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| <p>European Network of Election Monitoring Organizations International Observation Mission to Ukraine Local Elections 2015</p> | <p>Європейська мережа організацій зі спостереження за виборами Міжнародна місія зі спостереження в Україні Місцеві вибори 2015</p> |
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INTERNATIONAL ELECTION OBSERVATION MISSION UKRAINE LOCAL ELECTIONS 2015

FINAL REPORT



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Contents

| | |
|------------------------------------------------------------------------------|----|
| I. EXECUTIVE SUMMARY | 2 |
| II. INTRODUCTION..... | 6 |
| III. BACKGROUND..... | 6 |
| IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM | 7 |
| A. Legal framework | 7 |
| B. Electoral system..... | 8 |
| V. ELECTION ADMINISTRATION..... | 11 |
| VI. CANDIDATE REGISTRATION..... | 17 |
| VII. WOMEN PARTICIPATION | 19 |
| VIII. VOTER REGISTRATION AND VOTERS' LISTS..... | 20 |
| IX. ELECTION CAMPAIGN | 22 |
| X. MEDIA | 25 |
| XI. ELECTION OBSERVATION MISSIONS..... | 27 |
| XII. ELECTION DAYS..... | 28 |
| A. First round of local elections, held on 25 October..... | 29 |
| B. Second round of local elections, held on 15 November | 30 |
| C. Repeated elections held on 29 November in Mariupol and Krasnoarmiysk..... | 33 |
| XIII. COMPLAINTS AND APPEALS..... | 35 |
| XIV. RECOMMENDATIONS | 37 |
| A. Proposals for the Parliament, Government, Political Parties, NGOs..... | 37 |
| B. Proposals for the CEC..... | 39 |
| C. Proposals to the Prosecution and Courts..... | 39 |
| D. Proposals regarding Media | 40 |
| XV. MISSION INFORMATION AND ACKNOWLEDGEMENTS | 41 |

I. EXECUTIVE SUMMARY

The Regular Local elections in Ukraine were held on 25 October 2015, followed by the second round of mayoral elections on 15 November in 29 cities that had more than 90,000 voters and where no mayoral candidate won more than 50% of votes cast in the first round. Elections were not held in the Autonomous Republic of Crimea and city of Sevastopol, as well as parts of the Donetsk and Luhansk regions.

The Election Observation Mission of the European Network of Election Monitoring Organizations (ENEMO) to Ukraine for the Local Elections of 2015 began with the arrival of the Core Team, consisting of 8 experts, to Kyiv. ENEMO additionally deployed 50 long-term observers (LTOs) across the country to observe and assess the electoral process in their respective regions, 93 teams of mobile observers for the first round of elections held in 25 October, and 67 mobile teams for the second round of 15 November. Re-scheduled elections in Mariupol and Krasnoarmiysk on 29 November were observed with 3 teams of mobile observers.

Elections were held under the new Law on Local Elections adopted by the Parliament of Ukraine only several months before elections, in a rather non-transparent manner. The law introduced significant novelties shortly before elections, leaving little time for all election process participants to familiarize themselves with the new election system and its possible outcomes.

The new Law failed to introduce adequate mechanisms to cope with the most shortcomings reported by ENEMO and other international and domestic stakeholders during previous elections, especially those related to the level of politicization of the electoral process, inadequate regulations regarding financing of political parties, abuse of state resources and election campaigning; registration of candidates; the parallel systems of election dispute resolutions; media conduct; high number of voters per PEC; lack of professionalization of election commissions, and other.

Positive effects of the newly adopted legal changes are mainly reflected by a higher legitimacy of elected mayors in cities with 90,000 or more voters; higher level of decentralization of the entire process, including the territorial decentralization, election administration and political parties; higher inter-party competition among deputy candidates; as well as broader rights of international observers. Also, introduction of legally prescribed gender quota may be perceived as the first step in the right direction for future reforms of electoral legislation in Ukraine, with regards to adequate gender representation.

The wide use of term "open list" by lawmakers to explain the electoral system for election of councils in multi-member constituencies, is questionable, as it neither gave the voter a chance to vote for a candidate, within or out of the party list, nor provided for an adequate representation of

all territorial districts. A large number of nomination districts have no elected candidate after elections, while some nomination districts were overrepresented.

Territorial Election Commission (TEC) composition was highly politicized, being comprised only from political party nominees. Compositions of both TECs and Precinct Elections Commissions (PEC) were reported to ENEMO observers as a significant point of concern by many local parties and candidates, especially TECs that were comprised mainly from candidates representing parliamentary parties. According to a number of interlocutors and ENEMO observers, other local political parties and/or candidate representatives had very little influence in decision making processes of TECs and PECs and were rarely appointed at Chairman, Deputy, or secretary positions of respective commissions.

The Central Election Commission (CEC) conducted numerous trainings of second and third level commission members, with the assistance of IFES and OSCE. Yet, the CEC faced a significant issue of constant requests from commissioners and/or political parties to replace their previously nominated commission members. To that end, CEC did not have enough time or resources to properly train all newly replaced commission members.

A significant number of PECs were formed with the minimum number of commissioners and without proper training, which might have been one of the reasons of a slow and inefficient conduct of voting, counting and tabulation of results, especially during the first round of elections.

The printing of ballots generally took place within the time frame, but also raised a series of concerns. Observers noted that the process was not transparent and the decentralization of the voting process made it impossible to record the exact number of ballots printed. In some cases, PECs received either too many or too little ballots compared to the legal provisions. Lack of sufficient funds further delayed the printing process.

Election law provided for the correction of mistakes and inaccuracies in candidate registration documents and did not allow for rejection of registration on these grounds. However, some TECs refused the registration of candidates, mostly based on inaccuracies in registration documents. The courts' approach in registering the candidates was not entirely consistent, in some cases they ruled that mistakes and inaccuracies in biographies constituted grounds for rejecting the registration of candidates, but decided otherwise in many other cases. This approach undermined the right to an effective remedy guaranteed by the Council of Europe and other international standards and obligations. Moreover, restrictive application of the law resulted in late registration of candidates, which hindered candidates' right to stand for elections, as well as their ability to engage in election campaign and meet legally prescribed deadlines for ballot papers. The CEC also had to intervene several times to register candidates.

The new law introduced a requirement for a minimum of 30 per cent quota for each gender in the electoral list. The law however contained no indication on the compliance with the gender quota as a requirement for registration of political parties' lists. The CEC Resolution No. 362 indicated that a failure to observe the gender quota cannot lead to refusing the registration of the party. The Resolution was initially overturned by the Kyiv Administrative Court of Appeals, but the decision was challenged by the CEC at the High Administrative Court of Ukraine that upheld the Resolution. This "facultative" application of the gender quota led some TECs to refuse registration to the candidates that did not fulfill the gender quota requirements. Introduction of a minimum of 30% quota for each gender in the party list has generally improved women participation in the electoral process, at least within party election lists.

Around 1.5 million of internally displaced persons (IDPs) were not able to vote in these Local elections in their current place of refuge. Also, citizens that were not in their registered place of residence on the day of voting were not allowed to vote elsewhere. The Law on Local Elections was not very demanding in terms of special conditions for a voter to change his/her place of voting address, what lead to several cases of abuse of such legal provisions. A high number of voters registered at the same address were discovered in some places.

The campaign (especially before the first round of elections) could be described as mildly intense and characterized by a moderate interest of voters in political events, platforms and candidates. Front-runners used a mix of campaign strategies including canvassing, large billboards, leaflets, tents, TV ads and rallies. In most cases, campaign themes and messages reflected national concerns and not the local ones.

ENEMO noticed a number of incidents in which campaigners were physically abused and campaign materials destroyed. Overall, these appear to be relatively isolated cases, despite their gravity, and some of them were pending investigation. A number of cases of state officials' involvement in campaigning, abuse and misuse of state funding and official positions by candidates already in power was reported in all oblasts.

Observers noted instances of breaching campaign regulations such as advertisements on public premises and production of election materials without proper identification. The practice of so called black PR – a long-standing problem in Ukraine – is so widespread it is almost part of the campaign strategy per se.

Unequal access to campaign funding, and the lack of transparency regarding its sources characterized these elections just like past electoral cycles in Ukraine. Contenders with significant lack of funds were outcompeted by larger candidates who enjoyed more overall exposure.

Direct and indirect vote buying remains an important issue for Ukrainian elections. ENEMO observers reported on series of cases in which voters took a photo of their ballots before casting it, which raises suspicions of possible vote buying. Authorities reacted in some cases to curb the phenomenon and to punish the perpetrators. This task was made more difficult by the fact that most instances of vote buying were made indirectly and through the abuse of public resources.

Media was used heavily for electoral campaigning, mostly during the first round of elections, in line with the overall reduced campaigning for the second round. The preferred medium of choice for campaigning was the television. Long Term Observers of ENEMO in all oblasts have reported about biased media coverage, favoring one or another candidate or party; electoral advertising during news editions or electoral advertising materials not clearly identified as such.

The only responsible body for monitoring media conduct is the National Television and Radio Broadcasting Council of Ukraine (NTRBC), but its role is not to specifically conduct media monitoring during the election campaign and it has no power to impose sanctions upon media outlets that violate the electoral law. Local branches of the NTRBC are mostly understaffed and do not have the needed human, technical or financial means to carry a thorough and complete media monitoring and there are no clear criteria of selection of the media being monitored.

The voting process was mainly held in a calm atmosphere and in line with most international democratic standards. However, the conduct of all monitored election administration bodies in the second round of elections was seemingly better than during the first round. A new and complicated electoral system, combined with a high number of voters per PEC, many election protocols, numerous ballot papers, constant changes of PEC and TEC members and lack of proper training of all replaced commissioners have caused slight delays and confusion in the work of a high number of PECs during the first round of elections.

A number of shortcomings and irregularities were also reported during the Election Days, although without significantly disturbing the entire voting process, such as improper sealing of ballot boxes, improper filling of protocols, casting of ballots in wrong boxes, crowded and disorganized precincts, improper issuing of ballots to voters, family voting, violations of the secrecy of voting and campaigning around the precincts.

The Administrative Courts have mostly observed legally prescribed terms where they have considered complaints received before the Election Day within two days but no later than two hours before the beginning of voting. Courts rejected majority of requests related to invalidating the results, or recognizing the elections as not held, mainly on procedural grounds. At the same time Courts have not been entirely consistent in the application of the law when adjudicating on the decisions.

II. INTRODUCTION

The European Network of Election Monitoring Organizations (ENEMO) is a network of 22 leading election monitoring organizations from 18 countries of Europe and Central Asia, including three European Union countries. The Election Observation Mission (EOM) for the Regular Local Elections of 2015 in Ukraine was the tenth by ENEMO to the country. The EOM began with the arrival of the Core Team, consisting of 8 experts, to Kyiv. ENEMO additionally deployed 50 long-term observers (LTOs) across the country to observe and assess the electoral process in their respective regions for the elections held on 25 October, as well as the second round, conducted on 15 November.

ENEMO has deployed 180 short-term observers (STOs) to observe the first round of elections throughout Ukraine. Together with mobile LTOs, ENEMO had 93 teams in the field, which have monitored the opening of 93 Precinct Election Commissions (PECs), voting in 1211 PECs and the closing of 93 PECs. Another 90 STOs were deployed during the Election Day on 15 November, which formed 67 ENEMO teams in the field, together with mobile LTOs, which jointly monitored the opening of 67 PECs, voting in 873 PECs and the closing of 67 PECs. ENEMO also observed re-scheduled elections in Mariupol and Krasnoarmiysk on 29 November, with 3 teams that monitored the opening of 3 PECs, voting in 40 PECs, the closing of 2 PECs and the activities of city Territorial Election Commission (TEC).

