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PRE-ELECTION TECHNICAL ASSESSMENT 2012 PARLIAMENTARY ELECTIONS IN UKRAINE

October 2012

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October 9, 2012



International Foundation for Electoral Systems

Table of Contents

I. Introduction	2
Background	2
Methodology.....	2
Key Recommendations	3
II. Assessment Findings and Recommendations.....	7
The Legal Framework for Elections.....	7
Election Management Bodies	8
Suffrage and Registration of Parties and Candidates	16
Election Day	19
Voter Lists	24
Election Districts	28
Voter Education	30
Political Party and Campaign Finance.....	31
Election Dispute Resolution	33
Appendix 1	36
List of Interlocutors.....	36

I. Introduction

Background

The 2012 parliamentary elections will be an important test of Ukraine's democracy. The election campaign is unfolding against a background of intense polarization among political actors and reports of violations of the electoral rules. Following the 2010 local elections, which were marred by significant irregularities, electoral participants have expressed low levels of trust in each other and in the electoral administration itself. Two leading opposition figures, Yulia Tymoshenko and Yuriy Lutsenko, are in prison and unable to participate in the elections.

In this context, the performance of the electoral system will be of critical importance. The competent and impartial implementation of electoral processes by the Central Election Commission (CEC), and all authorities, will be critical to ensuring the credibility and acceptability of the outcome of the elections. Implementation of the elections will be particularly challenging because the recently adopted Election Law has changed the electoral system and introduced a number of new provisions, including provisions on the formation of lower-level election commissions, which have never been tested.

So far the electoral authorities seem to have kept pace with the requirements of the new legal framework. However, a number of actions have come under criticism by political parties, candidates and international and domestic observers. The success of the elections now depends on the performance and behavior of the political parties and election commissions on Election Day, and on the degree to which the commissions and court system are able to respond effectively to allegations of violations of the rules.

In addition to recommendations for long-term, systemic changes, this report recommends a number of measures that can be taken in the weeks and days remaining, and on Election Day itself, to improve the administration of the election and citizen confidence in the process. We urge Ukraine to consider such measures.

Methodology

From October 1 to 9, 2012, a team of election experts (hereinafter the "IFES Assessment Team") conducted a technical evaluation of the electoral environment in Ukraine ahead of the parliamentary elections to be held on October 28, 2012. The objectives of the mission were to provide an objective, impartial assessment of Ukraine's parliamentary election processes and to make recommendations for improvement.

The Assessment Team comprised Paul Harris (former chief executive of the New Zealand Election Commission); Steve Canham (senior voter data and electoral systems expert); Renata Lapti (former member of the Republic of Moldova Central Election Commission); Gavin Weise (IFES deputy director for Europe and Asia); and David Ennis (IFES chief of party in Ukraine).

The assessment team met with a wide range of electoral experts, stakeholders and participants, including representatives of the CEC and lower-level election commissions, the State Registry of Voters, political parties, local experts, civil society, international organizations and domestic and international election observation missions. A complete list of interlocutors is included in Appendix 1.

The IFES Assessment Team focused on the electoral administration and the conduct of electoral processes and did not address important issues relating to the political context for these elections, including the media environment or abuse of administrative resources. Findings and recommendations are based on international standards and best practices and IFES' own experience in countries around the world. Importantly, while the IFES Assessment Team cites deficiencies and offers suggested methods for improvement, IFES has not attempted to offer an overall evaluation of the election, the outcomes of which are still uncertain.

Key Recommendations¹

Legal Framework for Elections

- The government should follow through on the commitment made in Presidential Decree No. 1004 to “[bring] the election law in conformity with generally accepted international democratic standards and accelerate its codification.” Particular attention should be paid to the need to reform the Law on Local Elections.
- Future law reform efforts should provide opportunity for meaningful participation by and input from stakeholders, including opposition parties and civil society.

The Central Election Commission

- The CEC should develop a strategic plan outlining goals for the next three to five years. It should also consider allowing the CEC secretariat staff to take more responsibility for day-to-day operations, freeing commissioners to focus on high-level planning and priority setting, and to deliberate policy matters.
- The CEC should conduct a comprehensive and objective technical evaluation of its performance after the 2012 parliamentary elections, through a transparent and consultative process that allows input from all electoral stakeholders.

Lower-Level Election Commissions

- The rules governing formation of lower-level election commissions should be reconsidered in light of the experience during the 2012 elections. In particular, parties that do not contest the nationwide constituency should be able to nominate District Election Commission (DEC)

¹ A more comprehensive list of recommendations can be found in the body of the report.

and Precinct Election Commission (PEC) members only in those districts where they have nominated a candidate.

- Parties and candidates that nominate election commission members should not be able to replace them at will. Once appointed, election commissioners should be free from political interference.

Training of Election Commission Members

- For the 2012 elections, the CEC and DEC's should make every effort to ensure that members of every PEC receive basic training and are provided with training materials, including PEC manuals.
- For future elections, the CEC should develop a detailed training plan, including plans for materials development, well in advance of the election.
- The capacity of the CEC secretariat to train lower-level election commission members must be strengthened. The CEC should consider creating a specialized training unit or division that will have the capacity to create training plan; develop standardized curricula and materials; and design and implement monitoring and evaluation systems.

Suffrage and Registration of Parties and Candidates

- A number of potentially restrictive conditions in the Election Law on the right to seek public office should be reviewed in light of Ukraine's international commitments and democratic norms. Such conditions include the length of residency requirement and the denial of suffrage for those convicted of a deliberate crime.
- The underrepresentation of women among the leaders of political parties and in the legislature is a serious issue in Ukrainian political life that is unlikely to be resolved during the 2012 elections. Ukraine should examine measures that other states have taken to increase the representation of women in politics, including policies of positive discrimination in the laws governing elections and political parties.
- Deposit requirements should not be overly restrictive to parties and candidates of lesser financial means. Any party or candidate who receives significant popular support should be entitled to a return of any registration deposit.

While registration deposits are an internationally acceptable means of discouraging frivolous candidates, Ukraine should consider other measures to achieve that goal, such as introducing a requirement for signatures of a certain number of voters.

Election Day

- Crowding and long queues are a real possibility during the 2012 elections. In the time remaining, the CEC and DEC's should instruct PECs on measures to best manage the flow of voters and to accommodate voters during peak periods. To the extent that additional train-

ing for PECs is possible, attention should be given to polling day simulations and other practical exercises that will increase commissioners' ability to process voters efficiently.

- To better guarantee secrecy of the vote, the CEC should consider issuing regulations on the minimum number of voting screens required at each precinct. In the longer term, Ukraine should consider adopting standardized voting screens.
- PECs should ensure they have the materials specified in the law to assist voters with visual impairments mentioned in the Election Law. To the extent possible, PECs should review their polling station set-up to identify any improvements that can be made to make the station more accessible and to better provide secrecy for voters with disabilities.
- Making results available by polling station is an internationally accepted practice and essential for transparency. Prior to the election, the CEC should issue a regulation on the level of detail and time frame in which the results for individual precincts will be posted via its central website. Consideration should also be given to making this requirement explicit in the law.
- Current provisions in the Electoral Law that appear to tolerate certain levels of fraud in polling or counting should be changed. Any serious irregularities should be investigated and remedied.

Voter Lists

- There should be clarification regarding citizens' access to the voter list during the public verification process to ensure consistency in the process of pre-election verification of the provisional voter list. The ability for voters to view and challenge the details of other persons on the list should specifically be addressed.
- The CEC and Register maintenance bodies should take steps to ensure that clear notifications are received by all voters affected by Resolution No. 1046 (which eliminated what is called "electoral tourism") to ensure that they have a clear understanding of where they are supposed to vote.
- In future, the CEC might consider making it possible for voters to check and verify their own personal voter data and precinct of voting through web-based or SMS services.

Election Districts

- The Election Law should be amended to provide clear criteria for the creation of district boundaries. These should include, at a minimum, requirements that such districts be contiguous and protect national minorities and other communities of interest.
- Although practices differ across countries, boundary delimitation is a function that is best handled by impartial, technical specialists with suitable expertise. The CEC should consider

creating a professional advisory body to develop initial proposals for electoral boundaries, while retaining the power to ultimately approve the advisory body's proposals.

- The CEC should consider creating a process for public engagement in and discussion of the boundary delimitation process. At a minimum, the CEC should give a public explanation of the process it followed and the criteria it applied in drawing the electoral boundaries.

Voter Education

- The CEC should prioritize voter education programs in the days remaining before the election. There is still sufficient time for the CEC to educate citizens on basic voter list verification and voting procedures, as well as on the political options available to the electorate on Election Day.

Political and Campaign Finance

- The Government of Ukraine should follow the recommendations in the Group of States Against Corruption (GRECO) Third Evaluation Report to strengthen the regulation of the role of money in politics.
- The CEC should use its authority under Article 49.7 of the Election Law to conduct a meaningful review of the post-election campaign financial disclosure forms filed by parties and candidates. The CEC should establish audit and investigation procedures to deal with inconsistencies, errors and omissions in the reports. It should also consider establishing a unit within the secretariat with responsibility for reviewing and analyzing financial disclosure forms.

Election Dispute Resolution

- Procedures for resolving election disputes before both election commissions and courts should be reviewed to take account of lessons learned during the 2012 elections. The review should attempt to clarify jurisdictional issues so that it is clear which body is supposed to handle which type of complaint. Where concurrent jurisdiction is to be retained, procedures to prevent parallel consideration of the same matter should be strengthened.
- Consideration should be given to extending the timelines for adjudication of certain types of complaints and/or lawsuits to three to five days in order to ensure that courts and election commissions have sufficient time to make informed decisions.
- The system of sanctions should be reviewed to ensure that sanctions are proportionate and sufficient to serve as a deterrent.

