representative for the Common Foreign and Security Policy, Ambassador Jan Kubis, Secretary General of the OSCE, Mr. Alexander Kwasniewski, President of the Republic of Poland, Mr. Valdas Adamkus, President of the Republic of Lithuania, Mr. Boris Gryzlov, Speaker of the Russian Parliament and Mr. Włodzimierz Cimoszewicz, Minister of Foreign Affairs of the Republic of Poland and Chairman of the Committee of Ministers of the Council of Europe.

On 4 December, the CEC complied with the Supreme Court's ruling and set 26 December as the date for repeat voting.

On 8 December, with a large majority, the Parliament voted to amend the electoral legislation and the Constitution of Ukraine. The latter reduced the power of the incoming President vis-à-vis the parliament, with delayed effect, while the former aimed to reduce the potential for electoral fraud in the repeat election.

Resolution of Election Disputes after the 21 November Second Round

The most significant complaint adjudicated after the second round concerned Mr. Yushchenko's challenge of the CEC resolution establishing the final results. Although there were other complaints pending in courts and with the CEC, these became inconsequential due to the Supreme Court's consideration of Mr. Yushchenko's all-encompassing legal challenge. The Court's consideration of the complaint was open and transparent, and all parties had the opportunity to present evidence and legal arguments. Furthermore, the Court allowed the proceedings to be televised, and some broadcasters aired the complete proceedings.

The evidence presented to the Court led it to the conclusion that the electoral legislation and Ukrainian Constitution had been violated and that it was impossible to ascertain the true result of the voters' choice in the single nationwide constituency.

The Court established a number of significant facts during the case concerning the manner in which the final results had been established by the CEC. *Inter alia*, the Court established that the CEC members had not been given an adequate opportunity to scrutinize documents submitted to it by TECs before determining the final national results. These documents included TEC-level results based on a calculation of PSC results within the election district, dissenting statements made by TEC members, and election-related complaints.

Sixty-five complaints were pending with the CEC when it decided the official results. This fact was withheld from some CEC members. Indeed, they were informed that no complaints had been submitted. However, it remained unclear who was responsible for withholding the information. In addition, the Court found that, at the time the CEC determined the final results, court cases concerning complaints made at PSC and TEC-level were still ongoing. The Supreme Court concluded that the CEC acted unlawfully in determining the final results.

The Court also established that a number of significant violations had taken place before, during and after the 21 November election. These included significant legal violations in the process, as follows:

- There were violations during the compilation and updating of voter registers;
- The misuse of Absentee Voting Certificates (AVCs) violated the law, and their issuance was without due CEC supervision;
- The election campaign in the media disregarded the principle of equality between candidates;
- The ban on campaigning by executive government bodies and local governments was disregarded by State officials;
- Legal provisions on the composition of election commissions and on the involvement of official observers in the election process were violated;
- Provisions regulating mobile voting were violated;

- Polling Station Commission (PSC) protocols were compiled in disregard of the law;
- Electoral documents were not transported to TECs according to law.

As a result, the Supreme Court determined that it was impossible to establish in a reliable manner the will of voters in the single nationwide constituency and that, as a consequence, it was necessary to restore the rights of the participants of the electoral process by holding a repeat vote of the second round. In order to achieve this, the Court ruling obliged the CEC to appoint a repeat vote of the second round to be held on 26 December.

The Legal Framework

Amendments to the election legislation were adopted by Parliament on 8 December. However, these are temporary and are effective only until a new President assumes office. While it is unusual that election legislation be amended during the course of an election process, apparently, the aim of the Parliament was to lessen the scope for the type of fraud that occurred on 21 November and remedy deficiencies in the election administration to avoid a repetition of the same violations on 26 December.

The most significant legal adjustments include:

- Re-composing the CEC with new membership;
- Reducing the size and amending the composition of the 225 Territorial Election Commissions (TECs) and some 33,000 Polling Station Commissions (PSCs) to enable the two candidates to appoint an equal number of Chairpersons, Secretaries and members to these bodies;
- Preventing the late expulsion of election commission members, a problem noted in both previous election rounds;
- Enhancing the integrity of the production and use of ballots and absentee voting certificates (AVCs) and improving mechanisms to ensure their accurate reconciliation;
- Allowing candidate representatives more access to information on voter registration and requiring the CEC to publish information on the number of voters registered;
- Reducing the number of documents which can be used by voters to prove their identity when voting; and
- An amendment limiting the right to vote outside the polling station to voters with serious and permanent disabilities, which was subsequently ruled by the Constitutional Court as unconstitutional on the eve of the election.

