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29 November 2012

## Observation of the parliamentary elections in Ukraine (28 October 2012)

### Election observation report

Ad hoc Committee of the Bureau

Rapporteur: Mr Andreas GROSS, Switzerland, Socialist Group

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### 1. Introduction

1. At its meeting on 25 June 2012, following an invitation from the President of the Ukrainian Verkhovna Rada, the Bureau of the Assembly decided to set up an ad hoc committee composed of 41 members and the two co-rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *ex officio*, to observe the parliamentary elections in Ukraine scheduled for 28 October 2012. Mr Andreas Gross was appointed Chairperson of the ad hoc committee. At its meeting on 3 September 2012, the Bureau took note of the declarations of absence of conflict of interests of the candidates for the observer mission and approved the ad hoc committee's composition (see Appendix 1).

2. On 4 October 2004, a co-operation agreement was signed by the Parliamentary Assembly and the European Commission on Democracy through Law (the "Venice Commission"). In pursuance of Article 15 of this Agreement, "when the Bureau of the Assembly decides to observe an election in a country in which electoral legislation was previously examined by the Venice Commission, one of the rapporteurs of the Venice Commission on this issue may be invited to join the Assembly's election observation mission as legal adviser", the Bureau of the Assembly invited an expert from the Venice Commission to join the ad hoc committee as an adviser.

3. The ad hoc committee observed the elections as part of the International Election Observation Mission (IEOM), which also comprised delegations from the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE-PA), the European Parliament and the Parliamentary Assembly of the North Atlantic Treaty Organisation (NATO-PA), as well as the Election Observation Mission conducted by the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR).
4. The ad hoc committee met in Kiev from 26 to 29 October 2012 and met, amongst others, with a group representing the parties standing for election, the Head of the OSCE/ODIHR Election Observation Mission and her staff, the Representative of the Secretary General and Head of the Council of Europe Office in Ukraine, representatives of the OSCE mission in Ukraine, the European Union delegation, the NATO Office, and civil society and media representatives. The ad hoc committee regretted that neither the President of the Central Electoral Commission (CEC) nor any members of the CEC had been able to attend the meetings with the IEOM members, given that meetings with CEC leaders had been scheduled but cancelled at the last minute. The ad hoc committee did not receive any plausible explanations concerning the unavailability of the CEC leaders. The programme of ad hoc committee meetings is reproduced in Appendix 2.
5. On election day, the ad hoc committee split up into 21 teams to observe the elections in the cities of Kiev, Kharkiv, Lviv, Odessa, Sebastopol and the surrounding areas.
6. In order to assess the organisation of the election campaign and the political climate during the latter, the Bureau sent a pre-electoral mission to Ukraine from 20 to 22 September 2012. The pre-electoral delegation, representing the Assembly's five political groups, comprised Mr Andreas Gross (Switzerland, SOC), Head of Delegation, Mr Andres Herkel (Estonia, EPP/CD), Mr Andrea Rigoni (Italy, ALDE), Mr Mevlüt Çavuşoğlu (Turkey, EDG), Mr Andrej Hunko (Germany, UEL) and the co-rapporteurs of the Monitoring Committee for Ukraine: Ms Mailis Reps (Estonia) and Ms Marietta de Pourbaix-Lundin (Sweden). The declaration issued by the pre-electoral delegation at the close of its mission is reproduced in Appendix 3.
7. The International Election Observation Mission concluded that the 28 October 2012 parliamentary elections in Ukraine "were characterised by a tilted playing field. This was the result, primarily, of the abuse of administrative resources, as well as a lack of transparency in campaign and party financing and of balanced media coverage. Voters had a choice between distinct parties and candidate registration was inclusive, with two notable exceptions, representing a wide variety of political views". The IEOM press release published after the elections is reproduced in Appendix 4.
8. The ad hoc committee would like to thank the Verkhovna Rada, the OSCE/ODIHR Election Observation Mission and the Secretary General of the Council of Europe's representative in Kiev for their co-operation and support.

## **2. Legal and political context**

9. Ukraine has no unified electoral code. The 28 October 2012 parliamentary elections were governed by the Ukrainian Constitution, the Law on Election of People's Deputies, the Law on political parties and the Law on the Central Electoral Commission (CEC), as well as the provisions of other laws, including the Code of Administrative Procedure and the Penal Code. The corpus of laws governing the elections is too dense, unnecessarily complex and confused, which is why the Parliamentary Assembly and the Venice Commission have long been recommending that the Ukrainian authorities prepare and adopt a unified and simplified electoral code.
10. The main legislative text applicable to the 28 October elections was the Law on Election of People's Deputies, adopted in November 2011 following widely disputed local elections. The ad hoc committee notes that a number of amendments had been made to the Law in response to several Venice Commission recommendations, including:
  - the unrestricted media access to all the events linked to the elections ;
  - the elimination of the provisions authorising voters to be added to the electoral rolls on election day;
  - the fact that parties which have accepted candidates can no longer remove them from their lists without valid reason;
  - mandatory training for the presidents, vice-presidents and secretaries of district commissions before they take office;

- the abolition of the discretionary right of parties to dismiss members of the commissions without valid reason.