This final report is based on the findings of ENEMO observers from the field. The report combines information from monitoring of opening, voting, counting and the transferring of election materials to TECs on Election Days, as well as from findings of LTOs during the entire election process, where they focused on the work of election administration bodies after the first round of elections, election-related complaints and appeals, the conduct of election subjects prior to the election day, as well as the overall election environment and its conduct.

III. BACKGROUND

The Regular Local elections in Ukraine were held on 25 October 2015¹ and under the new Law on Local Elections². Only several months before elections, in a rather non-transparent manner, the Parliament of Ukraine (Verkhovna Rada) has adopted the new Law on Local Elections

¹ The first round of Elections.

² Full name of the Law in Ukrainian: Виборів депутатів Верховної Ради Автономної Республіки Крим, обласних, районних, міських, районних у містах, сільських, селищних рад, сільських, селищних, міських голів та старост сіл, селищ. (ENG: Elections of deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, city, settlement, village councils and village, town and city mayors and chiefs of villages.)

(LLE)³, which imposed considerable changes compared to previous election laws in Ukraine. The new law has introduced significant novelties shortly before elections leaving little time for all election process participants to familiarize themselves with the new election system, as well as its possible outcomes, especially its effect on territorial and precinct election commissions and voters.

Local elections were not held in the Autonomous Republic of Crimea and city of Sevastopol, as well as parts of the Donetsk and Luhansk regions, based on the resolution of the National Parliament⁴ and by decisions of the Central Election Commission (CEC), as they either belong to currently occupied territories (as declared by the Verkhovna Rada), or territories where requirements for holding of elections in line with international standards were not likely to be met according to CEC, mostly due to security reasons.

Elections in Mariupol, Svatove and Krasnoarmiysk (Donetsk and Luhansk regions) were not held on 25 October, mostly due to the lack of professionalism of TEC members, mismanagement of ballot printing and their dissemination. Following the special Ukrainian Parliament's law, elections in Krasnoarmiysk and Mariupol were later scheduled and held on 29 November. Elections in Svatove were held on 27 December 2015.

Apart from locations mentioned above, the elections on October 25 were followed by the second round of mayoral elections on 15 November in 29 cities that had more than 90,000 voters and where no mayoral candidate managed to win more than 50% of votes cast in the first round. Also, elections in a number of places that were invalidated due to certain mistakes and/or irregularities, lack of candidates, or equal election results were repeated in December the same year, on different dates.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

A. Legal framework

Regular local elections in Ukraine are held every four years⁵. Legal framework for local elections consists of the Constitution of Ukraine, Law on Local Elections, Law on Central Election Commission, other relevant laws and resolutions of the CEC. Due to the late adoption of the new

³ LLE was adopted on 14 July 2015, came into force in August and the election process started on 5 September.

⁴The resolution from 17 March, 2015 on recognition of certain regions, cities, towns, villages and settlements of Donetsk and Luhansk as temporarily occupied territories.

⁵ Next local elections will possibly be held in two years due to expected legal and Constitutional amendments related to further decentralization of Ukraine.

Law, the CEC had to adopt more than 50 "regulatory" resolutions in order to further explain the Law to election subjects and/or provide more detailed instructions regarding certain provisions.

The new Law has introduced important changes into the Ukrainian electoral framework:

- Three different election systems being used for local elections;
- A five per cent threshold;
- Different levels of territorial electoral commissions, limiting the maximum number of commission members to 18;
- A "30% gender quota" within the electoral lists of local parties;
- Limited possibilities for independent candidates to run in all local elections;
- Recalling of an elected deputy/mayor/head after elections.

Besides such novelties, the new Law failed to introduce adequate mechanisms to cope with the most shortcomings reported by ENEMO and other international and domestic stakeholders during previous elections, especially those related to the level of politicization of the electoral process⁶, inadequate regulations regarding financing of political parties, abuse of state resources and election campaigning; registration of candidates; the parallel systems of election dispute resolutions, media conduct; high number of voters per PEC, lack of professionalization of election commissions and other. Other relevant electoral laws are being drafted at the moment that might provide for a legal framework that could regulate such issues in a more adequate manner, especially the Law on Financing of Political Parties.⁷

Positive effects of the newly adopted legal changes are mainly reflected by a higher legitimacy of chosen Mayors in cities with 90,000 or more voters; higher level of decentralization of the entire process, including the territorial decentralization, election administration and political parties; higher inter-party competition among deputy candidates; as well as broader rights of international observers. Also, the first time legally prescribed gender quota (even though it turned out to be non-obligatory) may be perceived as the first step in the right direction for future reforms of electoral legislation in Ukraine, with regards to adequate gender representation.

B. Electoral system

Three different election systems were used in these local elections ("FPTP" - first past the post, "TRS" - two rounds system and "List PR" - list proportional representation).

Mayoral elections - two systems, a system of a relative and a system of an absolute majority were used for mayoral elections, mainly depending on the number of voters and size of the relevant territory. System of a relative majority, so called First Past the Post system (FPTP) was used for election of village/settlement Heads and Mayors of cities with fewer than 90,000 voters.

⁶ Systems of nominating electoral candidates and electoral administration bodies, etc.

⁷ This law was adopted recently by the Ukrainian Parliament (08.10.2015).

The absolute majority system, a two rounds system (TRS) of elections was used in these elections for electing Mayors in cities with 90,000 voters, or more. TRS was used in 35 cities of Ukraine during these elections⁸.

Council Elections - two systems were also used for elections of councils - the List Proportional Representation (List PR) system, named by legislators as the proportional "open list" system and a FPTP system. FPTP system was only used for electing village and settlement councils, whereas the List PR system was used for electing all other councils in these elections.

Multi-member constituencies were divided into nomination districts, which in number coincided to the number of seats of the respective council. Local branch of a political party had the possibility to nominate a candidate in a nomination district. Vote casted for a party was considered a vote for a candidate of the party, nominated in that nomination district. The leader of the local party's list was not assigned to any nomination district and was elected first, if a party got at least one seat.

The new law had also introduced a five percent threshold for local branches of political parties contesting in multi-member constituencies. Seats were allocated to the parties that had passed the legal threshold. Allocation of seats to parties was made by using an election quota (modified Hare quota). Election quota was calculated by dividing the total number of valid votes cast for local organizations of political parties, which have passed the legal threshold, with the number of council mandates in the relevant multi-member constituency. A party received a number of seats equal to the number of the electoral quota contained in their electoral results. In case some seats were not allocated through this procedure, remaining seats were allocated by using the methods of the largest remainder.

Party seats were allocated to their candidates in nomination districts based on the percentage of votes cast for the respective local organization of political party in territorial election districts. If several candidates received an equal percent, they were placed in the list in descending order, based on the number of votes cast in the territorial election district for local organization of political party and the respective candidate.

Lawmakers' term "open list"⁹, used widely to explain this electoral system for election of councils in multi-member constituencies is questionable, as it neither gave the voter a chance to vote for a candidate, within or out of the party list, nor provided for an adequate representation of all territorial districts. In the case of these elections, the voter could only cast the vote for the party, even that the party could nominate its candidate in a nomination district. Voting for the party was considered as a vote for the nominated candidate. Introduction of nomination districts was helping making the overall campaign more competitive within the party, but it did not have the basic characteristics of an open list system.

⁸ The second round of Mayoral elections was held within three weeks from the first round of the Election Day.

⁹ The core purpose of using open lists is in giving voters the possibility to either choose among different candidates from different party lists, or vote for candidates within a party list by changing the order defined by the parties.

The new law did not state the maximum deviation on the number of voters per electoral district while creating boundaries of such districts by relevant TECs, thus leaving space for potential gerrymandering. Unlike the Law on Parliamentary elections (The Law Of Ukraine on Election of People's Deputies of Ukraine), which sets the limit of variations of electoral constituencies to 12%, the new Law on Local Elections has no such provision, but recommends that electoral constituencies should be formed with an approximately equal number of voters. According to Article 16 of the Law on Local Elections, the general number of deputies¹⁰ of a relevant council (village, settlement, city, city district, region, oblast council) is determined based of the number of voters belonging to a relevant territorial community (village, settlement and city, residing in the territory of a city district, region or oblast). The case of Zatoka¹¹ proved that not only gerrymandering was possible, but happened in this case with an attempt to have a constituency with "ghost voters". The CEC has reacted efficiently and properly and deleted such voters from that constituency. However, this constituency still existed, with no registered voters, but with five registered candidates without any votes for the parties.

Between the two rounds of mayoral elections in respective cities, ENEMO analyzed the impact of List PR system used for electing respective Councils (oblast, rayon and cities with more than 90,000 registered voters)¹². In its interim reports, ENEMO has mentioned possible negative impacts and shortcomings of using such a system. After accessing most of election results, it is visible that the electoral system in use has not met the expectations of the public. Special emphasis was put on widely used term "open list system". This term is not correct, as for these local elections, a closed non-blocked list system was being used, but without preferential voting.

Changes of the electoral legal framework have not made a stronger personalization of the electoral system, as voters still casted their votes for the parties. Nomination districts have not fulfilled their main purpose - to make a stronger link between the electorate and its representatives. Analysis showed that a large number of nomination districts have no elected candidate after elections. The actual starting impact of this system is that a number of nomination districts without an elected councilor is equal to the number of parties that pass the threshold of

¹⁰The number of respective council members/deputies is ranging from 12 (for communities with up to 1000 voters) up to 120 (for communities with more than 2 000,000 voters).

¹¹In the recently formed single-member constituency #13 of Zatoka, an urban-type village, 5 candidates were registered. On 19 October 2015 the CEC was informed by certain candidates for deputies of Zatoka Council (Odessa Oblast) on possible illegal registration of a big number of voters at one address. CEC obliged the local police to investigate this case. Police has found out that 254 students from Odessa have changed their place of residence from that in Odessa to Zatoka. These registrations were cancelled and the total number of voters in that election district was then zero.

¹²List Proportional Representation (List PR) system. To be able to participate in the process of allocation of seats, a party needs to pass a five percent legal threshold. Allocation of seats to parties was made by using election quota (modified Hare quota). Ukrainian List PR system for these local elections uses closed non-blocked list, but modified, without preferential voting. Seats within the candidate list are allocated to candidates who gain better result, in percentage, in their nomination unit. Multi-member constituencies are divided into nomination districts, whose number coincides to the number of seats of the respective council. The new law introduced the non-obligatory 30 per cent gender quota.

5% and thus receive at least one seat, as the leader of the party candidate list is not directly assigned to any nomination district.

The number of districts without an elected candidate was dominantly even higher, due to the influence of used system of re-ordering candidate party list based on the percent of received party votes (votes for a candidate/s in respective nomination district). For the Oblast council elections, the range of districts without any elected councilors varies from 20% in Odessa up to 33% in Chernivtsi, Poltava and Zhytomyr.

On the contrary, some nomination districts were overrepresented. The percent of districts with two elected councilors varies in some Oblasts from 11% up to 24%. Some Oblasts even have districts with three elected councilors. There are 14 districts with three elected councilors at the Oblast Council level (in 9 Oblasts) in the entire territory of Ukraine. Similar findings were registered for the city council elections, whereas on the Rayon level, the situation is similar only with nomination districts without elected councilors. There are only a few cases in whole of Ukraine where there were three Rayon councilors elected in the same district.

Besides five cities that have elected their Mayor on 25 October: Kharkiv, Ternopil, Odessa, Slavyansk and Lysychansk (later Mariupol), other 29 cities of Ukraine with more than 90,000 voters had a second round of elections for the Mayor, as no candidate in these cities managed to win more than 50% of votes in the first round.