II. Assessment Findings and Recommendations

The Legal Framework for Elections

The Law on the Election of People's Deputies of Ukraine (the "Election Law") was passed in December 2011 with support from pro-government and opposition parties after a controversial, and at times acrimonious, law reform process. At the request of the Ministry of Justice, both IFES and the Venice Commission/OSCE/ODIHR reviewed and commented on a draft of the Electoral Law in October 2011.² While the Election Law that was ultimately adopted differs in some important respects from the version that was reviewed, many of the comments and recommendations from both organizations remain valid.

The law that was finally adopted included a number of measures that were added at the suggestion of opposition members that differed from the version that was reviewed, including:

- Article 18, which requires the CEC to announce district boundaries not later than 175 days before Election Day. This is a significant improvement over the 90 days proposed in earlier drafts, which would have left little time for parties and candidates to plan their campaigns and for the CEC to prepare for the election.
- Article 22.3, which removes a provision from earlier drafts that allowed temporary election precincts overseas to be established outside diplomatic posts. Although likely to limit opportunities to vote for citizens residing abroad, this change increases the transparency and predictability of voting abroad.
- Article 40.3, which makes it clear that voters have the right to review and correct the preliminary voters list, which was not clear in the draft reviewed by IFES. Review and correction of the voter list is an important means of ensuring the right to vote.
- Article 49.7, which establishes a new mandate for the CEC to review campaign financial reports submitted after the election. As is discussed further below, this provision is a potentially important step towards an effective system of campaign finance regulation.
- Article 74.19, which exempts the media from liability for printing libelous material if they were unaware of the court order establishing the libelous nature of the material.

While some opposition party representatives remain ambivalent about the Election Law and about their decision to support it in the legislature, the inclusion of the provisions mentioned above has undoubtedly strengthened the legal framework for parliamentary elections.

In its review, IFES concluded that the mixed electoral system was consistent with international standards, but questioned whether it was fair to fundamentally change the electoral system so soon

² The IFES Review and Analysis can be found at <http://www.ifes.org/Content/Publications/Papers/2011/Review-and-Analysis-of-the-Draft-Law-on-the-Election-of-Peoples-Deputies-of-Ukraine.aspx>. The opinion of the Venice Commission and OSCE/ODIHR is available at <http://www.osce.org/odihr/84126>.

(10 months) before an election. In particular, IFES was concerned that the various opposition parties would find it difficult to adapt to the new parallel electoral system, which, in combination with the abolition of blocs and the introduction of a 5 percent threshold, made it difficult if not impossible for smaller parties to compete. The results of the first-past-the-post single-member constituencies would likely trend toward over-representation of more popular parties at the expense of minor parties, as the latter might rarely, if ever, receive the most votes in any particular district. The advantage to major parties would be magnified if a large number of votes were cast for smaller parties that did not cross the 5 percent threshold. In such circumstances, a strongly disproportionate result seemed possible, despite the semi-proportionate nature of the electoral system.

Based on the IFES Assessment Team's conversations with party representatives and observers, it appears the worst-case scenario has not come to pass. While a number of smaller parties seem to have little chance of gaining representation in the next parliament, some of the leading opposition parties have joined forces in a single campaign that should be competitive both in the nationwide PR contest and in the single-member districts. In addition, it appears that independent candidates are attracting strong support in many single-member districts, a development that has the potential to change the composition of the legislature in unpredictable ways.

While this assessment focuses on the 2012 elections, some mention should be made of the wider legal context. As IFES and others have pointed out in the past, the laws relating to parliamentary, presidential and local elections, as well as the political party law, all contain weaknesses and are inconsistent with each other. The local election law, in particular, is deeply flawed and was widely criticized before and after the 2010 local elections.³ The Assessment Team notes that the Venice Commission and OSCE/ODIHR have urged Ukraine to consider adopting a unified electoral code.⁴

Recommendations:

- The government should follow through on the commitment made in Presidential Decree No. 1004 to “[bring] the election law in conformity with generally accepted international democratic standards and accelerate its codification.” Particular attention should be paid to the need to reform the Law on Local Elections.
- Law reform efforts should provide opportunity for meaningful participation by and input from stakeholders, including opposition parties and civil society.

Election Management Bodies

Parliamentary elections in Ukraine are administered by a three-level hierarchy of election commissions consisting of the Central Election Commission (CEC); a District Election Commission (DEC) in

³ See for example, *Assessment of the Pre-Election Environment for Ukraine's Local Government Elections*, IFES, 8 October 2010; <http://www.ifes.org/Content/Publications/Papers/2010/Statement-of-the-NDI-and-IFES-PreElection-Delegations-to-Ukraines-2010-Local-Government.aspx>.

⁴ See, for example, Venice Commission/OSCE/ODIHR, *Joint Opinion on the Draft Law on the Election of People's Deputies*, 17 October 2011.

each of the 225 single-mandate electoral districts; and a Precinct Election Commission (PEC) in each election voting precinct within the DECs and abroad.

The Central Election Commission

According to Law on the Central Election Commission (the “CEC Law”), the CEC is a permanent and collegial body responsible for conducting presidential, parliamentary and local elections and national and local referenda. Article 2.2 of the CEC Law requires the CEC to act according to the principles of “rule of law, legality, independence, objectivity, competence, professionalism and collegiality ... openness and publicity.” The CEC Law also enumerates the Commission’s powers and authorities; regulates its decision-making procedures; and provides for its secretariat.

The CEC’s specific powers relating to parliamentary elections are set out in Article 19 of the CEC Law and in Article 30 of the Election Law. Among other things, the CEC prepares for and conducts parliamentary elections; publishes CEC resolutions and public information; registers candidates; prepares ballot papers and forms; and declares and promulgates the final election results.

The IFES Assessment Team learned that CEC members take an active role in all of the commission’s operational work, and that individual commissioners are given responsibility for supervising particular CEC activities and operations generally within particular regions. The CEC has a permanent staff of about 250 formally organized in a structure of 13 departments, 17 divisions and several sub-units.⁵ It has not established regional offices, although it is permitted to do so under Article 35 of the CEC Law. The CEC told the assessment team that it creates a work plan for each electoral event but does not have a strategic plan that states its goals, priorities and resource allocations for longer term periods.

The IFES Assessment Team’s interlocutors indicated that the CEC has for the most part carried out its responsibilities under the new Election Law in a competent manner. However, as is discussed further in other sections of this report, the CEC was challenged by some issues, including the formation of DECs and PECs; the determination of the boundaries of the single-mandate electoral districts; and nominations of parliamentary candidates. Some of these difficulties stem from weaknesses in the Electoral Law; others stem from limits of the CEC’s resources or capacities.

Any discussion of the CEC’s performance during the 2012 parliamentary elections must recognize that it was operating under considerable time pressures owing to the adoption of a new Electoral Law less than one year before the election. In addition, the law burdened the CEC with additional new responsibilities, such as the creation of single-member districts and the registration of candidates. However, some operational shortcomings may also be due to the CEC’s structure and manner of working. In particular, the practice of giving individual commissioners operational responsibility for particular issues, and for particular regions, seems to have contributed to inconsistent application of the rules and uneven performance, especially as regards boundary delimitation and candidate registration. Giving individual commissioners such responsibilities may also contribute to the perception, expressed to the IFES Assessment Team by some interlocutors, that CEC actions are in some cases influenced by partisan considerations.

⁵ OSCE, *Ukraine: Assessment of the Institutional Capacity of the Central Election Commission to Organize Training for Lower Level Commissions* (2011), p. 7.

Preliminary results of a pre-election opinion poll conducted by IFES during September 2012 show that while 64 percent of respondents agreed that elections in Ukraine were competently administered; only 34 percent of respondents had strong or partial confidence in the CEC.⁶ This level of confidence should be troubling for an institution that is entrusted with managing elections and certifying election results. Increasing trust in the integrity and competence of the CEC among both the public and electoral participants should be a major goal of the CEC going forward.

Both the Electoral Law and the CEC Law include provisions requiring the CEC to be transparent in carrying out its functions. For example, the CEC is required to publish its decisions and other information on its website; representatives of candidates, political parties, observers and media have the right to attend CEC meetings. Article 75.13 of the Election Law states that the representative of a party that has nominated parliamentary candidates in the national constituency has the right to attend CEC meetings, present proposals, take part in the discussion with an advisory vote and receive the agenda and related materials. These provisions are to be welcomed. However, a number of interlocutors expressed concern that the CEC often makes decisions informally prior to meetings, which are at times *pro forma* affairs.⁷ In addition, some interlocutors complained that their representatives have had difficulty in obtaining access to the documents and information to which they are entitled.

The IFES Assessment Team was told that the CEC has held post-election “lessons learned” conferences after previous elections. It is common practice among permanent and professional election management bodies to conduct a comprehensive and objective technical evaluation of its performance after a major electoral event. Typically, such a review examines the electoral law and procedures and the capacities of the election management bodies to carry out their statutory responsibilities in light of the lessons learned during the election. Such reviews can help an election management body develop strategic plans, as well as proposals for law reform. It would be valuable for the CEC to undertake such an exercise after the 2012 election, particularly given that the elections are to be conducted under a new Election Law and electoral system.

Recommendations:

- Election management bodies, like any large organization, should monitor and evaluate their own performance and develop strategic plans that set out long term goals.⁸ They should also review their organizational structures from time to time to ensure they are carrying out their functions efficiently and effectively. The CEC should develop a strategic plan for the next three to five years, and should review its organizational structure.

⁶ The 2012 IFES public opinion survey was conducted in September 2012. There were 1,512 respondents and the margin of error is 2.5 percent at the 95 percent confidence level. IFES will release the full survey results on October 11, 2012.

⁷ Such practices have been criticized by OSCE/ODIHR in the past; see *Election Observation Mission Final Report: Ukraine Presidential Election, 17 January and 7 February 2010* (2010), p. 7.

⁸ “Multi-year planning allows the EMB to optimize performance, deliver efficient and comprehensive services to voters, maximize use of often limited financial and human resources and strengthen itself as a professional and credible institution of governance.” IFES, *Strategic Planning for Effective Electoral Management* (2011), p. 14.