However, the law still does not oblige the CEC to publish all PSC-level results on its website, clarify the role of the police on election day or grant non-partisan Ukrainian observer groups a legal status in monitoring the election process.

Election Administration

On the same day it adopted the amendments to the electoral legislation, the Parliament changed the composition of the CEC. All parliamentary factions were able to propose and vote on each CEC member. Four previous members of the CEC did not receive sufficient votes to be reappointed, and new members replaced these persons. The outgoing members included Serhii Kivalov, the former chairperson. The Party of Regions, which nominated Mr. Yanukovych as candidate, re-nominated three existing CEC members. However, none of their nominees received

sufficient support in Parliament to be appointed. Mr. Yaroslav Davydovych, the former CEC Deputy Chairperson, was appointed Chairperson.

With only 18 days to prepare the election, the newly composed CEC was handed a considerable challenge. The OSCE/ODIHR EOM continued its practice of observing all CEC sessions and found that the CEC conducted sessions more openly and professionally than was previously the case. One of its first actions was to remove an anti-riot barrier surrounding the CEC building put in place by the former CEC. The CEC also finally complied with a Supreme Court instruction to re-calculate the first round results to take into account the Court's rulings on election appeals. Overall, the CEC appeared more committed to conducting a transparent and accountable election process than previously.

The former CEC failed to provide the OSCE/ODIHR EOM with a variety of basic information concerning election results, voter registers, the use of AVCs and the number of citizens voting outside the polling stations. The new election law obliges the CEC to make public this type of information. To meet these standard transparency measures, the CEC required information from TECs and PSCs. The CEC was able to comply with these reporting requirements.

In general, the CEC was efficient in dealing with an enormous workload and meeting tight legal deadlines. The printing of 38 million ballots in a short period was a particular challenge. To achieve this, the CEC requested Parliament to amend the new electoral legislation to permit ballot printing in two printing houses rather than one. This amendment was passed on 14 December and, after a delay, was signed into law by President Kuchma on 18 December. According to the CEC, 38,113,075 ballots were printed, a figure 1.6% in excess of the number of voters registered prior to election day. However, in Donetsk TECs were provided with excess ballots amounting to only 0.2%, whereas other regions including Crimea, Kharkiv, Kyiv, Lviv and Khmelnytsky received a 2% excess number of ballots.

The re-configuration of TECs, which are composed of an equal number of representatives of the two candidates, went remarkably smoothly considering the limited time available. In general, observers reported that, in contrast to the appointment of the former TECs, the appointment was non-controversial, despite the fact that the overwhelming majority of TEC Chairpersons from the second round were changed.

However, observers reported that some 12% of TECs experienced difficulties reaching a quorum for their sessions; this can be linked to the fact that candidates appointed representatives from the east to PSCs in the west and vice versa. Another result of this strategy, followed by both candidates, is the poor level of collegiality reported in almost 32% of TECs observed.

TECs had their first session according to deadlines foreseen by amendments. Although some training events took place, there was insufficient time to provide a significant level of training for new TEC members.

Similarly, the appointment of almost half a million PSC members was achieved within very tight deadlines. While some late changes to the membership of some TECs and PSCs occurred, the newly composed commissions were politically balanced. In general, their membership was not subject to widespread personnel changes as witnessed after their predecessors were formed in

September³. Furthermore, the amendments to the law prevented the dismissal of candidate representatives on the eve of the election.

One of the amendments to the election law limited the right to receive a ballot outside the polling station to disabled persons of the first category. Yet, on 25 December, the Constitutional Court ruled that this provision was too restrictive and ordered the CEC to take necessary measures for implementation of the Court's ruling. The election administration endeavoured to comply with the Constitutional Court's decision. In general, the CEC informed TECs of the ruling the same afternoon by telephone and sent written information later, by fax, email or cable. Indeed, all of the TECs contacted by LTOs on 25 and 26 December were aware of the ruling. However, many PSCs received the information through the media. Nevertheless, TECs successfully contacted many PSCs, particularly in urban areas. However, insufficient time was available to notify all PSCs and voters of the Court's ruling, before the expiry of the deadline for citizens to request to vote at home, 20.00, on 25 December.