11. The parliament is elected for a five-year term. The new Law on Election of People's Deputies has brought back the hybrid parallel system which was in place in 1998 and 2002. Half of the 450 deputies are elected under a proportional system of fixed party lists within the same national constituency. The remaining 225 deputies are elected in single-seat constituencies under a pluralist single-ballot system (the best-placed candidate obtains the seat). In order to take part in apportioning mandates under the proportional ballot, political parties must obtain at least 5% of the votes cast, as compared with 3% during the 2007 elections.

12. The ad hoc committee would like to stress that the electoral system established in the Law is not that recommended by the Parliamentary Assembly in its [Resolution 1862 \(2012\)](#) on the functioning of democratic institutions in Ukraine, and by the Venice Commission in its joint opinion of October 2011. In its resolution, the Assembly regretted that its main previous recommendations, including the adoption of a unified electoral code and of a regional proportional election system, had not been implemented.

13. In its opinion on the draft Law on Election of People's Deputies, the Venice Commission regretted that the decisions to adopt a hybrid system, the electoral threshold and the prohibition of coalitions had been taken unilaterally by the majority without taking account of the opinions of representatives of the other political parties or civil society. Nevertheless, when the Verkhovna Rada adopted the draft Law in November 2011, most of the opposition deputies voted for these provisions.

14. The Venice Commission's opinion highlighted the following problems:

- the majority system combined with proportional representation in a nationwide constituency does not guarantee better representation of voters in parliament;
- the lack of clear criteria and deadlines for establishing electoral constituency boundaries;
- the lack of clear arrangements for challenging election results;
- the failure to fully disclose, before and after the elections, the sources and amounts of financial contributions or the type and amount of campaign expenditure, and the lack of independent supervision of political party and electoral campaign financing. Nor does the Law lay down any effective, gradual and dissuasive sanctions for breaches of the provisions on financing;
- the abolition of the right of parties to form electoral coalitions and the imposition of a 5% electoral threshold.

15. For these elections, under a decision taken a few months before the elections, video cameras were installed in all polling stations, and the images were broadcast live all the time the stations remained open. However, the cameras partially recorded but did not broadcast the vote counting and result finalisation procedures.

16. The new hybrid electoral system altered the dynamics of these elections as compared with 2007, to the extent that party-nominated and independent candidates confronted each other vigorously at the local level. A number of independent candidates allegedly had links with wealthy businessmen, some of whom had apparently also supported the political parties financially.

17. The elections took place against the background of the cases involving Ms Tymoshenko and Mr Lutsenko, two major opposition figures who are currently serving prison sentences. The Assembly considers that the numerous shortcomings noted in the criminal procedures may have curtailed the defendants' chances of securing a fair trial within the meaning of Article 6 of the European Convention on Human Rights (ETS No. 5).

18. During the last few weeks of campaigning, party representatives reported increasing numbers of cases of harassment, threats, intimidation and occasional violence against candidates and their campaign staff.

### **3. Administration of the elections**

19. Parliamentary elections are administered by a three-tier system of electoral commissions: one central electoral commission (CEC), 225 district electoral commissions (DECs) in 225 single-seat constituencies, and 33 762 polling station commissions (PSCs). The 18 members of each district commission are appointed by the CEC from party nominations. Parties with parliamentary groups have guaranteed representation in the district

commissions. The other seats are filled by a single drawing of lots for all the constituencies among the parties standing for election. Posts on the polling station commissions are distributed by the district commissions among the representatives of the 85 political parties which stood in these elections and the majority candidates registered in the single-seat constituencies.

20. The selection procedure for members of PSCs resulted in a political imbalance within the latter, which is a recurrence of the problem already noted by some national and international organisations in connection with the formation of the electoral commissions. According to the preliminary report of the OSCE/ODIHR Election Observation Mission, some of the so-called “technical” parties putting up a very small number of candidates in one or two constituencies won seats on the DEC of several constituencies, including those where these parties had no candidates at all. Other political parties with candidates in a large number of constituencies had no seats on the electoral commissions.

21. The members of the ad hoc committee were informed of the phenomenon of so-called “technical” parties and candidates allegedly linked to the main parties, primarily the Party of Regions, which had appointed representatives to the electoral commissions who often had neither the possibility nor the intention of being elected. This kind of political speculation considerably reduces voter confidence in the electoral process.

22. A few days before election day, some small political parties decided to replace over 60% of the DEC members whom they had originally appointed, as well as some 50% of PSC members. From the legal angle, the principle of proportional representation on electoral commissions was respected, but this approach could well have affected the stability of the functioning of the electoral administration.