- The CEC should consider, among other things, increasing the degree to which operational matters are handled by secretariat staff, rather than individual members. It might make sense to appoint a chief executive officer to oversee secretariat activities and report to the CEC on operational performance. While the CEC cannot delegate its responsibility to make formal decisions and ensure that legal responsibilities are being fulfilled, greater operational autonomy of secretariat staff on day-to-day matters could increase the consistency and professionalism with which certain functions are carried out, while freeing CEC members to focus more on policy matters, including high-level planning and priority setting.⁹ The CEC should also evaluate the training needs of its secretariat staff and should develop and implement training programs to increase their capacity.
- The CEC might also examine whether the establishment of regional CEC branches would allow better delivery of some functions, such as training of election commissions, voter education and information, oversight of voter registration, and production and storage of election materials and equipment.
- The CEC should conduct a comprehensive and objective technical evaluation of its performance after the 2012 parliamentary elections. Such a review should be completed soon after each election to ensure sufficient time for legislative and other changes to be implemented well before the next major electoral event. Post-election reviews should seek out input from all stakeholders, especially political parties and lower-level election commission members.

District and Precinct Election Commissions

The formation of the DEC and PEC members for the 2012 elections is the issue that was most frequently raised by the IFES Assessment Team's interlocutors. In particular, the decision to use single lotteries to form DEC and PECs – instead of separate lotteries – and the rule allowing all parties – no matter how marginal – to participate in the formation of election commissions were widely criticized.

DECs and PECs are temporary bodies created to administer each election. DECs are established by the CEC, while PECs are established by the respective DECs (except for the PECs for the out-of-country election precincts, which are established by the CEC). DECs may have between 12 and 18 members, although in practice they usually have 18 members.

The Electoral Law grants the right to nominate members of the DECs to two types of nominating entities: (a) parliamentary factions currently registered with the apparatus of the parliament; and (b) parties that are electoral subjects. Candidates nominated in the single-mandate election districts have no right to be represented in the DEC. The Electoral Law gives the right to nominate PEC members to the above two groups, as well as to candidates nominated in the single-mandate election districts.

If the number of the nominations to a DEC or PEC exceeds the highest possible number of commission members, then the Law requires the drawing of lots to select the members from the

⁹ In some countries, the chief executive of the election management body's secretariat is the country's chief electoral officer; see International IDEA, *Handbook of Electoral Management Design*.

candidates nominated by the parties that are electoral subjects and (for PECs) by candidates in the single-mandate districts. The procedure for drawing lots is not determined in the Election Law.

CEC Resolution No. 69 of April 19, 2012, provided that the composition of all 225 DEC members would be decided using a single lottery, which was held on August 24, 2012. In addition to the five parliamentary factions, the right to appoint DEC members was won by 19 political parties, many of which enjoy little or no voter support, including the Union of Ukrainian Anarchists, *Sam za Sebe* Party and Civic Solidarity. Some of lottery winners had nominated only a small number of candidates in the single-mandate districts. At the same time, Udarny and Svoboda – two major opposition parties that submitted lists of candidates for the nationwide PR contest and seem likely to surpass the 5 percent threshold for representation in parliament – could not place their nominees on any of the DEC members as a consequence of this lottery.

Many of the IFES Assessment Team's interlocutors were highly critical of the manner in which the DEC members were formed, and especially the decision to hold a single lottery for all 225 DEC members. The problematic nature of the lottery results may be indicated by the very high proportion of DEC members from small parties who have been replaced since the lottery. Some parties have replaced up to 100 percent of their nominees. Political party representatives and domestic and international observers were of the view that DEC members nominated by smaller parties were being replaced by members who in fact represented one of the major parties.¹⁰

The procedure for selecting PEC members was established initially in CEC Resolution 88 of May 17, 2012, which required each DEC to conduct a separate lottery for each PEC under its jurisdiction. However, on September 13, 2012 (less than 10 days before the lotteries were to be held), the CEC issued a new Resolution requiring DEC members to conduct a single lottery for all PECs.¹¹ This decision to change procedures at the last minute is hard to explain given the criticism that followed the single DEC lottery, and the fact that the DEC members would seem to have had ample time to perform separate lotteries.

According to NGO election observation reports,¹² the process of nomination of the PEC commissioners and the lottery process used to select them by the respective DEC members were marred by irregularities. In many cases people were nominated without their prior consent by one or more parties. In 20 single-mandate districts, the DEC members drew lots after the legally established deadline (i.e., after September 18) or conducted repeated lotteries without apparent justification. NGO observers also reported instances in which malfunctions of the CEC's *Vybory* electronic system prevented finalization of the establishment of PECs within the established deadline. As with the DEC members, it appears that many PEC members have been replaced since the initial establishment of the PECs.

¹⁰ Once the members of DEC members and PECs have been appointed, Article 37.3.2 of the Election Law allows them to be replaced unilaterally by the parliamentary faction, political parties and candidates that nominated them.

¹¹ CEC Resolution No 895, 13 September 2012, *On amendments to CEC Resolution No 88 of 17 May 2012*.

¹² OPORA Civic Network. *The Sixth Report on Results of Nationwide Observation of 2012 Parliamentary Elections*, September 2012; <http://oporaua.org/en/news/2710-shostyji-zvit-za-rezultatamy-zagalnonacionalnogo-sposterezhennja-parlamentski-vybory-2012-veresen>; Committee of Voters of Ukraine. *Report No. 5 on Results of Long-Term Monitoring of Preparation for 2012 Parliamentary Elections in Ukraine: Summary*, September 2012; http://www.cvu.org.ua/files/doc1349250353Report_CVU_LTO#5_summary.pdf.

While much of the criticism of the DEC and PEC formation focused on the decision to hold single lotteries, the more important reason for the representation of minor parties and the consequent high rate of replacements is the rule in Article 27 of the Electoral Law, which allows any party that has nominated even a single candidate to submit nominations for DEC and PECs throughout the country.

That being said, it does seem that multiple lotteries would have ensured greater diversity on DEC and PECs. The IFES Assessment Team was unconvinced by arguments that it would have been technically impossible to hold separate lotteries, especially at the DEC level.

Any discussion of the formation of the election commissions should recognize the extent to which election commissions are politicized. All electoral participants seem to believe that their best defense against potential fraud committed by their competitors is to have representation on the committees. This point of view is not surprising given the low levels of trust in Ukraine.

However, over the long term, the best ways to lower the risk of fraud are to build the professionalism and impartiality of election commissions, to ensure they work transparently and to put in place effective mechanisms for identifying and countering violations of the rules. Nomination of election commission members by election participants is a common practice, but commissioners should not then be considered representatives of candidates and parties. Commissioners ought to be impartial representatives of the wider community. International best practice is clearly opposed to replacement of commission members by the parties that have nominated them.¹³ Once appointed, members should be allowed to carry out their responsibilities without political interference.

Some interlocutors told the IFES Assessment Team that parties must be allowed to replace members that they nominate in case they are bribed to begin working for another party. This approach attempts to solve the problem of politicization of election commissions by politicizing them still further. Replacement at will also facilitates the kind of behind-the-scenes deal making among parties that seems to have characterized the formation of DEC and PECs during the 2012 elections.

A related point is that election commissions in Ukraine are typically created with 18 or more members in order to ensure that as many election participants as possible can nominate members. This number is far in excess of what is needed operationally and can only make the commissions' work more difficult. If greater scrutiny of the work of election commissions is needed, a better alternative would be to strengthen the provisions governing the role of party and candidate agents.

¹³ Venice Commission. Code of Good Practice in Electoral Matters. October 2002. II.3.1.f

Recommendations:

- The rules governing formation of lower-level election commissions should be reconsidered in light of the experience during the 2012 elections. In particular, parties that do not contest the nationwide constituency should be able to nominate DEC and PEC members only in those districts where they have nominated a candidate.
- Parties and candidates that nominate election commission members should not be able to replace them at will. Once appointed, election commissioners should be free from political interference.

Training of DEC and PEC Members

Providing effective and standardized training to those responsible for conducting an election is widely understood to be a critical step in preparing for an election.¹⁴

According to the Election Law, the CEC is responsible for providing training to lower-level election commission members. In particular, the CEC trains the DEC management staff who are in turn responsible for providing training to the other DEC members and to PECs. In recent election cycles, election-related training has been delivered by domestic NGOs with the support of international donors and technical assistance providers. However, during the 2012 election cycle, the training of lower-level election commissioners has been implemented by the CEC with minimal assistance.

Responsibility for training within the CEC rests with the CEC's Organizational-Methodical Department (OMD). The few staff members within the OMD who currently have responsibility for training are also responsible for other areas, such as making drafts of CEC statements and decisions, collecting statistical information, etc. There does not appear to be a real delineation of powers or responsibilities within the OMD, and no one is devoted full-time to the task of election training and capacity building.

IFES, with financial support from USAID and CIDA, has been providing training-related technical assistance to the CEC and the OMD as they work to fulfill their training mandate for the 2012 parliamentary elections. IFES has co-located a number of trainers with the CEC staff responsible for training. This collaboration has resulted in the development of a training plan, curricula and materials for training all election commissioners, including manuals for DEC and PECs, as well as training for the vast majority of the 675 DEC chairs, deputy chairs and secretaries.

The OSCE is also assisting the CEC to develop its capacity to carry out future training for election commissioners, by creating an online training course. The web-based program dedicated to the electoral training will cover electoral law, analytical materials on election issues, forms of election documents, samples of election documents, an online library, FAQs and a self-evaluation of knowledge and skills.

¹⁴ See, for example, Venice Commission, *Code of Good Practice in Electoral Matters* (2002), II.3.1.g and paragraph 84, which emphasize the need for "standardized" training of election commissioners.

DECs began to deliver training to PECs, using the materials and curricula jointly developed by IFES and the CEC in early October. At the time of writing this report, it was too early to fully assess the effectiveness of these trainings. It appears that responsibility for scheduling and arranging logistics for PEC trainings has been left to the individual DECs. It is also unclear, as of the publication of this report, if PEC manuals and other training materials developed at the central level will be printed and distributed to the DECs in time and in sufficient numbers to be used in training PECs.