According to data released publicly by the CEC, some 590,000 voters (1.6% of registered voters) requested a mobile vote. The largest percentages were found in Donetsk and Luhansk regions, where it was reported some 160,000 citizens requested to vote at home (some 3% of registered voters). Ternopil, Volyn and Poltava regions also experienced a higher than average number of citizens' requests to vote at home. In Kyiv, only 0.4% of registered voters requested to vote at home.

While a total 188,070 Absentee Voting Certificates were printed for the 26 December round of voting, only 37,000 persons requested to receive an AVC. Of these, only 11,000 actually registered to vote at a polling station away from the place of their permanent residence. Consequently the scope for misuse of this provision, as occurred on 21 November, was considerably lessened.

Voter Lists

There is widespread recognition that inaccurate voter lists were one of the most significant shortcomings of the two previous election rounds. The OSCE/ODIHR EOM assessed that local State administrative bodies, which are in charge of the production of the voter lists, were primarily responsible for inaccuracies in previously compiled draft voter lists.

The amendments to the law introduced minor changes to provisions on the preparation of voter lists. For example, on election day, minor correction of the lists is permitted. However, voters may only have their names added to lists if they are in possession of a certificate issued by a Court. Unlike previously, they may not be added to a voter list through an AVC, which were abused to facilitate multiple voting in some regions on 21 November. Additional mechanisms aimed at preventing fraud and improving transparency included the numbering of voters on the voter list and issuing candidate representatives a copy of the lists prior to election day. However, there was clearly insufficient time available to improve fundamentally the accuracy of the lists.

As there were widespread concerns that the voter lists prepared for the 21 November election had been manipulated after the first round, the Parliament decided that voter lists prepared for the 31 October election should be re-used for the 26 December election, including the names of

³ Significant numbers of election officials representing opposition candidates were removed from their posts at the last minute prior to both the 31 October and 21 November rounds of voting.

those citizens who had applied for Court and TEC decisions on 31 October. The CEC stated its intention to enforce a much stricter control on the management and updating of the voter lists.

The CEC appointed all TECs on 18 December. According to the amendments, TECs were required to prepare new voter lists for the repeat second round by 20 December. OSCE/ODIHR EOM observers reported that there had been uncertainty about which voter lists should be used for the re-run, despite clear formulation in amendments and later clarifications on amendments sent by the CEC to election commissions on 21 December. The voter lists from 21 November were reportedly used in parallel with the one of 31 October, thus resulting in a lack of uniformity in the application of law. In addition, 54% observers expressed poor confidence in the accuracy of VL.

The late appointment of a number of PSCs lessened the time available to voters to check the lists or collect an AVC, even though, as reported by OSCE/ODIHR EOM observers, a majority of PSC received VL within the deadline.

The Campaign

Both candidates actively contested the election. However, in contrast to the previous two election rounds, Mr. Yanukovich took a leave of absence to campaign. Deputy Prime Minister Mykola Azarov is serving as acting Prime Minister.

During the brief campaign period, the two candidates confronted each other sharply. This was particularly visible during the presidential debate broadcast live on the night of 20 December, in which the candidates were able to ask direct questions to each other.

While a number of campaign events did take place, observers reported that overall the campaign was more low-key than during the run-up to the 21 November election. However, taking into consideration the wide-ranging civil and political activity that followed the original second round, the campaign activities never truly ceased, and each candidate's supporters remained highly mobilised.

The report by international medical experts that Mr. Yushchenko had been poisoned by dioxin ingested orally was the most prominently discussed news story in the week prior to the election. Mr. Yushchenko asserted publicly that he was sure he had been poisoned at the behest of Ukrainian authorities, although this was denied.

Mr. Yanukovich focused his campaign activities in the east and south of Ukraine, where he made a number of personal appearances. He charged Mr. Yushchenko and President Kuchma as instigating an "anti-constitutional coup". He also asserted during numerous public appearances that Western, particularly American, funds were used to support Mr. Yushchenko's campaign and that Ukraine would have to pay for this alleged support should Mr. Yushchenko be elected. During the run-up to the repeat election, Mr. Yanukovich began to present himself as in opposition to President Kuchma and Mr. Yushchenko.