At the same time, repeated elections, based on the new Law on local elections were held in those single mandate constituencies (mainly villages and settlements), where no candidate managed to win elections by using the FPTP system, as two or more candidates for the city Head/Council had the same number of votes. There were around 75 of these places according to CEC¹³, where elections needed to be repeated by the end of the year. Most legal provisions of the new Law were to be applied in the same way as during the first round of elections, though some differences exist in terms of PEC composition, election campaigning and certain deadlines¹⁴.

V. ELECTION ADMINISTRATION

The system of election administration that is responsible for the preparation and conduct of local elections was divided into three main categories of commissions: the Central Election Commission (CEC); Territorial Election Commissions (TEC) and Precinct Election Commissions

¹³ <http://www.cvk.gov.ua/wvm2015/pvm036pt001f01=100.html>

¹⁴ As described within Article 87 of the Law on Local Elections.

(PEC)¹⁵, with several types of TECs, depending on the type of territorial election district ("Oblast" TECs, Rayon/region TECs, City TECs, Village TECs, etc.).

The Central Election Commission (CEC) is a permanent collegial state body, whose authorities and work are regulated by the Constitution of Ukraine, the Law on Central Election Commission and other laws of Ukraine. The CEC had 15 members, appointed by the "The Verkhovna Rada" of Ukraine, upon the submission of the President of Ukraine for a period of seven years¹⁶. The authority of the Central Election Commission is exercised in the entire territory of Ukraine and its decisions are mandatory for compliance for all participants of the election process, including territorial and precinct election commissions, according to the law.

The new LLE has allowed for further decentralization of election management bodies, giving the most responsibilities regarding the electoral process organization to TECs. TEC is an election body responsible for organization and conduct of local elections in its respective terms of reference. The number of TEC members may range between 9 and 18 persons, who are chosen by the relevant Commission, based on nominations from local branches of political parties declared at the first session of the Verkhovna Rada of Ukraine of the current convocation (up to two nominations per TEC) and local branches of a political parties registered in a respective administrative territorial unit (one candidate). Candidates nominated by local branches of political parties represented in the Ukrainian Parliament must be appointed members of a territorial election commission, whereas other members of a TEC are being determined by drawing lots, from candidates nominated by other local branches of political parties.

In order to prepare and conduct the local elections 10,777¹⁷ different TECs were formed by CEC, out of which 640 belonged to "higher level" TECs (22 oblast TECs, 462 Region/Rayon TECs, 146 City (with oblast significance) TECs). The rest of TECs corresponded to village, settlement, and city district TECs that were formed by higher level TECs: 233 City TECs (with regional significance), 83 District TECs, 9219 Village TECs and 612 Settlement TECs. The approximate number of PECs formed for these elections was around 30,000.

Unlike TEC, a PEC is not a legal entity, but ensures organization and conduct of local elections within the boundaries of a respective election precinct. The right to nominate candidates for PEC members was reserved for: local branches of political parties that were declared at the first session of the Verkhovna Rada of Ukraine of the current convocation, local organizations of political parties that nominated candidates for deputies who were registered in multi member constituencies, candidates for deputies in single member constituencies and candidates for village, settlement, city mayor, or an village elder. Each subject could have nominated only one

¹⁵ Article 19 of the Law on Local Elections officially categorizes PEC as another type of TEC, but due to all specifics of a PEC, most electoral subjects consider them as a separate category of election administration.

¹⁶ Mandate/term of 12 out of 15 current CEC members had expired before elections, but was prolonged by the Parliament, without stating the prolongation period.

¹⁷ 10618 for the regular local elections and 159 for the first elections in newly formed communities/voluntary associations.

candidate for PEC, whereas candidates nominated by local branches of political parties represented in the Ukrainian Parliament were automatically appointed. Other members of a PEC were decided by drawing lots. Number of PEC members depended on the type/size of a relevant PEC (small 10–14 persons; medium 12–16 persons; and large 14–18 persons).

Both the TEC and PEC appoint the chair, deputy chair, secretary and other commission members, namely candidates from different local political parties. However, TEC compositions were highly politicized, being comprised only from political party nominees. Compositions of TECs and PECs were reported to ENEMO observers as a significant point of concern by many local parties and candidates, especially TECs that were comprised mainly from candidates represented by parties from the Verkhovna Rada. According to a number of interlocutors and ENEMO observers, other local political parties and/or candidate representatives had very little influence in decision making processes of TECs and PECs and were rarely appointed at Chairman, Deputy, or secretary positions of respective commissions.

Due to the late adoption of the new law, the majority of TEC and PEC members had to be adequately trained in short period of time in order to meet all legal demands and fulfill necessary tasks accordingly. The CEC conducted numerous trainings, with the assistance of IFES¹⁸ and OSCE¹⁹. Yet, the CEC faced a significant issue of constant requests from commissioners and/or political parties to replace their previously nominated commission members. To that end, CEC did not have enough time, neither resources to properly train all newly replaced commission members. More than 1,500 TEC members have been replaced by relevant branches of political parties, or by the CEC²⁰ only before the first round of elections.

Also, a significant number of PECs were formed with the minimum number of commissioners and without proper training, which might have been one of the reasons of a slow and inefficient conduct of voting, counting and tabulation of results, especially during the first round of elections. At the same time, due to a low interest and/or possibilities of local parties/candidates to nominate PEC members, TECs had to fill in PEC member positions with other persons in order to meet the legal minimum, in a large number of cases. This procedure for nominating persons by TECs, other than political party nominees was very questionable. Besides, a significant number of PEC member replacements was also reported, made by parties and candidates that nominated these members, or due to resignations of members themselves, ranging from 15 percent to even 50 percent depending on the territory and region.²¹

¹⁸ International Foundation for Election Systems - IFES: <http://www.ifes.org/ukraine>.

¹⁹ Organization for Security and Co-operation in Europe: <http://www.osce.org/ukraine>.

²⁰ Dnepropetrovsk, Kharkov, Kherson, Cherkassy and other.

²¹ In Odessa and Kyiv oblasts between 30 percent and 50 percent of PECs members were replaced in the week prior to the Election Day. In Chernihiv this percentage was between 25 percent and 35 percent.

The Law does not contain adequate provisions with regards to the printing procedure of ballot papers (the use of special paper with certain safeguard mechanisms, minimum requirements for the printing company that can be chosen to print ballots, transparency during the printing, etc.). The printing of ballots generally took place within the time frame, but also raised a series of concerns. Observers noted that the process was not transparent and the decentralization of the voting process made it impossible to record the exact number of ballots printed, especially in Vinnitsa, Cherkassy, Odessa and Khmelnytsky. In some cases, PECs received either too many, or too little ballots compared to the legal provisions. Lack of sufficient funds further delayed the printing process.

In Kherson and Kharkov the printing of ballots was significantly delayed because of late approval of the the final version of the ballots. In addition a number of ballots had to be destroyed as a result of mismatch of colors. In Ivano-Frankivsk the printing of ballots took place in regular printing stores where the ballots remained deposited without official oversight until they were transferred to the PECs. In Ternopil the police confiscated ballots that were printed in excess by the printing company. In Sumy PEC protocols for Oblast Rada were published without having the full information and therefore they had to be destroyed and reprinted. In the same TEC, ballots for PEC #590634 were not printed at all, while ballots for PEC #590042 were printed twice. This error was eventually corrected by destroying the duplicates.

A number of complaints were made by representatives of local branches of political parties to ENEMO observers regarding the conduct of certain TECs with regards to printing of ballot papers. Such complaints were mainly addressed towards the choice of the printing company, the total number of ballot papers printed, the improper storage of ballots after they have been printed and the overall transparency of the entire printing process.²² Such mistakes and improper conduct of certain TECs with regards to ballot printing caused serious problems and concerns in a number of places in Ukraine in these elections, sometimes even leading to repeating of the first round of elections, including elections that were to be repeated in Svatove, Dovzhok, Kamentz-Podilski (Khmelnytskyi oblast) and other places. A similar situation happened in Mariupol, Krasnoarmiysk and other cities whereas in some places the number of printed ballots was significantly higher than the legal limit²³. Some TECs also had to re-print ballot papers due to additionally registered candidates and/or due to mistakes with names of respective candidates. ENEMO observers have noticed a number of printing mistakes in firstly printed ballot papers in different regions of Ukraine.

On 2 November, the CEC disbanded (through early termination of powers) members of the two TECs in Mariupol and Krasnoarmiysk cities, due to the fact that they failed to conduct the first

²² For example, In Ivano-Frankivsk the printing of ballots took place in regular printing stores and ballots were stored there until they were transferred to the PECs without any official oversight.

²³ In Ternopil, the police confiscated ballots that were printed in excess by the printing company.

round of regular elections on 25 October²⁴. New TEC compositions were formed several days later, based on nominations from the same political parties that nominated the previous composition of the named TECs and upon the Parliament's newly adopted law that required elections to be held in these two cities on 29 November. The same law appointed CEC as the authority in charge of producing ballot papers and their transfer to PECs. Even though this change of the TECs' composition was justified, the fact that CEC did not react sooner remains a concern, as the law allows the CEC to take own initiatives in securing equal application of legal provisions and respect of electoral rights of all election participants. Moreover, according to several interlocutors and media reports, the CEC was aware of different problems in Mariupol and Krasnoarmiysk TECs even before the Election Day on 25 October.

TECs functioned with the required number of members and held regular meetings. Some dysfunctions in the work of commissions were reported in Dnepropetrovsk where a head of a TEC has been replaced without notice and a stamp from a different TEC was lost. In Cherkassy, six TEC members were replaced by the CEC after they repeatedly failed to comply with CEC regulations and also refused to implement Kiev Court decisions regarding the registration of candidates. In Lviv, TEC in Yavorivski Rayon worked for a few days without the position of Secretary because three persons from UKROP were constantly resigning from this position. While the work of TECs was largely free from external interference, ENEMO learned of cases when election commissioners were being threatened or attacked, most noticeably in Cherkassy, where several TECs members were beaten inside the TEC premises.

In the period between the two rounds of elections, most TECs managed to organize their duties accordingly, tabulate and announce final election results. However, a number of TECs in many regions of Ukraine had difficulties in implementing all their legal duties as planned and within the legal terms prescribed by the Law, whereas the conduct of a number of TECs has been reported by ENEMO observers, a number of interlocutors and election participants as disorganized, unprofessional, at times even politically influenced and/or biased.

Numerous complaints from election participants, as well as concerns of our observers were raised towards a number of TECs in Sumy, Odessa, Chernivtsi, Mykolaiv, Kherson, Kharkiv, Dnipropetrovsk, Zaporizhia and Cherkasy mainly regarding the politicized and unprofessional conduct of TEC members during tabulation and announcement of election results. Most severe example is the Oblast TEC in Cherkasy region, where TEC members allegedly altered the final results of elections in favor of Solidarnost and the Opposition Block. After a strong reaction from the other election contestants and the police, these results were cancelled and new results of elections were announced, based on initial protocols. Similar incidents have also been reported in Babuhsynsky rayon (Dnipropetrovsk), as well as in Prydniprovsky rayon (Cherkasy) and at the

²⁴Mainly due to lack of professionalism and issues with printing and dissemination of ballot papers as explained in earlier reports of ENEMO.

Regional TEC in Vinnytsia. Most of these cases are being further investigated by relevant authorities.