In a new approach, Article 26.7 of the new Election Law passed at the end of 2011 states, “A person may be appointed as head, deputy head, or secretary of a district election commission only if he or she has completed, in the manner established by the Central Election Commission, the training for managerial positions in a district election commission.” That provision is a welcome step forward, but it does not come into effect until January 1, 2013, and thus does not affect the 2012 parliamentary elections. It will, however, apply to parliamentary elections held after that date, including any by-elections.

Recommendations:

- For the 2012 elections, the CEC and DECs should make every effort to ensure that management-level members of PECs receive training and are provided with training materials, including PEC manuals.
- The CEC should develop a detailed training plan, including plans for materials development, well in advance of the next election. As an initial step, the CEC should assess the effectiveness of the 2012 training program after the election by seeking feedback from DEC and PEC members themselves. By learning the lessons of the 2012 election campaign, the CEC may be better able to design and implement effective training systems in future elections.
- The CEC should shift its training approach from the current lecture format to seminars that incorporate adult learning techniques; use simulations and interactive activities; initiate debates and free and open discussions; and engage the audience. Election training materials should focus on simple yet essential election tasks (voting, counting, result tabulation, complaints, observer access, etc.).
- The capacity of the CEC secretariat with regard to training must be strengthened. The CEC should create a specialized training unit that will have the capacity to create a training plan well in advance of an election; develop standardized curricula and materials; and design and implement monitoring and evaluation systems.

Suffrage and Registration of Parties and Candidates

Candidate Eligibility

While the provisions in the Election Law dealing with the nomination and registration of candidates are generally consistent with international standards, they do include some problematic restrictions on candidate eligibility.

Ukraine restricts the right to vote (and thus stand for office) of citizens who have been declared incompetent by a court (Article 70.2 of the Constitution and Article 2.9 of the Electoral Law). This rule may be contrary to Ukraine's international commitments and emerging norms on the universal right to vote. Article 12 of the UN Convention of the Rights of Disabled Persons, to which Ukraine is signatory, stipulates that a state must ensure that persons with disabilities, including mental disabilities, "enjoy legal capacity on an equal basis with others in all aspects of life." Moreover, the Council of Europe, in its Recommendation on the Participation of Persons with Disabilities in Political and Public Life states, "All persons with disabilities, whether they have physical, sensory, or intellectual impairments, mental health problems or chronic illnesses, have the right to vote on the same basis as other citizens, and should not be deprived of this right by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived capacity."¹⁵ The Venice Commission has also recently expressed doubts about the propriety of restricting suffrage rights based on mental capacity.¹⁶

Ukraine also limits the eligibility of citizens who have not been resident in the country for five years prior to an election to stand as candidates.¹⁷ This restriction may be contrary to obligations set forth in the International Covenant on Civil and Political Rights (ICCPR). General Comment 25 to the ICCPR states that, "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation." In addition, it is unclear what kind of presence in Ukraine constitutes residence for the purpose of the restriction, an ambiguity that led to confusion during the candidate registration process.

As IFES mentioned in its September 2011 review of the draft Law on the Election of People's Deputies, the provisions in Article 9.4 of the Election Law and Article 76.2 of the Constitution that deny the right to stand for office for those who have been convicted of a "deliberate" crime are problematically vague because they do not address the nature or seriousness of the crimes that will lead to exclusion. The Venice Commission's Code of Good Practice on Electoral Matters suggests such provisions should include reference to the principle of proportionality, so that suffrage rights are not unduly restricted.¹⁸

¹⁵ Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, Adopted by the Committee of Ministers on November 16, 2011.

¹⁶ Venice Commission, *Interpretative Declaration to the Code of Good Electoral Practice in Electoral Matters on the Participation of People with Disabilities in Elections* (December 19, 2011).

¹⁷ *Constitution of Ukraine*, Article 76.2.

¹⁸ Venice Commission. Code of Good Practice in Electoral Matters. October 2002. Paragraph 6(d).

Recommendation:

- While Ukraine's electoral legislation provides for universal suffrage, including the right to stand as a candidate, there are a number of exclusions to this right that may be inconsistent with Ukraine's international commitments and emerging global norms. Any future review of the Election Law should be taken as an opportunity to reconsider these restrictions on suffrage. Care should be taken not to exclude from the political process persons who may have an intellectual or psychosocial disability.

Women's Participation

While the principle of non-discrimination based on gender is included in both the Election Law and the Constitution, the low level of participation of women in the political process in Ukraine is a cause for concern. The gender balance of Ukraine's parliament is ranked 123 out of 144 states by the Inter-Parliamentary Union, with only 8 percent of women of the current members of parliament.¹⁹

With women representing just 16 percent of the registered candidates, it seems unlikely that the 2012 elections will result in any increase in women's representation in the parliament. Indeed, the fact that so many women candidates have been given positions in unviable positions at the bottom of the party lists suggests that the level of women's representation may actually fall. In this regard, it is also relevant that majoritarian systems (such as the first-past-the-post system to be used in electing representatives to the newly formed single-member districts) typically produce lower levels of representation for women than PR systems.

Recommendation:

- The underrepresentation of women among the leaders of political parties and in the legislature is a serious issue in Ukrainian political life that is unlikely to be resolved during the 2012 elections. Ukraine should examine measures that other states have taken to increase the representation of women in politics, including policies of positive discrimination in the laws governing elections and political parties, and consider whether such methods might be applicable in the Ukrainian context.

Registration of Candidates

The reduction in the length of the campaign period from 120 days to 90 days in Electoral Law resulted in a significantly compressed time frame for candidate nomination and registration compared to previous elections.²⁰ This fact, along with the decision to centralize processing of candidate registration at the CEC, rather than in the DECs, appears to have placed a significant strain on the former body's administrative capacity. By all accounts the CEC met the challenges imposed by the deadlines and completed candidate registration within the time frame prescribed by law.

¹⁹ See: <http://www.ipu.org/wmn-e/classif.htm>.

²⁰ IFES raised questions about the viability of the timeline for registration of candidates, especially candidates in single-member districts, in its 2011 *Review and Analysis of the Draft Law on the Election of People's Deputies of Ukraine*, 2011. While the timelines that were included in the Electoral Law showed some improvement over the draft law that was reviewed, delays and miscommunications during the 2012 elections suggest that the timelines should be subject to further reconsideration.

One area of particular concern during the 2012 election related to the handling of incomplete registration documents. Article 60.1(2) states that the failure to provide necessary registration “documents” shall result in the refusal to register the candidate by the CEC. However, Paragraph 3 of the same article states that “errors and inaccuracies” in registration documents are not grounds for refusal of registration. Candidates who submit registration documents containing errors or inaccuracies are supposed to be given a chance to correct and resubmit the documents. However, in some cases, the CEC refused to register candidates who submitted documents that were missing some of the required information. The CEC took the position that such omissions amounted to a failure to submit required documents, rather than an error or inaccuracy, and refused to register the candidates in question.²¹ As some interlocutors pointed out, this was a rather restrictive and arguably unfair approach to take, which resulted in a number of candidates being unable to contest the elections.

Recommendation:

- The Electoral Law should be reviewed to ensure that the provisions relating to candidate nomination, including provisions relating to timelines, should be reviewed to ensure there is sufficient time for both political entities and the CEC to fulfill their obligations in candidate registration. Procedures should ensure that candidates are given the opportunity to correct deficiencies, including omissions, in their registration documents before a decision is made to deny their registration.

Deposits

Article 56 of the Election Law establishes deposits of 2,000 minimum monthly salaries²² (UAH 2,236,000 or USD \$279,745) for parties submitting candidate lists and 12 salaries (UAH 13,416 or USD \$1,678) for candidates contesting single-member district seats.

Registration deposits, where required, “should be of a sufficient level to discourage frivolous independent candidates and political parties, but should not be so high as to prevent legitimate political parties or independent candidates from obtaining ballot access.”²³ Deposits in Ukraine, especially for the national constituency, are among the highest in the region.

The problem of frivolous candidates, including so-called “technical” candidates, is a real one in Ukraine. However, the amount of the deposits required, and especially the deposit for parties contesting the nationwide constituency, are excessive and could serve as a disincentive to candidates and parties that lack financial means.

²¹According to analysis done by the ODIHR/OSCE EOM, 33 candidates were rejected for failure to provide information on activities of their social work, telephone numbers and other inaccuracies; another 85 were denied registration based on failure to include in their personal statements their intent to resign, if elected, from activities incompatible with a deputy’s duties. OSCE/ODIHR Interim Report No 1 (12-28 September 2012), p. 6.

²² The minimum wage is adjusted several times each year. For the purposes of this report we have used the rate that will be in effect as of October 1, 2011, namely UAH 1,118 per month. The rate in effect during the 2012 elections will be slightly different. The USD equivalents are based on exchange rates prevailing during the month of September 2011.

²³ International Institute for Democracy and Electoral Assistance. *International Electoral Standards: Guidelines for reviewing the legal framework of elections*. 2002. p. 51.

Further, according to the Venice Commission's Code of Good Practice in Electoral Matters, "the number of votes needed for [a deposit] to be reimbursed should not be excessive." The rule providing the return of the deposit only to the winning contestants in the single-member districts is excessive and unfair to candidates and parties who did not win election but were able to garner significant numbers of votes, and would also appear to be inconsistent with the Venice Commission's guidance on this issue.²⁴

Somewhat paradoxically, while the fees for registration could be considered restrictive, there are an extraordinary number of candidates contesting the single-member districts.²⁵ If a primary purpose of registration deposits is to prevent frivolous candidates, the policy is clearly not working, at least with regard to the single-member district races.

Recommendations:

- Deposit requirements should not be overly restrictive to parties and candidates of lesser financial means. Any party or candidate who receives significant popular support should be entitled to a return of any registration deposit.
- While registration deposits are an internationally acceptable means of discouraging frivolous candidates, Ukraine should consider other measures to achieve that goal, such as introducing a requirement for signatures of a certain number of voters.