The Yushchenko campaign launched intensive mobile campaign activities in the east and south of the country with personal appearances in Kharkiv, Mr. Yushchenko's supporters organised a convoy of cars travelling from city to city, predominantly in areas that had supported Mr. Yanukovich during previous rounds. The convoy, termed "freedom train", encountered obstruction in Odessa and Crimea and was attacked in Donetsk. Nevertheless, in the run-up to

the repeat election, freedom of assembly was largely respected. A small pro-Yushchenko campaign event was held in Donetsk, without incident.

The Yushchenko campaign released new television advertisements and public statements about citizens' ability to receive education and use the Russian language. During his campaign, Mr. Yushchenko stressed the importance of good relations with Russia, which he hoped would improve under his leadership.

In the final week of the campaign, Mr. Yanukovych repeatedly called for a repeal of the amendments to the election law restricting the special voting procedures of absentee and mobile voting, which he presented as an unfair infringement of voters' rights. He made a point of this in the 20 December debate with Mr. Yushchenko, and there were attempts to repeal the restrictive amendments of the legislation in the Rada.

As in previous rounds, the OSCE/ODIHR EOM identified examples of inflammatory campaign material. While this was less visible than previously, material that linked Mr. Yushchenko to Nazism that was distributed at a Yanukovych rally in Odessa went well beyond acceptable norms.

Challenges to Civil and Political Rights

Other than incidents involving the above-mentioned "Friendship Train", only a few campaign related incidents were reported, including the destruction of some campaign stands in Simferopol. A few observers received allegations that pressure was being applied to students, public employees and governmental officials to vote for Mr. Yanukovych in some southern and eastern regions. However, insufficient time was available to corroborate fully the allegations. In Donetsk, observers reported that the media environment had become more restrictive, with pressure applied to independent journalists. Observers in western, northern and central regions did not receive any reports of challenges to citizens' civil and political rights.

Role of State Structures during the Campaign

During the relatively brief period of observation preceding the repeat election, observers were unable to detect any widespread misuse of State resources for the benefit of one or other candidate. In general, observers received far fewer reports that local government officials were interfering in the election, and many reported that local administrations were attempting to facilitate the process.

Resolution of Disputes Prior to the Repeat Second Round

Few complaints were filed after the 3 December decision of the Supreme Court. Mr. Yanukovych filed a complaint with the CEC alleging that Mr. Yushchenko's campaign had been funded by American sources, which would be a violation of the electoral law. The CEC rejected this complaint on 22 December, as no evidence of illegal contribution was provided.

Mr. Yanukovych also filed two complaints with the Supreme Court seeking to reverse CEC resolutions regulating the printing of ballots. The first complaint sought reversal of the CEC resolution that permitted both candidates to form observation teams for ballot printing at the two printing houses. The basis of the complaint was that the resolution was passed before President Kuchma signed the law allowing a second printing house for ballots. The Supreme Court

rejected the complaint because the CEC resolution did not harm Mr. Yanukovych, but in fact benefited him since his representatives would be able to observe ballot printing.

Mr. Yanukovych also filed a complaint on the CEC resolution that determined the number of ballots to be printed. The basis of this complaint was that the number of ballots to be printed - 38,113,075 - would be insufficient. Mr. Yanukovych's representative argued that the number of ballots should be based on the number of voters on voter lists used for the second round of voting instead of the lists used for the first round, and that this required a higher number of ballots to be printed. The Supreme Court rejected the complaint because the number of ballots to be printed was the same as the number printed in the first round and because there were more than 10,000,000 unused ballots in the first and second round of voting.

A complaint was filed with the Constitutional Court by 46 Verkhovna Rada deputies challenging the 8 December amendments to the electoral law. The complaint claimed that the amendments restricted suffrage rights of citizens and freedom of movement by limiting the use of mobile voting and absentee voting certificates. The Constitutional Court heard the case on 23 and 24 December.

On 25 December, the Constitutional Court ruled that the amendments were constitutional, with the exception of one amendment that limited the right to vote by mobile ballot to disabled persons who are unable to take care of themselves and require daily assistance from others. The Constitutional Court ruled that this provision was too restrictive and ordered the CEC to take necessary measures for implementation of the Court's ruling.

In response, the CEC issued a clarification the same day stating that mobile voting would be available to any voter who could not come to the polling station on his own. The Yanukovych campaign filed a complaint the same day with the Supreme Court challenging the CEC clarification. The Supreme Court upheld the CEC decision adopting the clarification.

