

**UKRAINE:
PRESIDENTIAL ELECTIONS
2004**

Report
by
Jeremy Franklin

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Preface

Following an invitation from the Ukrainian Ministry of Foreign Affairs in June 2004 to observe Ukraine's presidential election called for 31 October 2004, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Ukraine between 9 and 12 June 2004. The NAM recommended that a standard election observation mission be established, which in addition to a core team in Kyiv should include 50 long-term observers. The NAM furthermore advised on the secondment of 600 short-term observers given the concerns for potential manipulations on election day, such as witnessed earlier the year during the mayoral election in Mukacheve in south-western Ukraine.

The OSCE/ODIHR Election Observation Mission (EOM) for the 31 October Presidential election officially opened in Kyiv on 21 August with the arrival of the core team. The EOM was headed by Ambassador Geert-Hinrich Ahrens from Germany. The core team initially consisted of 15 election experts, but was expanded to 21 members before the re-run of the second round on 26 December. Initially, 45 long-term observers (LTO) representing eleven OSCE participating states were deployed throughout Ukraine in front of the two election rounds on 31 October and 21 November. The number of LTOs was increased to 55 in front of the repeat vote on 26 December.

Shortly before the first round on 31 October, the EOM deployed over 600 short-term observers (STOs) across Ukraine. Before the run-off on 21 November, the EOM included 563 observers.

In addition to internationally recruited STOs, the contingency of observers was made up of locally recruited STOs, predominately from embassies in Kyiv, as well as observers from the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the NATO Parliamentary Assembly (NATO PA) and from the European Parliament (EP) – transforming the EOM to the International Election Observation Mission (IEOM).

Two Norwegian LTOs, Jeremy Franklin and Kjetil Hestad, were recruited to the EOM by the Norwegian Resource Bank for Democracy and Human Rights (NORDEM). Mr. Franklin observed the election process from 14 September until 1 December, including the two initial election rounds, while Mr. Hestad observed in front of and after the repeat vote on 26 December. Mr. Franklin was deployed in Crimea, including the city of Sevastopol, and Mr. Hestad in Kirovohrad oblast.

For the two initial rounds, NORDEM sent two Norwegian STOs. They were Stine Münter and Espen Eftedal Svensen. For the first round on 31 October they were deployed to Hartsisk (Donetskaya oblast) and L'viv, respectively. For the second on 21 November, their areas of deployment was Donetsk and Nikopol (Dnipropetrovskaya oblast), respectively.

For the repeat elections on 26 December, the IEOM deployed 1,367 observers. For this round NORDEM seconded seven STOs. They were Tron Gundersen, Hans Cato Haddal, Jostein Hoel, Linda Kartawich, Jorun Lunestad, Annie-Lise Mjaatvedt and Brynjulf Risnes.

In addition, the Norwegian Ministry of Foreign Affairs sent two STOs, Stian Christensen, who observed during the first round in Sevastopol, Crimea, and Mette Strengehagen, observing the repeat elections.

The main purpose of this report is to present the findings of the Norwegian observers. Their observations correspond with those of the EOM as represented in the EOM's interim reports and Statements of Preliminary Findings.

The Norwegian Centre for Human Rights / NORDEM
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Introduction

The 31 October 2004 presidential election was the third such election to take place since Ukraine proclaimed its independence on 24 August 1991. In December 2003, Ukraine's Constitutional Court permitted the incumbent president Leonid Kuchma to run for a third five-year term. However, Mr. Kuchma decided not to run and consequently the 2004 election was widely regarded as being a crucial moment in Ukraine's history, bringing with it aspirations for a second peaceful transition of presidential powers.

However, after the first round on 31 October, the International Election Observation Mission (IEOM) stated on 1 November that:

*“The 31 October presidential election [...] did not meet a considerable number of OSCE, Council of Europe and other European standards for democratic elections. During the pre-election period, the governmental, electoral and other authorities did not create conditions that ensure in practise the free expression of the opinion of electors in their choice of representatives. Consequently, **this election process constitutes a step backward from the 2002 elections** (emphasis mine, J.F.)”*

The IEOM made the same general conclusion after the 21 November run-off between incumbent Prime Minister *Viktor Yanukovich* and the opposition's *Viktor Yushchenko*. Here the authorities were also criticised for failing to address the shortcomings in the election process noted by the IEOM in its statement of 1 November.

The most serious shortcomings observed by the observation mission included biased state media and interference by the state administration in favour of Mr. Yanukovich, the disruption or obstruction of opposition campaign events by state authorities, and inadequate handling of complaints by the Central Election Commission. In short, this created unequal campaign conditions in front of both rounds. Unequal campaign conditions particularly affected Mr Yushchenko from the opposition *Our Ukraine* bloc.

Among positive aspects of the election, the IEOM emphasized that a plurality of candidates gave voters a real choice, and that a high number of voters turned out to vote in what was generally a calm atmosphere.

Regarding interference by state administration in the election campaign on behalf of a certain candidate, in Crimea (the LTOs' AoR) there was little doubt that the full weight of administrative resources was used to support the candidacy of Mr. Yanukovich. Although difficult to directly verify, credible reports from several sources alleged that:

Persons were pressured to put their names down in support of Yanukovich's candidacy (signature collection) by heads of local executive bodies;

Under the threat of, e.g. job losses, local authorities 'recruited' persons to represent Yanukovich-affiliated candidates on PSCs;

Conversely, persons representing opposition candidates where pressured to resign from PSCs and TECs;

Regarding unequal campaign conditions, and connected to the above, numerous allegations and own observations verified that this was also the case in Crimea. Examples include:

Unlimited access for Mr. Yanukovich to billboards throughout Crimea, while the campaign office of Mr. Yushchenko unsuccessfully struggled to purchase poster space;

Several instances of Ministry of Internal Affairs (i.e. police) disrupting Yushchenko campaign activities;

Local state-owned media outlets were heavily biased in favour of Mr. Yanukovich, and credible reports of journalists being under pressure not to report objectively on the campaign - consequently practising self-censorship, and;

The employment of 'black PR' techniques slandering Mr. Yushchenko, and the failure of election commissions and public prosecutors to redress the consequent complaints submitted by Our Ukraine.

This report will elaborate on key areas and phases of the electoral process, including the process leading up to election day, election day itself and the immediate post-election phase. Under each chapter, the more regional-specific findings of the LTO will be thoroughly presented and held up against the EOM's general findings. Also included in the report are the OSCE/ODIHR Statements of Preliminary Findings and Conclusions (Annex)

Political Background

Following the failed coup in Moscow in August 1991, First Secretary of the Ukrainian Communist Party, *Leonid Kravchuk*, resigned from the party and on 24 August 1991 Ukraine's parliament declared independence from the Soviet Union. This declaration was later confirmed in a referendum in December 1991, where simultaneously Mr. Kravchuk was elected the first president of independent Ukraine.

After a few turbulent years, which, *inter alia*, witnessed the disarmament of Ukraine's nuclear arsenal and disagreement between Russia and Ukraine over the ownership of the Black Sea Fleet in Sevastopol, new parliamentary and presidential elections were held in 1994. The parliamentary elections resulted in a strong left-oriented bloc gaining legislative control. In the presidential election, *Leonid Kuchma* from Dnipropetrovsk emerges as the winner in the run-off between him and Mr. Kravchuk.

In 1997, claims of corruption lead President Kuchma to sack several ministers, among them Prime Minister *Pavlo Lazarenko*, who was replaced by pro-reform *Valeriy Pustovoytenko*. The year also witnessed the introduction of a new electoral system and law, under which the 1998 parliamentary elections were held. The economic crisis in Russia in 1997-98 severely affected Ukraine and the newly introduced national currency, the *Hryvnia*, lost 50 percent of its value in September 1998.

In October 1999 presidential election were held, with Kuchma running for a second five-year term. His major opponents were *Petr Symonenko*, leader of the Communist Party of Ukraine (CPU), and Socialist Party of Ukraine (SPU) leader and former Speaker of Parliament *Oleksandr Moroz*. First round results put Kuchma in the lead with 36 percent of the vote against Mr. Symonenko's 22 percent. Symonenko, who favoured closer ties with Russia, garnered most of his support in the East. The second round run-off in November between Kuchma and Symonenko gave Kuchma 57 percent of the vote against 37 percent for Symonenko. Thus, Leonid Kuchma was elected president for a second term.

In 2000 President Kuchma appointed former head of the National Bank of Ukraine *Viktor Yushchenko*, new prime minister. One of Mr. Yushchenko key appointments was businesswoman *Yulia Tymoshenko* as deputy Prime Minister for energy. Economically, the first positive signs began to appear in the Ukrainian economy. Politically, however, the years 2000-2001 witnessed strong polarisation between the Parliament and President due to a controversial referendum that would

strengthen presidential powers at the expense of the Parliament. Even more controversial were the allegations, substantiated by a an audio recording presented by SPU's Oleksandr Moroz, that President Kuchma and other senior figures in the presidential administration were involved in the murder of investigative internet journalist Georgiy Gongadze, whose headless corpse was found in August 2000. The 'tapes scandal'¹ ignited a political crisis and several weeks of demonstrations in Kyiv against the President and his administration.

In January 2001, Kuchma fired Yulia Tymoshenko, and in April a business grouping joined forces with the CPU in parliament to oust Prime Minister Yushchenko. He was replaced by *Anatoliy Kinakh*, whose policies continue the economic growth of Ukraine. Towards the end of the year, *Viktor Medvedchuk* – leader of the Social Democratic Party of Ukraine-united (SDPU(u)) was removed as the first deputy Speaker of the Parliament by the Communists and a coalition of centre-right nationalists.

Parliamentary elections were held in March 2002. The *Our Ukraine* electoral bloc, lead by former Prime Minister Viktor Yushchenko, won a plurality of seats with 27.6% of the proportional vote, against the pro-administration *For a United Ukraine* bloc's 11.8%. The CPU garnered 20% of the proportional vote:

Table 1. Proportional results of 2002 parliamentary elections.

Name of party/coalition	Party/coalition leader	Result in percent
"Our Ukraine" bloc	Viktor Yushchenko	23.57
"For a United Ukraine" bloc	N/A	11.77
Communist Party of Ukraine	Petr Symonenko	19.98
Yulia Tymoshenko bloc	Yulia Tymoshenko	7.26
Social Democratic Party of Ukraine (united)	Viktor Medvedchuk	6.27
Socialist Party of Ukraine	Oleksandr Moroz	6.87

No party or bloc was able to form a majority in parliament, but after two months, the pro-president forces were able to assemble a minimal majority in parliament. The opposition accused pro-Kuchma forces for having assembled their majority by unlawful means by, e.g. exhorting pressure on deputies to join the coalition. The development led to a decisive split between Kuchma and Yushchenko and resulted in the latter joining forces with the Yulia Tymoshenko bloc, the Socialists and the Communists in their call for early presidential elections.

In 2003, NATO unveiled a Membership Action Plan for Ukraine, which included a number of criteria, including the need for Ukraine to commit herself to conduct elections in accordance with OSCE criteria, among them respecting freedom of speech and press. Later that year the European Union launched its new neighbourhood policy towards Ukraine, Belarus and Moldova. The same year Ukraine, Russia and Belarus declared their intentions to negotiate to create a Single Economic Space. This move received heavy criticism in the Verkhovna Rada by right of centre parties and blocs.

¹ What initially started out with one audio-cassette, evolved into several hundred hours of recordings that allegedly directly implicate the President and his top aides in a broad range of crimes, including the disappearance and later murder of journalist Gongadze. The presidential administration claimed the tapes were fabrications, but they were authenticated by, e.g., the FBI.

This year also witnessed several initiatives to change the constitution, among them one proposed by Kuchma himself where he called for the president to be elected by the Verkhovna Rada, and not through direct elections.² Despite the opposition towards the reforms, a draft constitutional bill was passed in the Rada, backed by the administration and the Communists, at the end of the year.

In January 2004 efforts to press forward constitutional changes resulted in deputies from Our Ukraine and the Tymoshenko bloc disrupting a session in the Verkhovna Rada claiming the majority was acting illegally. In April a vote on the proposed changes failed by a narrow margin to meet two-thirds vote required to amend the constitution. The changes, if adopted, would have reduced the powers of the presidency in favour of the Verkhovna Rada.

The pending constitutional reform was one of the main issues during the pre-election campaign.

Election system

The election system provides that a candidate must get over 50% of the vote to be elected in the first round. If none of the candidates pass this threshold, a run-off is held within three weeks between the two candidates who scored highest in the first round. The winner in the second round is the candidate who gets the most votes. A voter has the option to vote against all candidates.

Presentation of candidates

Initially, 26 candidates registered with the CEC, of which two later withdrew, leaving 24 candidates to contest the election. A large number of these were believed to be so-called “technical” candidates put forward with the purpose of getting representation on Territorial Election Commissions and Precinct Election Commissions, and to take votes away from one of the two top front-runners. A majority of the technical candidates either openly or covertly supported the candidacy of the incumbent PM Viktor Yanukovich while about five candidates supported Yushchenko.

Opinion polls in front of the election consistently put Mr Yushchenko in the lead in front Mr Yanukovich. However, as election day approached, the lead diminished and the last opinion poll published 15 days before election day placed the two candidates neck to neck.

Other top candidates included Socialist Party leader Oleksandr Moroz, Progressive Socialist Party leader Natalya Vitrenko and the Communist Party’s Petr Symonenko. Other prominent candidates, but lacking a strong party structure, included former PM *Anatoliy Kinakh*, Kyiv mayor *Oleksandr Omel’chenko* and banker *Leonid Chernovetskiy*.