Election Day

Polling Procedures

Under Article 85.1 of the Election Law, voting is to be held on Election Day from 8:00 until 20:00 without interruption. This is a significant change from 7:00 to 22:00 in the previous law, and efforts should be made to ensure citizens are aware of the new (more limited) hours and that they will be accommodated in this time frame. This change brings the hours of the voting day more in line with regional practice, and should make Election Day more manageable in terms of the burdens placed on polling station staff.

Article 19.3 of the Election Law specifies that election precincts shall be established with the number of voters from 20 to 2,500 voters. As IFES and others have pointed out in the past, requiring a single election precinct to serve an excessive number of voters can have a negative impact on operations, including the control and flow of voters. For some critical operations, such as the sorting and counting of ballots, the impact of an excessive number of voters cannot be offset by the involvement of additional commissioners.

²⁴ Venice Commission, *Code of Good Practice in Electoral Matters*. October 2002. Paragraph 9.

²⁵ In districts 4, 90, 91, 92, 95, 97, 98, 104, 212, 219, and 220 the number of registered candidates exceeds 30. The highest number of candidates – 48 – is in district 95 (48 MP candidates). In fact in only 2 out of 225 constituencies are there less than 5 candidates registered.

Article 25 of the ICCPR states that “every citizen shall have the right and opportunity [to vote] without unreasonable restrictions.” The 12-hour voting window established in the Election Law would appear to provide such opportunity. However, given the large size of some precincts (potentially in excess of 2,500 voters), and the adoption of a new electoral system including two ballots, the reduced hours may result in crowding and lengthy queues.²⁶ IFES has previously recommended that procedures be put in place to ensure that voters in the queue at the closing of polls are able to vote. This change was made in the Election Law and is a welcome addition that will help ensure that citizens are able to exercise their right to vote.

Secrecy of the vote is provided for in Article 71 of the Constitution and Article 7 of the Election Law, and is protected in a number of provisions dealing with voting procedures. However, the Election Law does not require that standard voting screens be used in polling stations. Also, unlike the previous law, the Election Law does not specify the number of screens the polling station must provide (based on the number of voters). The removal of that requirement could result in an insufficient number of screens being supplied in some precincts, which could compromise the secrecy of the vote.

The rights of voters with disabilities are addressed to a degree in the Election Law. Each polling station is to be automatically provided with materials for the visually impaired, i.e., it is not incumbent on an individual voter to request in advance that such materials be made available.²⁷ In addition, a voter who has difficulty marking or casting the ballot may ask for the assistance of another voter, provided they are not a commissioner, observer, candidate or candidate representative (Article 85.5). These legal provisions are at least in keeping with Ukraine’s obligations under the Convention on the Rights of Persons with Disabilities (CRPD) and are to be welcomed.

However, Article 29(a)(i) of the CRPD also calls on states to ensure that “voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.” While the IFES Assessment Team did not have time to assess a representative sample of Ukraine’s 33,000-plus polling stations, it is generally understood that Ukraine must do better in this respect. Many polling stations are located on higher floors and/or in buildings that are generally not accessible by persons with physical disabilities. IFES recognizes that the use of mobile ballot boxes is an acceptable way of facilitating the rights of voters in the absence of adequate facilities.

Recommendations:

- The CEC and DEC’s should, in the time remaining before the election, instruct PECs on measures to best manage the flow of voters and to accommodate voters during peak periods. To the extent that additional training for PECs is possible, attention should be focused on polling day simulations and other practical exercises that will increase commissioners’ ability to process voters efficiently.

²⁶ For example, in order to accommodate 2,400 voters, a PEC would need to process 200 voters per hour, every hour from the time the polls open.

²⁷ However, it was not clear to the Assessment Team whether these materials were entirely compatible with the ballots needed for these elections and would in fact be used.

- The CEC should consider in future increasing the overall number of election precincts in Ukraine to ensure that an appropriate and not excessive number of voters are assigned to each electoral precinct.
- PECs should ensure they have the materials to assist voters with visual impairments mentioned in the Election Law. To the extent possible, PECs should review their polling station setup to identify any improvements that can be made to make the station more accessible and to better provide secrecy for voters with disabilities. For example, a PEC might provide a voting screen suitable for use by a person using a wheelchair. The CEC, together with civil society groups, the Ministry of the Social Policy and Labor and other concerned stakeholders should review all of the country's polling places to assess their accessibility for persons with disabilities.
- To better guarantee the secrecy of the vote on Election Day, the CEC should consider issuing instructions on the minimum number of voting screens required in each precinct. In the longer term, Ukraine should consider adopting standardized voting screens.

Counting and Tabulation of Results

Article 91.9 of the Electoral Law requires PECs to immediately post results in the premises of the PEC for public view upon the completion of counting. Similarly, Articles 95.8 and 96.8 require the DEC to immediately post aggregated results in the premises of the DEC for public view.

Upon receiving preliminary data from a PEC, Article 94.2 of the law requires DEC to send data to the CEC via an automated information system, and for the CEC to immediately publish the data on the official website. This preliminary data is defined in Article 85.13 as the number of voters included in the voter list of the PEC at the end of voting, and the number of voters that received ballot papers. The CEC is not obliged to publish any further information, except for the final CEC protocol on the parliamentary list results.²⁸ It is understood that CEC may publish full precinct results on the official website, but the law does not specifically require the CEC to publish results on its website or release results by precinct.

The OSCE/ODIHR Election Observation Report on the 2010 Presidential Elections noted that there were restrictions in access to observe the entry of PEC data into the *Vybory* system used for transmission to the CEC, and that this reduced transparency of the election process. However, such restrictions may be unavoidable in some cases due to the small size of the computer rooms.

The IFES Assessment Team acknowledges the initiative of OPORA in preparing to conduct a Parallel Vote Tabulation (PVT) of the October Parliamentary Elections. PVT is an internationally recognized mechanism for promoting and assessing the transparency of the vote counting and tabulation process.

²⁸ The CEC must publish official results within five days of establishing the final results, but only through official print media (Article 100).

Recommendations:

- Making results available by polling station is an internationally accepted practice and essential for transparency. Prior to Election Day, the CEC should issue a regulation specifying what information it will publish and at what time(s). Consideration should also be given to including a requirement to publish precinct-by-precinct results in the Election Law.
- The CEC should consider measures to improve transparency of the electronic result process at the DEC's, such as projecting the entry of results outside of the computer room through external screens or other mechanisms allowing the electronic results process to be observed without requiring entry to the computer room.
- To ensure that official observers are able to effectively observe the counting process, clear instructions should be given to DEC's and PEC's to ensure that, during the vote counting process, official observers are able to position themselves so that they can clearly see the faces of the ballots being counted to ensure that voter's intentions are being accurately recorded.

Invalidation of Results

Article 92 of the Electoral Law specifies criteria for PECs to potentially declare voting in an electoral precinct invalid if there have been violations of the law that make it impossible to determine the true results of the expressions of the will of the voters. These criteria include:

1. Discovery of illegal voting by persons who have no right to vote, voting by persons who are not included in the voter list for the election precinct or who have been included in the voter list without legal grounds, or multiple voting by the same person, in a number that exceeds by 10 percent the number of voters who received ballot papers at the election precinct.
2. Discovery of damage to a ballot box (or boxes) that makes it impossible to establish the content of the ballot papers, if the number of such ballot papers exceeds by 20 percent the number of voters who received ballot papers at the election precinct.
3. Discovery in the ballot boxes of the nationwide election district or single-mandate election district ballot papers in a number that exceeds by more than 10 percent the number of voters who received ballot papers at the election precinct.

If any of the above circumstances occur, the PEC must compile a written act on the irregularity that will be grounds for consideration by the PEC on whether to declare voting invalid.

These articles allow a PEC to recognize voting in a precinct as valid even when certain discrepancies and irregularities exist with respect to voting, such as multiple voting or ballot stuffing, as long as they do not exceed the specified thresholds. This approach could potentially allow fraudulent votes to influence results, especially in single-mandate constituencies. Further, the provisions mentioned appear to give the PEC discretion over whether to invalidate voting, without providing adequate guidance as to the basis upon which such discretion should be exercised.

While it is possible to invalidate the results in any particular electoral precinct, Articles 95.11-12, 96.11-12 and 98.13 prohibit the invalidation of election results in a particular district or in the nationwide constituency, regardless of the number of election precincts at which the voting has been declared invalid. The CEC is obliged to determine and certify election results in a district, regardless of the number of precincts declared invalid. This appears to be contrary to the guidance of the Venice Commission, which indicates that an appeal body must have the authority to annul elections where irregularities have made determination of the voters' will impossible, and that it must be possible to annul the entire election, and not merely the results for one constituency or polling station.²⁹

Recommendations:

- There should be no tolerated levels of fraud in polling or counting. All irregularities should be investigated and remedied to the extent possible. Results should be cancelled in any case where fraud or other irregularities have made it impossible to determine the voters' collective intent.
- Consideration should be given to allowing the invalidation of results in the entire election or in any particular district where the voters' collective will is simply impossible to determine. To the extent such that invalidations could have had an effect on the final result, re-voting should also be an option.

Video Cameras in Polling Places

On August 3, 2012, the president signed the Law on Ensuring Openness, Transparency and Democratic Nature of Election of People's Deputies of Ukraine on October 28, 2012³⁰. According to that law, each regular election precinct will be equipped with video cameras to observe the premises during voting. Voting and preparations for voting are to be live streamed on the Internet. The vote counting process and completion of protocols will not be streamed on the Internet, but recorded and made available by the CEC upon request. Voting, counting and tabulation of results at special election precincts and election precincts abroad will not be recorded.

On September 13, 2012, the CEC adopted Resolution No. 892, which provides further detail on how the law is to be implemented. Resolution No. 892 specifies that each of the more than 32,000 regular election precincts will be equipped with a laptop computer, two video cameras, USB extenders and a storage box. Video cameras will be positioned to observe where ballot papers are handed to voters and where the ballot boxes are placed. Each PEC is required to appoint two members to supervise functioning of the video recording system.