23. The CEC is a permanent body comprising 15 members appointed by parliament for a seven-year term. The work carried out by the CEC during the election period was deemed generally satisfactory as regards most administrative matters. The CEC held regular meetings which were open to party representatives, candidates, the media and observers. However, the CEC also held some meetings behind closed doors, which did nothing to enhance the transparency of its operations. The CEC failed to take timely steps, within its mandate, to tackle occasional allegations of vote buying or breaches of the rules on media coverage of the election campaign.

#### **4. Registration of candidates and voters**

24. The CEC registered 21 political party lists with 2 554 candidates for the proportional strand of the elections, while 2 651 candidates were registered in the 225 majority constituencies, 1 500 of whom were nominated by the political parties and 1 151 were registered as independent candidates. Of the 85 political parties which put up candidates in the majority constituencies, 26 nominated single candidates.

25. A total of 439 candidatures were rejected by the CEC. According to information from the OSCE/ODIHR Election Observation Mission, such rejections were frequently explained by minor omissions from the files submitted by the candidates. As required by current legislation, the CEC also refused to register Ms Timoshenko’s and Mr Lutsenko’s candidatures.

26. On 16 October, the day before the deadline for withdrawing candidatures, the leaders of the opposition parties Batkivshchyna and UDAR reached an agreement on mutual support for their candidatures in a number of majority constituencies, withdrawing 28 and 40 candidates respectively.

27. In accordance with the Law on the national electoral register, the preliminary electoral lists were drawn up by the authorities responsible for updating the register. The CEC was responsible for the content and updating of the register. 36 588 697 voters were included on the electoral lists for the parliamentary elections on 28 October, including 424 858 living abroad.

28. The ad hoc committee noted that, broadly speaking, the quality of the electoral lists had improved as compared with previous elections. The people it spoke to did not report any major problems in this area during the election campaign. The Electoral Law provides safeguards against multiple voting and other types of fraud regarding the electoral lists, and its provisions helped improve list accuracy.

29. In pursuance of the recommendations set out in the Parliamentary Assembly’s previous reports on election observation in Ukraine, as well as those of the Venice Commission, the PSCs were prohibited from amending the electoral lists on election day, except for correcting technical errors. No change or adjustment of the electoral lists could be made on the day of the election impacting on any voter’s right to vote without a court

order or notification of the body responsible for updating the national electoral register. The ad hoc committee considers the accuracy of the electoral lists as an important factor in building voter confidence in the democratic process.

30. The Electoral Law did not allow for remote voting authorisations, instead establishing a relatively simple procedure enabling voters to apply for a temporary change of voting address without changing their residential address, should they be unable to vote in their usual polling station. This procedure also applied to voters who were temporarily abroad on election day. All voters could submit such an application for a temporary change of address up to five days before the election, so that the change could be incorporated into the national electoral register. The CEC took the positive decision to allow this type of address change exclusively within the same majority constituencies.

## **5. The election campaign and the media environment**

31. The election campaign was dynamic and visible. The climate surrounding the campaign was fairly calm, except in some majority constituencies where cases of intimidation and some non-violent incidents were identified by the OSCE/ODIHR Election Observation Mission. The police managed to guarantee security during the various electoral events.

32. In the major towns and cities, the parties campaigned via election hoardings, posters, leaflets and television adverts. In rural areas and smaller towns, the candidates addressed the voters via party newsletters, posters and door-to-door canvassing.

33. Members of the ad hoc committee were informed by various people they spoke to of the presence of so-called “technical” candidates or political parties which allegedly played into the hands of the major parties and the main candidates by using up air time on the State channels and appointing representatives to the electoral commissions, but who often had neither the intention nor the possibility to be elected. The campaign was between individuals rather than political programmes or platforms with clear ideological differences.

34. Some of the opposition parties, non-governmental organisations (NGOs) and media informed the members of the ad hoc committee of cases of misuse of administrative resources, primarily by the party in office and individual candidates. This mainly involved active participation by regional and local government officials in candidates’ meetings, the use of government department newsletters and websites to support candidates and the cancellation of opposition candidates’ meetings without valid reason.

35. This abuse of administrative resources showed that some people exploited their official duties, thus blurring the distinction between the State and the party in office. The parties also complained about the distribution of fake newspapers containing erroneous or slanderous information on candidates, and cases of distribution of material goods to voters, mainly by individual candidates, which could be seen as an indirect form of vote buying.

36. The ad hoc committee is convinced that the Ukrainian authorities should conduct investigations into the cases noted, in order to determine the possible responsibilities and inform the general public and the Parliamentary Assembly. Such action by the Ukrainian authorities would help to build citizen confidence in the electoral process and to prevent these kinds of allegations during future elections.

37. In connection with the financing of the election campaign and of political parties, representatives of the opposition parties, NGOs and the media informed the members of the ad hoc committee of the predominance of money and the role played by oligarchies in political life in Ukraine in general and in the electoral process in particular. The total income declared in 2011 by the first 100 candidates on the Party of Regions list was the equivalent of €230 million, the total being some €57 million in the case of the opposition party Batkivshchyna.

