

INTERIM REPORT 3
2 – 13 March 2006

I. EXECUTIVE SUMMARY

Following an invitation from the Ukrainian Authorities in December 2005, the OSCE/ODIHR established an Election Observation Mission (EOM) on 23 January in order to observe the lead up to the 26 March presidential election. In addition to the 52 long-term observers currently deployed, the OSCE/ODIHR has requested the participating States to send 600 short-term observers to monitor voting, counting and tabulation of election results.

- A competitive campaign has still been proceeding peacefully, allowing parties/blocs to present their positions without hindrance. The police have maintained a noteworthy position of non-interference in rallies and meetings. The pace and visibility of the campaign also increased notably.
- The tone of the campaign has become markedly polarised, with strong recriminations exchanged between contestants. The Party of Regions (PoR) alleged at its party congress that massive and countrywide fraud is intended in order to deliver a victory to pro-government forces. Our Ukraine (OU) broadcast a graphic and scathing 30 minute advertisement, linking key PoR figures to the criminal world and to violence.
- The state broadcaster continues to adhere to its obligation to equally distribute free airtime to contestants. However, its election related coverage in the news shows a degree of unbalance in favour of certain pro-government parties and blocs. On 5 March, private *Channel 5* introduced the free of charge debates, pairing leading 10 parties based on recent opinion polls.
- Inaccuracies in the voter lists in some areas, mainly in the south and east of the country, were increasingly often indicated as a major problem in the run up to the election. Almost all parties have pointed at their respective opponents for being responsible for the alleged poor quality of the voter lists in some areas. The EOM conducted a number of checks that confirmed some of the alleged problems, specifically in Luhansk area.
- According to EOM observation, most PECs are functioning with only the required quorum of members, while a number of them are not operational yet. This limits the possibility for voters to check their names on the voter lists, and raises concerns as regards the election day process.
- The CEC and some contestants have put forward last-minute draft amendments to the election law, to be discussed by Parliament on 14 March. While these seek to address problems evidenced in the preparation of the elections, it would be the fourth time the election law would be amended in the run up to the elections.

II. CAMPAIGN

The pace of the election campaign has notably increased throughout the country over the course of the reporting period. However, based on an analysis of the party/bloc rallies observed by EOM Long-Term Observers (LTOs), the political content remained relatively

devoid. In the majority of rallies held by opposition parties/blocs observed by EOM observers¹, the main message conveyed was criticism of the current authorities, strengthening the relationship with Russia, economy, foreign policy alignment, and anti-NATO positions. Pro-governmental parties/blocs rallies speeches,² tended to focus mainly of the economy and foreign policy alignment, while the Bloc of Yulia Tymoshenko (BYT) focused on corruption in general, as well as on criticism of Viktor Yanukovych and PoR.

Co-operation amongst pro-government forces was heightened when on 1 March a coalition agreement was signed in Lviv by the regional branches of BYT, PORA-ROP, OU, and the Socialist Party (SPU). The agreement included principles of conducting the election campaign, future joint activities between these parties in Lviv, prevention of election falsification, and the non-use of administrative resources. No other such agreements have been signed anywhere else in the country.

On the other hand, the overall tone of the campaign became increasingly polarised, with some provocative statements given by the main contestants:

- At the 9th Congress of the Party of Regions on 4 March, party leader Viktor Yanukovych announced that the party anticipates massive falsifications organized by the state authorities in every region of the country, in order for the ‘Orange’ forces to retain power. The mechanisms of this falsification were linked to inaccurate voter lists in the East and South (through mistakes in transliteration of Russian names into Ukrainian) and also large numbers of PoR voters missing from the voter lists. He also mentioned rumours that election commission members will fall sick on election day in large numbers in order to undermine elections in certain polling stations to have results annulled in areas where PoR has support;
- Similar concerns were echoed in the field by PoR in Dnipropetrovsk and Kharkiv. The *Ne Tak!* Bloc echoed these accusations and bloc leader and former President Leonid Kravchuk was quoted as saying on 10 March that if election re-runs become necessary, there is the possibility that ‘blood could be spilled’;
- On 10 March, the Secretary of the Donetsk Oblast opposition Communist Party publicly stated that it is actually the Party of Regions that is “undertaking a campaign to sabotage the parliamentary elections.” He noted that in Donetsk, local authorities are generally representatives of the PoR. These same authorities are responsible for the formation of the voter lists; thus, any mistakes introduced are as a result of their work. On the same day, OU branch in Donetsk echoed these accusations, stating that the PoR is purposefully introducing double entries into voter lists in the south and east in order to boost PoR results. EOM LTOs are currently looking into the issue.
- Also on 10 March, OU aired its second 30 minute free airtime bloc on UT 1 titled “Threat. The Scary Truth”. The tone of this ad was highly vitriolic and bellicose, presenting footage of OU campaign materials and tents being attacked in Donetsk by PoR members and OU members recounting graphic attacks by PoR on OU campaigners. Incidents reported were discussed in the previous EOM interim report; LTO follow-up indicated that the magnitude of the events was exaggerated. In addition, the ad painted some PoR members (including candidate Rinat Akmetov) as

¹ Party of Regions, Ne Tak, Vitrenko Bloc, Communist Party

² Our Ukraine, Socialist Party, PORA-ROP, Kostenko & Pliushch Bloc

gangland thugs, suggesting they had been involved in a outburst of revenge killings which occurred in Donetsk³ in 1995, and showing graphic images of corpses being exhumed and blow-off limbs from the bombing of the Donetsk football stadium in 1995. The ad also named specific individuals in the PoR list who had previous criminal convictions. The PoR has already reacted, criticising the ad for using subliminal techniques to associate the party with violence, and has reportedly sent the material to the General Prosecutor office for investigation.

During the reporting period, there have been isolated incidents of violence against campaigners and the destruction of party/bloc property. As reported by EOM LTOs, a chain of attacks occurred in Dnipropetrovsk on 28 February against campaigners and property of OU. The incidents were reported to police, who have later closed the case due to lack of witnesses. As previously, such incidents remain limited in nature. There have also been two incidents of houses/offices of political figures being burned. On the night of 6/7 March in Lviv, a fire occurred at the campaign office of Mr. Petro Pysarchuk, a PoR parliamentary candidate. On the night of 9/10 March, the district headquarters of the *Ne Tak!* Bloc in Luhansk was subject to an arson attack. Police is investigating both incidents, which have been confirmed by LTOs.

During the course of the reporting period, the EOM has observed sporadic occurrences of misuse of administrative resources, pressure on voters and inducements offered to voters by contestants. In Kharkiv, LTOs have confirmed that students at Technical College No. 38 have been induced by their school director to make PoR campaign flags for six hours a day in place of their regular studies. The school director has stated that she was sub-contracted by the PoR to produce the flags and accepted the contract in order to get funds to repair the school. She considers the exercise to be practical training for the students. In Ordjonikidze, Dnipropetrovsk Oblast, LTOs have received confirmation that workers at the local factory have been pressured by their management to sign contracts committing them to vote for BYT and have been threatened with job loss in the event that BYT does not succeed in the election. The confirmation came from the local BYT branch, who in turn pointed to the factory manager, a BYT member and candidate for local elections, as the one responsible for the pressure. Despite BYT criticism of the practice, the factory manager retains his party membership, and also appeared at Ms. Tymoshenko's side during a rally on 25 February.

Finally, the situation in Crimea is becoming increasingly polarized with the CEC taking a decision on 7 March not to allow the use of PECs to carry out a referendum on the issue of Russian as a second language. The Minister of Justice also came out on 6 March with a statement that such a referendum is illegal. In retort, PoR issued a statement on 9 March that they would call for protests in Crimea in case the referendum was not allowed to take place.