Oleksandr Moroz (Socialist Party of Ukraine/SPU)

Mr Moroz has been an MP since 1990 and in 1994-98 he served as Speaker of the Verkhovna Rada. Moroz came in third in the 1999 presidential elections. The SPU currently has 22 deputies in the parliament and the party backs a stronger parliament vis-à-vis the presidency. It also emphasises strong social protection and supports political and economic ties with both the West and Russia. Moroz has heavily criticized the Kuchma administration for being corrupt and abusing its powers.

² Kuchma’s reform plan was widely condemned by the opposition and generally unpopular among the public, leading Kuchma to withdraw his proposal in August 2003.

Petr Symonenko (Communist Party of Ukraine/CPU)

Mr Symonenko was first elected to parliament in 1994 and was a major contender in the previous presidential elections in 1999 garnering 37.8% of the vote against Kuchma's 56.2% in the run-off between the two. The CPU has generally opposed the Kuchma administration and calls for an end to privatization, a return to economic planning and closer ties with Russia, including calls for dual citizenship for Russians living in Ukraine and making Russian the second state language. It opposes closer ties with the West, including NATO membership.

The CPU currently holds 66 seats in the Verkhovna Rada.

Natalya Vitrenko (Progressive Socialist Party/PSP)

Mrs Vitrenko founded the PSP after leaving the Socialist Party in 1996. In the 1999 presidential elections, Vitrenko came in fourth place receiving 10.97% of the vote.

Vitrenko calls for a reversal of market reforms, a return to state economic planning, closer ties with Russia and the reacquisition of Ukraine's nuclear arsenal. The PSP draws much of its support from older voters.

Viktor Yanukovich (Party of Regions/PR)

Mr Yanukovich has been Prime Minister of Ukraine since 2002 and leads the Party of Regions, which is based in the eastern city of Donetsk – the hometown of Mr Yanukovich. Before becoming PM, Yanukovich was governor of Donetsk *oblast* (region).

The PR is seen as representing the interests of local industrialists. The party obtained 67 seats in the parliament during the last parliamentary elections in 2002.

The Social-Democratic Party of Ukraine (united)/SDPU(u) headed by Viktor Medvedchuk – head of the presidential administration – opted to support the candidacy of Yanukovich. Mr Yanukovich also enjoyed the backing of President Kuchma.

Yanukovich garners most of his support in the heavily industrialised eastern oblasts, and in southern parts of the country, including Crimea.

During the campaign, Mr Yanukovich was widely seen as benefitting from the support of media owned by backers of President Kuchma.³

Viktor Yushchenko (Our Ukraine/OU)

Viktor Yushchenko was Prime Minister from 1999-2001. Before that he headed Ukraine's National Bank. In his presidential bid, Mr Yushchenko had the support of the Our Ukraine bloc⁴, which consists of the National Rukh Movement of Ukraine, the Ukrainian National Rukh⁵, the Congress of Ukrainian Nationalists, the Reforms and Order Party,⁶ and the Solidarity Party. In addition, Yushchenko had the

³ See also chapter on the media.

⁴ Yushchenko is himself not a member of the coalition, but heads it in parliament.

⁵ RUKH (“The People’s Organization for the Restructuring of Ukraine”) was initially a popular movement that played a crucial role during Ukraine’s transformation from a Soviet republic to an independent state. It has later splintered into several political parties.

⁶ Party of presidential candidate *Mykola Hrabar*.

backing of the Tymoshenko bloc headed by influential politician and businesswoman Yuliya Tymoshenko.

The 2002 parliamentary elections rewarded Our Ukraine with 102 seats, while the Tymoshenko bloc obtained 19 seats.

Yushchenko calls for clarified but accelerated privatization, anti-corruption measures, market reform and wants to intergrate Ukraine in Western structures, such as NATO and the European Union.

Below is a complete lists of presidential candidates and who they represented. They are listed as they appeared on the ballot on 31 October 2004:

Bazyliuk, Oleksandr (Slavic Party of Ukraine)
Boyko, Bohdan (People's Movement for Unity of Ukraine)
Brodskiy, Mykhailo (Yabluko party)
Chernovetskiy, Leonid⁷ (self-nominated/Christian Liberal Party of Ukraine)
Chornovil, Andrey (self-nominated)
Dushin, Ihor (Liberal-Democratic Party of Ukraine)
Hrubar, Mykola (Reforms and Order Party)
Kinakh, Anatoliy (Party of Industrialists and Entrepreneurs of Ukraine)
Kozak, Roman (Organisation of Ukrainian Nationalists/OUN)
Komisarenko, Sergey (self-nominated)
Korchinskiy, Dmytro (Bratstvo Party)
Kryvobokov, Vladislav (People's Party of Depositors and Social Protection)
Moroz, Oleksandr (Socialist Party of Ukraine)
Nechyporuk, Volodymyr⁸ (SPDU(u))
Omel'chenko, Oleksandr (Unity Party)
Rzhavskiy, Oleksandr (Yedyna Rodyna Party)
Rohozhynskiy, Mykola (self-nominated)
Symonenko, Petr (Communist Party of Ukraine)
Vitrenko, Natalya (Progressive Socialist Party of Ukraine)
Volga, Vasyl (Public Control Party)
Yushchenko, Viktor (self-nominated/Our Ukraine bloc)
Yakovenko, Oleksandr (Communist Party of Workers and Peasants)
Yanukovich, Viktor (Party of Regions)
Zbitniev, Yuriy (New Force Party)

⁷ The candidate joined the OU bloc in 2004.

⁸ Mr Nechyporuk is a SPDU(u) deputy in the Verkhovna Rada. Although self-nominated, it is reasonable to believe that his role was that of as a 'technical candidate' since the SPDU(u) officially supported Yanukovich's candidacy.

The Legislative Framework

The conduct of the elections of the President of Ukraine is governed by the Constitution of Ukraine (adopted in 1996), Law of Ukraine “On Elections of the President of Ukraine” (LEPU) (adopted in 2004), Law of Ukraine “On the Central Election Commission” and instructions and guidelines issued by the Central Election Commission.

In its preliminary statement after the first round on 31 October 2004, the EOM stated that the new election legislation provides an adequate framework to conduct elections if implemented impartially. It also addresses a limited number of previous OSCE recommendations. Improvements in the new law include provisions that require equal opportunities for all election participants and equality of access to the media and other campaign facilities, and promotion of transparency by granting party, candidates and international observers the right of access to voting and counting procedures.

However, the EOM identified several shortcomings in the legal framework, including its failure to respect the OSCE commitment to allow for domestic, non-partisan observers to observe the election process. Furthermore, the law stipulates that while party- and international observers have the right to observe and obtain Polling Station Commissions (PSC) and Territorial Election Commission (TEC) protocols, they have no right to obtain other important election documents. Neither does the law oblige the CEC to publish results per polling station, thereby reducing transparency in the tabulation of results process.

In the field, the LTOs noted that the legal provision that allows for each presidential candidate to appoint two members to both TECs and PSCs⁹ resulted in both large, and more significantly, politically unbalanced election commissions. The proportional distribution according to number of commission members proposed was fully respected, resulting in election commissions being made up members predominately representing Yanukovich affiliated candidates.

Furthermore, the legal framework does not include provisions that would establish a unified, centrally maintained voter list. Instead, this is the responsibility of local authorities, and in Crimea a majority of the TECs blamed local bodies in charge of maintaining and updating voter lists for not providing accurate lists. On several occasions, it was mentioned that the quality of the voter lists was better in 2002 than it was for this election. Furthermore, routines for updating the voter lists between the two rounds were inconsistently applied by the TECs, partly due to a short timeframe to implement CEC instructions on how to update the lists.

The legal rights of domestic, non-partisan observers should be strengthened. The LTOs recorded several cases of such observers being evicted from polling stations on election day.

Finally, as the law does not grant international observers the right to receive election related documents other than PSC and TEC results protocols, the LTOs sometimes experienced difficulties in obtaining basic documents, such as lists over polling stations. Instead, the observers were dependent upon the goodwill of TECs in order to obtain these documents.

⁹ LEPU; Art. 23 & 24, respectively.

The Electoral Administration

Ukraine has a three-tier election administration consisting of the Central Election Commission (CEC), 225 Territorial Election Commissions (TECs) and some 33,000 Polling Station Commissions (PSCs).

The formation of the CEC is regulated by the Law of Ukraine on the Central Election Commission, while formation of TECs and PSCs is governed by the LEPU. The CEC is a permanently working state body and consists of 15 members appointed to office for a term of seven years. The Verkhovna Rada upon recommendation of the President appoints its members.

The CEC oversees and organizes the conduct of elections to the Verkhovna Rada, to the President of Ukraine, as well as referenda. It is responsible for the uniform application of the election law, issuing clarifications to TECs and PSCs, as well as directing their activities; provides funds to lower-level election commissions; and ensures the production and broadcasting of voter information. Furthermore, the CEC registers candidates and their proxies and determines the results on the basis of protocols from the TECs. It is also in charge of printing the ballot papers and absentee voter certificates (AVCs) and to distribute them to TECs.

TECs are formed no later than 80 days prior to election day by the CEC on the basis of candidate nominations. Each candidate may nominate up to two members to both TECs and PSCs. This is intended to secure multi-party/candidate representation and openness in the work of election commissions. No party/bloc can hold more than one of the positions as chair, deputy, and secretary on the same commission.

The main responsibilities of the TECs are to form election precincts and establish their boundaries; form Polling Station Commissions and direct their activities, hereunder provide them with technical and administrative assistance, and organize training of PSC members; disseminate election material among PSCs, including the voter lists, ballot papers and AVCs; determine the results for the territorial election district and submit the TEC protocol to the CEC and; within its limits of authority, consider complaints and appeals, and take decisions on them.

PSCs are formed by TECs no later than 35 days prior to election day. They are composed of candidate appointees and should have no less than twelve members.¹⁰ The authorities of PSCs include to receive voter lists from TECs, verify and make them available for public inspection; ensure that voters are given the opportunity to familiarize themselves with information about the candidates and their programmes; prepare the voting premises (Polling Station) and ballot boxes; organize and conduct the count of votes, and submit the protocol to the TEC; and consider complaints and appeals regarding amendments in the voter list, the conduct of the poll, and take decisions on them within the limits of its authorities.

Each polling station may serve from 20 to 3,000 voters. The law provides for out-of-country voting. In this case, polling stations are to be established in “diplomatic and other official representations and consular offices of Ukraine abroad, and in military units located outside the boundaries of Ukraine”.

Although the CEC conducted its work in a transparent manner and its sessions were open to the media and observers, the OSCE/ODIHR EOM noted several shortcomings in the work of the CEC, most notably:

The failure of the CEC to publish results per PSC, although the CEC several times declared its intention to provide this data, thereby lessening transparency and confidence in the results;

¹⁰ In election precincts with less than 50 voters, PSCs can be made up of the leading ‘troika’ and two to four members.

Despite repeated requests from the EOM, the CEC failed before both rounds to make public the number of ballots issued to each TEC;

The failure to publicly announce the number of AVCs delivered and disseminated in each territorial election district in front of the second round, as well as the number of voters added to voter lists in between the two rounds;

The reluctance of the CEC to grant relief on complaints regarding electoral violations, most notably those filed by the opposition;

The lack of a comprehensive voter information programme to inform the electorate about voting procedures and the secrecy of vote.

Regarding lower level commissions, the EOM noted that the possibility for each candidate to nominate two members to both TECs and PSCs often led to staffing problems, but that once this problem was resolved, composition of election commissions remained relatively stable between the two rounds.

In Crimea, the ability of minor candidates, who lacked wide recognition and a nationwide party, to recruit members to PSCs was questionable. LTOs received numerous and credible reports that local authorities had lent a hand to those candidates who were affiliated with Mr Yanukovich in finding nominees to PSCs, in contravention to the law that states that only proxies¹¹ are authorized to do this. The manner in which this ‘recruitment’ took place is unclear, but LTOs were told several times that persons nominated to PSCs had been pressured and coerced to ‘put their name down’ by individuals working in state structures. In addition, there were several cases where people nominated to PSCs were not aware of having been nominated in the first place and where their names appeared on more than one nomination list. As such, many of the nomination lists contained multiple entries.

In Crimea, as was the case in most other parts of the country, TECs had great problems in forming PSCs, especially after their composition was confirmed by the TECs by 25 September. After this date, all the LTOs’ twelve TECs reported that large numbers of PSC members had resigned. Most TECs quoted personal reasons, such as “illness”, when asked why PSC members were resigning. Some also stated that the proxies had done poor work when recruiting members to represent their candidates on PSCs, such as not informing them properly about the nature of the work, or the role they would play in PSCs. Therefore, when faced with their duties as PSC members, many decided to resign simply because they were not prepared for the task.

In addition, the discovery of double and even triple entries in the nomination lists further complicated the process of forming PSCs since new nominees had to be found.

However, when speaking to representatives of oppositional parties and candidates¹², the story of PSC resignations seemed to be more complex and grim than described above. Our Ukraine told LTOs that many of their PSC members, especially those occupying the positions of Chairperson, Deputy and Secretary, had been intimidated or pressured to resign. Allegedly, pressure included threats of job-losses, especially regarding those employed in the public sector.

Other tactics employed to remove both TEC and PSC members in opposition included deliberately not summoning them to sessions, thereby creating grounds for higher election commissions to expel them.¹³

¹¹ In this election, the term ‘proxy’ denoted a person accredited by the CEC who acted as the candidate’s personal representative. In theory, a candidate would have one proxy for each territorial election district.

¹² In Crimea, these were Our Ukraine (Yushchenko), SPU (Moroz), Chernovetskiy, Brodskiy, Hrabar and the CPU (Symonenko).