38. It should be remembered here that during the 2010 presidential election, the Assembly’s ad hoc committee for the observation of elections voiced its concern about “the place of money and oligarchies in politics in Ukraine in general and in the election process in particular”. This reality apparently reached even more alarming proportions during this election campaign. Many Ukrainian citizens are seeing the political “combat” as a struggle between different clans and their financial interests rather than between competing platforms and ideas.

39. In its October 2011 evaluation report on Ukraine, the Council of Europe's Group of States against Corruption (GRECO) recommended that the Ukrainian authorities:

- harmonise the provisions on the financing of election campaigns set out in the electoral legislation;
- prevent any possibility of getting round the rules on transparency contained in the electoral legislation;
- require that during all elections full campaign accounts be easily accessible to the public within the time-limits laid down by law, and consider the possibility of sharing information on electoral funding with the public before the day of the election (for example via interim reports);
- introduce provisions requiring independent auditing for political party and election campaign accounts;
- ensure that an independent mechanism is established to guarantee properly co-ordinated supervision of the financing of political parties and election campaigns;
- investigate allegations of violation of the rules on political financing and, if necessary, impose sanctions;
- ensure that all breaches of present or future norms on the financing of political parties and election campaigns are clearly defined and are liable to effective, proportionate and dissuasive sanctions.

40. Consequently, GRECO invited the Ukrainian authorities to submit, by 30 April 2013, a report on the implementation of the recommendations regarding, *inter alia*, the financing of electoral campaigns and political parties.

41. The Law on Election of People's Deputies guarantees voters' access to diversified, objective and impartial information so that they can make a considered, informed and free choice. Any electoral commissions, media, governmental institutions and bodies and civil society associations communicating information on the elections must do so in an objective, impartial, balanced, reliable, complete and accurate manner.

42. The parliamentary elections were held in a media environment in which the main private television channels were heavily influenced by various powerful economic groups with their specific financial interests. As regards the State channels, they depend on finance from the State budget and defended the interests of the Party of Regions rather than those of Ukrainian society. This situation considerably limited political pluralism during the election campaign. The public media provided the political parties and candidates standing in the elections with free advertising space and air time, in accordance with the law. The political parties spent colossal sums of money on advertising during the 2012 election campaign. According to estimates from media representatives, they spent some €200 million, which represents about €5 per voter, whereas the figure is approximately €1 in Germany per voter and 80 cents in Poland.

43. According to the media monitoring report of the OSCE/ODIHR Election Observation Mission, the Party of Regions had more media coverage on the State channel "Pershyi Nationalnyi" than did the Batkivshchyna coalition. On this same channel, 97% of the media coverage of the activities of the Party of Regions was positive, whereas 18% of Batkivshchyna's activities were presented in a negative light. Furthermore, the channels Kanal 5, Inter and TVi devoted more air time to Batkivshchyna than to the Party of Regions. Representatives of the international organisations, the media and NGOs informed the ad hoc committee of cases of "envelopes of money" being handed to journalists in order to secure positive media coverage or merely to have access to the media. Broadly speaking, a number of the people that the ad hoc committee spoke to expressed doubts about the independence and objectivity of the media.

## 6. Complaints and appeals

44. By election day, the CEC had received 106 complaints and taken 94 decisions on them. The great majority of these complaints concerned rejection of candidatures, violations of legislation during the election campaign, the participation of State officials in the campaign and attempts to indirectly buy votes. The vast majority of the complaints were rejected for lack of evidence. The CEC sent 79 complaints to the investigatory bodies for further action and took 24 decisions on warnings to be sent to political parties and candidates following court decisions on non-compliance with the rules applicable to the election campaign. On the whole, the CEC examined the complaints within the requisite time-limits.

45. By the beginning of the election campaign, the courts had already considered over 900 complaints, making a genuine effort to reach decisions within the time-limits laid down by law. According to the preliminary report of the OSCE/ODIHR Election Observation Mission, some one third of all court decisions concerned the

organisational procedure for deciding on the membership of electoral commissions by drawing lots, and most of the complaints were rejected. Some candidates reportedly used court appeals to advertise their own election campaigns. The Ministry of the Interior received 4 845 complaints concerning alleged violations of campaigning rules, and the Public Prosecutor's Office received 73 complaints concerning alleged violations of the Penal Code. At the time of the drafting of the present report, two criminal investigations were under way.

## 7. Election day

46. Election day was quiet. The ad hoc committee noted the well-ordered running of the election. The voting and vote-counting operations were generally conducted in a professional and calm manner.