³ As reported in the Our Ukraine spot by Mr. Mykhaylo Klyuyev, captioned as head of the Interior Ministry directorate in the Donetsk Region, a total of 57 people were killed by this gang in 1995. The murdered included 25 businessmen, 19 rival gang members, and eight gang members from the same group who were killed for 'betrayal'. Five people were reportedly killed for the sole purpose of intimidating the public.

III. ELECTION ADMINISTRATION

Changes in the membership and managerial positions on DEC's continue, although at a slower pace. The CEC has also dismissed the chair and the deputy chair of DEC 48 in Donetsk region, for inactivity that prevented the DEC to fulfil its duties.

On 9 March the CEC chairman announced that the formation of PECs was practically completed, although affected by the remaining need to replace PEC members who resign. The EOM is closely monitoring the process, and a preliminary assessment shows that many DEC's have not completed the formation of PECs in full, that the majority of PEC are understaffed and that some PECs are not yet formed at all. While in some districts PECs report no problems in finding substitutes for a small number of withdrawals, some other have to deal with the withdrawal of half of their members, and have difficulties replacing them. According to EOM observations, a number of PEC do not have regular or announced opening hours. As a consequence, voters are unable to check the VL and update their data or receive Absentee Voter Certificates.

The EOM has also received complaints of interference of the local administration on DEC's. The chairman of DEC 177 in Kharkiv region received several oral and one written 'request' from heads of local administrations, seeking to influence the appointment of 'troika'⁴ members of PECs. The interest of the local administration in the composition of the PEC is high because of their role in the concurrent local elections.

As of 11 March the total number of PS was 34,078, an increase of some 900 PS compared to the 2004 Presidential elections. The increase is a consequence of the reduction of the recommended maximum number of voters by polling station from 3,000 to 2,500. In autumn 2005, as a consequence, CEC requested to executive committees of local councils of highly populated urban centres to increase by about 3,200 the number of PECs. Only 900 additional PS were created. The EOM has found more than 1,200 PS with more than 2,500 voters, with some comprising over 3,500 voters.

The system for compiling voter lists is complex and it involves a large number of different state institutions and offices. Because of the lack of a centralised database and inconsistencies resulting from transliteration of Russian names into Ukrainian, the quality of locally kept databases varies considerably throughout the country. It seems that VL quality is better in regions where they were prepared in electronic form for the 2004 elections. In the east of the country, where Russian is mainly spoken, databases used for the compilation of the voter lists were Russian based and often kept on paper form. This resulted in an additional task for VL working groups, as they had to adapt the data to the official language. This was done in a non systematic way and in the absence of clear guidelines from the central authorities.

A number of complaints on the accuracy of the voter lists were conveyed to the EOM by parties. They alleged cases of entire streets or houses missing, missing persons, multiple entries listing the same name in its Ukrainian and Russian version, names wrongly 'translated' from Russian to Ukrainian, etc. Following these complaints, the EOM conducted a series of random checks on VLs in some of the most problematic regions, receiving mixed results. While checks in Luhansk and Sumy areas mainly confirmed PoR complaints as to the poor state of the VL, in Kherson area, PoR complaints were not confirmed by the EOM

⁴ The chair, the deputy chair and the secretary of the PEC

findings. Additionally, despite numerous allegations, parties were not able to provide the EOM with concrete evidence of cases where the transliteration of a surname from Russian to Ukrainian resulted in a new, different entry in the VL. The EOM is dedicating significant resources to the verification voter lists complaints.

Candidates can withdraw from party lists until three days before the elections. As of 11 March, 111 out of 7,747 registered candidates withdrew. Ten had been in the past convicted by courts, and are therefore not eligible to run; five of them withdrew by themselves, three were revoked by the nominating political party, the registration of one candidate was cancelled by CEC on 10 March and one case is still pending.

On 9 March, the ‘New Force’ party held a press conference to announce their withdrawal from the election, echoing “massive falsifications” being prepared by the State authorities. On 10 March, CEC Chairman Mr. Davydovych confirmed that a formal request had been received from the party’s head, but noted that other party members were planning to contest the request for withdrawal before the courts.