Interlocutors of ENEMO expressed their concerns regarding TEC conduct and election results in some regions, where a number of complaints and even criminal charges towards certain TEC members have been filed. Namely, alleged violations in relation to elections happened in Odessa and Cherkasy, while a number of complaints were logged in Sumy, Kiev, Dnipropetrovsk, Kharkiv, Kherson, Vinnytsia and other regions.

The legal provisions prescribe for election results to be tabulated within five days after the day of Elections in single mandate constituencies and 10 days for multi-mandate constituencies, whereas all election results must be publicly announced within five days after the final tabulation of votes. Most TECs have managed to respect the given legal deadlines, yet the vote counting, tabulation and announcement of election results were delayed in many places, all over Ukraine and in some instances election results were not final and public even after two weeks from the Election Day of the first round.²⁵

ENEMO and many other stakeholders raised concerns prior to the elections regarding the complexity of the new Law and the lack of knowledge of relevant PEC members. These concerns turned out to be justified. Mostly due to the lack of training and many replacements of PEC members, TECs in all regions of Ukraine returned a large number of protocols from PECs to be corrected accordingly. In some regions, the percent of returned PEC protocols for correction of mistakes at certain TECs was even close to 50% (Summy, Volyn, Ivano-Frankivsk, etc.), or even more than 60% (Zhytomyr, Zaporizhia), whereas some TECs in Lviv and Kharkov had to return around 20% of protocols. TECs had to conduct re-counting of votes received from numerous PECs in order to establish final results of voting, mostly in Volyn, Vinnytsia, Odessa, Dnipropetrovsk, etc.

Based on Article 87 of the new Law on Local Elections, repeated voting for elections of deputies of village and settlement councils, as well as village, settlement and city with less than 90,000 voters mayors shall be held by the same PECs, while City TEC in cities with 90,000 or more voters shall form new PECs, based on proposals of candidates running for the city mayor in the second round of elections, not later than five days before the day of repeated voting. The Law prescribes quite a big number of members per each PEC (16 persons for large, 14 persons for medium and 12 members of small PECs), equally nominated and represented by both candidates running for Mayor.

²⁵ The Kyiv Administrative Court of Appeals (Case No. 362/7311/15-a) ordered vote re-count at Salyvonkivska TEC which was delayed.

During the second round of elections, a number of mayoral candidates have also not managed to provide an adequate number of precinct commissioners from their side²⁶, which highly undermined the equal candidate representation rule during this repeated voting, as the remaining PEC members were again selected by the relevant TEC in a questionable procedure that was not adequately described within the new Law. Most interlocutors claimed that the lack of funds for PEC members was the main reason why they did not have a larger interest of citizens to take part in precinct commissions, claiming that those candidates supported by larger political parties and/or those having more funds for elections paid their PEC representatives in addition to the fees covered by the state budget. A large number (around 4000) of new PEC members have been additionally trained by the CEC and civil society, with the support of IFES regarding new legal provisions before the repeated voting on 15 November, when the efficiency and knowledge of PEC members was significantly higher than on 25 October election day, as reported by ENEMO observers and proved by the overall smaller percent of returned protocols for corrections and tabulation time, even though there was only one ballot to be cast for mayoral elections in the second round.

ENEMO observers reported that many TECs, but especially PECs were also encountering logistical problems, triggered mainly by a lack of funding and shortage of office supplies and computers. Also, not all PECs had adequate space, neither the equipment for an efficient conduct of their duties, yet all PECs had the minimum necessary resources to fulfill their legal tasks properly, according to ENEMO observers. Numerous PECs closed during working hours were also noted by ENEMO observers.

VI. CANDIDATE REGISTRATION

Every citizen of Ukraine with the right to vote could stand for election except those with an unexpunged criminal record for a violation of grave and especially grave crimes against voters' rights or corruption charges. Candidates were nominated through their local party branch, whilst city mayors, heads and deputies to village and settlement councils could be self-nominated. This practice was contrary to the international standards²⁷. Election law required candidates to provide a financial deposit, refundable only to successfully-elected mayoral candidates and political parties passing the five percent threshold for voter support. According to the Venice Commission and OSCE guidelines, deposits should be refundable based on the gain of a reasonable percentage of votes.²⁸

²⁶ The law prescribes that new PECs are formed for the second round of Mayoral elections, equally composed of candidates nominated by all running Mayors.

²⁷ i.e. OSCE Copenhagen Document, article 7.5.

²⁸ CoE (Venice Commission): Code of Good Practice in Electoral Matters, sec. I.1.3.vi; See also, OSCE (ODIHR): Guidelines for Reviewing a Legal Framework for Elections, First Edition, p. 16.

The candidate registration process was to be completed on 1 October 2015.²⁹ Most TECs have completed the registration of most candidates within the legally prescribed time. On a number of occasions, ENEMO observed TECs misusing the law related to candidate registration. The CEC had to intervene several times to register candidates, especially for city council elections in Kherson,³⁰ candidates at Cherkassy³¹ and Kharkiv.³² However, due to a long registration process, a number of candidates had a shorter period of time for official election campaigning.

Candidates were required to submit an extensive list of documents in order to register, including a biography, property, income and expenses statements; and where applicable, a copy of the decision of the meeting of their party's conference. Election law provided for the correction of mistakes and inaccuracies and did not allow for rejection of registration of candidates on these grounds. Courts in some cases ruled that mistakes and inaccuracies in biographies constituted grounds for rejecting the registration of candidates, but decided otherwise in many other cases.³³ Moreover, some TECs refused the registration of candidates, mostly based on inaccuracies in registration documents.³⁴ As a result some 675 complaints were lodged against TECs, with the courts deciding in favor of 217 candidates.

The courts' approach in registering the candidates, however, was not entirely consistent. In some instances, courts ordered respective TECs to register candidates,³⁵ whereas in other cases they requested TECs to review registration documents.³⁶ This approach undermined the right to an effective remedy guaranteed by the Council of Europe and other international standards and obligations.³⁷ Moreover, restrictive application of the law resulted in late registration of

²⁹ The Territorial Election Commission should make a decision concerning the registration or refusal of a candidate no later than 23 days prior to Election Day, according to LLE.

³⁰ A candidate for city council elections Volodymyr Saldo had repeatedly failed to register. (CEC resolution No 438).

³¹ Cherkassy TEC did not register candidates from Free Democrats Party for the city council elections and a mayoral candidate despite the CEC resolution 482.

³² Kharkiv oblast TEC, despite being dissolved and formed anew by the CEC for violations of the election law, had repeatedly failed to register candidates from the Opposition Bloc (OB) for the oblast council elections. The OB was able to run in the elections only after the decision on registration of its candidates was adopted by the CEC (CEC Resolution No 473).

³³ The Kyiv Administrative Appeal Court upheld the decision of the lower courts on refusing the registration of a candidate based on inaccuracies in their biography. In another five occasions, Administrative Courts in Khmelnytsky, Volynsky, Dnipropetrovsk, Kharkiv and Ternopil overturned the TEC decisions refusing to register candidates based on inaccuracies in the biography or mistakes in transferring the election deposit.

³⁴ During the period from 8 to 12 October 2015, the CEC terminated powers of five different TECs early and approved the composition of the new commissions, due to their repeated failures and/or refusal to register certain candidates, despite decisions by the CEC and court ordering the approval of the candidates' application for registration.

³⁵ In the majority of cases, Administrative District Courts in Volyn, Dnipropetrovsk, Vinnytsia, Khmelnytsky, Cherkassy, Ternopil and Mykolaiv obliged TECs to register candidates.

³⁶ On four occasions, Administrative Courts of Appeals in Sumy, Khmelnytsky, Kharkiv and Dnipropetrovsk ordered respective TECs to review the registration documents again.

³⁷ Article 13 of the European Court of Human Rights: 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.' See also, Article 2 of the ICCPR. ...'[Everyone shall] have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;''

candidates.³⁸ This subsequently hindered candidates' right to stand for elections, as well as their ability to engage in election campaign and meet legally prescribed deadlines for ballot papers.³⁹

ENEMO has commended the CEC for its professionalism and impartiality in the process of overseeing and taking actions towards certain TECs. The CEC also intervened to complete the process of registration of candidates running for elections itself in several cases, so that the legal provisions were respected and relevant election subjects were allowed to run for elections. In the end, a total of 209,658 candidates were registered for 10,561 councils⁴⁰; out of which, 161,173 deputies were elected in single mandate constituencies, whilst 9,965 were elected as city mayors and heads, out of which 7,983 were self-nominated.⁴¹

VII. WOMEN PARTICIPATION

The new law introduced the requirement for a minimum of 30 per cent quota for each gender in the electoral list. The law however contained no indication on the compliance with the gender quota as a requirement for registration of political parties' lists. Furthermore, the CEC Resolution No. 362 indicated that a failure to observe the gender quota cannot lead to refusing the registration of the party. The Resolution was initially overturned by the Kyiv Administrative Court of Appeals. The Court observed that legal provisions on gender quota cannot be declaratory, but mandatory for all relevant election contestants⁴². This decision was later challenged by the CEC at the High Administrative Court of Ukraine⁴³ that upheld the initial Resolution of the CEC. This "facultative" application of the gender quota lead some TECs to refuse registering the candidates that did not fulfill the gender quota requirements.⁴⁴

Introduction of a minimum of 30% quota for each gender in the party list has generally improved women participation in the electoral process, at least within parties' election lists. Parties have generally observed the 30% gender quota. The total number of female council candidates was around 35%, whereas the percentage of women running for Mayors and Heads was less than 15%.

³⁸ Between 18 - 23 October 2015, Administrative Courts of Chernihiv, Zaporizhia, Lviv and Vinnytsia registered 7 candidates.

³⁹ UN (CCPR): General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service (Article 25), para. 15.: "Any restrictions on the right to stand for election, ... must be justifiable on objective and reasonable criteria."

⁴⁰ There were more than 21 000 parallel election processes taking place in these elections.

⁴¹ CEC website: http://www.cvk.gov.ua/pls/vm2015/PVM003?PT001F01=100&pt00_t001f01=100

⁴² The Resolution was challenged by Samopomich on 30 September 2015. Case No 875/36/15.

⁴³ High Administrative Court of Ukraine issued a decision on 4 October 2015.

⁴⁴ TECs in Zhytomyr and Berdychiv have denied registration of candidate lists based on non-compliance with the gender quota requirements.

ENEMO observed that there was a high number of women represented at the level of PECs and less so at the level of TECs, whereas ENEMO previously highlighted the lack of women representation in party leadership at the local and national level and disproportionate representation of women among the party leaders.

Representation of women candidate's at Oblast council level (22 Oblasts) was 29.8%, out of which some 15% of women deputies were elected. The highest level of women were elected in Sumy, Khmel'nitsky and Kharkov and stood at 21.4%, 20,3% and 19,2% respectively. The regions with the lowest elected women candidates are Zakarpatia with 10.3% and Odessa with 9.5% respectively.⁴⁵ The number of elected women candidates in Kyiv and other regions is around 18%, as opposed to 82% of elected men deputies. The high percentage of women representation is noted in Chernihiv with 33.3% and Lviv at 25%, whereas Kirovograd and Uzhgorod have the lowest percent of women deputies with 9.5% and 8.3%. As reported previously by ENEMO, the percentage of women candidates running for Mayors and Heads was less than 15%, whereas only two women candidates took part for the second round of mayoral elections. Findings showed that women on average received around 18% of seats at city, regional and settlement councils and around 16% of seats on an Oblast level.⁴⁶

VIII. VOTER REGISTRATION AND VOTERS' LISTS

Ukrainian citizens, at least 18 years old were legally allowed to vote in Local Elections, in the territorial community where they have a registered place of residence. Citizens that were not in their registered place of residence on the day of voting were not able to vote elsewhere. Around 30 million voters were able to vote in the last local elections, though the exact number of voters was not available before Election Day on 25 October, especially due to possibility of corrections of the Voters list by voters a day before. The Administrative Code on Proceedings allowed a person to file an administrative complaint on correction of the voter list too. A complaint may be filed no later than two days before the Election Day, where court decides on administrative complaints concerning correction of voters list within two days after receiving the complaint but no later than two days before the Election Day.⁴⁷

The new Law on Local Elections was not very demanding in terms of special conditions for a voter to change his/her place of voting address, what lead to several cases of abuse of such legal provisions. A high number of voters registered at the same address was discovered in some places. Besides the two cases in Zatoka, the first where 296 students have been found registered

⁴⁵ Data prepared by the Committee of Voters of Ukraine (CVU).