47. However, the ad hoc committee identified a number of technical problems in the polling stations visited:

- the ballot- and vote-counting procedure was very long, complex and somewhat confused;
- cases were noted of unintentional non-compliance with vote-counting procedures in some polling stations, particularly in rural areas;
- in some of the polling stations visited, to observe the ballot- and vote-counting procedure, the presidents asked members of the ad hoc committee either to leave the polling stations before the beginning of the procedure or to remain until the counting had been concluded and the protocols drawn up;
- in a polling station in Belaya Tserkov in the Kiev region, members of the ad hoc committee were informed of an attempt to buy votes which had taken place near the polling station, but which had failed thanks to the intervention of political party observers;
- in a polling station near the Academy of Tax and Finance, members of the ad hoc committee were informed of cases of pressure on students to vote for the chancellor of this Academy, who was standing for election;
- the presence of a considerable number of people was noted in the polling stations. The very broad composition of the polling stations had promoted the transparency and reliability of the vote counting process. However, it also meant that the premises were overcrowded, particularly during vote counting;
- the rural polling stations had very few observers;
- on the whole, the polling stations were inaccessible or difficult to access for persons with disabilities; disabled people could, however, vote from home (mobile polling stations).

48. According to the preliminary results announced by the CEC, the Party of Regions obtained 30% of the votes cast, the Batkivshchyna coalition 25.54%, the Udar Party 13.96%, the Ukrainian Communist Party 13.18%, and the Sloboda Party 10.44%. The other 16 parties standing in the elections failed to reach the 5% threshold for a parliamentary seat. The CEC announced the final election results on 11 November 2012: the Party of Regions obtained 185 seats (72 on the proportional list and 113 in the majority constituencies), the Batkivshchyna coalition 101 seats (62 on the proportional list and 39 in the majority constituencies), the Udar Party 40 seats (34 on the proportional list and 6 in the majority constituencies), the Sloboda Party 37 seats (25 on the proportional list and 12 in the majority constituencies), the Ukrainian Communist Party 32 seats (32 on the proportional list), independent candidates obtained 43 seats and candidates affiliated to the small political parties gained 7 seats.

49. Serious irregularities were noted during the calculation of the election results in 13 majority constituencies. The delay in publishing the results worsened the tense post-electoral situation. Some political party observers and representatives were barred from observing the electronic transfer of results to the CEC. On 5 November, the leaders of the united Batkivshchyna, Sloboda and Udar opposition contacted the CEC to report cases of serious violations of the result calculation procedure in majority constituencies Nos. 94, 132, 194, 197 and 223. In response to these complaints, the CEC unanimously adopted a decision on "the impossibility of establishing credible results in the said constituencies because the elections had not been organised in conformity with the Constitution or the Electoral Law in these constituencies". The opposition parties wondered about the legal basis of the CEC's decision on repeat elections. The CEC also invited the Verkhovna Rada to specify the legal basis for organising repeat elections in the constituencies in question.

50. On 6 November, the Verkhovna Rada adopted a resolution on the holding of repeat elections in constituencies Nos. 94, 132, 194, 197 and 223 because the CEC had been unable to establish credible results in these constituencies.

## 8. Conclusions and recommendations

51. The ad hoc committee concluded that the 28 October 2012 parliamentary elections in Ukraine were marred by a tilted playing field which contributed to the dominance of the major economic and financial groups, particularly because of the misuse of administrative resources and a lack of transparency in the financing of the election campaign and of the parties, but also owing to an imbalance in the media coverage. The voters had a choice of different parties and a large number of candidates who had been able to register, thus catering for a wide variety of political views.

52. Election day was quiet. The members of the ad hoc committee noted the well-ordered running of the election, finding that, on the whole, the voting and vote-counting operations were conducted in a professional and calm manner. The situation worsened during the calculation of results in a considerable number of majority constituencies, which led to long delays in the counting procedure. Serious irregularities were noted in at least 13 majority constituencies, in five of which the election results were cancelled. In this connection, the ad hoc committee expresses its grave concern and considers that these irregularities are liable to vitiate the whole electoral process.

53. The ad hoc committee notes with satisfaction that the Verkhovna Rada adopted a number of amendments to the Electoral Law in November 2011 in response to several Venice Commission recommendations, including the right of independents to stand for election, unrestricted media access to all the events linked to the elections, the elimination of the provisions authorising voters to be added to the electoral rolls on election day, and the abolition of the parties' discretionary right to dismiss commission members without valid reason. The ad hoc committee also noted the improved quality of the electoral lists as compared with those used for previous elections.

54. Nevertheless, the ad hoc committee underlines the fact that the electoral system set out in the Electoral Law was not the one recommended by the Assembly in its [Resolution 1862 \(2012\)](#), and by the Venice Commission in its joint opinion of October 2011. In its resolution, the Assembly regretted that its main previous recommendations, including the adoption of a unified electoral code and of a proportional regional electoral system, had not been implemented.

55. The ad hoc committee voices its concern about the serious problems which are noted election after election: misuse of administrative resources; active participation by regional and local government officials in candidates' meetings; the distribution of fake newspapers containing erroneous or slanderous information about candidates; cases of distribution of material goods to voters, mainly by individual candidates, which could be seen as an indirect form of vote buying; and the presence of so-called "technical" candidates and political parties. The ad hoc committee is convinced that these phenomena are unhelpful in terms of building voter confidence in the electoral process.

56. The ad hoc committee regrets that the elections took place against the background of the cases involving Ms Tymoshenko and Mr Lutsenko, two major opposition figures who are currently serving prison sentences.