IV. LEGAL FRAMEWORK

In order to address a number of issues in the election preparation, there have been a number of calls to amend the election law once more. Proposals came from the CEC, PoR, and the ‘Public Council for Ensuring Ukrainian Citizens’ Voting Rights’, and are due to be discussed in Parliament on 14 March. The most important proposed amendments would allow local bodies of self-government to propose PEC members to DEC chairpersons; to allow PEC members to vote at their working place on election day, to lower the quorum necessary for a PEC to function and make decisions, and to re-establish a possibility to add voters on the voter list on election day, based on a court decision. CEC also appealed to the Cabinet of Ministers to allow the use of the old Soviet passports for voter identification in the election day.

As noted in the Joint OSCE/ODIHR - Venice Commission’s “Opinion on the law on elections of people's deputies of Ukraine”⁵, a ‘freezing clause’ to exclude changes to an electoral law for a certain period ahead of an electoral event is recommendable. While the election law originally stated that no amendment could be made within the 240 days prior to election day⁶, which was criticised as being too long in the above-mentioned Joint Opinion, the Parliament nevertheless amended the law three times⁷ within the period, and in the last amendments it shortened the period to 40 days before election day allowing for amendments of provisions concerning the election documentation.

It is still unclear whether the Parliament will also consider at its next session the swearing in of the new Constitutional Court judges, allowing this institution to function. It would be regrettable if the country would be without the highest constitutional authority during the critical period immediately prior to and after the elections.

⁵ CDL-AD(2006)002rev

⁶ Chapter XIV, Final Provision # 2 of the election law

⁷ Amendments were adopted in 17.11.05, 19.01.06 and 9.02.06.

V. COMPLAINTS AND APPEALS

During the last month and half, the EOM has followed a total of 39 complaints at local level, filed with election commissions, both local and appeal courts and prosecutor offices. Of these cases, fourteen regarded administrative pressure on voters. There were also nine cases of negative campaigning, and five complaints on the composition of election commissions and inaccuracies on voter lists.

The EOM observed one case illustrating the concerns raised by the possibility granted to electoral subjects to seek legal redress both from election commissions and from the courts concurrently: a PoR complaint against the Labour Ukraine Party for alleged ‘vote buying’ in Odessa, was filed in parallel with a Kiyv district court and with the CEC. In accordance with the law, the CEC suspended the case while the court took it into consideration. However, because of different interpretations of the election law, the CEC decided to re-open the case after the court had issued its ruling, therefore opening the possibility of having conflicting rulings from two different bodies. Eventually, both rulings were consistent with each other.

The Pecherskyi District Court in Kiev, that receives all complaints against the CEC, has ruled so far 131 cases; while 17 are still pending, 11 were given full or partial satisfaction, and all the other were either rejected, left without consideration or sent to other competent courts.

The number of complaints filed with the Pecherskyi District Court is decreasing. According to some interlocutors, this is because possible complainants do no longer file complaints on issues such as negative campaigning, which the court has already decided or was not able to provide effective remedy. No new cases were reviewed by the High Administrative Court.

VI. MEDIA

Media monitored by the EOM have continued to provide voters with extensive information on the electoral campaign and the main parties and blocs. However, reporting has focused predominantly on personalities, rather than on political platforms, with a high portion of critical and negative commentaries exchanged among contestants.

The efforts by various channels to organise televised debates appeared to have reached some limited success. A first proposal by *I+I* TV has resulted in the scheduling of the only debate⁸ so far. On March 5, *Channel 5* has launched debates, based on five series of one-to-one discussions between the top-ranking political forces chosen according to recent opinion polls. This was the channel’s own initiative to organize free of charge debate with an international support.⁹ Blok *Ne Tak!* decided not to avail of this option and not to participate in a debate foreseen with PORA-ROP.

In their news programmes, apart from the coverage devoted to the President and the Government, most of the monitored broadcast media have so far allocated the biggest part of

⁸ Debate is scheduled for 23 March with participation of N. Vitrenko Bloc and *Viche* party.