¹³ The LEPU stipulates that if a member of an election commission systematically fails to perform the duties laid on him, his or her authorities can be terminated before term by the election commission that formed the commission (Art. 30.4).

In some TECs, LTOs were shown lists over nominees to PSCs before and after their composition had been confirmed by the TEC. The tendency was that those nominations not accepted by the TEC particularly affected oppositional candidates. In one TEC around half of the names initially put forward by OU, Brodskiy and Hrabar were not accepted, thus dramatically reducing their numbers on PSCs.

Although candidates do have the right to find replacements for those who resign from election commissions, several minor candidates, again those in opposition, faced difficulties in finding new people, both because of time constraints, and because they lacked manpower.

All the above seriously complicated, and thus delayed, the normal functioning of PSCs since resignations impacted upon the 2/3rds quorum necessary for PSCs to take decisions. In turn, the late up-and-running of PSCs left less time for voters to go to their respective polling stations and check their entries in the voter list, as well as familiarize themselves with the candidates' political programmes.

As previously mentioned, a majority of TEC and PSC members represented the interests of Mr Yanukovich. Consequently, during decision-making processes in the commissions, the opposition was always outnumbered. LTOs furthermore noticed that the three leading positions in TECs, especially that of Chairperson, often seemed to be held by puppets, while the fourth 'free' member,¹⁴ usually associated with Yanukovich, seemed to be pulling the strings. In one case, the work of the TEC appeared to be controlled by a person who was not a formal TEC member.

It should be mentioned, however, that both TECs and PSCs seemed to be hard-working bodies. All TECs the LTOs met with had a thorough knowledge of the legal framework and although not obliged to by law, most provided the LTOs with the documents they requested.

Voter and Civic Education

The LEPU stipulates that it is the CEC's responsibility to "ensure the production on national TV and radio of information programmes giving clarifications to voters about the principles and procedure of conducting elections, [...] the voting procedures, the rights and obligations of voters [...]"¹⁵

Before the first round, the EOM criticized the CEC for not having fulfilled in an adequate way its above legal obligation to provide voter education. However, at local level, several TECs were conducting such activities, airing spots encouraging voters to go and check their entries in the voter list, and explaining voting procedures.

As a positive element, the state-owned national broadcaster *UTI* did air public information advertisements, produced by the NGO *Committee of Voters of Ukraine*, aimed at promoting awareness among voters regarding electoral provisions and verification of the voter list.

Although not directly witnessed, in Crimea LTOs were told that the TECs had conducted some voter education where typically the TEC Chairperson would appear on local television, urging voters to go their polling stations and check for their name in the voter list.

As for local media's role in conducting voter education, TV stations based in Simferopol¹⁶ told the observers that in addition to airing analytical programmes and debates between local representatives of

¹⁴ Each TEC must have four 'free' members, meaning that these have taken leave from their usual employment to work full time in the election commission. Usually, free members include the 'troika', plus one regular TEC member.

¹⁵ LEPU: Art.25.7

government and the opposition, they were airing spots explaining election procedures, which included calls for voters to check their entries in the voter lists. Some spots regarding the latter were produced locally.

Voter Registration

As previously mentioned, Ukraine lacks a central system of voter registration. Local bodies of government structures, such as the Ministry of Interior, the Ministry of Justice and the State Tax Administration, manage civil data. These, and their sub-bodies¹⁷, submit the civil data to executive bodies of village, settlement, city and district councils who compile the general voter list before first July on the year of elections of the President. The voter list shall include citizens of Ukraine who currently are, or who on the day of elections turn 18, and who permanently live in the respective territorial unit as of the day the list is prepared.¹⁸

The relevant bodies responsible for consolidating the voter list(s) for the given precinct(s) submit each list in two copies to the respective TEC 35 days before election day. On the basis of information submitted by commanders of military units, military personnel are included in the regular voter list.

The TECs deliver the voter lists (in one copy) to the respective PSCs no later than 31 days prior to election day. The second copy is retained by the TEC. After the voter lists are distributed, responsibility for updating the lists falls to the PSCs, under the overall guidance of the TEC.

When received at the PSC, the voter list must be made available for public scrutiny.¹⁹ In case of inaccuracies or omissions in the voter list, a voter must file a complaint with the PSC, TEC or local court, which decides whether or not to amend the list based on the voter's request. On election day, a voter may only approach the TEC or local court to be included on the voter list, based on a written complaint.

Absentee Voter Certificates

A voter who will not be in his/her precinct on election day may apply for a Absentee Voter Certificate (AVC) from his/her PSC in order to vote in another precinct. An AVC is valid throughout Ukraine, except for in precincts within the immediate vicinity of the election precinct where the voter initially was registered.

Upon receiving an AVC, the issuing PSC de-registers the voter from the voter list by making an entry in the list, indicating date and the AVC's number, upon which the recipient and the member of PSC who issued the AVC sign the voter list.

In its assessment of both rounds, the OSCE/ODIHR EOM identified the inaccurate voter lists as one of the most significant shortcomings. After the first round, the EOM stated that the legal framework insufficiently guaranteed the accuracy of the voter lists and that the late formation of PSCs impeded

¹⁶ State TV Crimea (*GTRK Krym*) and *Chornomorskaya TV*.

¹⁷ E.g. The 'Passport Table' (*Passportniy Stol*) and various housing departments (*ZhEK*).

¹⁸ LEPU: Art. 31

¹⁹ The voter lists were not posted. Usually they were on display on a table, or available upon request at the polling station premises.

voters' ability to check their entries. On election day 31 October, observers noted a large number of errors and/or omissions, while on 21 November generally fewer voters were turned away from polling stations due to inaccurate voter lists.

In Crimea, the poor quality of the voter lists constituted one of the main problems during both election rounds. The extent of the problem remains unknown, but suffice it to say that over 2,500 voters alone approached one TEC on 31 October with complaints regarding inaccurate or missing entries. It is reasonable to believe that a much higher number of voters was deprived the right to vote due to inaccuracies since many lacked resources, such as transport, to travel to the TEC in order to get a permit to vote.

The situation slightly improved on 21 November when a CEC instruction passed on 10 November allowed PSCs to correct misspellings in the voter list on election day, enabling those voters whose names were misspelled to cast their ballot without approaching the TEC or court instance. Generally, observers noted fewer voters being turned away on the second round compared to the first round.

From what was told LTOs, inaccuracies in the voter lists especially affected the Crimean Tartar community. The Crimean Tartars²⁰, which make up around 12% of Crimea's population, are organised through the *Medzjlis* national assembly, which is an officially recognized political body representing their interests. In July 2004, the *Medzjlis* adopted a resolution to support the candidacy of Viktor Yushchenko, partly in response to the Yanukovich cabinet not supporting the Law on Restoration of the Rights of Persons Deported on an Ethnic Basis²¹ and the presidential administration's resistance to allocate land to returning Tartars. Consequently, it was expected that most of the 110,000 Crimean Tartars registered to vote would support Yushchenko. However, credible reports suggested that names of Crimean Tartar voters had deliberately been tampered with in the voter list, presumably to prevent them from voting for the opposition candidate. Examples were given of voters having checked their names twice at the polling station, and still not being able to vote on election day due to misspellings.

In TECs densely populated by Crimean Tartars, it was suggested that as many as 20% of the Crimean Tartar voters were unable to vote during the first round due to misspellings or other inaccurate data.

After the first round, all TECs the LTOs met with stated that inaccurate voter lists constituted the main technical shortcoming. The period in between the two rounds left very little time to update the voter lists since that process could not begin before the official calling of the second round. In turn, the calling of new elections cannot be done before after the CEC has published the official results, which the CEC first did on 11 November. Updated lists were to be distributed to PSCs by 13 November, which effectively left TECs only a couple of days to complete this extensive job.

In accordance with the law, TECs are responsible for updating the voter lists in front of a repeat vote. The new voter lists are based on the previous ones and include those voters added on the original voter lists based on a TEC or court order, and voters who turned 18 between the two rounds. Voters who voted using an AVC are not included in the new list.

The ways in which the lists were updated seemed to vary, with some TECs placing most of the responsibility on the shoulders of PSCs, while other TECs, based on information received from the relevant civil data offices, compiled new voter lists on their own. Due to time constraints, some TECs were late in disseminating the new and updated lists to PSCs, e.g. in Simferopol. This left even less time for voters to go to the polling stations and check their entries before election day 21 November. It

²⁰ The Crimean Tartars, a Turkish people, were exiled *en masse* to central Asian republics in 1944 for their alleged co-operation with the Nazi occupiers of Crimea. They were allowed to return to Crimea at the end of the 80ies and only during the last 5 years approximately 250,000 have returned.

²¹ The law was passed in the Verkhovna Rada in June 2004.

should be noted, however, that in front of both rounds, voters were not particularly active in checking the voter lists.

Candidate Registration

The law states that every citizen of Ukraine, who is 35 years of age, has the right to vote, has resided in Ukraine for the last ten years, and who commands the state language, can run for the post of President of Ukraine.²² Furthermore, the law stipulates that candidates can be nominated by political parties, blocs or be self-nominated. Each candidate must pay an election deposit of 500,000 UAH (approx. 72,000 EUR); submit property and income statement for the preceding year; submit an autobiography and submit a pre-election programme in the state language. In addition, each candidate has to collect a minimum of 500,000 signatures in support of his/her candidacy. The deadline for submitting the signature lists to the CEC was 20 September 2004.

Of the initial 26 candidates that had paid the electoral deposit and were registered by the CEC, one candidate withdrew before his signatures were verified and another failed to gather the required number of signatures. The remaining 24 candidates included a number of well-known candidates, but the majority lacked broad public recognition, a nationwide party and campaign structure. The OSCE/ODIHR EOM received numerous allegations that the ability of some candidates to collect 500,000 signatures could only be explained by that they had received assistance from the state apparatus. In fact, the sixteen least scoring candidates obtained all together less than 500,000 votes, compared to the over 10,000,000 signatures they claimed to have submitted!

The ability of the CEC to verify the signatures was limited to confirming that each candidate had more than 500,000 signatures and the superficial check by CEC staff members of the signatures was insufficient in order to check for multiple entries.

In Crimea, LTOs received numerous and credible reports of state employees being forced to sign up for Mr Yanukovich under the threat of job dismissal. In both Yalta and Feodosiya, company and department heads were allegedly instructed by the city's executive council to collect signatures for Yanukovich.

The Election Campaign

The Law of Ukraine on the Election of the President states that:

A candidate may start the pre-election campaign after he/she is registered by the CEC and that the campaign shall end at 24 hours on the last Friday before election day;

The campaign before the repeat vote may start the day after the vote was called and end 24 hours on the last Friday before the day of repeat voting (LEPU: Art.58);

Printed campaign material must contain information about the institution that printed the material, or a notice that the material is printed using the resources of, respectively, a candidate to the post of

²² LEPU: Art.9

President of Ukraine or a party, as well as circulation figures and information about the persons responsible for their issuance (LEPU: Art.59.7);

A presidential candidate has the right, on a contractual basis and at the expense of the campaign fund, to lease buildings and premises for the purpose of holding meetings, rallies and other pre-election campaign events (LEPU: Art.58.6);

Publication of opinion polls is prohibited the last 15 days prior to election day (LEPU: Art.64.13);

Pre-election campaign material must be removed at 24 hours on the last Friday preceding the day of elections by services of local executive bodies (LEPU: Art.64.17); and

It is prohibited to make public the results of exit polls on election day (LEPU: Art.64.18).

The following articles in the law are aimed at providing equal opportunities for all candidates:

All candidates nominated for the post of President of Ukraine shall enjoy rights and opportunities to take part in the election process;

A mass media outlet that provided a candidate with airtime or print space shall not have the right to refuse to provide airtime or print space on the same conditions to another candidate²³ (LEPU: Art. 60.8);

In cases where premises are provided for a campaign event for one candidate, the owner of the premises shall not have the right to refuse to provide it to another candidate under the same conditions²⁴ (LEPU: Art.58.9).

In its assessment of the campaign leading up to the first round, the OSCE/ODIHR EOM noted that “[...] the campaign was rancorous, divisive and did not permit fair conditions to all candidates to convey their message to the electorate”. Unequal campaign conditions were manifested through state authorities and administrative structures at all levels having been observed to provide substantial support to the Yanukovich campaign, at times using administrative resources in favour of the above candidate.

Although difficult to prove, in Crimea, heavily populated by Russians,²⁵ there was little doubt as to which candidate administrative structures lent their support to. Allegations of voters, especially those employed in the public sector, being pressured to support or promote Mr Yanukovich in one way or the other were widespread, as were allegations concerning the administration’s obstruction of the campaign of Mr Yushchenko.

In July 2004 Yanukovich’s main Crimean campaign office in Simferopol announced the formation of a coalition composed of NGOs and political parties called ‘Crimea for Yanukovich’. The coalition was co-ordinated by the current Prime Minister of the Council of Ministers of the Crimean Verkhovna Rada. A similar coalition was also created in Sevastopol. LTOs were told that several NGOs representing national minorities had felt obliged to join the coalition in order to continue to receive financial support from the Crimean government, while others had been included without their knowing.

²³ Does not apply to mass media owned by parties that are subjects of the election process.

²⁴ Does not apply to premises owned or used on a constant basis by parties/blocs that are subject of the election process.

²⁵ According to the 2002 census, Crimea consists of 60% Russians, 23% Ukrainians (heavily russified), 12% Tartars, and 5% other minorities. As such, Yanukovich was thought to appeal to Russians/Russophones.