A further CEC Resolution No. 1026 adopted on September 21, 2012, detailed that the voting at regular precincts will be streamed online at <http://vybory2012.gov.ua>. Due to infrastructure and Internet

²⁹ Venice Commission. *Code of Good Practice in Electoral Matters*. October 2002. II.3.3.e.

³⁰ When translated, the law's full name is "Law on Ensuring Openness, Transparency and Democratic Nature of Election of People's Deputies of Ukraine on October 28, 2012."

penetration levels within Ukraine, streaming of the voting process will not be possible in all voting precincts.

The CEC and other interlocutors told the IFES Assessment Team that the web camera initiative was undertaken by the government to raise the public's level of trust in Election Day activities, and as a preventive measure against possible violations and fraud. The CEC also told the IFES Assessment Team that under no circumstances will the privacy of voters and secrecy of the ballot be compromised by the presence of cameras.

The Assessment Team heard various opinions as to whether cameras in the electoral precincts would increase public confidence in voting or undermine it. Some interlocutors expressed concern that voters may not understand that their voting preferences remain secret, or that citizens may feel pressure to come out to vote if their non-participation may be recorded. According to a recent national opinion poll,³¹ approximately 48 percent of respondents supported the web camera initiative and believed that it will prevent violations, while almost 35 percent did not support the initiative and believed that it was being conducted for commercial reasons, to intimidate voters, or to receive information on how they voted. Some public awareness and voter education activities related to the cameras have commenced, but the impact of these activities on voter perceptions remains unclear at this time.

The IFES Assessment Team was also advised that recorded video of the vote counting process will be kept on a database within CEC for a period of one year, and will be available to support complaints and prosecutions of electoral offences. It was, however, unclear to the IFES Assessment Team whether the consolidation and management of the video of vote counting will be available soon enough to serve as evidence in support of complaints relating to the counting process. Under Article 109 of the Election Law, complaints in relation to vote counting must be filed with DEC's within two days of the performance of the action. In the resolutions adopted by the CEC to date, it is also not clear how effective the cameras will be in capturing the results of the vote counting and tabulation process.

Putting aside the question of whether cameras in polling stations are useful as a means of increasing transparency or reducing fraud, the implementation of such a large and logistically complicated initiative so soon before an election has the potential to distract efforts and focus from other critical election preparations. Further, the cost associated with the cameras and video streaming (reported-ly roughly USD \$100,000,000), may not be justified by the benefits, especially when one considers alternate uses – such as enhanced training for election staff, salaries for PEC members, voting screens and other polling station equipment, etc. – to which that money might have been put.

Voter Lists

Voter Registration

The voter lists for Ukraine are developed and maintained on the basis of the Election Law and the Law of Ukraine on the State Register of Voters (2007) as amended.

³¹ Conducted by the foundation "Democratic Initiatives and the Razumkov Center, August 10-15, 2012.

Article 3 of the Law on State Register of Voters specifies that the State Register of Voters (SRV) is to operate under the principles of the promotion and protection of human and citizen rights; universal suffrage; completeness; reliability; one-time registration; permanence of the register; accessibility and public control; protection of information; and periodic updating.

The SRV is a centralized database (currently with 36.7 million voters) maintained through a process of periodic (monthly) updates of the register based on information submitted from designated government institutions and agencies.³² During the election period, updates are received 10 days prior to transfer of the preliminary list to each PEC, and again 10 days prior to Election Day. Updates are received and processed by each of 754 Register Maintenance Bodies (RMBs) which are located within the City Council or Local State Administration. Voters may also file personal requests for registration directly to an RMB.

Verification of the Preliminary Voter List

The review and correction of the voter list is an important means of ensuring transparency and fairness of elections. No later than 20 days prior to the day of voting (October 7), RMBs are required to transfer the preliminary voter list to PECs. The day following receipt of the preliminary voter list (PVL), each PEC is required to make the PVL available for public view at the premises of the PEC. In addition to posting the PVL, PECs are also required to send or deliver a notice to each registered voter confirming their registration status.

Article 40 of the Election Law and Article 10 of the SRV Law give voters the right to view and challenge their own inclusion or omission, or the inclusion or omission of other persons in the list. However, these sections are ambiguous as to whether a voter has the right to view the full PVL for his or her precinct, or if he or she is only allowed to review his or her own details and perhaps the details of others listed at the same address.

If a voter files an application to change or exclude voter data on the PVL, the PEC is required to review the application for formal completeness only. All complete applications are to be forwarded by the PECs to RMBs, which then consider the application in accordance with the law, introduce the changes to the personal data in the SRV and notify the PEC of the result of the review.

It should be noted that, with regard to an application to exclude a voter from the voter list, the law is not clear as to the criteria to be used in making the decision, or if the voter subject to exclusion is to be notified and given the opportunity to object to the exclusion.

To allow political party verification of the voter list, a copy of the PVL is made available to political parties with fractions or units in the current convocation of the parliament. Parties may apply for the list once per year, but not later than 60 days prior to Election Day. To deter inappropriate usage of the personal details of voters, the CEC places strict technical controls on the material provided that prevent the copying or printing of data, and ensure that it can only be used on one computer. These technical controls appear to make it difficult for political parties to conduct a genuine and effective verification of the PVL data.

³²Designates government institutions and agencies include Ministry of Internal Affairs, Ministry of Justice, commanders of military units, district courts, heads of penitentiary, heads of specialized institutions, Ministry of Foreign Affairs, Ministry of Defence and heads of district authorities.

Systems to allow voters to verify their personal details through web and SMS facilities are commonly used internationally and can significantly improve voter perceptions of transparency and confidence to exercise their voting rights. To verify personal details outside the period of public verification, voters are currently required to submit a written application in person to the RMB. This process does not facilitate ready access to enable voters to routinely verify the inclusion and correctness of their registration.

Recommendations:

- There should be clarification regarding citizen's access to the voter list during the public verification process to ensure consistency in the process of pre-election verification of the PVL. The ability of voters to view and challenge the details of other persons on the list should specifically be addressed.
- The criteria for adjudicating applications for inclusions, corrections and exclusions on the PVL should be clarified, including whether voters whose data has been challenged should be given notice.
- The CEC should consider working with political parties to develop a system that will allow political parties to analyze the PVL, while still ensuring that the personal information of voters is protected. The current system appears to render political party verification of the PVL ineffective.
- To promote public confidence in the voter register, the CEC may wish to consider making it possible for voters to check and verify their own personal details and precinct of voting through web-based or SMS services. It is understood that some features of the SRV would make it difficult to introduce such a system while maintaining appropriate data protection measures, but consideration should be given to developing this mechanism for future elections.

Amended Provisions for Voter Registration

International observer organizations, including ENEMO and ODIHR, have noted improvements in the voter list since the introduction of the SRV system. Despite these recognized improvements, there continue to be some areas of concern. Article 7 of the SRV law includes provisions to enable voters to submit applications up to five days before an election to request a temporary change of place of voting, without changing their permanent domicile and voting address. While this provision may have added an element of convenience for voters in previous elections, the re-introduction of single-mandate districts for the 2012 parliamentary elections has opened the potential for abuse of the provision through so-called election tourism.

On September 13, 2012, the CEC adopted Resolution No. 893 on "Procedure for temporary change of place of voting without changing voter's address," which specified that voters can only change their voting place within the single-mandate district of their voting address. The only exception to this rule is made for the DEC and PEC members who are allowed to vote in the constituencies other than those of their voting/domicile address. While the IFES Assessment Team agrees with the objec-

tives of Resolution No. 893, a number of interlocutors suggested that the resolution was contrary to provisions of the SRV Law.

Prior to the issuance of Resolution 893, approximately 4,400 voters had been assigned a temporary place of voting in districts other than their district of voting/domicile address. On September 22, 2012, Resolution No. 1046 was issued, which required RMBs to cancel previously made decisions allowing voters to vote at an election precinct located in a district other than the respective voter's voting address. Approximately 1,600 voters currently remain in the SRV with temporarily changed place of voting, approximately 600 of whom are DEC and PEC members.

Approximately 418,000 voters are currently registered in the SRV with the right to vote outside Ukraine through foreign diplomatic missions. Article 22(2) of the Election Law specifies that out-of-country election precincts shall be distributed evenly among all single-mandate districts being created in the territory of the capital of Ukraine – city of Kyiv. This provision was ruled as unconstitutional in a ruling of the Constitutional Court of Ukraine (No. 7-rp/2012 dated April 4, 2012). Some interlocutors said that the exclusion of out-of-country voters from voting in single-mandate district elections amounts to an unfair, and constitutionally questionable, restriction of their voting rights.

Both the OSCE/ODIHR and ENEMO observation missions raised concerns about home voting during the 2010 Presidential Election. Home voting procedures have been clarified to a degree by 2011 amendments to the SRV law requiring a voter who wishes to vote at home to file a declaration that the voter has a permanent inability to move independently. Article 86 of the Electoral Law further clarifies this provision by requiring that a certificate of health issued by a medical institution must be attached to the application for home voting. This is a positive step that will help reduce the potential that the home voting system will be abused.

Article 42 of the Election Law specifies that changes to the voter list at an election precinct on Election Day may only be made pursuant to a court decision. Additionally Article 173.3 of the Code of Administrative Adjudication specifies that an application seeking to verify a voter list must be filed with an administrative court no later than two days prior to Election Day. Administrative courts are legally obliged to make a decision in the case within two days after the receipt of a lawsuit, but no later than two days prior to Election Day. These provisions would appear to reduce the possibility of changes to the voter lists on Election Day. Requests for changes may however still occur in the event of cases where decisions were taken before the legal deadline for filing to the administrative court, but not presented to the PEC until Election Day. These steps toward reducing last-minute changes to the voter list have the potential to improve the transparency and fairness of the list of voters.

Recommendations:

- The CEC and RMBs should make particular efforts to ensure that clear notifications are received by all voters affected by Resolution No. 1046 to ensure they understand where they are supposed to vote.