⁹ Fund for Development of Ukrainian Media by Embassy of the USA; International Renaissance Foundation and IREX U-Media. The debate is meant to be held within the framework of art.68.12 of the Law and be based on “the principles of objectivity, unbiased and balance reporting” instead of within the form of election campaigning envisaged in Article 66.2 of the law.

their information on parties/blocs to OU, although its share has been slightly decreasing in the last two weeks. However, while the presentation of President Yushchenko and Prime Minister Yekhanurov has been characterised by a prevailingly positive and neutral tone, the activities of the party were covered in a rather balanced way.

A high portion of the political information provided by the State broadcaster *UT 1* has remained focused on the activities of the executive branch, with more attention in the course of the last two weeks given to the Head of the State. As the EOM was informed by the channel, it is partly a consequence of a specific law¹⁰, which obliges State-funded media to cover certain activities of the officials, predominantly of the President. In this period, the channel allocated 27% of its political prime time news to the President and 23% to the Government, the highest shares among the monitored televisions. The tone of was notably neutral and positive.

However, during the reporting period, monitoring of the state broadcaster indicated that, although adhering to free airtime regulations, the coverage of the main political rivals was less balanced. Most of the election related coverage has been devoted to OU, with 13%, while the PoR and BYT received 9% and 6% respectively. In addition, while the information on the ruling party was exclusively neutral and positive in tone, the main opponents were reported on in exclusively neutral and negative tone.

The two other main broadcasters *Inter* and *I+1* showed electoral campaign from different perspectives. *Inter* has focused on OU and PoR, granting them respectively 15% and 12% of its political prime time news coverage, with negative comments prevailing over positive ones for both parties. It gave the most positive coverage to *Ne Tak!* Bloc. Conversely, channel *I+1* has paid highest attention to BYT, with 11% of rather balanced coverage. While the authorities have been presented quite positively, the PoR received 9% of exclusively neutral and negative coverage.

Private TV channels *TRK Ukraine* and *ICTV* have displayed clear bias in favour of the Party of Regions and PORA-ROP respectively, granting them with 18% and 13% of almost exclusive positive and neutral information. On the contrary, while private channel *NTN* has provided its viewers with various political viewpoints, including the interviews with top placed contestants, its news programme regularly presents domestic current affairs in a manner critical of the authorities.

Print media convey diverse political messages, mostly in a partisan manner. The state-funded newspapers, outside their obligation to allocate free space, have supported the authorities. *Uradovy Kurier* has showed clear bias in favour of the Government and the President, granting them altogether more than 75% of very positive information, whereas *Golos Ukrainy*, an official publication of the Parliament, has continued to present unbalanced information in favour of Lytvyn's Bloc, led by the incumbent Speaker of the Parliament. Critical and analytical reporting has been observed in the weekly *Zerkalo Nedely*.

In the regions even though in general there is a widespread atmosphere of free reporting, the media are still more vulnerable to particular political or business interests. In Crimea, Lylia Budzhurova, the Head of Crimean Association of Independent Journalists and the Editor-in-

¹⁰ The Law on the Procedure of Coverage of Activities of the State and Local Authorities by the Mass Media, adopted in 1997.

Chief of the privately owned weekly *Pervaya Krymskaya* newspaper faced, on 1 March, an arson attempt to the garage door of her private house. In addition, on 9 March a fake “special issue” of the paper was circulated, containing heavily negative articles against PoR.

VII. INTERNATIONAL OBSERVERS

As of 13 March, the CEC has registered a total of 1834 international observers, belonging to 15 different organisations¹¹. Shortly before election day, the OSCE/ODIHR EOM will be joined by parliamentary delegations from OSCE Parliamentary Assembly, as well as from the Council of Europe Parliamentary Assembly, the European Parliament, and the NATO Parliamentary Assembly.

¹¹ Main international organisations fielding observers are: ENEMO, the Ukrainian Congress Committee of America, the World Ukrainian Congress, the Ukrainian Canadian Congress, the international NGO “For Fair Elections” and the International Republican Institute