Prior to the first round, the pre-election campaign was relatively low-key, the only exception being the highly visible campaign of Mr Yanukovich in form of posters and billboards. These were prominently on display throughout Crimea, while on the other hand, Our Ukraine (OU) was unable to purchase billboard space for its candidate, Viktor Yushchenko, because advertising firms refused to sell space due to alleged intimidation by local authorities. In addition, LTOs saw posters and banners on display featuring Mr Yanukovich on several public buildings, in contravention to the law.

Other visible campaign techniques employed both by the position and opposition included small information tents, from which campaign material was disseminated to passers-by. The LTOs recorded one instance of such a tent belonging to OU unlawfully being dismantled by the Ministry of Internal Affairs (police). In Sevastopol, the OU told LTOs that several of their tents had simply been stolen.

Furthermore, both front-runners established 'civil reception' offices some three months prior to election day. The vast majority of them belonged to the Party of Regions – Mr Yanukovich's party, and where to be found everywhere. According to the Yanukovich campaign office, the purpose of establishing such offices was to "narrow the distance between the ordinary citizen and the government" (sic) and that their establishment had nothing to do with the pre-election campaign! However, the local Yanukovich campaign office was usually located in the same building.

In Sevastopol, Simferopol and Yevpatoriya, inflammatory material targeting Yushchenko was widely circulated by persons unknown. The most serious example of such so-called 'black PR' was a leaflet addressed to the Crimean Tartar community, supposedly written by Yushchenko, promising that if he came to power he would kick out the Russians and hand Crimea back to the Tartars. The purpose behind the leaflet was evidently to stir up ethnic hatred and fear among the Russian-speaking community. Even on election day, observers witnessed the posting of anti-Yushchenko leaflets in Yalta.

During the pre-election period Yanukovich and Yushchenko, as well as Petr Symonenko (CPU), visited Crimea. The meetings generally targeted younger voters as they featured line-ups of popular Ukrainian, and sometimes Russian, pop bands. In between the performances, pre-recorded political advertisements were shown on a large monitor. The exception to this 'recipe' was the Symonenko event, which toward the end witnessed a couple being blessed by leader of the Crimean branch of CPU, whereupon they received a microwave oven as wedding present!

Although the Crimean Tartar community was active in getting-out-the-vote among its people,²⁶ the central Yushchenko campaign office in Crimea evidently failed to mount an effective campaign and attract new voters, allegedly because of lack of dedicated leadership and internal disagreement. From before, Yushchenko's support base in Crimea was thin and a major campaign event featuring the candidate himself yielded a low turnout. Neither did the Yushchenko campaign succeed in reaping any benefits from several prominent local members of the SPDU(u) that left the party and instead expressed their support for Yushchenko.

In accordance with the law, candidates could not officially resume their campaign in between the rounds before 12 November, effectively leaving them only eight days to campaign before the second round on 21 November. The late announcement of results was perceived by the OU as being a tactic to deprive the bloc of valuable time to campaign, although their campaign, at least in Simferopol, was almost non-existent before the second round. Based on long-term observation, it is reasonable to believe that the Yanukovich campaign was less affected as furtive structures in the state apparatus continued to work for that candidate between the rounds.

²⁶ 'Getting-out-the-vote campaign was conducted both on a central level and through local *Medzjlis* offices, under the presumption that most Tartars would vote for Yushchenko.

The Media

Article 34 of the Ukrainian Constitution guarantees the freedom of expression and speech, while Article 15 prohibits censorship. Moreover, the LEPU contains detailed provisions governing the conduct of electronic and print media during a pre-election campaign. It provides for free and paid broadcast time and print space to all registered candidates on equal conditions for campaign purposes.²⁷ Each candidate was given 30 minutes of free airtime on national TV and 45 minutes on a nationwide radio station, as well as 20 minutes on regional TV stations in each region of Ukraine.

In previous reports after the 1998 parliamentary and 1999 presidential elections the ODIHR identified the media as one of the main shortcomings of the process. On both occasions, the state controlled and private media failed to provide impartial information about the election campaign and candidates.

During these elections, the OSCE/ODIHR EOM monitored eight TV channels and nine daily and weekly²⁸. In addition, 14 regional TV stations, both state funded and private, were monitored. The results showed that state funded media displayed overt bias in favour of PM and presidential candidate Viktor Yanukovich, thereby obstructing the opposition candidate's opportunity to present his message on an equal basis. On the other hand, private channels, such as *Novy Kanal*, *STB* and especially 5th Channel, aired a greater diversity of news.

The EOM furthermore noticed that the issue of so-called *temnikiy* (guidelines on the content and presentation of news items) by persons unknown constrained the public's access to balanced information.

The print media offered a plurality of views, but mainly supported specific candidates. Therefore, in order to obtain an objective view of the campaign, voters would have to read several newspapers.²⁹

In Crimea, the LTOs monitored two regional TV stations: The state funded *Crimea TV (GTRK Krym)* and the private *Chornomorskaya TV (TRK Chornomorskaya)*. Before the second round, Crimea TV allotted an overwhelming amount of its airtime to Yanukovich, of which all was neutral or positive in reference. All references made to Yushchenko were either neutral or negative in content. Conversely, Chornomorskaya TV dedicated 75% of its coverage of the elections to the campaign of Yushchenko, of which all had neutral or positive reference.

Regarding the media environment, the LTOs received credible reports that most media outlets owned by the local state administration supported Yanukovich and that journalists were under pressure to report on the elections in a certain way. Both in Sevastopol and in the rest of Crimea, OU filed numerous complaints to local courts regarding bias in the printed media's coverage of the campaign and its refusal to print any of the opposition's views.

It should also be mentioned that the OSCE/ODIHR and their LTOs were subject to criticism in various media outlets. An article in the *GTRK 2000* newspaper (owned by Mr Medvedchuk) was highly critical of the work of LTOs in Crimea and questioned their neutrality. A similar article, quoting the critical words of the head of the city administration in Sevastopol, appeared a few weeks later on several websites where the LTOs were accused of acting in clandestine.

²⁷ LEPU: Arts.60, 61 & 63.

²⁸ The EOM conducted quantitative and qualitative of the following media outlets: TV: *UTI* (state-funded), *I+I*, *ICTV*, *STB*, *Novy Kanal*, *TRK Ukraina* and *Fifth Channel* (all private). Newspapers: *Uriadovy Kurier*, *Golos Ukrainy* (state owned), *Fakty i Kommentarii*, *Segodnya*, *Den*, *Silski Visti*, *Ukraina Moloda*, *Zerkalo Tyzhna* and *Vechirni Visti* (all private).

²⁹ For a more comprehensive overview of the OSCE/ODIHR's media monitoring results, please see www.osce.org/odihr

Observation on the Polling Day

Based on observations done by over 600 observers drawn from OSCE participating states, the OSCE PA, Council of Europe, the European Parliament and the NATO PA, the IEOM concluded in its Preliminary Statement after 31 October that the poll took place in a generally calm atmosphere. Moreover, voting and the vote count were positively assessed in the vast number of polling stations (PSs) visited.

However, observers did notice several serious shortcomings, including:

Inadequate polling facilities (10% of PSs visited); overcrowding (12%); inaccurate voter lists, resulting in voters being turned away (20%); group voting; and presence by police in 40% of the PSs visited, although not provided for in the law.

On 21 November, although voting again was conducted in a generally calm atmosphere, observers rated election day less favourable than 31 October. There was a higher occurrence of serious violations, including incidents of violence and 24 cases of voters being transported from polling station to polling station to vote (multiple voting).

Observers also reported intimidation directed towards polling station staff and observers. Although fewer voters were turned away due to inaccurate voter lists, approximately 5% of the voters were added to voter lists on the basis of AVCs. The IEOM noted that this was of concern, taking into consideration the abuse of these documents reported by LTOs prior to the election.

Election day procedures

Opening procedures

Before the opening of a polling station, the Polling Station Commission (PSC) has to convene at the polling premises no later than 7:15 in order to set up the polling station. The following steps are then taken:

The safe is opened and the number of ballots received from the TEC is announced and entered into the PSC protocol;

The number of voters who received AVC is counted, as is the number of non-issued AVCs. The latter are invalidated by tearing off the bottom-right corner, after which they are packed and sealed separately by the PSC; and

The PSC, candidates, observers and representatives of the media examines the ballot boxes, after which they are sealed with two (different) seals. A control slip for each box is then signed by all PSC members, proxies and observers, and inserted into the box. Mobile ballot boxes are stored, empty within sight.

Voting procedures

Polling commences at 08:00, and ends at 20:00. At this time, only voters inside the polling stations have the right to vote. The following voting procedures apply:

A voter presents a valid ID,³⁰ his/her name is found in the voter list and the voter is issued one ballot;

³⁰ Documents confirming a voter's citizenship are: Passport; internal ID; diplomatic passport; service passport; seaman's ID; crew member's ID; military ticket; temporary ID; and card issued by penitentiary system. Additionally, on 28 October, the government adopted a resolution signed by PM Yanukovich that provided that Soviet Union passports were valid until 1

If a voter presents an AVC, his/her name is entered on the bottom of the voter list, including the certificate's number, date of issue and number of PSC decision. The voter is then issued one ballot;

The voter signs the ballot counterfoil and the voter list;

The PSC member who issued the ballot enters his initials in the voter list, signs the already stamped ballot and the ballot counterfoil, which is torn off the ballot and retained by the PSC;

The voter enters the voting booth and marks the ballot. If the voter makes a mistake (spoilt ballot), a second ballot can be issued upon written request. Another voter may assist a disabled voter;

The voter casts the ballot in the box and leaves the polling station.

Mobile voting

Voters unable to go to the polling station because of health conditions may apply to vote in their home. A written request to vote by mobile ballot must be submitted the PSC 12 hours prior to the beginning of the poll. A note of this is written in the field in the voter list where the voter signs for the ballot. Based on the requests, an extract of the voter list is compiled. Before departure, a control slip indicating time of departure, number of ballots received and initials of the mobile team is completed. It is signed by the PSC, observers and proxies (candidates) and inserted into the mobile ballot box. Upon return to the polling station, a note in the voter list is made of those who cast their vote at home. The extract of the voter list is attached to the regular voter list.

Counting procedures

Having closed and locked the polling station, the PSC shall first of all consider any eventual complaints or comments filed during election day. The following procedure should be followed during counting:

The number of voters in the precinct is determined by counting entries in the voter list;

Unused ballots are counted, announced and entered into the PSC protocol. The unused ballots are invalidated by tearing off their bottom-right corner and packed together with spoilt ballots in a separate package marked "unused election ballots" and indicating TEC and PSC numbers, number of ballots and signatures of the PSC certified with the seal.

The number of signatures in the voter list is counted and announced. The numbers should equal the number of voters who received ballots. Likewise, the number of ballot counterfoils is counted and should amount to the number of voters who received ballots;

If the above numbers do not correspond, the PSC shall indicate the reason for the discrepancy in a decision, signed by the PSC members, upon which another decision has to be taken on determining the number of voters who received ballots;

The voter list, the mobile vote extract and applications for mobile voting, the AVCs and court decisions are packed together and labelled "The list of voters";

The ballot boxes are opened in sequence, starting with the mobile boxes, the content dropped on a table. The presence of the control slip has to be verified;

If no control slip is found, the ballots in the box are not taken into consideration and are packed separately labelled "Ballots not to be considered";

The total number of ballots is counted aloud (excluding the above), then divided according to candidate and validity. If there is any doubt about the content of the ballot, a vote shall be taken by the PSC;

December, thus making them valid voter ID documents. Interestingly enough, already in 2002 the Verkhovna Rada had terminated the validity of these documents.

Void ballots³¹ are counted, announced and entered into the PSC protocol, after which they are packed in a package labelled “Void ballots”; and

Votes for each candidate and “against all” are counted, the results announced and entered into the PSC protocol. Each PSC member is entitled to recount the ballots. Ballots for each candidate are packed separately, the package indicating name of candidate or “did not support any candidate”.

All PSC members must sign the completed PSC protocol. If signatures are missing, the reason for their absence shall be entered. If inaccuracies are revealed in the protocol after its signing, corrections can be made only by compiling a new protocol. Four protocols are completed; two go to the TEC, one stays with the Secretary, while the fourth is posted at the PS. Candidates, proxies and observers are entitled to receive a copy of the protocol certified by the PSC Chair and Secretary.

At the TEC, the following procedures apply:

Upon arrival of the PSC material, TEC members should first control the protocol for mathematical/logistical consistency. If minor inaccuracies are found, the TEC can order the PSC to make changes to the protocol. Thus, a new protocol with “Corrected” written on it shall be submitted the TEC;

The TEC can order a recount of ballots at the TEC based on complaints by PSC members, proxies or observers, which were entered into the PSC minutes. A recount is mandatory if the packages containing the election material have been opened on the way to the TEC; and

All PSC results are entered into a tally sheet and the individual PSC results submitted electronically to the CEC. The final (tabulated) TEC results will have to result from a TEC decision signed by all TEC members. Missing signatures have to be justified.

One TEC protocol is submitted to the CEC, together with all PSC protocols, one is given to the TEC Secretary, and one will be displayed. All other TEC members are given a protocol, and observers have the right to receive a copy.

Election Day Observation Reports

Election Day Observation Report from STO Stine Münter

The cities of Hartsisk and Donetsk are located in the Donbass region, in the northeast of Ukraine. The Donbass region has the largest proportion of ethnic Russians in Ukraine, and the area has strong ties to the neighbouring Russian Federation. Both cities rely heavily on industry, with a significant mining, chemical and steel production. However, as a consequence of the backlog of the soviet-industrial legacy there is huge over-employment in the industry, along with a relatively high level of unemployment.