⁴⁶ Final Report of CVU available at: http://issuu.com/8612157/docs/final_report_cvu_gender_monitoring__c984ab7faf6631

⁴⁷ If the complaint has come two days before the Election Day, it shall be considered immediately. Article 173. The Code of Administrative Procedure of Ukraine.

for voting at the same address and another case that was later reported and investigated by the authorities as another 323 persons were illegally registered to vote, but the Odessa Administrative Court of Appeals ordered the PEC to remove them all from the Voters list. As a result such "phantom" voters were deleted from the respective voters' lists in both cases.

In addition to this, the Odessa District Administrative Court prohibited the Bilhorod - Dnistrovskiy regional Department of the Chief Administration of State Migration Services of Ukraine in Odessa region to register more than five people (except for under-aged persons) at one place of residence, until 25 October 2015, i.e. the election day of the first round of local elections⁴⁸

Around 1.5 million of internally displaced persons (IDPs) were not able to vote in these Local elections in their current place of refuge. Also, citizens that were not in their registered place of residence on the day of voting were not allowed to vote elsewhere, yet the overall voter turnout (more than 46%) in the first round of elections was similar to previous elections. The voter turnout in the second round of elections was significantly lower (around 34%).

According to the Law on State Register of Voters, Register Maintenance Bodies (RMB) were in charge of upholding and maintaining the state Voter register regularly. Relevant RMB should have handed over the printed preliminary voter list to a respective PEC, together with the individual invitations⁴⁹ no later than 13 days before the Election Day. As for the repeated voting, according to Article 87 of the new Law on local elections the Voters' lists should have been prepared by the State Voters Register maintenance body and submitted to the relevant PECs, no later than two days before the Day of the repeated voting. Voters' lists were mainly received on time by PECs in most cities.

As for the Voters list, one copy of a preliminary voter list is prepared for each regular precinct. Any voter had a right to examine the preliminary voter list in the premises of the PEC and check whether his/her data entered in the voter list was correct. Based on such check, every voter had the right to request a correction of the preliminary voter list, by submitting a request to the relevant PEC, RMB, or the administrative Court. Besides correcting the basic data, a voter could have requested to include or exclude him/her personally, or other persons from the list, as well as to add/remove the note on permanent incapacity of the voter to move independently.

⁴⁸Odessa District Administrative Court. Case No 815/5725/15;

⁴⁹According to Article 31 of the LLE: A PEC of a regular election precinct sends a personal invitation received from the RMB to every voter included, in order to inform the voter about his/her inclusion in the preliminary voter list of the respective election precinct, names of all local elections in which he/she is invited to vote, the address, phone number and working hours of the PEC, as well as the time and place of voting. Voters, whose data in the voter list contains notes signifying their permanent incapacity to move independently are notified at the same time that they will be given the possibility to vote at the place of their stay. Such personal invitations are sent to voters not later than 10 days before the Election Day.

Corrected voter lists for each regular election precinct should be made in one copy and transferred to the respective PEC no later than two days before the Election Day. Changes and updates to the corrected voter list were made by the chair, or the deputy chair and the secretary of the PEC, on the grounds of a court decision, or notices of the RMB concerning elimination of multiple inclusion of a voter in the electoral list at this election precinct. Such changes may have been made before 18:00 of the last Saturday before the Election Day. No changes to the corrected voter list were allowed on the day of voting, except for correction of inaccuracies and clerical mistakes, by the deputy chair and the secretary of the PEC.

ENEMO has not received major complaints regarding the accuracy of voters' list. Nevertheless, the situation in Pavlohrad (Dnipropetrovsk oblast) had raised some concerns whether the Voters' list was entirely accurate and/or was being regularly updated. Namely, during the counting of votes, the city TEC has calculated that the total number of voters in this city was less than 90 000 and that election results for the Mayor were to be announced after the first round of elections, by using the First-pass-the-post system of elections. According to their decision, the candidate that won the largest number of votes in the first round of elections should have been directly elected and appointed as a new Mayor.

On 27 October 2015 the CEC had adopted a similarly dubious decision (Decision No. 515), which stated that no second round for mayoral elections should be held if a TEC, when preparing the protocol on final results of elections finds out that the total number of voters included in voters' lists is less than 90 000. This CEC decision was later overturned by the Kiev Administrative Court of Appeals⁵⁰ after CEC decision was challenged by the Pavlohrad candidate for the Mayor, who was previously negatively affected by such decisions of election commissions. The Court observed that the number of voters in the city of Pavlohrad, as of 1 August 2015 was 90295 voters, based on the information that was published in the 'Voice of Ukraine' on 1 September 2015. The CEC website also provided that approximate number of voters in Pavlohrad is 90 208. The Kiev Administrative Court of Appeals argued that the law provides for a clear procedure and criteria for determining when and how each election system should be used and therefore had cancelled the above mentioned CEC decision.⁵¹ ENEMO has previously commended the Court for such a decision.

IX. ELECTION CAMPAIGN

The campaign (especially before the first round of elections) could be described as mildly intense and characterized by a moderate interest of voters in political events, platforms and candidates. In most parts of Ukraine the campaign period has been free of pressure and intimidation and all

⁵⁰ The Kyiv Administrative Court of Appeals. (Case No. 875/59/15).

⁵¹ This decision was later upheld by the High Administrative Court of Ukraine on 2 November 2015.

candidates were able to express their views and meet with voters. Front-runners used a mix of campaign strategies including canvassing, large billboards, leaflets, tents, TV ads and rallies.

In most cases, campaign themes and messages reflected national concerns and not the local ones. The most important topics of campaigns were: war in the East, the fight against corruption and the current economic crisis. However, in some areas, the campaign reflected local issues. For example, in Ternopil oblast, campaign also referred to local issues, such as water pollution, whereas at Ivano-Frankivsk the main issue of these elections was the lack of basic safety in the region and a huge increase of number of crimes.

Candidates and parties accused each other of attempts to fraud elections and pointed to cases of vote buying and vote rigging strategies. Police was sometimes reluctant to interfere or follow on these allegations. Cases of direct or indirect vote buying were reported in almost all oblasts, but especially in Vinnitsa, Zaporizhia, Poltava, Rivne, Volyn, Ternopil, Kiev, Kherson and Ivano-Frankivsk. The practice varied from paying direct cash to potential voters, to offering various products and discounts. While most of these claims remain to be actually proved, the recorded attempts at vote buying constitute a threat to the fairness of the electoral process.

Unequal access to campaign funding, and the lack of transparency regarding its sources characterized these elections as well, just like past electoral cycles in Ukraine. Contenders with significant lack of funds were outcompeted by larger candidates and enjoyed less overall exposure. Authorities' failure to address this aspect, despite attempts at more transparency through an amended law, should remain a concern.

ENEMO noticed a number of incidents in which campaigners were physically abused and campaign materials destroyed. Overall, these appear to be relatively isolated cases, despite their gravity, and some of them were pending investigation⁵².

⁵² In Rivne City Council, a deputy of Svoboda party was attacked with acid in her home, which left her in a bad medical condition. In Ivano-Frankivsk a candidate for the city council was kidnapped, beaten and then thrown out of a moving car. In Volyn, a candidate was beaten by three unknown persons. In Mykolaiv two activists were severely injured following an attack with acid while campaigning. In Zaporozhia mayor candidate Mykola Frolov reported that there were 7 attacks on his campaigners by unidentified persons. In Chernihiv an UKROP activist was beaten while canvassing. In Odessa, campaign tents of candidate Oksana Droban were destroyed by 25 masked people. In Sumy campaign tents of Opposition block and Samopomoch were attacked and destroyed by unidentified persons. In Kharkov groups of unidentified people destroyed campaign materials of incumbent mayor and candidate. In Ivano-Frankivsk, the daughter of a candidate had her car destroyed by unidentified perpetrators. In Zaporizhia, the organization "We – Zaporozhcy" suffered 10 attacks mainly related to the destruction of campaign materials. Also in Zaporizhia, mayoral candidate Buryak had his posters destroyed. More worryingly, on November 10th the Chief of Staff of Nikolai Frolov, runner-up in the city mayoral elections, was admitted to hospital after being beaten on the street by unknown attackers. In Sumy the car of an elected member of the city council from Samopomoch party was set on fire on 3 November. Similarly, in Rivne on 11 November the car of former Opora activist Roman Martyn was set ablaze. He was involved in a movement against the current mayor and therefore the action might have been politically motivated. In Vinnitsa, a rubber bullet was fired towards the headquarters of Svoboda party. Police started investigating all these cases.

ENEMO observers documented a number of state officials involvement in campaigning. Abuse and misuse of state funding and official positions by candidates already in power was reported in all oblasts, but especially in Vinnitsa, Chernihiv, Ternopil, Kharkov, Ivano-Frankivsk, Cherkassy and Kiev.

Observers noted instances of breaching campaign regulations such as advertisements on public premises in Kherson, Chernihiv, Kharkov, Cherkassy and production of election materials without proper identification in Kherson. The practice of so called black PR – a long-standing problem in Ukraine – is so widespread it is almost part of the campaign strategy per se.

Campaign for the second round was much quieter and less engaging than in the first round. Candidates met with voters, displayed their messages on billboards, in leaflets and during rallies and debated each other in TV shows. Overall, however, the intensity of the campaign was significantly weaker in all oblasts. The gap after the first round between the mayoral candidates in many cities was one of the causes of the muted campaign. In places like Kiev, Lviv, Sumy or Vinnitsa, for example, candidates in the second place conceded to ENEMO observers that the race is all but over. They felt there was no need for them to campaign.

Financial resources were also a major factor of a mild campaign in the second round of elections. Most candidates spent their resources in the first round in order to offer a serious challenge. On this background, candidates who were already in an administrative position, such as acting mayors, had a significant advantage over their candidates. The possibility to use and abuse public funds and office significantly increased their visibility and campaign repertoire. Candidate mayors in Lviv, Chernivtsi, Vinnitsa, Rivne, Chernihiv, Zaporizhia, and Poltava were reported to use their public position in order to gain votes. In most of these cases there was a conflict between the administrative duties of the elected officials and their campaign activities.

At the same time accusations of vote buying continued to be widespread among candidates. Those already in administrative positions were accused of indirect vote buying and of presenting the work of the public administration as their own achievement. This was specifically the case in Vinnitsa, Lviv, Poltava and Ivano-Frankivsk⁵³.