57. In connection with party funding and the financing of the election campaign, the ad hoc committee recalls that during the 2010 presidential election, it voiced its concern about "the place of money and oligarchies in politics in Ukraine in general and in the election process in particular". This reality appears to have reached even more alarming proportions during this election campaign. Unfortunately, many Ukrainian citizens are seeing the political "combat" as a struggle between different clans and their financial interests rather than between competing platforms and ideas.

58. The ad hoc committee considers that on the whole the CEC operated satisfactorily, holding regular meetings which were open to party representatives, candidates, the media and observers. However, the CEC also held some meetings behind closed doors, which did nothing to increase the transparency of its operations. The CEC failed to regularly take appropriate steps, within its mandate, to tackle occasional allegations of vote buying or breaches of the rules on media coverage of the election campaign.



59. The ad hoc committee considers that the Parliamentary Assembly should continue its close co-operation with the Ukrainian Parliament and institutions, by means of its monitoring procedure, and with the Venice Commission, in order to resolve the problems noted during the parliamentary elections on 28 October 2012 and to further consolidate the whole electoral process. Consequently, the ad hoc committee invites the Ukrainian authorities to:

- finally adopt a unified electoral code, preferably before the next elections, as recommended by the Assembly in its [Resolution 1862 \(2012\)](#), as well as by the Venice Commission in its joint opinion of October 2011;
- reform the electoral system in order to allow small parties to enjoy some measure of electoral success, in particular by improving regional representation and increasing voters' influence over their representatives in parliament, by adopting a multi-constituency proportional representation system based on open party lists;
- fully implement the recommendations of the Assembly and those of GRECO issued in October 2011, in order to reinforce the transparency of political party and election campaign financing;
- conduct investigations into all allegations of misuse of administrative resources and other electoral irregularities, and publish the results of these investigations;
- conduct effective investigations into the irregularities noted in the majority constituencies where the election results had to be cancelled, as well as in other majority constituencies where serious violations of legislation were noted; establish the responsibilities of the authors of these irregularities and any others working behind the scenes, and inform the Assembly of the outcome as soon as possible;
- draw a clear distinction between the State administration and the political parties in office;
- take the requisite steps to guarantee media pluralism during electoral campaigns;
- examine the means of simplifying the long, complex vote- and ballot-counting procedures on the day of the election;
- organise training courses for members of the polling stations, particularly in rural areas, in order to improve their command of procedures on election day.

60. The Assembly is prepared to assist Ukraine in implementing these important electoral reforms.

## Appendix 1 – Composition of the ad hoc committee

Based on proposals by the political groups in the Assembly, the ad hoc committee was composed as follows:

- Andreas GROSS, Head of the Delegation
- **Group of the European People’s Party (EPP/CD)**
  - Pedro AGRAMUNT, Spain
  - Márton BRAUN, Hungary
  - Deirdre CLUNE, Ireland
  - Renato FARINA, Italy
  - Valeriu GHILETCHI, Republic of Moldova
  - Andres HERKEL,\* Estonia
  - Joe O’REILLY, Ireland
  - Zahuri POSTANJYAN, Armenia
  - Yves POZZO di BORGIO, France
  - François ROCHEBLOINE, France
  - Rovshan RZAYEV, Azerbaijan
  - Luca VOLONTÈ, Italy
- **Socialist Group (SOC)**
  - Paolo CORSINI, Italy
  - Arcadio DIAZ-TEJERA, Spain
  - Sabir HAJIYEV, Azerbaijan
  - Tadeusz IWINSKI, Poland
  - Stella JANTUAN, Republic of Moldova
  - Pietro MARCENARO, Italy
  - Aleksandrs SAKOVSKIS, Latvia
  - Valery SUDARENKOV, Russian Federation
  - Yanaki STOILOV, Bulgaria
- **Alliance of Liberals and Democrats for Europe (ALDE)**
  - André BUGNON, Switzerland
  - Roman JAKIĆ, Slovenia
  - Hermine NAGHDALYAN, Armenia
  - Andrea RIGONI,\* Italy
  - Jordi XUCLÀ, Spain
- **European Democrat Group (EDG)**
  - Mevlüt CAVUŞOĞLU,\* Turkey
  - Sir Roger GALE, United Kingdom
  - Nadejda GERASIMOVA, Russian Federation
- **Group of the Unified European Left (UEL)**
  - Andrej HUNKO,\* Germany
  - Nikolaj VILLUMSEN, Denmark
- **Co-rapporteurs of the Monitoring Committee (ex officio)**
  - Mailis REPS,\* Estonia
  - Marietta de POURBAIX-LUNDIN,\* Sweden
- **Venice Commission**
  - Srdjan DARMANOVIC, Montenegro