Due to the socio-economical situation in the region the main concern of the electorate include issues like social security and employment. The city of Donetsk is the birthplace of presidential candidate Viktor Yanukovich, and the region is considered to be his stronghold. Yanukovich has the backing of the local oligarchy, and this constellation of politics and economy represents the hope of prosperity for the many people in the Donbass region.

The election in the region was expected to be a dirty process, partly because of allegations from the opposition parties about misuse of state resources as well as the highly biased campaigning in favour of

³¹ A ballot is deemed void if it: lacks the PSC seal; has no signature of a PSC member; is marked more than once; is not marked; has the ballot counterfoil in place; is impossible to determine the voter's will.

Yanukovich. An atmosphere of fear was also considered to prevail among particularly public, but also private, employees, who felt pressured to vote for Yanukovich in order to keep their jobs.

First round – 31 October:

The team was a so called ‘TEC team’, responsible for covering TEC 61 in Hartsisk, a neighbouring town of Donetsk.

After finalising the count, the PSC delivers the protocol and the election material to the TEC which announces the results, summaries all PSC results and – at the latest 8 am next morning - conveys the computerised total results to the CEC. Because the team was tasked to observe at a TEC, it was not expected to cover more than two or three polling stations (PS), or observe the opening and closing/counting procedures.

Observation of polling:

On the day of the election the team observed in three PSs in the town of Hartsisk. The PSs that were visited appeared to be well organized, and the PSCs generally fulfilled their duties in a satisfactory manner. However, it should be mentioned that the general problem for the area was the lack of nominees of the opposition candidates, Yushchenko and Moroz, to the PSCs. This was partly because the Yushchenko headquarters saw no point in being represented in this area, since it was the stronghold of Yanukovich. Another reason given was that the proxy of Moroz, on her way to the TEC to submit the PSC nomination lists, disappeared under mysterious circumstances – only to reappear after two days when the deadline to submit nominations had passed. When approached by the LTO after this incident the representative of Moroz was not willing to give any explanation.

As for the conduct of the poll at the three PSs visited, the team did not observe any irregularities. The voter lists were mainly accurate, and in the few instances when voters were added to the list, it was done on the basis of an absentee voter certificate or a court decision. The team observed no overcrowding in the PSs, which was as expected since the team observed in the afternoon, and the bulk of voting had been done in the morning. The general atmosphere was relaxed and the voters understanding of the voting procedures seemed fairly good. The only remark would be the presence of police inside the PSs, and at one PS there was an unauthorised person that appeared to be in charge of the voting process. With regard to the situation outside the PS the atmosphere was calm, with police present outside every polling premise.

While the team did not observe any irregularities in the work of PSCs directly, the team received serious allegations from one observer and representative of Viktor Yushchenko. According to the observer, groups of men had appeared outside several PSs in the morning, offering bribes (approx. NOK 23) to particularly vulnerable groups, such as elderly and poor people, to vote for Yanukovich. Many voters had allegedly accepted the bribe.

Observation at the TEC:

The STO team was present at TEC 60 from 8 pm and stayed there throughout the evening and night until 8 am next morning. This TEC had about 50 PSCs reporting to it, with a total of approximately 100,000 voters. The immediate problem at this TEC was the lack of organisation and insufficient space. The lack of space caused very bad working conditions both for the TEC and for the observers. None of the TEC members were able to observe whether the packages containing the protocols were sealed or the state of the protocols. Neither were the observers, which sat at a distance, able to observe this process. Hence, none but the Chair, his deputy and Secretary had access to the protocols upon delivery by the PSCs. When having in mind that this troika all represented Yanukovich or one of his technical candidates – the process obviously lacked the necessary transparency to rule out irregularities.

In the narrow corridor outside the TEC room there was a critical situation with lines of PSC members waiting for hours to deliver the election material. Many of these were elderly ladies and in the course of the evening the team observed several PSCs that gave up waiting and left for home with the protocols and the election material. When approached by the team they said they would return in the morning when the queue was shorter. However, the STOs did not suspect this to be attempts of fraud, but rather a matter of exhausted election workers and the chaotic conditions they were offered inside the TEC building.

Another serious irregularity that the team observed several times was that PSCs, after having their protocols rejected by the TEC for various reasons, returned to the corridor where they corrected the protocols and then copied the signatures of the PSC members that were not present. This procedure is not in compliance with Art. 81 in the election law, which clearly states that the PSC shall return to the PS, correct the protocol, whereby the members of the PSC once again sign it.

Second round - 21 November:

The STO team was a TEC team, with the centre of Donetsk city as its area of responsibility. The task was to observe 3-4 PSs before going to TEC 42 and 43 for observation throughout the evening and night.

On the day before the election, the LTOs in Donetsk had received reports that a number of PSC members from the opposition supposedly had been dismissed by various TECs in the area.

Observation of polling:

The team attended the opening of one of the PS (about 2,000 voters) about which the above-mentioned allegations had been made. At this PS the Chair, Deputy and the Secretary represented Yanukovich or one of the candidates affiliated to him. The opening session of the PSC was disrupted when two PSC members representing Viktor Yushchenko suddenly turned up and asked for an explanation for why they had been dismissed the previous day. The Chair of the PSC was not willing to explain and asked the Yushchenko representatives to leave the PS, which they did.

The atmosphere at the PS was tense throughout the morning. Several men similarly dressed in black coats tended to control the entrance to the PS, and inside the PS there were similarly looking men – accredited as observers for Yanukovich or his party – the Party of Regions. As similar reports from the rest of the district came in, these men were nicknamed ‘Men in black’. There was only one Yushchenko observer – an elderly, inexperienced lady – who seemed to be intimidated by these men. For longer periods at a time they would follow her closely, never more than a few feet away, and she was obviously not comfortable with the company. Other observers for opposition candidates, such as Hrabar, were refused access to the PS by the PSC Chair and Deputy.

The voting process at this particular PS seemed quite well organised, and the voters' understanding of the process was fairly good. However, the STOs noticed that most of the time, a line of people was gathered in front of a desk that covered one particular address, while there were no voters at the other desks. When trying to see what was going on at this desk the team was refused access on the grounds that it disturbed the process of voting. When asked about the constant line of voters, the PSC member in charge of this address said that the people standing in line were voters voting by AVC that were being added to the voters list. When the Chair was asked the same question, she explained that there was a big apartment building located at this address. The team was not able to find out what was actually going on, but the reluctance of the Chair to explain the situation was in itself an indication of irregularities taking place.

At the two other PSs visited that morning no particular technical problems regarding polling were observed. At both places the voting was well organised and the space was suitable for the number of voters. There were no signs of overcrowding and the voters' understanding of the process seemed good.

At the largest of these PS (approx. 1,500 voters) the team observed several indications of serious irregularities. The Chair, Deputy and Secretary were all politically affiliated with Yanukovich. There were a number of men guarding the entrance to the PS, checking the passports of the voters attending the PS. When the team inquired about these gatekeepers the team was given several explanations, none of which seemed credible.

The atmosphere at this PS was tense, and the PSC Chair was not very cooperative towards the team. The team discovered that the original number of PSC members had been 39; while on election day the number of PSC members present at the poll was 23. According to the Chair, the members that were absent had voluntarily resigned because they were not needed, and some had been dismissed by the TEC because they did not “fulfil their duties” (sic), which implied that they did not attend the meetings of the PSC. When asked about the number of dismissals, the Chair was unwilling to elaborate on this matter. He informed the team that on the previous date the Yushchenko HQ had itself dismissed 22 of their PSC members and replaced them with another 33 representatives that never turned up for the meetings of the various PSCs. When the team later checked this information with the Yushchenko HQ it turned out to be false. According to the HQ there had never been any dismissals of representatives. The problem, according to the HQ, was that their representatives were never invited to PSC sessions, and were consequently dismissed by the TEC for not showing up.

At the next PS visited by the observer team the situation was different. At this PS, which was very small (300 voters), the Chair was a representative of Yushchenko. He told the team that two of his PSC members – representing Yushchenko and Hrabar – had been dismissed by the local TEC, but he had refused to comply with the TEC’s decisions.

Observation at the TEC:

The team was tasked to observe at a relatively large TEC with 77 PS (a total of 151,000 voters) reporting to it. When arriving at about 8 pm for the TEC session, the team was initially refused to enter the room where the TEC had convened. The team, along with the other observers, were asked to observe from a gallery on the grounds that the TEC wanted to avoid disturbances during its session. Finally, after a lengthy argument the team was allowed to enter the room, on the condition that it should not move around during the TEC session. Consequently, the team was not able to conduct a satisfactory observation. The position of the team gave no direct access to observe the process of unsealing and controlling the content of the protocols, and neither the possibility to see the seal of the packages with election material that were handed in by the PSCs. As the STOs were not allowed to leave the room, they were prevented from observing the situation in the corridor and outside the building.

The announcement of the PSC results showed a landslide for Yanukovich. Generally, the votes cast for Yushchenko varied from 3 to 5. There were one or two exceptions, though, of which one was the PS the team visited the same morning where the chairperson represented Yushchenko. At this PS Yanukovich gained 80 percent of the vote, while Yushchenko got about 17 percent. The final result for the TEC was 150,000 votes for Yanukovich and 960 for Yushchenko.

Election Day Observation Report from STO Espen Eftedal Svensen

First round – 31 October:

In the first round the STO was part of a TEC team responsible for observing the tabulation at TEC 123 in Drogobych, Lvivskaya Oblast.

The western Ukrainian oblast of Lviv is predominantly pro-Yushchenko, which was reflected in the election results giving the opposition candidate 87.25 % of the votes. TEC 123 was no exception, with close to 90 % of the votes in favour of Mr Yushchenko.

Before going to the TEC, the team observed in a few polling stations. The team did not make any particular findings.

Observation at the TEC:

The work at the TEC 123 on election night was a bit chaotic and unorganized. A tighter organization would have made the process more transparent. More than half of the incoming boxes with the election material were not sealed. In addition, there was a large presence of police both outside and inside the TEC at all times. It is also worth mentioning that whenever a problem would arise, the majority of the TEC members would vote *against* taking action to remedy the problem.

The STO team was allowed to check protocols and even get into the computer room (although the law does not provide for this) where all the results are entered and electronically sent to the CEC.

Second round – 21 November:

In the run-off on 21 November the STO team was deployed in Nikopol in Dnipropetrovskaya oblast. Nikopol is situated in southeastern Ukraine and is considered a regime stronghold. The oblast centre, Dnipropetrovsk, is the hometown of President Leonid Kuchma. It is however worth mentioning that Yanukovich ‘only’ got 57.93 % of the votes against Yushchenko’s 35.75 % in the observer team’s territorial election district.

Observation of polling:

No specific irregularities were uncovered by the STO team at the ten PSs visited on election day. Several cases of alleged irregularities were reported to the STOs by observers representing Yushchenko, but the STO team was not able to verify any of them. There was, however, a considerable increase in the number of voters who had applied for mobile voting. The increase was from 50 to 100 % and all the PSCs explained this by weather changes since the first round.

Observation of counting and tabulation of results:

The PS where the team observed the counting was well organized but the PSC failed to implement several important procedures. For instance, the unused ballots were held up in front of the observers, then packed and sealed and the package signed by all the PSC members. The only problem was that the number of unused ballots remained unknown since no one counted them. The same was the case with signatures in the voter list. The list was simply wrapped in paper and sealed without the signatures being counted.

The tabulation at the TEC was very well organized, and the whole process was recorded with a video camera. The STOs were allowed to check the protocols from the polling stations as they came in. It was however obvious that the observers representing Yushchenko did not stand a chance against the TEC Chairman. Whenever the Yushchenko observer made a remark about any shortcomings in the process, the Chairman of the TEC would disregard him and continue reading out the results. Also in this TEC there was a massive police presence, but only outside the building and in the corridors outside the conference room where the actual tabulation took place.

Election Day observation in Crimea

The LTOs’ area of responsibility (AoR) comprised the Autonomous Republic of Crimea (ARC) and the city of Sevastopol.³² The administrative capital of ARC is Simferopol with approximately 400,000 inhabitants. Sevastopol boasts a similar number of citizens.

³² Sevastopol, together with Kyiv, has ‘special’ status in the territorial-administrative division of Ukraine.

The peninsula of Crimea is surrounded by the Black Sea to the West and South. In the extreme east Crimea shares a border with Russia in the Kerch-strait – the scene of much controversy two years ago between Ukraine and Russia.³³ To the northwest, Crimea is surrounded by the Sea of Azov.

Tourism and recreation still play an important role in Crimea's economy, especially in such places as Feodosiya, Alushta, Yalta and Yevpatoriya situated along the southern and western coastline. However, central, northern and eastern parts are dominated by steppe and agriculture employs many people in places like Krasnoperekopsk, Dzhankoy and Nizhnigorsk. Krasnoperekopsk in the north is additionally a centre for production of various chemicals.

The city of Sevastopol harbours the Black Sea Fleet, currently divided between Ukraine and the Russian Federation. Until recently, it was a closed city due to its military importance.

Political background:

The Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine. The ARC has its own constitution adopted by the *Crimean Verkhovna Rada* (Crimean Parliament) and approved by the Ukrainian Verkhovna Rada. The Crimean Verkhovna Rada consists of 100 deputies directly elected by universal suffrage. The *Council of Ministers* is its government and is headed by a Prime Minister. The Prime Minister is appointed to and dismissed from office by the Ukrainian Verkhovna Rada with the consent of the President of Ukraine.

Crimea and Sevastopol have traditionally been Communist strongholds, exemplified by the 2002 parliamentary elections when the CPU in ARC got 53% of the vote, while Our Ukraine only garnered 16%. Consequently, during these elections, it appeared that the main battle would be fought between Petr Symonenko of the CPU, and Viktor Yanukovich. Although the CPU has experienced a decline in popularity over the last years, the party has a loyal (although diminishing) electorate from which to draw activists.