Therefore, direct and indirect vote buying remains an important issue for Ukrainian elections. ENEMO observers, as well as local observers groups reported on series of cases in which voters took a photo of their ballots before casting it. This raises suspicions of possible vote buying. Authorities reacted in some cases to curb the phenomenon and to punish the perpetrators. This was the case in Chernivtsi, where the deputy of Ridne Misto was officially placed on the wanted list by the local police following accusations of vote buying. In relation to the same case, a

⁵³ For example, in the city Kryvyi Rih, Dnepropetrovsk oblast, Opposition Bloc candidate for mayor was accused of blackmailing the workers in the public sector to vote for him. In Ivano-Frankivsk mayoral candidate Igor Nasalik organized free tours for Ivano-Frankivsk citizens to Kalush. The trip included a free lunch, free medical examination and free pills.

number of students were arrested for selling their votes. While such actions from the local authorities are a step forward in the right direction, the high number of allegations of vote buying across the country should alert the authorities and they should intensify their investigations. This task was made more difficult by the fact that most instances of vote buying were made indirectly and through the abuse of public resources. The lack of transparency of campaign finances, and the failure of many candidates to present proper documents after the first round, compounded this matter. Increased transparency of campaign finances remains an area of improvement for Ukrainian elections.

Instances of "black PR" remained an issue during the campaign in most races, but especially in Dnepropetrovsk, Cherkassy, Mykolaiv, Ivano-Frankivsk, Vinnitsa, Lviv, Poltava, Chernivtsi and Chernihiv.

A number of candidates violated campaign rules by starting their agitation earlier, where certain candidates also breached campaign provisions by placing promotional stickers on public buses.

X. MEDIA

ENEMO Election Observation Mission did not carry a systematic media monitoring for the Local Elections 2015 in Ukraine. The data presented in this section are based on interviews with media and other domestic and international stakeholders, and non-systematic observations of the LTOs.

The Ukrainian legislation regulating media generally provides a good framework for freedom of expression, while the conduct of the media during the electoral campaign is regulated by the Law on Local Elections. Unlike the Law on Parliamentary Elections, the new LLE does not provide for free airtime for the political parties or candidates, but does sanction the obligation of the media to provide equal and open access for them. Equal access is thus meant in terms of equal payment for all candidates, and equal opportunities to access the services for candidates who can afford the payment for political advertising, or participation in electoral debates, upon previously advertised format, payment, and other elements.

ENEMO judges that lack of public funding for the campaigning has limited the possibility to parties or candidates with fewer resources to access the media services, similarly to other means of communication with the public, and thus created an unfair advantage for candidates which have the possibility to raise more funds. Ukraine's score for freedom of the press (Freedom House Index) for the year 2014 has increased from "Not Free" to "Partly Free", inverting the trend. Nevertheless, Ukrainian media still suffers from high partisanship and lack of autonomy

from both political and business interests⁵⁴, which affects the editorial policy of the media outlets. Despite that, no media interlocutors have declared being under pressure by candidates or parties.

Television was the primary medium of choice, although internet is gaining ground and has been used for campaigning purposes on these elections. Radio and printed media have also been used to some extent, whereas there were reports about certain printed media being formed just before the electoral campaign and distributed as leaflets, in which mainly propaganda materials were published, hidden as news articles. It should be stressed that the Law on Local Elections does not have any provisions regulating the online media during coverage of the electoral process, a circumstance which should be considered by lawmakers in future amendments to electoral laws.

Media was used heavily for electoral campaigning, but mostly during the first round of elections, in line with the overall reduced campaigning for the second round. According to various interlocutors of ENEMO, such situation could be explained both the fact that in many cities the difference in results in the first round was high enough for some candidates not to lead an aggressive campaign, as well as to the lack of funds for paying for media advertisement or debates. The preferred medium of choice for the campaigning for the second round was mainly the television. Long Term Observers of ENEMO in all oblasts have reported about biased media coverage, favoring one or another candidate or party⁵⁵; electoral advertising during news editions or electoral advertising materials not clearly identified as such⁵⁶. The practice of paid-for news articles also continued to be widespread. Advertising, or articles which put selected candidates under an unfavorable light for the audience (also known as black PR) were also reported⁵⁷.

In many cases media outlets under local government ownership have been reported to give space to undercover political advertising for incumbent mayors, which apart constituting media bias is also an abuse of public resources. According to information received by the LTOs, in general the media has respected the electoral silence, in line with the law, although cases of breaches⁵⁸ were noticed in billboards, leaflets and text messages sent on mobile phones inviting electors to vote for selected candidates. No instances of media representatives being prevented to follow the election process was observed by or reported to ENEMO observers.

⁵⁴ All LTO teams received allegations by various interlocutors on media ownership or influence by politicians or business people. In most cases the reported relationships were not possible to be verified, due to lack of transparency on media ownership.

⁵⁵ ENEMO LTO teams have reported on biased coverage by the local media, in favor of specific candidates. Some of the examples reported by the interlocutors are: Zaporizhia (Panorama and TV channel "TV-5"); Chernihiv (TV channel and newspaper "Detynets" and newspaper "Chernihivski vidomosti"); Vinnitsa (TV stations "Vita" and "Vintera", Radio "Buh" and newspapers "Vinnytsia Gazeta"), Zhytomir (KROK Radio, newspaper 20 minutes), etc.

⁵⁶ Specific cases were reported in Ternopil, Vinita, Zaporizhia, etc.

⁵⁷ Instances of black PR were reported in Mykolaev, Ivano-Frankivsk, Vinnitsa, Lviv, Poltava, Zhytomir and Chernivtsi.

⁵⁸ A case of breach of the electoral silence by the media, made public by the Committee of Voters of Ukraine (CVU) was registered in Lviv, where incumbent mayor and a mayoral candidate has participated in a radio interview for the Lviv Regional State Broadcasting Company, during which he has spoken about achievements during his time in office.

The only responsible body for monitoring media conduct is the National Television and Radio Broadcasting Council of Ukraine (NTRBC), but its role is not to specifically conduct media monitoring during the election campaign, although the Law on Local Elections mentions it, and it has no power to impose sanctions upon media outlets violating the electoral law. In case of observing or being reported about media bias, NTRBC can either address the media directly and request it to correct the bias, or notify the relevant election management body - CEC (for national media) and TECs (for local media). Nevertheless, the election management bodies consider their intervention in media matters as out of their competencies, since the media are not considered as electoral subjects. In case the request of the NTRBC is sent to the media directly, the media has one month to reply to such request, in which case the correction of the bias can appear when the campaign is already over.

Moreover, local branches of the NTRBC are mostly understaffed and do not have the needed human, technical or financial means to carry a thorough and complete media monitoring and there are no clear criteria of selection of the media being monitored. The only legally effective means the candidates have to address biased media coverage is addressing the court, in case of a defamatory news piece and force the relevant media to publish an article disapproving the first one, in case the court rules in their favor.

XI. ELECTION OBSERVATION MISSIONS

The election legislation of Ukraine provides for observation by authorized observers of the political parties and for non-partisan observation of both international and domestic organizations, as well as foreign countries. The Law on Local Elections, approved in July 2015 by the Verkhovna Rada, provides for more rights for international observers, as compared to the Law on Parliamentary Elections⁵⁹.

For the Local Elections of 2015, the CEC approved the request for accreditation of 14 international organizations, 14 foreign countries⁶⁰, and 83 domestic organizations. These elections received a much higher attention from the international community, as compared to the Local Elections of 2010. The CEC has accredited in total 1554 international observers for the first round and 115 for the second round, for a total of 1669 accredited observers⁶¹, number which is around three times higher than the number of observers for the elections of 2010. The

⁵⁹ International observers have now the right to receive copies of protocols on delivery of ballot papers, counting of votes and establishing the results of voting as well as other documents, rights which are only reserved to partisan and non-domestic observers by the Law on Parliamentary Elections.

⁶⁰ Austria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Japan, Lithuania, Poland, Slovak Republic, United Kingdom, and the United States.

⁶¹ <http://www.cvk.gov.ua/pls/vm2015/PVM063?PT001F01=100>

high number of observers following the local elections of 2015 points at a particular interest of the international community in political developments in the country.

The international election observation missions with the highest number of accredited observers were OSCE/ODIHR and ENEMO. Other international organizations observing the elections include the European Parliament, the National Democratic Institute, Council of Europe, Ukrainian Congress Committee of America, European Platform for Democratic Elections, and International Commission on Human Rights. OSCE/ODIHR and ENEMO IEOMs also followed the elections that were held in Mariupol and Krasnoarmiysk on 29 November.

As for domestic organizations, two of the most active ones in the field of election observation were Committee of Voters of Ukraine and Opora, which have engaged the most number of domestic observers. Apart from monitoring the election process, these organizations have also undertaken various other activities aimed at increasing the transparency of the process.

ENEMO observers have not reported any case of obstruction of their monitoring activities throughout the duration of the mission.

XII. ELECTION DAYS

For observing all rounds of local elections in Ukraine, ENEMO has accredited a total of 398 observers, out of which 8 persons as core team, 50 Long-term observers and 340 Short-term observers. While LTOs were deployed in each region of Ukraine to conduct a comprehensive observation of the entire election process, STOs were deployed only to monitor the conduct of the election days, including the work of PECs during opening, voting and counting at precincts, as well as work of TECs during the intake of election materials from PECs. Altogether, ENEMO teams monitored more than 2000 PECs and more than 130 TECs during both rounds of local elections (25 October and 15 November, as well as elections held on 29 November in Mariupol and Krasnoarmiysk), paired in teams of 2 observers.

The overall observation statistics showed that the voting process of local elections was mainly held in a calm atmosphere and in line with most international democratic standards. However, the conduct of all monitored election administration bodies in the second round of elections was seemingly better than during the first round. A new and complicated electoral system, combined with a high number of voters per PEC, many election protocols, numerous ballot papers, constant changes of PEC and TEC members and lack of proper training of all replaced commissioners have caused slight delays and confusion in the work of a high number of PECs during the first round of elections.

The overall work of election administration was significantly improved during the second round of elections (the overall rating of PEC work by ENEMO observers improved from 5-15% during the second round). Even though numerous technical mistakes were made in a number of PECs and TECs, the overall conduct of elections, taken into account a significant number of changes set forth under the new Law and the resources available to election administration bodies, has been largely marked as good, or very good, whereas trainings conducted by CEC, IFES, OSCE and other stakeholders have proved to be a significant cause of such results.

A. First round of local elections, held on 25 October

During the Election Day on 25 October, ENEMO deployed 50 Long Term observers and 180 Short Term observers that monitored the opening of 93 PECs, voting in over 1211 PECs and closing of 93 PECs.

ENEMO observes noted that 88,2 percent of the monitored polling stations opened on time while 9,7 percent opened within 15 minutes delay. Only 2,2 percent of polling stations opened after more than 15 minutes of delay. The overall evaluation of PECs was rated as very good in 44,1 percent of cases, while 49,5 percent of commissions' work was considered good. However, the activity of 2,2percent of PECs was marked as very bad by ENEMO observers. A number of PECs did not have all the necessary election materials, but the minimum to complete their tasks. (ballot boxes, polling booths).

In addition, ENEMO observers reported that PECs generally conducted opening in order and according to the procedures in 89,2 percent of cases and in 5,4 percent of cases PECs have failed to follow all legal procedures. Despite the general positive assessment of the opening process, ENEMO observers also reported several cases of breaching the opening procedures mainly by improper sealing of the ballot boxes, failure to insert control sheets, or the failure to properly fill in the opening protocol.

The positive activity of the PECs was reflected by the fact that 96,8 percent of commissions did not receive a single complaint regarding their work. Observers also noted several cases where the number of ballots received by PECs was less than the number of voters on the lists.

The voting process was rated as good and very good in 95,9 percent of the PECs observed. ENEMO observers also positively appreciated the conduct of the PEC commissioners, describing the work of PECs as appropriate in 99,3 percent of cases. In addition, 95,8 percent of reports considered that the secrecy of the voting was met during the electoral process, but recommended that the law should prescribe folding of ballots as obligatory for all voters.