The Media

Following the seriously flawed 21 November election and the holding of mass demonstrations, many of the most significant media outlets started to redress the substantial imbalance in the content of their broadcasts dealing with political issues. In sharp contrast to previous practice, opposition politicians were given direct airtime to challenge the views of political incumbents.

On 4 December, the OSCE/ODIHR EOM recommenced its monitoring of six nationwide TV channels, two channels with partial nation-level coverage, and nine daily newspapers.⁴

The OSCE/ODIHR EOM's media monitoring findings showed that a number of significant changes in the media's presentation of political and electoral issues have occurred. In the three weeks preceding the repeat runoff, the media actively covered the activities and opinions of the two candidates in a much more balanced manner than during the period preceding the two previous rounds of voting.

Overall, the media offered voters a diverse range of views. Previously, *temnyky* (guidelines on the content and presentation of news items) were used to censor or manipulate information and constrain the public's free access to balanced information. Journalists reported to the

⁴ Television: State-funded *UTI*, Private *Inter*, *1+1*, *ICTV*, *STB*, *Novy Kanal*, *TRK Ukraina* and *Channel 5*. Newspapers: State *Uriadovy Kurier*, *Golos Ukrainy*, *Private Facty I Komentarii*, *Segodnia*, *Den*, *Silski Visty*, *Ukraina Moloda*, *Zerkalo Tyzhna* and *Vechirni Visti*.

OSCE/ODIHR EOM that the main TV networks no longer followed these “guidelines”. Indeed, most TV channels monitored by the EOM made a clear effort to serve as a forum for discussion, in which opinions might be shared and exchanged freely.

As Mr. Yanukovich had taken a leave of absence from his position as Prime Minister, he no longer derived as much media attention in his capacity as a senior member of the Government.

Marking a significant break with its previous electoral coverage, the State-funded television, *UTI*, generally offered candidates equal conditions to convey their message to the electorate. *UTI* complied with a CEC decision to allocate free airtime to both candidates for campaign broadcasts. A televised debate between the two main contestants took place on *UTI* and was broadcast by several other TV channels. In a positive development, the format of the debate provided both candidates with a real opportunity to directly exchange views and opinions.

The EOM's media analysis revealed that during the three weeks preceding the 26 December election, *UTI* provided Mr. Yanukovich with 57.5% of its political and election prime time news coverage, of which 35% was evaluated by the OSCE/ODIHR EOM as positive and 57% neutral in tone. During the same period, Mr. Yushchenko received 42.5% of similar airtime, of which 28% had positive and 60% neutral connotations.

The two most popular private TV channels, *Inter* and *1+1*, offered viewers a plurality of views. In its prime time news programmes, *Inter* presented balanced and impartial coverage of both contestants. While *1+1* provided both candidates with a similar amount of airtime, it granted Mr. Yushchenko more favourable coverage. Other private TV channels, *ICTV* and *Novy Kanal*, were also generally even-handed, whereas *STB* broadcast marginally more positive coverage of Mr. Yushchenko than of his rival. Significantly, all these channels provided both candidates and their supporters with airtime to challenge the political opinions of their opponents.

TRK Ukraine, a Donetsk-based television with partial nation-level coverage, continued to demonstrate an overt bias in favour of Mr. Yanukovich and against Mr. Yushchenko. Conversely, *Channel 5* continued to favour Mr. Yushchenko. The type of negative campaigning observed during the previous rounds of election was much less in evidence prior to the repeat voting.

State-funded newspapers, *Uriadovy Kurier* and *Golos Ukrainy*, both met their obligation to distribute free space equally between the two candidates. Outside this space, *Uriadovy Kurier* continued to show its support to Mr. Yanukovich by granting him 60% of its political and election reporting. However, this figure is much reduced, compared to previous monitoring data. While Mr. Yushchenko received only 40% of such newspaper space, the tone of the coverage of both candidates tended to be balanced. *Golos Ukrainy* continued to offer its readers a balanced picture of the campaign.

In comparison to the first and second rounds of election, observers in general received fewer allegations that the local State authorities obstructed opposition-leaning media. Nevertheless, the situation with the media in regions remains problematic since many regional media outlets are economically dependent on local authorities, and as such lack editorial independence.