Nonetheless, election results from the first round gave Yanukovich a landslide victory with 69 % of the vote. Yushchenko came in second (13%), while Symonenko polled poorly, receiving only 7% of the vote. LTOs were told that the reason for this poor showing was that although the Crimean Communists officially opposed the current regime, a lot of co-operation was taking place behind closed doors. Therefore, it was alleged, a large percentage of CPU voters had this time supported Yanukovich instead of their own candidate.

During the second round, Yanukovich again won landslide victories, both in Crimea (ARC) and in Sevastopol, receiving 82% and 89% of the votes, respectively. Yushchenko slightly increased his result, garnering 14.6% of the vote in Crimea, and 7.6% in Sevastopol.

First round (31 October) observation:

For the first round, the LTOs in Crimea received 17 STO teams, of which three were embassy teams and four consisted of parliamentarians. Three of the teams were assigned to observe at TECs – so-called 'TEC teams'. The STOs covered eleven out of in all twelve TECs.

Observation of election day:

All STOs reported that generally opening procedures were in conformity with the law. The opening of one PS was delayed because the PSC had to wait for new ballots since it had stamped out the name of one candidate on the original ballots.³⁴

³³ What sparked off what turned into a border dispute over the tiny island of *Tuzla*, located in the Kerch-strait, was Ukraine's sovereignty over the deep-water lead leading into the Sea of Azov. Consequently, Russian ships going through were obliged to pay a toll to Ukraine.

Generally, voting was carried out in a calm atmosphere and the technical execution of the polling was mentioned as one of the most positive aspects of the process. Several shortcomings and irregularities were, however, observed:

Problems with the accuracy of the voter lists resulting in many voters being turned away. In one instance, voters did not appear on the list but with a proof of residence were added on to the voter list and allowed to vote;

Secrecy of vote comprised in some TECs; in one case voter screens were intentionally facing outwards making it difficult for voters to mark the ballots in secrecy:

Police was present inside all PSs visited by observers. Their presence was not perceived as being intimidating; and

Unauthorized persons seen in a few PSs whose presence was intimidating/intrusive; representatives of *Cossack* army in one PS; and in another case, uniformed railway men claiming to preserve order going in and out of a PS.

Observation at the TEC:

At the TECs, observers reported that the technical execution of the tabulation and aggregation of results was generally good and transparent. However, the manner in which the voting material was delivered at TECs by PSCs was less positive. At one TEC, none of the material was sealed upon arrival, which automatically should have resulted in a recount. Only two recounts were ordered. Furthermore, somewhat chaotic conditions at some TECs were reported due to long queues of PSCs waiting to deliver their material.

Second round (21 November) observation:

For the second round, LTOs received eleven STO teams that covered eleven TECs. Of these, three teams were designated as TEC teams.

Observation of election day:

Again, observers reported that polling was conducted in a calm atmosphere and that there were generally few irregularities. PSCs were dedicated and organised the voting well. The most significant improvement since the first round was the accuracy of voter lists, with far less voters being turned away at the PSs.

The observers did, however, record several serious exceptions to the above characteristics:

In Yalta (TEC 7), voters were allowed to vote without presenting AVCs, TEC or court order. In the same district, a whole PSC, headed by an opposition appointee, was disbanded one day prior to election day;

In one TEC, several hundred patients from a local sanatorium were denied the right to vote;

Voter lists were still problematic in some PSs; e.g. Crimean Tartar PSs. In Yalta, the quality of the voter lists had apparently not improved between the rounds; and

In one PS, ballot boxes were initially missing. The count in the same PS lacked transparency and the figures were manipulated to make them 'fit' in the protocol.

Observation at the TECs:

³⁴ A few days prior to election day, the candidate *Brodskiy* applied to the Supreme Court to revoke his candidacy. The application was turned down, but too late for some PSC which had already stamped out his name on the ballot papers, anticipating his withdrawal.

Generally, few disputes and mathematical mistakes were recorded by STOs at the TECs. The election commissions were open towards the observers and they took their work seriously.

The most serious irregularities observed included non-members of one TEC being involved in the TEC's decision-making process on election night. At another TEC (Yevpatoriya), students representing *PORA*,³⁵ who wanted to file a complaint, were almost evicted by the TEC chairperson. Members of the same TEC were hostile toward the STOs and one person (non-member) continuously harassed the STOs by following them about, taking pictures.

The review of Complaints Process

The Constitution of Ukraine, Law of Ukraine on the Election of President of Ukraine (LEPU), and Civil Procedure Code regulate the complaints process. A complaint based on a *decision*, *action*, or *inactivity* of an election commission or one of its members may be lodged with a higher election commission or with a court of law. Proceedings at a court take precedence over those at election commissions and once the court has made its ruling on a complaint, election commissions must abide by the ruling and take a consequent decision.

The appropriate court for review of a decision of the CEC is the Supreme Court. A TEC decision should be reviewed at the local court of appeals, while decisions of PSCs should be appealed at the local court at the location of the PSC.

A complaint may be lodged with the respective election commission or court within seven days from the passing of the decision, taking action or inaction. Complaints regarding violations that occurred on election day may be filed with the election commission that committed the violation no later than at the end of voting, and with a higher election commission or court no later than 24:00 hours on the day after election day. Complaints received must be considered within five days from the date of its receipt, while complaints lodged on election day or the next day are considered without delay.

The following have the right to submit complaints and appeals: (1) the candidate, (2) the political party/bloc that nominated the candidate, (3) an election commission, (4) a voter, (5) a candidate proxy, (6) a candidate representative, and (7) an official observer of the candidate or political party/bloc.

After both the initial rounds, the OSCE/ODIHR EOM was critical of the CEC's passiveness and reluctance in addressing alleged electoral violations. The EOM noted that the CEC rejected most of the complaints on procedural grounds without considering their merits, while the Supreme Court was more active and effective in addressing legal violations.

In Crimea, most of the complaints were lodged by Our Ukraine or candidates affiliated with Yushchenko. LTOs are only aware of one complaint (regarding the unlawful dismantling of an OU campaign tent) receiving redress at a local court in *Bakhchisaray* (TEC 10). As far as LTOs were aware, all other complaints submitted to TECs, courts and local prosecutors were either not considered, and/or dismissed.

The Supreme Court's decision to prohibit a candidate's proxy from filing media-related complaints severely restricted the ability of self-nominated candidates, most notably Yushchenko, to file complaints. Those candidates who had the backing of a party could rely on the party to file such complaints. In Crimea, the courts on such grounds dismissed scores of complaints related to the

³⁵ Youth organisation supporting Yushchenko.

media's biased coverage of the campaign. A majority of the complaints were initially filed by Yushchenko proxies.

The LTOs followed one particular court case at the Court of Appeals in Simferopol regarding the Yalta TEC's decision to accept lists of PSC nominations from twelve candidates. All candidates were thought to be technical candidates for Yanukovich and one person had submitted all lists on the same evening. Consequently, the plaintiff (proxy of Brodskiy) wanted the TEC to invalidate the appointment of these people to PSCs since, as he claimed, the way in which the lists were submitted and the fact that the TEC had accepted them was illegal. Moreover, the plaintiff contested the manner in which the nomination lists had been compiled, claiming that local State structures had been involved in collecting names of nominees to PSCs. The court refused to consider the latter point.

The court dismissed the case on 14 October, upholding most of the defendant's claims, stating that the law does not determine *who* can submit nomination lists, as long as they are signed by the relevant candidate's proxy and verified by a notary public.

Conclusions and Recommendations

On 22 November the IEOM stated:

"Despite a number of serious shortcomings being identified in its statement of 1 November, the authorities failed to take remedial action between the two rounds of voting to redress biased coverage on State media, misuse of State resources, and pressure on certain categories of voters to support the candidacy of Mr Yanukovich. Overall, State executive authorities and the CEC displayed a lack of will to conduct a genuine democratic election process."

On 6 December, as a response to the specific circumstances, the OSCE/ODIHR issued a set of preliminary recommendations aimed to address the shortcomings noted in the two previous rounds. These were limited to what could be achieved during the short time-span leading up to the second re-run on 26 December. The recommendations were offered for consideration by the authorities of Ukraine.

Regarding the *election administration*, it was emphasized that no single political group should be in a position to control the CEC's work, the CEC should decide more transparently and effectively on complaints and appeals, and all members of the CEC and all party proxies and international and domestic observers should be provided with unlimited and unconditional access to all sources of election information. It was also stressed that the CEC should develop detailed procedures for production of election materials, its distribution from central to local level (polling station), and vice versa, the return of election material from local to central level. Lastly, the CEC should only declare preliminary results on the basis of hardcopy information (protocols) from the TECs, and where the number of TECs that have delivered results, including number of PSCs, is indicated.

As for TECs and PSCs, it was pointed that their composition should be modified in such a way as to permit them to operate efficiently and independently. In order to avoid expulsions from TECs and PSCs on the eve of election, as was the case in front of both previous rounds, mechanisms should be in place to ensure the stability of their membership.

Regarding the printing of *ballots*, control mechanisms should be in place to ensure that all ballots are properly accounted for. Furthermore, a record of the number of ballots printed, distributed to the individual TECs and PSCs, and those used and unused during voting, should be included in the above receipts and made public.

Pertaining to the *legal framework*, the OSCE/ODIHR EOM recommended that point 2 in Art. 80 in the LEPU that requires that election violations must exceed 10% of the voter turnout for the results to be invalidated should be removed since it in effect establishes a “tolerance level” for election fraud. The law should also clarify the circumstances in which police may be present inside PSs and TECs, and prohibit the presence of unauthorized persons by listing those categories of persons who are entitled to be present in the premises of TECs and PSCs. Lastly, the legal provisions that provide for absentee voting (AVC) should be improved to enhance transparency and accountability.

As for *voter lists*, it was recommended that PSC no longer should be entitled to make corrections to the lists on election day, and the number of voters added to voter lists on election day³⁶ should be recorded in the PSC protocol, to enhance transparency and accountability.

Regarding *polling procedures*, the EOM listed a number of recommendations aimed at preventing multiple voting, especially concerning the use (abuse) of absentee voter certificates (AVCs):

The number of AVCs printed should be drastically reduced and to ensure that no more than the approved number of AVCs is printed, effective control during the printing phase should be in place;

In addition to serial number, each AVC should include the relevant TEC and PSC code;

The CEC should keep records of the number of AVCs printed for each TEC, and TECs should keep records of the number of AVCs they distribute to each PSC. This data should be publicly available.

A citizen’s ID card number should be recorded on each AVC issued, and PSCs should be required to keep records of serial numbers of each AVC issued and the ID card numbers of those voters issued an AVC;

After the deadline for issuing AVCs, PSCs should be required to reconcile the number of AVCs used and unused and inform the TEC, which in turn should inform the CEC. All unused AVCs should then be invalidated and returned to the TECs. The CEC should then announce the number of issued and unused AVCs in each territorial election district.

On election day, PSCs should verify that the ID card number on an AVC matches that of the voter holding it. The PSC protocol should be amended to include number of voters who used AVCs. Likewise, the number of voters using an AVC in a territorial election district should be included in the TEC protocol.

Finally, in order to make the *tabulation of results* more transparent, thereby strengthening the electorate’s confidence in the results, the legal provisions regulating the transfer of election material to and from PSCs should be strictly observed. PSCs should be required to deliver their protocols to the TEC within a given deadline, upon which the TECs should provide PSCs with a receipt containing all numeric information in the protocol that would be attached to the PSC protocol on display at the polling station. Lastly, the CEC should be required by law to post on its website all PSC results when determining the final results.

³⁶ Excluding those added on using an AVC.

Comments on the Election Observation Mission

The LTOs found the core team located in Kyiv very competent and cohesive. Taking into account the scale and size of the EOM, this LTO was particularly impressed over the efficiency of the logistical team and its ability to provide crucial information at an early stage. The LTO coordination was also commendable, and this LTO especially valued the clear instructions and information about what was taking place countrywide.

Financial restraints prevented both LTOs at a time from attending LTO meetings. Although this was of less significance, it would have been desirable that both LTOs could have been present during the pick up and briefing of the STOs.

The decision to call back the LTOs from the field (Crimea) earlier than expected left little time for them to conclude their business in their AoR. Instead, LTOs were left idle in Kyiv before the LTO debriefing finally took place on 29 November.

Repeat Vote – 26 December 2004

Report by Kjetil Hestad

Preface

The International Election Observation Mission (IEOM) for the repeat second round of the presidential election in Ukraine was a joint undertaking of the OSCE/ODIHR, OSCE Parliamentary Assembly (OSCE PA), The Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly

The 26 December repeat vote was the third election in Ukraine in a relatively short time. The deeply flawed 21 November elections were followed by mass demonstrations throughout the country, but especially in the capital Kyiv. The popular uprising was named the “Orange Revolution” after the orange colour adopted by Our Ukraine and Viktor Yushchenko. The demonstrators demanded that the 21 November elections had to be rerun due to the amount of electoral fraud that took place.

Following a court case in the Supreme Court the court decided that the second round be repeated and set the date for elections to 26 December 2004.

For the repeat second round the OSCE/ODIHR recruited 55 long-term observers (LTOs) and 1,367 short-term observers (STOs) from 44 participating states to monitor the elections, making into the IEOM. A core team of 25 international election experts coordinated the election observation mission (EOM). As previously, Ambassador Gert-Hinrich Ahrens from Germany headed the EOM.

On election day the international observers monitored the voting in 1,500 polling stations out of a total of some 33,000.