Despite the positives, a number of shortcomings and irregularities were also reported during the Election Day, such as improper sealing of ballot boxes, improper filling of protocols, casting of ballots in wrong boxes, crowded and disorganized precincts, improper issuing of ballots to voters, family voting, violations of the secrecy of voting and campaigning around the precincts.

In PEC 321260, Kiev Oblast party representatives of Batkivshchyna recorded the entire voting process. In addition, ENEMO observers reported on a number of cases in which voters took a photo of their ballot paper before casting the ballot.

In PEC 702, Kiev Oblast the number of ballots for city council elections did not match the number of the control sheets. In Kherson oblast, ballots from two polling stations (№50624 and №20625 respectively), located in different electoral districts and having different candidate lists were mixed up. PEC commissioners remained unaware of this problem for a while and as a result, over 150 voters casted their votes for a different district. The process was stopped and the case was referred to the higher level commissions. In PEC 181389 that belongs to Zhytomir Oblast all ballot papers were printed wrongly.

Also in relation to voters list, commissioners in Belgorod Dnestrovskii Raion, Odessa oblast, denied voting to voters whom they considered were illegally registered prior to the Election Day.

The closing and counting procedures were rated as good and very good by 89,2 percent of ENEMO observers. However, 10,8 percent of reports marked the closing and counting process as bad. While the transparency of the process was unanimously appreciated by ENEMO observers, 16,9 percent of reports noted that commissioners significantly deviated from prescribed counting procedures. In PEC 1104, Zaporizhia oblast, 50 ballots were found missing during counting. The appropriate TEC and the police were immediately notified.

B. Second round of local elections, held on 15 November

During the observation of PECs on 15 November election day, ENEMO observers found that most PECs opened on time, whereas just 1,5% of them opened within 15 minutes delay. This represents an improvement compared to the first round of elections held on 25 October, when 88,2% of the monitored polling stations opened on time, 9,7% opened within the next 15 minutes and 2,2% of all PECs opened after more than 15 minutes delay.

Overall, ENEMO observers rated the activity of PECs during the opening as either good or very good. Such ratings represent a positive development compared to the first round of elections, when the activity of 2,2% of PECs was considered very bad by ENEMO observers.

PECs generally conducted the opening in order and according to legal procedures in 97% of monitored cases, a fact reflected by the lack of substantial complaints related to their activities. This is an increase from the first round when 89,2% of the monitored PECs followed all prescribed procedures.

At the same time 1% of observed PECs did breach opening procedures in various ways. Most common violations of such procedures were cases of improper sealing of ballot boxes, failure to insert control sheets, or the failure to properly fill in the opening protocol – all being reported problems in the first round of elections as well.

Unlike in the first round when commissions received fewer ballots than the number of registered voters in many PECs, during this round this problem was generally solved, with only a few instances of mismatch still reported.

ENEMO observers rated the organization of the voting process of PECs as good and very good in 98,9% of cases, a slight improvement compared to the first round (95,8%). The conduct of the PEC commissioners was highly commended by ENEMO observers in 99% of cases. However, reports also noted that in some cases commissioners did not receive proper training and were not fully aware of the procedures.

Voting procedures were implemented without any substantial complaints and generally all PEC commissioners were present. The process of issuing the ballots was transparent and the secrecy of voting was ensured in almost 100% of cases observed by ENEMO. The set up of precincts was in 97,2% of cases in line with legal requirements.

At the same time, however, 3,5% of visited PECs were reported as crowded and disorganized, but the commissioners seemed capable to cope with such a situation. In few instances (1,4% of visited PEC) there were cases of campaign agitation outside the PECs. Moreover, only about half of PECs (52,7%) displayed full information about voting procedures and candidates.

A number of shortcomings and irregularities were reported during the Election Day, although without significantly disturbing the entire voting process. Such problems were related mainly to improper sealing of stationary and mobile ballot boxes, especially in PECs located in Zaporizhia, Ivano-Frankivsk, Kirovograd and Vinnytsia. Due to lack of funds, PECs were unable to provide the requisite electoral materials, such as seals and posters and as a result, PEC commissioners were forced to improvise. Incorrect protocols, family voting, improper signaling and design of the voting stations and instances of unauthorized people in PECs were also reported.

More significantly, PEC 181353, in Zhytomyr was closed at the time of ENEMO observers' visit. There was no sign that this PEC had ever opened.

At some PECs, representatives of one candidate predominantly manned these commissions, sometimes even exceeding the legal quota. This was the case specifically in Kiev, where representatives of mayoral candidate Vitaliy Klitschko clearly outnumbered those of his competitor.

Instances of citizens taking a photo of their vote continued to be reported, raising again suspicions of vote buying. For example, several such instances were reported in PEC 181429, Zhytomyr oblast. Another incident that raised concerns of vote buying occurred in PEC 741019 at Chernihiv oblast, where 11 voters had a strange white sticker on their ID card.

Another serious case occurred in PEC 531230 at Poltava oblast, where ENEMO observers and commission members witnessed that a voter inserted two ballots into the ballot box. It seemed that the voter managed to get hold of two ballot papers, by bribing two citizens into selling their votes. The police was alerted and an investigation started on the case.

ENEMO observers rated the closing and counting procedures as good and very good in 98,5% of monitored PECs, which is a big improvement compared to the first round of elections, when 88% of visited PECs received such a rating. Moreover, during the first round of elections, ENEMO observers marked the counting procedures as bad in 12% of PECs, as opposed to this round of elections, where such percentage dropped to 1,5%. Nevertheless, 11,8% PECs made slight mistakes during counting procedures, but without distorting the entire process.

ENEMO observers also commended PEC officials for the timely manner in which they finished the counting procedures. While the process of filling in the protocols proved again problematic in some cases, the accuracy of the process was significantly improved.

At PEC 531196 in Poltava oblast, commissioners found out that half of a ballot papers were missing, during the counting. TEC advised PEC members to make a note of this incident and consider ballots as spoiled. At PEC 12139, Dnipropetrovsk oblast, a fake ballot was discovered in the ballot box and commissioners took a photo of it.

Transfer of materials from PECs to TECs was generally conducted in a proper manner and according to legal provisions in 98,5% of the cases observed. The activity of TECs was generally orderly and fully transparent. This was reflected by the fact that 97,6% of TECs received no complaints regarding their work. Overall, the activity of TECs was rated as very good (58,8%) and good (41,2%) by ENEMO observers.

Protocols coming from PECs continued to be affected by mistakes and as a result, TECs ordered corrections in 52,9% of cases. Nonetheless, ENEMO observers reported that TECs demanded a recount of ballots in only five cases, which is a major improvement compared to the first round of elections.

C. Repeated elections held on 29 November in Mariupol and Krasnoarmiysk

For elections on November 29, ENEMO deployed two teams of observers in Mariupol and one team in Krasnoarmiysk to monitor the preparations for and the unfolding of Election Day on November 29 in these cities. In total, ENEMO observers visited 45 polling stations during opening, voting and counting and also reported on the activities of respective city TECs.

ENEMO observers noted that generally the electoral process was orderly, in line with legal provisions and without disruptions.

Despite the lack of proper campaign activities prior to Election Day for reasons described above, the turnout at the time of closing was above the average of the second round of the local elections (over 36%), pointing to the interest of voters in the process.

However, the particularities of the elections held in these areas, in disjunction from the rest of the country, did impact the electoral process. Most notably, the constant changes at the level of TECs and PECs, in some cases just few hours before opening, made the prior training provided by CEC and IFES irrelevant. As a result, the process was slowed down by tentative PEC commissioners worried not to commit mistakes or unsure of the exact procedures. This led to significant delays during opening, as was the case in PEC 141063 in Krasnoarmiysk, where the voting started half an hour later and the opening protocol was filled in secrecy. The precinct appeared to be badly managed and disorganized. In this precinct, four election commissioners were replaced just prior to Election Day and three of them were not present for opening.

In PEC 141060, Krasnoarmiysk, the head of PEC failed to arrive and subsequently the deputy head replaced him. In the other two monitored opening processes, ENEMO observers also reported delays, albeit less than 15 minutes. In PEC 142236, Mariupol, the commissioners rushed through the opening procedures in order to be able to open on time, but this did not affect the overall process.

Just like in the rest of the country, during these elections PECs did not receive proper materials regarding information on voting procedure and candidates. As a result 22 of the monitored polling stations (55%) displayed all requested information and 13 PECs (32,5%) displayed either one or the other. In six visited PECs there was no information available whatsoever (12,5%). In PEC 142315, Mariupol, only the information about one candidate was posted.

ENEMO observers rated the activity of all visited PECs as good (42,5%) and very good (57,5%). Also, the precinct set up and the conduct of the PECs commissioners were highly appreciated by

ENEMO observers in all visited PECs. This finding echoes similar findings in the previous two election days across the country.

The issuing of ballots was done according to legal procedures and the secrecy of voting was respected in all visited PECs. The quality of voters list was also reported as high, even though ENEMO observers received information of about 10 cases of people unable to find their names in the voters list in all monitored PECs.

Minor problems related to the proper filling in of protocols, the proper sealing of ballot boxes and their proper display were also reported.

In PEC 141074, Krasnoarmiysk, a voter was spotted taking a photo of his ballot but the commissioners asked him to delete it. More worryingly, in PEC 141077 Krasnoarmiysk, candidates present in the polling station asked voters to disclose their vote publicly.

In PEC 141079, Krasnoarmiysk, observers from one political party were in the position to direct the entire voting process based on their experience at the expense of the PEC commissioners.

Significantly for these elections, and especially for the provisions of the electoral law, in PEC 141075, Krasnoarmiysk, a voter received a ballot for elections in a different city council district. The voter realized the mistake only after the ballot was casted and subsequently complained to the commission, which acknowledged the mistake.

An unusual situation, potentially pointing to significant irregularities, was reported by ENEMO observers in PEC 141088, Krasnoarmiysk. At the time of counting the number of signatures in the voters' list was 795 while the number of control sheets for issued ballots was 1124 for mayoral elections and 1125 (of which one was spoiled) for the city council elections. After opening the ballot boxes, there were 788 ballots in the box for mayoral elections and 786 in the box for the city council. The difference remained unaccounted for and the PEC commissioners could not explain it. PEC members appeared unable to deal with the situation and started arguing with each other and as a result the situation became chaotic. Finally, the commissioners voted the cancellation of the elections in this PEC and decided to bring the matter to the respective city TEC for a final decision. It is worth noting that the aforementioned PEC received 2092 ballots for the mayoral elections and 2100 for the city council race. In total, 2082 voters were registered on the voters list.

XIII. COMPLAINTS AND APPEALS

Election complaints and appeals are governed by election laws and the Code of Administrative Proceedings. All participants in the electoral process could file a complaint or appeal either to the higher election commission or to the courts. In cases where the complaint was lodged with both the election administration and the judiciary, the election commission suspended consideration of the complaint. The Venice Commission and the OSCE guidelines, however, stressed the need for the election law to set a clear hierarchical appellate procedure for the handling of election-related complaints and appeals, and clarify the overlapping jurisdiction of courts and election commissions' vis-à-vis electoral disputes.⁶²

The Administrative Courts have mostly observed legally prescribed terms where they have considered complaints received before the Election Day within two days but no later than two hours before the beginning of voting⁶³.