– **Secretariat**

- Chemavon Chahbazian, Deputy to the Head of the Secretariat, Interparliamentary Co-operation and Election Observation Division
- Bastiaan Klein, Administrator, Monitoring Committee
- Daniele Gastl, Assistant, Interparliamentary Co-operation and Election Observation Division
- Anne Godfrey, Assistant, Parliamentary Assembly
- Angus Macdonald, Press officer, Parliamentary Assembly
- Serguei Kouznetsov, Administrator, Venice Commission

(\*) pre-electoral mission (19-22 September 2012)

## **Appendix 2 – Programme of the observation of the parliamentary elections in Ukraine (28 October 2012)**

### **Friday 26 October 2012**

- 8:30 – 9:30 Meeting of the ad hoc committee:
- Briefing on the pre-electoral mission by Mr Andreas Gross, Head of the Delegation
  - Briefing by Ms Ursula Koch-Laugwitz, Friedrich-Ebert-Stiftung Office in Ukraine
  - Briefing by Ms Gabrielle Baumann, Konrad-Adenauer-Stiftung Office in Ukraine
  - Briefing by Mr Vladimir Ristovski, Representative of the Secretary General of the Council of Europe in Ukraine
  - Recent developments in the field of election legislation, Mr Kouznetsov, secretariat of the Venice Commission
  - Practical and logistical arrangements, presented by the Secretariat

### **Joint Programme for the members of the delegations of the OSCE-PA, PACE, the EP and NATO-PA**

#### **Friday 26 October 2012**

- 10:00 – 10:30 Opening by the heads of parliamentary delegations
- Ms Walburga Habsburg Douglas, Special Co-ordinator of the OSCE, leader of the OSCE short-term observers, Head of the Delegation of the OSCE Parliamentary Assembly.
  - Mr Andreas Gross, Head of Delegation of PACE
  - Mr Pawel Kowal, Head of Delegation of the European Parliament
  - Mr Assen Agov, Head of Delegation of the NATO-PA
- 10:30 – 11:00 Political background
- Ambassador Madinba Jarbussynova, OSCE Project Co-ordinator
  - Ambassador Jan Tombinsky, Head of the European Union Delegation to Ukraine
  - Mr Vladimir Ristovski, Representative of the Secretary General of the Council of Europe in Ukraine
  - Mr Marcin Koziel, Head of the NATO Liaison Office in Ukraine
- 11:00 – 13:00 OSCE/ODIHR Election Observation Mission Core Team
- Ms Audrey Glover, Head of the OSCE/ODIHR observation mission and the team – political overview, campaign activities and media landscape, legal framework, polling procedures
- 15:30 – 16:30 Round table with domestic observer organisations
- Mr Oleksandr Chernenko, Chairperson of the Committee of Voters of Ukraine
  - Ms Olha Ajvazovska, Head of the Civic Network “Opora”
  - Ms Irina Bekeshkina, Director of the Democratic Initiative Fund
- 16:30 – 17:30 Round table with NGO representatives
- National Democratic Institute
  - National Republican Institute
  - IFES
- 17:30 – 18:30 Round table with media representatives
- Mr Mykola Kniazhytskyi, Chief Executive, TVi
  - Mr Brian Bonner, Editor-in-Chief, *Kyiv Post*

- Mr Andriy Yanytskyi, Economic Editor of the Internet portal “Left Bank”
- Mr Taras Shevchenko, Director of the Media Law Institute
- Ms Victoria Siumar, Executive Director of the Institute of Mass Media Information and Roman Holovenko, Head of Legal programmes

**Saturday 27 October 2012**

- 9:00 – 11:00 Meetings with representatives of political parties and blocs
- Party of Regions: Mr Leonid Kozhara, Deputy Chairperson of International Policy, and Mr Vladislav Zabarsky, representative of the party in the CEC
  - United opposition “Batkivshchyna”: Mr Arseniy Yatsenyuk, Head of the Council
  - Ukrainian Democratic Alliance for Reform (UDAR): Mr Valeriy Karpuntsov, Party representative in the CEC
  - All-Ukrainian Union “Svoboda”: Mr Oleg Tiagnybok, Head
- 11:30 – 13:30 Meetings with representatives of political parties and blocs
- Our Ukraine Block–People self-defense Faction: Mr Mykola Onischchuk, Deputy Head of the Party
  - Ukraine-Forward: Mr Aleksiy Lohvynenko, Member of the Party Council
  - Green Party: Mr Denys Moskal, Head of the Party
  - Communist Party of Ukraine: Mr Georgii Buiko, Deputy Head of the Party
  - Socialist Party of Ukraine: Ms Nataliya Bondar, Deputy Head of the Party
  - People’s Party: Mr Andriy Horovyi, Deputy Head of the Party
- 13:15 Concluding remarks
- 13:20 Deployment, meeting with interpreters and drivers

**Sunday 28 October 2012**

- 8:00 – 20:00 Observation of the elections

**Monday 29 October 2012**

- 8:00 – 09:00 Ad hoc committee debriefing meeting
- 9:30 – 10:30 Meeting of the heads of parliamentary delegations
- 14:30 Press conference

### **Appendix 3 – Declaration by the pre-electoral delegation**

#### **Forthcoming elections 'will be a litmus test of Ukraine's commitment to democratic principles'**

Strasbourg, 22.09.2012 – The forthcoming parliamentary elections in Ukraine will be a litmus test of Ukraine's commitment to democratic principles as a step towards further European integration, a pre-electoral delegation of the Parliamentary Assembly of the Council of Europe (PACE) said at the end of a two-day visit to Kyiv (20 and 21 September).