Roles of Register Bodies

The CEC is defined as the custodian of the voter list, with responsibility to monitor the compliance of voter list processes with the requirements of the SRV law. The CEC provides the authority for RMBs

to access and maintain the voter list, but the CEC itself has no authority to perform any direct updating of the voter list. The CEC is responsible for providing all necessary software and tools to the RMBs to perform the voter list maintenance functions. The CEC exercises management of the SRV through the State Register of Voters Department within the CEC.

Regional Registration Authorities (RRAs) are responsible for ensuring cooperation between local executive bodies, self-government bodies, establishments, institutions and organizations in creating and maintaining the register. The RRAs also have the responsibility to oversee the control functions to ensure decisions of the custodian are implemented. RRAs have no access to the voter list database other than statistical information.

RMBs, designated as subdivisions of local state administrations or city councils, have full access to add, change and exclude voters from the voter list.

As the designated custodian of the voter list, ultimate responsibility for the control and compliance of the voter register lies with the CEC, yet the only entities with access to apply updates to the voter lists are the 754 RMBs who are only formally accountable to the CEC. While the CEC can generate statistics of the daily system activities of RMBs, this seems an insufficient mechanism to ensure that CEC can fulfill its mandate of control and compliance of register maintenance activities. Equally, RRAs, having no access to the SRV database, are not well placed to verify compliance.

Recommendations:

- To increase trust and confidence in the compliance of the voter list, it is recommended that the CEC consider adopting more structured control mechanisms. These might include a program of compliance inspections, under which the CEC would review RMB processes and documentation and perform a reconciliation of statistical data. Such a program should not only be seen as a process of compliance, but also as an opportunity for the CEC to understand the ongoing needs and requirements of RMBs including technical support, training and local coordination.

Election Districts

The adoption of a parallel election system in December 2011 required the creation of single-member election districts for the first time since 2002. However, the Election Law includes very little detail on how delimitation of district boundaries is to occur. Article 18 of the Election Law specifies only that the CEC create 225 districts to exist on a permanent basis, publish the details pertaining to these districts at least 175 days before the date of an election and that the number of voters in an electoral district not vary by more than 12 percent from the average number of voters in all districts.³³

Notably, the Election Law did not include provisions requiring that districts be contiguous, take existing administrative boundaries into account, and that they preserve communities of interest (e.g., minority groups residing in a specific region), all of which criteria are considered international best practices, and all of which were included in the election law in force when Ukraine last used single-member electoral districts during the 1998 and 2002 parliamentary elections. There was also no

³³ Established by the CEC at 161,125 voters in CEC Resolution No. 65 dated April 9, 2012.

guidance for the CEC on the circumstances that would justify deviation in the number of voters from the average, nor any reference to the need for periodic re-delimitation.

The lack of clear criteria for boundary delimitation means that this function is largely at the discretion of the CEC. After the conclusion of the electoral reform process in December, there was very little time (roughly four months) to plan a complicated process such as boundary delimitation, or develop detailed procedures and additional criteria.

The CEC chose to allocate seats between administrative regions using the largest remainder method, a straightforward and objective method that has been used in previous elections to allocate seats between contestants in the nationwide PR contests. The character of the district boundaries that the CEC announced in late April, however, seemed to vary from region to region.³⁴ In some regions, districts were always, or at least usually, contiguous and consistent with administrative boundaries. In other regions (most notably Donetsk, Luhansk, Dnipropetrovsk), the districts were not consistent with administrative boundaries, and in a significant number of cases, noncontiguous.

When the IFES Assessment Team asked the CEC about these irregularities, the CEC emphasized the short period of time it had been given to create districts, the challenge of staying within the 12 percent variance rule and the desirability of following administrative boundaries (which at times, are themselves noncontiguous) to the greatest extent possible. While these factors no doubt made boundary delimitation challenging, they do not provide a complete explanation for the inconsistencies and irregularities in the district boundaries. In particular, it is hard to reconcile the explanation given by the CEC with the fact that the majority of the noncontiguous districts are also not consistent with administrative boundaries. The IFES Assessment Team can see no valid reason that would justify these departures from recognized best practices in boundary delimitation.

One possible explanation for inconsistency in boundary delimitation is that individual CEC members took responsibility for delimitating various regions.³⁵ Without some kind of mechanism to ensure consistency, it would be surprising if that approach did not lead to inconsistent outcomes. Further, making individual commissioners responsible for drawing district boundaries in specific regions also may feed the perception that the delimitation process has been influenced by partisan considerations.

Recommendations:

- The Election Law should be amended to provide clear criteria for the creation of district boundaries. These should include, at a minimum, requirements that such districts be contiguous and protect national minorities and other communities of interest.
- Although practices differ across countries, boundary delimitation is a function that should best be assigned to impartial professionals with suitable expertise, often subject to some form of political or judicial approval.³⁶ The CEC should consider creating an independent,

³⁴ See a detailed account of the boundaries in: *2012 parliamentary Elections: Boundary Delimitation Summary and Analysis*, IFES, May 2012, <http://www.ifes.org/Content/Publications/Reports/2012/2012-Parliamentary-Elections-in-Ukraine-Boundary-Delimitation-Summary-and-Analysis.aspx?p=1>.

³⁵ These individual proposals were however approved by the whole CEC.

³⁶ Venice Commission, Code of Good Practice in Electoral Matters. October 2002. II, 2.2, 17. .

professional advisory body that could develop initial proposals for electoral boundaries, while retaining the power to ultimately approve the advisory body's proposals.

- The CEC should consider creating a process for public engagement in and discussion of the boundary delimitation process. At a minimum, the CEC should give a public explanation of the delimitation process and the criteria to be applied in drawing the electoral boundaries.

Voter Education

The International Covenant on Civil and Political Rights (ICCPR) imposes an obligation on signatory states, including Ukraine, to provide citizens with effective voter education.³⁷

The Election Law includes a number of provisions (especially Article 64) requiring the CEC to provide voters with information on voting procedures, the rights of voters and the ways that such rights may be exercised and enforced. The CEC is obliged to post such information on its website, and lower-level election commissions have an obligation to print and post informational materials developed by the CEC in polling places. The CEC is also empowered to enter into agreements with mass media for dissemination of information relating to the election. However none of those provisions include a positive obligation on the CEC to implement large-scale voter education activities through the mass media.

In addition to the responsibility to provide voters with general information on electoral rules and procedures, the Election Law also requires the CEC and lower-level election commissions to print informational materials relating to individual candidates and their election platforms and to post them in polling places. Such materials are printed at the expense of the state budget.

The move from a purely proportional system to a parallel system, which requires voters to complete two ballots rather than one, makes voter education in this election particularly urgent. An opinion poll conducted by IFES in September indicates that while 60 percent of voting-age citizens believe that they are well informed about the election, roughly half did not know that they would be asked to complete two ballots. Also, 75 percent of those polled said that they did not know who the majoritarian candidates were in their district. The last-minute adoption of a law requiring video cameras to be placed in polling places further increases the need for adequate voter education.

As of the time of writing, the CEC voter education effort had only just begun. However, the IFES Assessment Team was told that the CEC, with support from the OSCE, has developed and plans to implement a voter education strategy that includes television, radio and print advertising that will provide voters with information on voting procedures and instructions on how to check, and if necessary correct, one's information in the voter list. Additional programming intended to dissuade voters from selling their votes is also planned.

³⁷ General Comment to Article 25 of the Covenant states, "Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community."

Recommendations:

- With the potential for long lines and crowded polling stations, the CEC should prioritize voter education programs in the days remaining before the election. There is still sufficient time for the CEC to educate citizens on basic voter list verification and voting procedures, as well as on the political options available to the electorate on Election Day.

Political Party and Campaign Finance

Most of the IFES Assessment Team’s interlocutors agreed that the current framework for regulation of political party and campaign finance does little to control or bring transparency to financial contributions or campaign spending.

The present law requires electoral subjects to establish dedicated electoral funds, which are supposed to be the sole source of money spent on campaigns. Deposits into an electoral fund may only come from a party or candidate’s own resources or from a natural person up to a maximum of 400 minimum monthly salaries (approx. USD \$50,000) to a political party and 20 minimum monthly salaries (approx. USD \$2,500) for SMD candidates. Legal persons and foreigners may not contribute to election campaigns. Parties and candidates are not limited in the amounts they can raise and spend during an election campaign.

The law also establishes certain disclosure requirements. Individual candidates are required under Article 57.1 to file a declaration with the CEC at the time of their nomination disclosing their “property, income, expenditures and financial liabilities for the year preceding the year in which the election process begins.” Each electoral subject is also required to disclose the sources of their campaign funds and how they have been used shortly after each election. The CEC is required to publish political party reports, but not reports submitted by single-mandate district candidates, on its website.

While these provisions suggest a desire to regulate and bring transparency to campaign finance, they are so poorly drafted that in practice it is hard to see how they can have that effect. In particular:

- The restrictions on contributions to individual candidates do not appear to apply prior to the start of the campaign period (90 days before an election). Gifts to politicians from businesses or individual donors prior to that time are not controlled and need not be disclosed.
- The restriction in the Election Law on donations by businesses can easily be circumvented by parties by characterizing such donations as donations to the party for general purposes, which are permissible under the Law on Political Parties. The party can then deposit that money into its campaign fund as “own funds.”
- The rules governing disclosure of campaign donations and expenses are vague and, in particular, do not address the key issue of donations in kind (donations of goods or services instead of cash) and third-party expenditures.
- Pre-election candidate financial disclosure applies only to the calendar year preceding the year of the election, which means income, including gifts, received during the months prior to the election campaign need not be disclosed.

In addition to these shortcomings, the law makes little provision for enforcement of provisions relating to campaign finance. For example, the Election Law does not provide for any sanction against a candidate who files an inaccurate or incomplete personal disclosure form with his or her registration documents. The Assessment Team heard from interlocutors (but did not independently confirm), that some candidates submit only blank forms, which, under Article 57.3 of the Election Law, the CEC is obliged to accept. It also appears that post-election disclosure forms submitted to the CEC in previous election cycles have not been subject to any review.