Election Day and the Count

On election day, the IEOM deployed 1,367 observers representing 44 OSCE participating States. Observers were deployed throughout Ukraine in order to achieve a representative assessment of

the election day proceedings, and were present in all 225 election districts. At the time of issuing this statement, observers had submitted 5,800 report forms. Observers were deployed to over half of the TECs to observe proceedings throughout election night. Other observers visited TECs and followed events until the early hours of the morning. Large numbers of observers from other international organizations, non-governmental organisations and individual states monitored the process following their own respective approaches.

Overall, observers assessed the process much more favourably than the two previous rounds. On 26 December, only 2% of reports indicated that voting was poorly or very badly conducted. In November, this figure was 7% (11% and 9% in central and eastern regions respectively). Where problems occurred on 26 December, these were more frequently reported in eastern and southern regions, for example, overcrowded polling stations, failure to fully respect the secrecy of the vote, ejection of PSC members or candidate observers, and an environment less conducive to an orderly poll. A higher number of complaints were filed at polling stations in these regions than the national average.

Despite the short time available to appoint the newly composed PSCs, in general, they seemed well prepared. According to observers' reports, some 97% of polling stations received sufficient election material, a figure similar to 21 November, and the large majority of PSCs were aware of the amendments to the legislation.

On the whole, the bi-partisan PSCs co-operated well with each other to ensure polling was conducted in a generally calmer atmosphere than previously. While some 3% of reports indicated tension or unrest at polling stations, this figure is less than the figure reported for the 21 November poll (7%).

Significantly, observers reported no violent incidents at any polling stations visited. Candidate observers were present in almost all polling stations visited. Far fewer candidate observers or members of PSCs were ejected or dismissed on 26 December than on both previous polling days. Where this was reported, it occurred mostly in the east and the south 7% and 6% respectively. Once again, police were frequently present in polling stations (66%), and unauthorized persons were present in 6% of stations visited. In 91% of polling stations visited, observers were given full access to polling stations and received information as required. However, observer teams were denied entry to six polling stations.

The local executive authorities and election administration had insufficient time to correct errors in voter lists noted during the two previous election rounds. Once again some citizens were turned away from polling stations because their names did not appear on voter lists. Observers reported that relatively few voters had their names added to voter lists on election day (0.3%). Some 7% of observers assessed the accuracy of lists as bad, a figure similar to 21 November. However, observers noted that the number of citizens adversely affected was far fewer than on 31 October. Inaccurate lists were more frequently reported in southern regions and Donetsk. In addition, observers reported instances in Donetsk region, where voters' names were added to voter lists without the required court order.

As noted previously, insufficient time was available for TECs to notify all PSCs and voters of the Constitutional Court's ruling to extend the right to vote at home to all voters who could not move on their own, before the expiry of the deadline for citizens to make such a request. While, all citizens, including invalids and the elderly retained the right to vote, some might have experienced difficulties in exercising this right. A lack of uniformity and some confusion was noted by observers in PSCs handling regarding voting by homebound voters. However,

observers reported ad hoc solutions to the problem by TECs, PSCs, local government administration, volunteers and even local businesses providing transportation to the polling stations for elderly and immobile voters. In two TECs, (no. 49 and 57, Donetsk region) observers noted that none of the polling stations visited applied the Court's ruling because they did not receive a formal instruction from the TEC on the issue. Thus, these PSCs only allowed category one invalids to vote at home. This was also noted at some polling stations in rural areas in TEC 46 (also Donetsk region). According to observer reports, some 2% of voters cast ballots at home. A higher number of citizens in eastern and western regions of Ukraine voted using the mobile ballot box (3% and 2.7% respectively).

Polling procedures were generally adhered to, although in 5% of polling stations voters did not systematically produce identity documents. A few observers in a variety of different regions across Ukraine reported that ballot boxes were not sealed properly. Very few instances of serious violations were reported although a small percentage of observers reported instances of seeing apparently series of apparently identical signatures on the voter lists. In western regions campaign materials were seen inside polling stations in 4% of visits and in eastern regions, persons were attempting to influence voters in their choice in 3% of polling stations visited.