One Norwegian LTO, Kjetil Hestad, was recruited to the mission by the Norwegian Resource Bank for Democracy and Human Rights (NORDEM). In addition NORDEM recruited seven STOs to observe the election day.

Introduction

After the repeat second round election was held on 26 December the IEOM said in a joint statement on 27 December 2004:

“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”

However, it should be noted that several shortcomings were also reported and they will be discussed later in this report.

The campaign took place in a peaceful and quiet manner throughout the country. LTOs noted, however, that the campaign structure of Mr. Yanukovich was not active until only a few days before election day. The public interest in the campaign was low and it seemed that people were tired of elections since this was the third election to take place within three months.

This report aims to highlight the findings of the Norwegian LTO and the findings of the Norwegian STOs. The overall findings of the Norwegian observers corroborate with those of the IEOM with regard to all important areas of the electoral process.

Political Background

For a more comprehensive historical overview of political developments in Ukraine up to the present, please see report from the previous rounds. The main political developments after 21 November were:

On 24 November, during a particularly chaotic session, the Central Election Commission (CEC) announced the final election results - giving Mr Yanukovich 49.46% of the vote and Mr Yushchenko 46.61%.

On 27 November, the Verkhovna Rada adopted a resolution declaring that the official election results announced by the CEC should be considered void because they did not reflect the will of the people.

On 1 December the participants signed a document, *inter alia*, committing the parties to abide by the Supreme Court's ruling on a complaint lodged by Mr Yushchenko regarding electoral manipulation.

After a five-day public hearing the Supreme Court on 3 December repealed the CEC resolution on the 21 November election results, and instructed the CEC to conduct repeat voting on 26 December.

Lastly, on 8 December, with a large majority, the Verkhovna Rada voted to amend the electoral legislation and the Constitution of Ukraine.

The Legislative Framework

In order to avoid the type of fraud that occurred during the first and second round of the elections, temporary³⁷ amendments to the election legislation were adopted by the Verkhovna Rada on 8 December. They included appointing a new CEC with new members; reducing the size and amending the composition of TECs and PSCs enabling the two candidates to appoint an equal number of Chairpersons, Deputy Chairs and Secretaries to these bodies; enhancing the integrity of the production and use of ballots and absentee voting certificates (AVCs); reducing the number of documents that can be used to prove a voter's identity, and narrowing down those eligible to vote by mobile ballot to only include voters with permanent and serious disabilities.³⁸

The temporary amendments did not address shortcomings previously identified by the OSCE/ODIHR, such as the non-obligation of the CEC to publish all PSC-level results on its website, the unclear role of the police on election day and the failure to grant domestic non-partisan observer groups a legal status to monitor the election process.

It was noted by the LTOs that the Constitutional Court decision of 24 December 2004 to allow invalids of category 2, 3 and 4 to register to vote by mobile ballot complicated the work of all the TECs and the PECs. It was remarkable how election commissions were able to implement the very late amendments and as far as the LTOs could tell their implementation did not disturb the election process in any way.

³⁷ The amendments are effective only until a new president takes office.

³⁸ This amendment was, however, deemed unconstitutional and overturned by the Constitutional Court on the eve of the election.

The Election Administration

On the same day that the amendments to the electoral legislation were adopted, 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, among them the former Chairman and three Party of Region appointees. Mr Yaroslav Davydovych, the former CEC Deputy Chairperson, was appointed Chairperson.

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. As for TECs, 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.

With only 18 days to prepare the election, the newly composed CEC was handed a considerable challenge. The OSCE/ODIHR EOM found that the CEC conducted sessions more openly and professionally. It furthermore appeared more committed to conducting a transparent and accountable election process 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.

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 the 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 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.

Regarding lower level commissions, observers reported that some 12% of TECs experienced difficulties reaching a quorum for their sessions, which may be linked to the fact that candidates appointed representatives from the east to election commissions in the west and vice versa. TECs had their first session according to deadlines foreseen by amendments but there was insufficient time to provide a significant level of training for new TEC members.

The appointment of almost half a million PSC members was achieved within very tight deadlines. In general, their membership was not subject to widespread personnel changes as witnessed during the first forming in September and their composition was politically balanced. Neither were candidate representatives dismissed on the eve of the election as the new amendments prevented this.

The election administration endeavoured to comply with the Constitutional Court's late ruling on mobile voting and the CEC generally informed TECs of the decision the same afternoon. Indeed, all of the TECs contacted by LTOs on 25 and 26 December were aware of the ruling.

Nevertheless, many PSCs received the information through the media. However, TECs successfully contacted many PSCs, particularly in urban areas. 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.

The LTOs visited all TECs in their AoR. Even though the TECs were quite late established they included members that had also been TEC members during the previous two rounds. As such, they had a good knowledge of the election procedures. The TECs appeared to function well and were composed of members representing both Yanukovich and Yushchenko. All TECs told LTOs that they were tired of the elections and just wanted to carry out the election as quick and fair as possible.

Voter and Civic Education

The most dominant organization carrying out voter education was the Committee of Voters of Ukraine (CVU). They especially conducted trainings for domestic election observers, and also gave lectures for the media on election related issues. They also had offices where voters could come with their questions.

The LTOs noted on election day that CVU representatives were present in most polling stations. They also saw some posters from CVU explaining voting procedures.

Voter Registration

In the previous election rounds, one of the most significant shortcomings was the inaccuracy of voter lists. The newly introduced amendments to the election law only to a small degree addressed this issue.

Since there was a widespread concern that the voter lists for the 21 November election had been manipulated, the Parliament decided to use the 31 October voter list for the 26 December repeat election.

On 18 December the CEC appointed all TECs. The LTOs reported that there were quite a lot of confusion as to which lists should be used. As a result, both the voter list of 21 November and 31 October were used.

The LTOs were told that few people had come to check the voter list, and that relatively few changes to the lists had been made.

The Election Campaign

After the flawed second round of the presidential election and the turnout of hundreds of thousands of people in the streets of Kyiv to protest the election result, the campaign went into a quieter mode from Yanukovich's side. It seemed to the LTOs that the entire party apparatus of Yanukovich collapsed in the days after the turnout of so many demonstrators in Kyiv and other places in Ukraine. The LTOs had difficulties finding campaign offices of Yanukovich, and the offices they found were in absolute chaos. The campaign offices of Yanukovich were often manned by elderly people. On the other hand, the campaign offices of Yushchenko were functioning and the numerous people present there were in

high spirits. Campaign staff of Yushchenko told LTOs that they were not campaigning very actively but that they were being approached by many people who had questions for them.

Neither side conducted much campaigning in front of election day. The little that did take place was usually in Kyiv, and through the media. In particular, the two debates between the two candidates on State TV were followed with huge interest. It should be noted, however, that both candidates' supporters most likely remained highly mobilised. This was especially noticeable in the eastern part of Ukraine concerning the supporters of Yanukovich. The supporters of Yushchenko organized something they called the "freedom train". This was a huge column of cars travelling from city to city.

The LTOs observed campaigning taking place only three days before the election, and all of it was low key. Generally, there were very few spectators, and they were not very enthusiastic. This was particularly noticeable during the visit of Mr. Yanukovich to the city of Kirovohrad. The staging of the event was done professionally, but the crowd was not very enthusiastic and there were even rumours that people had been paid to show up.

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. The OSCE/ODIHR's media monitoring findings showed that a number of significant changes in the media's presentation of political and electoral issues had taken place. 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.

Generally, the media offered voters a diverse range of views. Journalists reported to the EOM that the main TV networks no longer followed the *temnyky*,³⁹ which constrained the public's free access to balanced information. Now, on the contrary, most TV channels monitored by the EOM made a clear effort to serve as a forum for discussion, in which opinions could be shared and exchanged freely. Most notably, State owned *UTI* offered candidates equal conditions to convey their message to the electorate, allocated free airtime to both candidates and facilitated a televised debate between the two main contestants. The EOM's media analysis revealed that during the three weeks preceding the 26 December election, UT1 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. As Yanukovich this time 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.

All private TV channels offered viewers a plurality of views, including the nation-wide in outreach *Inter* and *I+I*. The type of negative campaigning observed during the previous rounds of election was

³⁹ i.e. guidelines issued allegedly by State structures with the intent of limiting the content and presentation of news items in disfavour of opposition candidates.

much less in evidence prior to the repeat voting. TRK Ukraine, a Donetsk-based television with partial nation-level coverage, continued to demonstrate an overt bias in favour of Yanukovich and against Yushchenko. Conversely, *Fifth Channel* continued to favour Yushchenko.

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.

Observation on Polling Day

On 26 December observers overall assessed election day much more favourably than the two previous rounds. Only 2% of the STO reports indicated that voting was poorly or very badly conducted.

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.

The LTO team was deployed in Kirovohrad district, which consisted of four TECs and several hundred PECs. The LTOs themselves did not do any observation during election day due to the large number of STO teams deployed in the area, and the consequent necessity to coordinate them.

Election Day Observation Reports

Election Day Observation Report from STO Linda Kartawich

The STO team was based in Shostka rayon in Sumy oblast. Sumy oblast is situated in the northeast part of Ukraine. The region borders Bryansk, Kursk and Belgorod regions of the Russian Federation, and the Poltava, Kharkiv and Chernigiv regions of Ukraine. The STO team covered the region of TEC 162 (Glukhiv, Shostka, Seredyna-Buda and Yampil rayons). Out of 178 PSs, the team visited eleven on election day.

Observation of opening: Before opening the PS, all polling station commission (PSC) members were present, as well as candidate observers representing both candidates. The PSC had received all the required election material, and all campaign material was removed from the vicinity of the PS. The PS was opened in accordance with proscribed procedures.

Observation of polling: All PSCs had balanced representation of the two candidates. Since the previous rounds they had been re-composed with different numbers of new members. Except for a few PSs, all PSC members (only women) were present.

Candidate observers representing both candidates were present at all PSs, except for three, where Yanukovich observers were absent. At four PSs, all Yanukovich observers had been appointed by a common employer - a factory in the area. One of the observers told the STOs that he was embarrassed to represent Yanukovich. The STOs saw no representatives from CVU (Committee of Voters of Ukraine) in the PSs visited.

A late decision by the Constitutional Court regarding mobile voting caused confusion among PSCs on the day before election day. The team therefore expected problems in PSCs handling of voting by homebound on election day. However, the team was made aware of only one complaint regarding this issue, and was told about *ad hoc* solutions to the problem; people providing transportation to the PSs for elderly and immobile voters. Few voters had requested mobile voting compared to the previous rounds.

In general, PSs were well equipped and organised, and the atmosphere was calm. Neither PSC members, nor candidate observers addressed the STOs with any complaints regarding the voting procedures. Voters seemed to understand the voting procedures. All campaign material had been removed, apart from some PSC members wearing orange scarves in favour of Yushchenko. Police officers were frequently present outside PSs. No unauthorised persons inside the PSs were observed. The team was well received by all the PSCs, and did not observe any serious violation of the law during election day.

Observation of closing and counting: The STO team observed the closing and counting at a rural PS. The Chairman checked the ballot box seal in the presence of both the commission members and the observers. The counting process was done in a calm and efficient way. The results were freely available for recording, and the process was transparent. All authorised representatives were given hand written copies of the protocol, including the STOs. Contrary to the previous rounds, the results showed that Yushchenko was the winner. Partisans of both Yushchenko and Yanukovich in the PS were celebrating the election after the PSC closed its session.

No serious irregularities or violations of the election procedures were observed by STOs during the closing and counting and at about 22:30 the team followed the PSC Chairman and Secretary with the protocol to the TEC.

Election Day Observation Report from STO Tron Gundersen

The STO team was deployed to Artemivskiy in Luhansk. Luhansk oblast is situated in the far east of Ukraine and borders the Russian Federation.

The STOs spent the day prior to election day familiarizing themselves with their AoR – a suburb to Luhansk town. The team met with several PSC and also visited the TEC. The team was well-received everywhere and all 15 PSCs visited seemed to be on track and prepared in front of election day.

One episode should, however, be mentioned. At one PS the Chair was very upset, having been told by an elderly man that all homebound voters would be able vote in their home. That same day the Constitutional Court had ruled the limitations put on mobile voting as unconstitutional. Evidently, the PSC Chairman was not aware of the ruling (as were neither STOs nor LTOs).

Observation of opening: For the opening the team visited a PS not far from the city centre. In the corridor leading into the PS, 6-7 policemen were standing, behaving in an intimidating manner. The Chairwoman of the PSC appeared professional and even evicted a guard/policeman from the PS. All opening procedures were according to the law.

Observation of polling: Generally, the STOs found very few irregularities during polling. Some PSC had not sealed the ballot boxes with both the seals. PSs were generally rather crowded, but the presence of police was limited to one police officer at each PS.

Most PSC Chairs were informed about the changes in the election legislation, including the previous day's Constitutional Court ruling. It was stated that this had not caused any problems. However, there seemed to be fewer homebound voters eligible to vote in this round. The team accompanied a mobile voting team to five private homes. Although time-consuming, the procedure seemed to work well.

Observation of counting and tabulation of results: At the PS chosen for the closing/count, the counting took three hours. All appeared to be in accordance with the prescribed procedures.

The team then followed the Chair and Secretary to the TEC and witnessed the hand-over of the voting material and verification of the PSC protocol. The STOs asked to see the computer room and were shown how results were entered into the computer. They were also shown how the software had mechanisms that, e.g., prevented a higher number of votes than registered voters to be entered.

The STO team was well received, both at PSCs and at the TEC. The team discovered very few irregularities and it was under the impression that election officials were doing their best in complying with the prescribed procedures.