The Election Law includes (at Article 49.7) a potentially important mandate for the CEC to review and analyze campaign financial reports submitted after the election and to report violations to the prosecution service. This provision opens the door for the CEC to begin to serve as a real regulator of the role of money in politics. However, the CEC has indicated to IFES that it currently does not have plans to step up oversight under the new provision.

In short, the campaign finance provisions in the Election Law provide little more than the façade of a regulatory system. The lack of regulation of the role of money in politics is undoubtedly a factor contributing to the well-documented problem of political corruption in Ukraine.

The flaws outlined above appear to be universally understood by stakeholders. All of the political party and government interlocutors with whom IFES met agreed that the current system needs reform, but most felt that real change would not be possible because there is no support among (other) politicians for such a change. Some stakeholders also expressed concern that any enforcement mechanism might be selectively used against parties and candidates. This indifference on the part of political leaders is not consistent with the opinion of ordinary people. According to a survey of public opinion conducted in Kyiv City by IFES during the summer of 2012, 83 percent of respondents felt it was important to have laws to regulate how political parties and candidates raise and spend their money in Ukraine.³⁸

It is worth noting that Ukraine is a member of the Group of States Against Corruption (GRECO) and has committed itself to addressing the recommendations of that body. In its third evaluation round, GRECO highlighted a number of shortcomings in the Ukrainian regulatory framework and observed that “in the current situation, there is a clear risk that parties and election candidates [will] become highly dependent on powerful businesses or on shadow financing.”³⁹ GRECO’s recommendations provide a clear and sensible roadmap that Ukraine can follow in addressing this major weakness in its electoral system.

Recommendations:

- The Government of Ukraine should follow the recommendations in the GRECO Third Evaluation Report to strengthen the regulation of the role of money in politics.

³⁸ IFES commissioned a telephone survey of public opinion on political and campaign financing for monitoring and evaluation purposes. This report has not been publicly released.

³⁹ GRECO (2011) *Evaluation Report on Ukraine on Transparency of Party Funding* (Theme II). Third Evaluation Round, p 19;
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)1_Ukraine_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)1_Ukraine_Two_EN.pdf).

- The law should provide additional information about the required content of financial reports by political parties and candidates, including information regarding donations in kind and third-party expenditures. Electronic submission of financial statements should be considered.
- Beginning with the 2012 election cycle, the CEC should use its authority under Article 49.7 of the Election Law to conduct a meaningful review of the post-election campaign financial disclosure forms filed by parties and candidates. The CEC should establish audit and investigation procedures to deal with inconsistencies, errors and omissions in the reports. It should also consider establishing a unit within the secretariat with responsibility for reviewing and analyzing financial disclosure forms.

Election Dispute Resolution

Election-related violations can be dealt with either by filing a complaint with an election commission or by filing a lawsuit with a court, typically an Administrative Court. The IFES Assessment Team was told by representatives of political parties and observer groups that many violations of the electoral rules had occurred, but that it seemed little was being done about it. There seemed to be a general sense that neither the election commissions nor the courts were responding effectively to the many reports of violations.

Complaints to Election Commissions

The procedure for challenging the violations of the election legislation in the election commissions is laid down in the Election Law and in CEC Resolution No. 133. Complaints may be filed with an election commission by candidates and their proxies, parties participating in an election, domestic observers, an election commission and any voter if the actions or inaction have violated his or her personal electoral rights or interests regarding participation in the election process.

The time limits for the filing and adjudication of complaints depend on the time when the alleged violation occurred. In general, a commission must consider a complaint within two days of receiving it, although a complaint filed with a PEC on Election Day before the end of voting must be considered immediately after the end of voting.

Election commissions must issue written decisions on complaints, copies of which must be given to the complainant, the respondent and other interested parties. Decisions on complaints filed with the CEC and with DEC's must be published on the CEC's website. An appeal against a decision of a PEC or DEC on a complaint may be made to the relevant DEC or the CEC, respectively, or directly to a court. The only sanction the CEC can impose in case of a violation of the electoral rules is to issue a warning. The inability to impose any more serious sanctions limits the ability of the CEC to impose discipline on the election process. In addition, it appears, except for cases relating to campaign violations, the CEC will only issue a warning based on facts established by a court.⁴⁰

Some interlocutors expressed concern regarding the handling of complaints by election commissions. Some complaints have been dismissed on technical grounds, without regard for the merits of

⁴⁰ Article 61.2.5 of the Parliamentary Election Law.

the case. International observers have stated that some CEC decisions appear to be inconsistent with requirements of the Election Law.⁴¹ An analysis of the DEC decisions in election-related cases done by the IFES Assessment Team demonstrate that in some cases the DEC decisions failed to comply with the requirements of Article 113 of the Election Law or provided little information on the nature of the dispute, evidence considered and/or arguments to substantiate their decisions.⁴²

The OSCE/ODIHR EOM Interim Report⁴³ indicates that by September 28, 2012, the CEC had received 32 complaints, most of which were forwarded to law enforcement agencies for further investigation. According to the Ministry of Interior, as of October 3, 2012, the police had registered 1,652 alleged election-related administrative offences and crimes, each day registering about 100 new allegations. On October 4, the Ministry of Interior launched the online interactive map⁴⁴ that presents information on registered offences and crimes, as well as places where they were committed.

Electoral Disputes in the Courts

The procedure for the resolution of election-related cases in the courts is set out in Articles 172-175 and 177-179 of the Code of Administrative Adjudication. Any voter, political party, candidate or domestic observer may challenge the legality of a decision, action or inaction of an electoral commission or its members. Individual voters also may challenge inaccuracies in the voter lists, regardless of whether his or her rights or interests in the election process were violated. Election commissions, candidates, political parties and voters may challenge the decisions, actions or inactions of public authorities and the officials of media organizations (including journalists). Candidates, parties and voters may challenge an action or inaction of candidates or their proxies; political parties or their officials or authorized persons; and domestic observers. Only the courts are empowered to consider cases concerning the decisions and actions of the CEC.

In general, courts must consider election-related cases within two days of filing, although a lawsuit filed on the day of voting but before the end of voting must be considered before the end of voting. Written decisions are issued in accordance with the rules of the court and may be appealed to a higher court. The IFES Assessment Team was told that the High Administrative Court expects the number of lawsuits to be higher than during previous election cycles.

The Code of Administrative Offences provides for the imposition of fines for election-related administrative offences. However, in many cases, the maximum fine amount seems insufficient to act as a real deterrent. For example, under Article 212-15 of the Code, a person who knowingly makes or accepts an illegal campaign contributions of less than 400 minimum monthly wages (UAH 400,000 or USD \$50,000) is subject to a maximum fine of UAH 1,700 (roughly USD \$200).

Ambiguity and Complexity

⁴¹ For examples, see Mission Canada, Election Observation Mission Interim Report 1, 3-28 September 2012, pp. 9-10.

⁴² See, for instance, Resolution of the DEC of the district No 94, 7 September 2012, Resolution of the DEC of the district No 20, 12 September 2012,

⁴³ OSCE/ODIHR Election Observation Mission, Ukraine Parliamentary Elections, 28 October 2012, Interim Report No. 1 (12-28 September 2012), p. 8.

⁴⁴ Can be accessed at: <http://91.227.69.67/>

While Ukraine's dual system of dispute resolution provides a degree of flexibility to complainants, the overlap in jurisdiction between the courts and election commissions is potentially confusing. This overlap also has the potential to result in multiple, and possibly conflicting, decisions on the same matter.

A number of interlocutors commented that many of the high number of complaints and lawsuits at this election to date resulted from the controversial decisions of the CEC and DEC's relating to important matters such as the boundaries of the single-mandate electoral districts, the lotteries used to make appointments to the DEC's and PEC's, and the nominations of candidates. In addition, there have been complaints about campaign violations, vote buying and use of administrative resources. The assessment team was told that many lawsuits have been rejected without consideration based on strict application of the requirements for filing applications, and inconsistent decisions have been issued in apparently similar cases.⁴⁵

Both the Code of Administrative Adjudication and the Election Law require that election-related complaints and lawsuits be resolved within two days of being initiated, subject to some exceptions. As IFES noted in its Review and Analysis of the Draft Law on the Election of People's Deputies of Ukraine,⁴⁶ speedy adjudication of complaints is important to ensuring the timelines of election processes, but a two-day time limit may not provide enough time for thorough consideration in some cases.

Recommendations

- Procedures for resolving election disputes before both election commissions and the courts should be reviewed to take account of lessons learned during the 2012 elections. The review should address jurisdictional issues so that it is clear which body is supposed to handle which type of complaint. Where concurrent jurisdiction is to be retained, procedures to prevent parallel consideration of the same matter should be strengthened.
- Consideration should be given to extending the timelines for adjudication of certain types of complaints and/or lawsuits to three to five days in order to ensure that courts and election commissions have sufficient time to make informed decisions.
- The system of sanctions should be reviewed to ensure that sanctions are proportionate and sufficient to serve as a deterrent. Consideration should be given to empowering the CEC to impose sanctions, such as fines, on electoral participants who violate the rules.

⁴⁵ For an outline of some of these cases, see Mission Canada, Election Observation Mission Interim Report 1, 3-28 September 2012, pp. 6-8.

⁴⁶ IFES Review and Analysis of the Draft Law on the Election of People's Deputies of Ukraine, 2011, p. 39.

Appendix 1

List of Interlocutors

The Central Election Commission

The Presidential Administration of Ukraine

The High Administrative Court

The State Register of Voters

Civil Society Groups:

- Agency for Legislative Initiatives
- Citizen's Network OPORA
- Civic Initiative Support Centre
- International Civic Organization "Internews-Ukraine"

Political Parties:

- All-Ukrainian Union "*Svoboda*"
- United Opposition "*Batkivschyna*"
- Communist Party of Ukraine
- UDAR Party
- Party of Regions

International Observer Groups:

- OSCE/ODIHR
- Enemo
- Canadem/Mission Canada

Election Programming Implementers:

- National Democratic Institute
- International Republican Institute
- Organization for Security and Cooperation in Europe