While 5% of observers assessed the conduct of the vote count on 26 December negatively, this figure is less than half of the percentage reporting negatively on this aspect of the process on 21 November. Generally, respect for counting procedures improved as did observers confidence in the accuracy of PSC-level results. For example only 2% did not pack and seal the voter list as required by law compared to a 14% failure in November and a much higher number checked ballots for the correct PSC number and PSC stamp than previously. In general, PSC members were free to examine ballots. However, in 7% of polling stations, PSCs did not determine the validity of ballots consistently. This was most noticeable in eastern regions where shortcomings in this regard were noted 17% of PSCs visited.

While, in general, bi-partisan PSCs co-operated well with each other to ensure the count was conducted in a generally calm atmosphere, disputes between members were reported in 19% of polling stations (31% in eastern regions). In 7% of polling stations PSCs did not complete the protocol of results in ink (14% in eastern regions). In almost all instances PSC members signed the protocol, but in 7% of stations, PSC members did not receive a copy of the protocol. In 15% of polling stations the results were not posted publicly as required by law. This failing was more evident in northern, central and western regions.

Announcement of Results

The CEC began announcing preliminary results before midnight on election day, by 05.00 a.m. on 27 December, the CEC had announced some 75% of preliminary results. Significantly, for the first time, the CEC began to announce PSC-level results. The speed with which election results were announced and the transparency of the announcement process stand in marked contrast to the previous two contests.

As of 27 December at 08.00, the preliminary results released by the CEC on its website showed there were 33 polling stations throughout all regions of Ukraine with more than 500 voters, in which implausible preliminary results (100 % turnout) were reported.

*This statement is also available in Ukrainian.
However, the English language version remains the only official document.*

Mission Information & Acknowledgements

Mr. Bruce George, President Emeritus of the OSCE Parliamentary Assembly (PA), Special Coordinator appointed by the OSCE Chairman-in-Office, led the OSCE short-term observers. Mr. Tadeusz Iwinski, Vice President of the Parliamentary Assembly of the Council of Europe, led the Parliamentary Assembly of the Council of Europe (PACE) delegation, Mr. Pierre Lellouche, Member of French National Assembly, led the delegation of the NATO Parliamentary Assembly (NATO PA), and Mr. Jacek Saryusz-Wolski, Vice President of the European Parliament led the European Parliament (EP) delegation. Ambassador Geert-Hinrich Ahrens headed the OSCE/ODIHR Election Observation Mission.

The OSCE/ODIHR Election Observation Mission (EOM) opened in Kyiv on 31 August with 57 experts and long-term observers deployed in the capital and twenty regional centres. To observe the re-run of the second round of the election, the size of the Mission was increased. Since 8 December, it has included a core team of 21 international experts based in Kyiv and 55 long-term observers in all the regions of Ukraine. On election day, the IEOM deployed over 1300 short-term observers representing 44 OSCE participating States, including 92 parliamentarians from the OSCE PA, 37 from the PACE, 27 from the NATO PA and 16 from the European Parliament. 981 observers were accredited as OSCE/ODIHR observers.

The IEOM wishes to thank the Ministry of Foreign Affairs and the Interdepartmental Working Group of the Cabinet of ministers and other national and local authorities for their assistance and cooperation during the course of the observation. In addition the IEOM is grateful to the Central Election Commission for providing accreditation documents. The IEOM also wishes to express appreciation to the OSCE Project Coordinator in Ukraine and embassies accredited in Kyiv for their support throughout the duration of the mission.

For further information, please contact:

- Ambassador Geert Hinrich Ahrens, Head of the OSCE/ODIHR EOM, in Kyiv (Tel: + 38-044-537-79-01);
- Urdur Gunnarsdottir, OSCE/ODIHR Spokesperson or Gilles Saphy, OSCE/ODIHR Election Adviser, in Warsaw (Tel: +48-22-520-06-00);
- Mr. Vladimir Dronov, Parliamentary Assembly of the Council of Europe, in Strasbourg (Tel: +33-388-41-20-00);
- Mr. Jan Jooren, Press Counsellor of the OSCE PA, in Copenhagen (Tel: +45 4041 1641);
- Mrs. Pia Vanneste, European Parliament, in Brussels (Tel: +3222-84-66-56);
- Mrs Svitlana Svyetova, NATO Parliamentary Assembly, in Brussels (Tel: +32-2-707-41-11).

OSCE/ODIHR Address:

OSCE Office for Democratic Institutions and Human Rights
Al. Ujazdowskie 19
00-557 WARSAW
POLAND
Tel: +48-22-520-06-00
www.osce.org/odihhr