The seven-member delegation, which met representatives of all the main parties running as well as election officials and civil society groups, urged a number of steps aimed at ensuring Ukrainian voters are able to make a free choice among genuine alternatives on 28 October, in line with Ukraine's commitments to the Council of Europe.

The delegation called for greater media pluralism in the run-up to election day, urging the authorities and both public and private media outlets – particularly television – to ensure that parties contesting the elections receive balanced, unbiased coverage of their platforms and policies. It encouraged Ukraine's journalists to be bold and fair in their reporting, and resist any tendency towards self-censorship, in order to serve the wider public interest. In this context, it expressed its great concern about the draft law on criminalisation of defamation and strongly urged the parliament to take into account the opinion of Council of Europe experts on the draft law before finally adopting it.

The delegation expressed its satisfaction that, for the first time, domestic non-party observers will be able to follow the voting, the count and tabulation. It welcomed their contribution, and encouraged Ukraine's civil society to play a full and active role in the election process, including by making use of the opportunities offered by social media and the internet. In this context, the delegation invites the authorities to clarify the rules surrounding the use of web-cams in polling stations in order to avoid confusion.

The pre-electoral period has been overshadowed by the imprisonment of former government members and opposition leaders Yulia Tymoshenko and Yuri Lutsenko, who are unable to stand. It shares the concerns expressed by the Assembly about the trials and imprisonment of these persons, and reaffirmed the Assembly's call for them to be released, by all legal means, before the elections take place. At the same time, this issue should not be used to de-legitimize the elections before they have taken place. The election should be judged on all elements affecting the whole process.

The "oligarchization" of Ukraine's politics, the merging of political and economic interests, is a matter for serious concern. The delegation called upon state actors and electoral contestants to refrain from abusing administrative resources, as well as private economic means, to manipulate the election process and distort the will of the people. It urged politicians to try to engage on the issues, and to put the public interest ahead of their own self-interest, in order to counter an overwhelming lack of confidence in politics and political institutions on the part of many voters.

Finally, the delegation called on the authorities and all electoral participants to take all steps necessary to ensure that these elections are conducted with full respect for democratic principles and the country's obligations to the Council of Europe. Only by doing so can public faith in the electoral process, and therefore ultimately in the outcome, be fully restored.

A full delegation of around 40 Assembly members will return to the country to observe the voting, alongside other international observers, before making a joint final assessment.

## **Appendix 4 – Press release from the International Election Observation Mission**

### **Ukrainian elections marred by lack of level playing field, say international observers**

Strasbourg, 29.10.2012 – Ukraine's parliamentary elections were characterized by a tilted playing field, the international observers concluded in a statement released today. This was the result, primarily, of the abuse of administrative resources, as well as a lack of transparency in campaign and party financing and of balanced media coverage.

Voters had a choice between distinct parties and candidate registration was inclusive, with two notable exceptions, representing a wide variety of political views. The political environment, however, is dominated by powerful economic groups, to the detriment of the electoral process, the statement said.

"Considering the abuse of power, and the excessive role of money in this election, democratic progress appears to have reversed in Ukraine," said Walburga Habsburg Douglas, the Special Co-ordinator who led the OSCE short-term election observation mission and the Head of the OSCE Parliamentary Assembly delegation. "One should not have to visit a prison to hear from leading political figures in the country."

"Ukrainians deserved better from these elections. The 'oligarchization' of the whole process meant that citizens lost their ownership of the election, as well as their trust in it" said Andreas Gross, the Head of the Parliamentary Assembly of the Council of Europe (PACE) delegation. "Unfortunately, the great democratic potential of Ukrainian society was not realized in yesterday's vote."

Election day was calm and peaceful overall, and the voting and counting was assessed mostly positively by the observers, but tabulation was assessed negatively, as it lacked transparency.

The election administration managed the technical aspects of the pre-election process adequately, but routinely held pre-session meetings behind closed doors, and most open sessions lacked substance.

"Yesterday, we witnessed a strong turnout and a well-conducted polling process. The positive engagement of the Ukrainian people shows their steadfast desire for democracy, and this bodes well for Ukraine's future," said Assen Agov, Head of the Delegation from the NATO Parliamentary Assembly "We all hope that the disappointment of our overall assessment will galvanize political stakeholders into delivering the democratic progress which Ukrainians clearly seek."

"The lack of appropriate responses by the authorities to the various electoral violations has led to a climate of impunity", said Audrey Glover, the Head of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) long-term election observation mission. "This has cast a shadow over the election and the democratic progress that, until recently, Ukraine had been making."