Election Day Observation Report from STO Jostein Hoel

The team was assigned to cover the elections in the Ovruch and Narodnichi districts in Zhytomyr oblast. The two districts had 52,008 and 8,127 registered voters, respectively, and are predominantly rural areas.

Observation of opening: The team was present at the opening of the polling station in Ignatpil in Ovruch district. All the opening procedures were followed, and the PS opened at 08:00 hours sharp. All members of the PSC were present. On the request of one of the candidate observers the ballot box was moved to another part of the room in order for him to be able to observe the voting better. There was no campaign material inside or outside PS, and the opening and subsequent voting took place in an orderly atmosphere.

Observation of polling: The team observed the voting in a total of eleven PSs during election day. In all PSs voting was calm, orderly and well organised, and there were no problems of overcrowding. In none of the PSs did the team observe signs of fraud or other serious irregularities, nor received indications of violations from PSC members or candidate representatives.

The PSC members in most PSs displayed a good knowledge of the election procedures. Still, some minor irregularities were observed; in one rural PS a few villagers entered the polling booths together, and a couple of voters marked their choice on their ballots next to the ballot box after refusing to heed the PSC Chair's call on them to do so inside the booth. In this and other villages there was also a tendency for elderly village dwellers to make open, somewhat humorous and sometimes revealing comments inside the PS. One memorable case involved an elderly voter in Ostriv who asked when he was handed his ballot, "Should I vote for the same person for whom I was asked to vote last time?"

None of the minor irregularities observed during election day appeared to be intentional, but rather a result of imperfect knowledge of procedures on the part of the PSC or voters.

Observation of closing/counting: The team returned to the village of Ostriv to observe the closing of the polling station and the count of ballots. Throughout the process of closing and counting the PSC Chairwoman displayed a firm grasp of the procedures, which were strictly followed. Together with a representative of the other candidate she first separated the ballots into three piles – one for each candidate plus one for invalid ballots. They then counted openly the ballots in each of the piles. While

the other members of the PSC or the candidate representatives did not inspect each counted ballot, they were all satisfied that the count had been properly conducted. The election material was then put in different envelopes and sealed, and five copies of the protocol were completed and signed. On request, the STOs also received a copy of the protocol. No tension, crowds or irregularities were observed in or around the polling station during the count.

Election Day Observation Report from STO Brynjulf Risnes

Khmelnytskyi region is in the western part of Ukraine and has a population of 1.3 million. The region is mainly rural and only the capital Khmelnytskyi has a population of more than 100,000 (250,000). The region is demographically a typical western Ukrainian region with a mainly Ukrainian speaking population, but with Russian language actively used. The demography of the population is also reflected in the overall political mood in the regions. It is “Yushchenko-land”, with Yushchenko receiving more than 70 percent of the votes in the first second round run-off on 21 November.

However, the level of conflict in the region was no lower than in other regions after the 21 November run-off, with wide accusation of biased regional media coverage in favour of Yanukovich and of regional administration using any means to bring about support for the Prime Minister. Furthermore, STO reports from both the October and November elections pointed to direct fraud during election day and counting procedures in favour of Yanukovich. Fraud included PSCs visiting district administrations on their way to the TEC - resulting in a number of falsified minutes of the count. The falsification of results was in some instances directly proven by way of comparison with copies of PSC protocols obtained by STOs.

The political situation in the region has changed radically after the December 3 Supreme Court decision.⁴⁰ As the region has a very strong pro-Yushchenko grass root movement, representatives of a number of different pro-Yushchenko organisations were ready to take over when the traditional pressure on the regional government from the central government suddenly ceased to exist. As a result, the main focus in the political debate before 26 December poll was on disclosing the regional administration’s undue influence over the previous election rounds. A high number of complaints were filed with courts and the regional Prosecutor’s office resulting in part in the resignation of a number of key officials. Although the top regional government continued to be pro-Yanukovich, its ability to influence on the campaign or election procedures was strongly reduced.

As was also observed by the STO team on polling day, the regional pro-Yanukovich movement was so weakened that it experienced huge problems appointing the sufficient number of members of election committees and observers. In fact, a substantial number of the Yanukovich representatives the team met on polling day were from other regions, in most cases from Kharkiv.

The vigilant pro-Yushchenko movement was quickly able to fill the vacancies in election commission following the amendments in the law on the composition of election commissions. In all polling stations visited by the team (10 in all) Yushchenko representatives had filled all vacancies according to the law and Yushchenko appointees were in fact Chairmen in all PSCs visited, while all Secretaries represented Yanukovich. This trend was confirmed by other STO teams in the region.

Observation of polling: The STO team did not observe any serious breaches of the electoral law or procedures, neither during opening, polling or counting. Nor was there anything reported to the team indicating such breaches. The only violations noted were of minor importance and included very few instances of voting in public, two people together in a voting-booth and alike. On a few instances

⁴⁰ Concerning the Supreme Court’s decision to annul the CEC’s announcement of election results and the consequent calling of the repeat vote on 26 December. *J.F.*

Yanukovich supporters complained about there being a heavy presence of Yushchenko supporters in the vicinity of polling stations. It is very difficult to assess if this was as a case of intimidation as almost everybody in the street was wearing something orange indicating their preference.

The last minute ruling of the Constitutional Court on mobile voting had little or no practical effect in the region. Of the ten polling stations visited by this particular STO team, additional applications based on the ruling were received only in one and for a very limited number. Overall, the number of mobile votes cast was about 10 % of the number cast during the November 21 vote.

Of particular interest it should be mentioned that the STO team visited and observed voting in a maximum-security prison where all prisoners were on life imprisonments. Although this of course was a particular and strong experience, it was surprisingly normal as voting concerns. No pressure or intimidation was detected and the Chairman (Yushchenko representative) said a number of improvements had been made to voting procedures since 21 November.

Observation at the TEC: As there was no TEC team assigned to the team's relevant TEC, STO teams took turns observing procedures at TEC upon arrival. Also at this level there were no sign of any disorder and no fact or circumstance pointed in the direction of attempted fraud.

The overall election results in Khmelnytskyi region showed that Yushchenko increased his result by almost 10 % compared to November 21, receiving 80 % of the votes.

Election Day Observation Report from STO Jorun Lunestad

The STO team was deployed in Kirovohrad in Central Ukraine. Around 85 % of the inhabitants are Ukrainians, 10 % are Russians, and the remaining is of other ethnic origin. As eastern parts of Ukraine generally voted for Yanukovich, and western parts for Yushchenko, both candidates placed big stakes in the outcome of the elections in Central Ukraine. As such, the region had been the scene of a real electoral struggle during the election months. The level of fraud and violations of the law was reported to be particularly high during the first two rounds.

Observation of opening: On election day the team was deployed in the district of Olexandria, east of Kirovohrad. The designated polling stations were all in villages surrounding Olexandria city. The opening was observed in the village of Nova Praga. The opening followed all the prescribed procedures and the PS opened precisely at 08:00.

Observation of polling: During the day the team visited eight polling stations. The atmosphere was calm and quiet, and no violations were noticed. In all polling stations PSCs were composed of an equal number of members nominated by the two candidates. Where the Chairperson was nominated by Yanukovich, the secretary was nominated by Yushchenko, and vice versa. In all polling stations observers representing both candidates were present. The voting proceeded according to the law in all polling stations visited, and the members of the PSC had a good understanding of the procedures. The only problem noticed during election day was related to the issue of the right of the disabled to vote outside the polling station. As the decision that allowed disabled voters of category 2, 3 and 4 to apply for mobile voting was taken on 25 December, a very limited number of these voters actually had the possibility to get the proper documentation to do so. The polling stations the team visited did not have the means to provide these voters with transportation, and the result was that most of these voters were deprived the right to vote.

Observation of counting: In the polling station where the team observed the counting, everything was according to the law. The process was carried out in a professional way. The team was given a copy of the protocol, which added transparency to the process. Neither PSC members, nor domestic observers filed any complaints regarding the counting. After the counting was completed, the team followed the material to the TEC where the aggregation of the results took place.

Election Day Observation Report from STO Hans Cato Haddal

The STO team's primary responsibility was to observe the work of the TEC 165 in Sumy region from closing time of the polling stations at 20:00 on 26 December, and until the TEC concluded its work around 10:00 on 27 December.

The day prior to election day the team visited four polling stations and had an introductory meeting with the Chairman of the TEC, and another meeting with the Chief of the local police.

During the previous election round, the LTOs experienced many obstacles when observing in territorial election district 165. These problems included gangs coming from other regions to cause disturbances, fraud observed in PSCs, and problems and disputes in the TEC.

Because of the context provided by their LTOs, the STOs gave priority to meet the TEC Chairman and the Chief of the local police to express the team's concern, and to interview them on what measures had been taken to avoid similar problems during this re-run. The team also tried to detect potentially major differences of opinion between TEC members representing different candidates, and to check at a few PSs what election material had been distributed, and that the members of the PSC had been given relevant training, including information from the TEC with regard to the new amendments of the election code. The atmosphere at the TEC was open and friendly. This goes for both the relationship between members of the TEC representing different candidates, and the TEC's attitude towards the STOs as international observers. The TEC demonstrated a clear intention to conduct the election according to the procedures. The team also met Mr. Yushchenko's representative who was sent from Kyiv to observe the work of this particular TEC on the backdrop of the problems that occurred during the last round. She also had instructions to observe the actual transport of TEC results to Kyiv.

The Chief of police also met the team with an open attitude. He did not know of or expect any particular problems. He did explain, however, that elections could attract people who were looking for trouble and could create disturbances. The police would be present in all polling stations, and they would also have mobile teams prepared in case of unforeseen events.

When the team visited one polling station at around 14:00-15:00, the PSC had still not received the election material. However, the members of the PSC did not seem disturbed by this. As at the TEC, the team encountered an open and friendly atmosphere in all the PSs visited.

Observation of polling: On election day the team went back to visit one of the polling stations it had visited the day before, and another that was very close to the TEC. Both PSs had received the election material in the afternoon the day before, and both had received a sufficient amount of material. In both polling stations the team witnessed that procedures were clearly understood and followed. Unarmed police were present inside both polling stations. In the second polling station there was also a uniformed representative from the local fire department. The STOs left the PS at around 19:30 to go to the TEC.

Observation at the TEC: Under TEC 165 there were 173 PSs. There were two other regular STO teams in the district. Both teams confirmed the team's observations from the two polling stations it had visited earlier in the afternoon. The first results arrived at the TEC around 21:30. The observation team was given good seats near the table where one representative from each candidate received and checked the protocols from the PSs. The PSC representatives were lined up in the entrance of the TEC. From what the team could see, each PSC delegation was escorted by a police officer. The team had access to information in the hallways and the room where the TEC held its session. It also had the opportunity to move freely around both inside and outside the TEC, including entering the computer room where the results were electronically transferred to the CEC in Kyiv. The work of the TEC was well organised, open and transparent. The room was never over-crowded. Representatives from both candidates checked the incoming protocols/minutes and securely sealed the envelopes. Every result was then read aloud before being handed over to the official responsible for entering and transferring the results

electronically to Kyiv. The representatives from the respective PSCs were present during this procedure. Only after the results had been transmitted to Kyiv they could leave the TEC.

No open disputes were observed. A few minor incidents were handled in a transparent and professional manner by the TEC. By 06:00 in the morning three out of the 173 PSCs had yet to show up. This caused a three-hours delay, and some of the explanations given, i.e. that the PSC members had fallen asleep in the car outside the TEC etc, sounded a bit construed. The TEC concluded its work in the morning around 10:00. The official results showed that Mr. Yushchenko received around 80% of the votes. Yanukovich got around 16%. Approximately 1.4 % of the ballots were deemed void. The rest had voted against both candidates.

Election Day Report from STO Annie-Lise Mjaatvedt

The STO team was deployed in Kyiv oblast, which has 1,427,900 voters. The oblast does not have any large ethnic minorities and is predominately composed of Ukrainians and Russians. The level of political activity was lower than in similar oblasts, due to the close proximity to Kyiv city. As such, most of the political activity took place in Kyiv city.

The team spent the days before election day familiarizing itself with its AoR. The STOs visited eleven PS in the region. In all but two PSs, members of the PSC were present. The team was therefore able to observe the preparations in front of election day.

Observation of opening and polling: On election day the team went to the first PS at 7:00 am before the opening of the poll. All PSC members were present and the commission had received all the prescribed election material.

During election day the team visited eleven polling stations. No irregularities were observed and all the PSCs had been re-appointed to comply with the requirement that the members should represent both candidates. All PSCs were informed of the amendments to the Election Law concerning which group of voters were eligible to vote at home. On two occasions the team witnessed discussions between the PSC members on how to interpret the amendments. During the discussions, an agreement between the PSC members was reached. The team talked to voters, PSC members and other (domestic) observers. On two occasions, mobile ballot boxes were brought to voters' homes to allow handicapped persons vote. On both occasions, one PSC member and two candidate observers, representing each of the two candidates, accompanied the mobile ballot box. The team chose not to accompany the mobile ballot box.

Observation of counting: The polling station with the highest number of voters was chosen for observing the closing of the poll and the count. The closing was conducted according to provisions in the Election Law. The count was transparent and, in addition to the team, two domestic observers were present. The election material was packed and sealed and transported to the TEC. The team accompanied the election material to the TEC and observed the handing over of the material to the TEC and the verification of the results. No irregularities were observed.

Appendices

(These are not published in the web edition)

1. OSCE/ODIHR Statement of Preliminary Findings and Conclusions (1 November 2004)
2. OSCE/ODIHR Statement of Preliminary Findings and Conclusions (22 November 2004)
3. OSCE/ODIHR Statement of Preliminary Findings and Conclusions (27 December 2004)