As of 6 December 2015 courts received some 7,481 cases featuring election-related disputes, of which 2,215 cases were further appealed. Around 133 appeals were rejected based on a failure to meet the court deadlines and inadequately submitted appeals. Inconsistent application of the law was notable in a number of instances, especially in cases brought during the pre-election period concerning the registration of candidates and voter lists. Despite the fact that the law does not grant IDPs the right to vote, courts on more than five occasions recognized IDP cards as proof of their registration and obliged PECs to register IDPs on the voter list.⁶⁴ On both Election Days, courts received around 90 complaints concerning actions, or omissions by TECs and illegal campaigning, where majority of complaints were upheld.

Courts rejected majority of requests related to invalidating the results, or recognizing the elections as not held, mainly on procedural grounds.⁶⁵ At the same time Courts have not been entirely consistent in the application of the law when adjudicating on the decisions.⁶⁶ There were around 80 requests on second re-count of votes, of which courts upheld 36 cases.⁶⁷ The rest of requests were either found unsubstantiated, or were rejected on procedural grounds. During the

⁶²The Code of Good Practice in Electoral Matters, p.II.3.3.C.c. 89. See also, Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System at p. 14.J (48) "Where a dual complaint and appeals process applies, both institutions should clarify their respective areas of competence and those of the lower level courts and election commission"

⁶³ Article 171 of the Administrative Code of Proceedings of Ukraine.

⁶⁴ There were more than five IDP registration cases among others adjudicated by Kyiv Administrative and Uman District Courts.

⁶⁵ Courts altogether received around 52 complaints including those relating to the invalidation of election results, or requesting that elections be recognized as not held.

⁶⁶ The Kirovograd Administrative Court and Burinsky Administrative Court upheld two cases recognizing elections as not held or invalid. In another case, however, the Gorodissky District Court found the actions of the TEC members as unlawful but did not elaborate on the consequences of its decision.

⁶⁷ Courts have ordered second re-count in Kherson, Kyiv, Zhytomir, Chernigovskiy, Vinnytsia, Cherkassy, Chernivtsi and Poltava oblast.

post-election period, more than 700 complaints were filed on decisions, actions or omissions of election commissions. Most of the complaints were rejected on procedural grounds, or dismissed.

Courts of common jurisdiction adjudicated on 138 election-related cases, mostly related to alleged irregularities related to production, or distribution of printed materials and illegal election campaigning. Administrative offences are punishable by relatively low fines for citizens and public officials.⁶⁸ Council of Europe, however, recommends states to adopt ‘effective and proportionate’ sanctions when it comes to violation of electoral campaigns.⁶⁹

According to data from the Ministry of the Interior, by 30 December 2015 the police received around 8,393 notifications of criminal violations connected to elections, as a result of which 621 criminal proceedings have been initiated.⁷⁰ The majority of these cases concerned attacks on candidates or other participants of the electoral process, falsification of electoral documents or vote-buying. ENEMO observers reported that the Shevchenko District Court in Chernivtsi sentenced three students for vote-buying for a three year prison term suspended by one year probation period.⁷¹

As observed previously, election law and criminal law lacked consistency in provisions related to vote-buying, contrary to international standards.⁷² The Criminal Code of Ukraine criminalizes electoral offences related to obstructing one’s right to vote or right to take part in elections, falsification of electoral documents, and illegal use of vote ballots by a voter, violation of the secrecy of voting, violation of election funding campaign, vote buying and other. Criminal sanctions related to the electoral related offences vary between one to three year prison term, whilst terms for the crimes committed under aggravating circumstances is increased to five years. The Code criminalizes direct vote buying but contains no provisions to sanctioning indirect vote buying.⁷³ The Elections law, however prohibits conduct of the election campaign accompanied by giving money to voters, or other goods except for goods which contain visual images of name and party symbols if value of such good does not exceed five percent of the minimum wage.⁷⁴ It

⁶⁸ E.g. Fine for the production or distribution of printed materials for election campaign that does not contain the information about the establishment that has circulated it varies for officials from ten to thirty for citizens and from fifty to seventy non-taxable minimum for officials.

⁶⁹ “States should require the infringement of rules concerning the [...] and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.” CoE (Committee of Ministers): Recommendation Rec(2003)4 of the Committee of Ministers to Member States on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, art. 16; See also, “[...]sanctions against those who infringe the provisions of the electoral law are implicitly required in any effective system of implementation.” IPU: Free and Fair Elections: International Law and Practice, p. 158.

⁷⁰ Letter from the Ministry of Interior received on 24 December 2015.

⁷¹ Decision of the Shevchenko District Court of 9 November 2015. Case no727/8656/15-к .

⁷² Under the Criminal Code, the pre-election campaigning by means of providing enterprises, establishments, or organizations with illegal benefits is sanctioned if the value exceeds three percent of the minimum wage. Election law sanctions conduct of election campaigning accompanied by giving money and other goods to voters if the value of such goods does not exceed five percent of the minimum wage.

⁷³ Indirect vote buying can be sanctioned under Article 212¹⁰ of the Code of Administrative Offences where campaigning in forms and by means, which are inconsistent with the Constitution and Laws of Ukraine or other violation of restriction on conduction of election campaign are punishable by relatively low fines for citizens and public officials.

⁷⁴ Article 60 of the Law on Local Election.

is further observed that election code and criminal code should not have any divergence in provisions ‘to avoid any confusion over legal consequences associated with them’.⁷⁵

The Law on Judicial System and the Status of the Judges defines the legal grounds for organization and administration of justice of Ukraine. It also entitles the Appeal Courts to analyze judicial statistics, study and generalize the judicial practice. The law also provides for the methodological assistance to local courts in applying the relevant legislation.⁷⁶ In a separate provision the law mandates the plenary session of a High Specialized Court – a panel of all judges of a High Specialized Court, to ensure uniform application of provisions of the law in resolving certain categories of cases within the respective judicial specialization and to summarize the practice of substantive and procedural law. The plenary session of the High Specialized Court is convened by the Chairperson of the court as many times as necessary or at the request of at least one fifth of the judges of the high specialized court, but not less than twice a year.⁷⁷

The new law adopted only several months before elections stressed the importance of adequate trainings of judges on election related disputes. Based on the information received by ENEMO, the Kiev Administrative Court of Appeals has organized four workshops on the election related disputes including the matters related to application of the electoral legislation and judicial practice. Whilst workshops were open to all judges, ENEMO learned that not all judges from the regional administrative courts were able to attend the training workshops. ENEMO also understood that the plenary session to study the judicial practice related to elections is usually convened right after the end of the election process.

XIV. RECOMMENDATIONS

A. Proposals for the Parliament, Government, Political Parties, NGOs

ENEMO acknowledges improvement of legal framework adopted in recent years, as a part of electoral reform that incorporated a number of recommendations previously made, including the new law on local elections. However, there is a further need to continue a transparent and inclusive electoral reform, with participation of various stakeholders, including experts and civil society to provide for improved electoral legislation and harmonized with all international standards. ENEMO strongly recommends the Unification of all electoral legislation under one election code for all future elections.

⁷⁵ Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System. K.51 at p.15.

⁷⁶ The Law on Judicial Systems and Status of the Judges. Article 27.

⁷⁷ Ibid, Article 36.

If the legislators are still motivated to establish an open list system for local elections, it is necessary to make a number of changes in electoral system design. The simple option would be to introduce open ballot system⁷⁸ within the current PR list system. The voter should be allowed to cast one preferential vote for a candidate within the party list. Preferential vote should be obligatory. Vote casted for a candidate is also a vote casted for this candidate's party list. The sum of votes casted for candidates of one party list represents the overall result of that party list. Seats between party lists should be allocated by using one of the methods of a highest average, preferably the Sainte-Laguë method. Seats gained by the party list should be allocated to candidates who received the highest number of preferential votes.

The election districts, as well as their size and boundaries should be established in a more professional and transparent way and be clear before the start of the election process. Legal provisions should be changed in a way to ensure a higher equality of size of election districts, with a maximum level of deviation per each district, whereas such an important task should be conducted, or reviewed on a national level, rather than a regional/local level by TECs in order to avoid, or reduce the possibilities of gerrymandering .

The legal framework should endeavor to ensure female candidates are adequately represented in electoral office through stricter enforcement mechanisms both at the parliamentary and local level.

The new Law on local elections should be harmonized with recent legislation regarding the financing of political parties/campaigns and increase the overall transparency and accountability in this segment. The electorate needs to be fully informed about campaign financing sources and amounts of each candidate before and after elections. It should be clear as to which institution is in charge of overseeing and monitoring the respect of legal provisions regarding the financing of political campaigns, whereas such institution should be independent, professional and able to impose adequate sanctions on those that violate the newly adopted regulations.

The lawmakers should consider providing of adequate financial support from state/local funds for all candidates/parties running for elections in order to increase the equality of access to political campaigning for all its contestants. At the same time, the law should include the return of the deposit funds, at least to those contestants that pass the threshold, or receive a sufficient level of support from the electorate.

ENEMO would like once more to recommend professionalization of election administration bodies at all levels, starting from the CEC, over all TEC levels and down to PECs. Even though CEC is a professional body, due to a large size of Ukraine as a country, lawmakers and CEC should consider opening at least regional offices of CEC in order to increase the overall

⁷⁸ To learn more about this system, please refer to an electoral system used for Parliamentary elections in Finland.

efficiency in communication and coordination of activities between CEC and lower level TECs, at least during the election period. Also, considering the numerous issues related to TEC compositions and conduct in these elections, lawmakers should consider establishing professional territorial commissions, at least on an Oblast level, which would be comprised of independent experts and possibly overseen by electoral contestants during elections. Otherwise, the law should reduce the possibilities of TEC and PEC members' replacements during elections by political parties/candidates, at least after a specific date before Election Day. Along the lines ENEMO recommends lowering the number of PEC members in both rounds of elections.

The law and CEC should consider changing the procedures of ballot printing, storing and dissemination, possibly by printing all ballots on a national/regional level and introducing adequate safeguard mechanisms for the ballots to reduce possibilities of potential forgery and other abuses. The procedure for selecting an adequate printing company should be established either by Law, or by CEC regulations in order to avoid several scenarios from these elections and increase the overall trust of the public in the electoral process.

B. Proposals for the CEC

Given the large authorities of TECs in these elections, including the creation of electoral districts, registration of candidates, printing of ballots, dealing with appeals and complaints, tabulation of election results, creation of PECs, etc, ENEMO believes that continuous trainings, along with adequate professionalization of the composition of TECs is highly necessary for future elections.

CEC should develop efficient template forms for registration of candidates running in elections, in order to minimize the possibility for mistakes, misinterpretations and/or technical errors made by candidates.

At the same time, lower level TECs should create a data base of experienced commissioners that would be hired for elections when needed, thus making the overall procedure of establishing PEC compositions more legal and efficient. This could be done through a certification process for PEC members that would undergo regular trainings. This would ensure that a competent workforce is available at any point in time for the organization of the elections.

C. Proposals to the Prosecution and Courts

ENEMO recommends to lawmakers to eliminate the existing gaps and inconsistencies between different laws and thus reduce the scope for non-uniform application of the laws. Courts should further refrain from delivering inconsistent decisions and should adjudicate on similar cases in alike fashion. Consideration could be given to studying and generalizing election law prior to

elections, as a safeguard against inconsistent application of the law. ENEMO also recommends that some procedural arrangements might be made in higher courts so that electoral disputes are decided by the same panel that would be additionally trained in election related matters and disputes.

The criminal and misdemeanor cases opened in relation to electoral offenses during these local elections should be professionally investigated and persons responsible should be adequately sanctioned, in line with the legal provisions.

All relevant national authorities should increase their efforts in monitoring, preventing and sanctioning every abuse of state resources during electoral campaigns, including the abuse of office, indirect vote buying and pressuring of voters, illegal use of public buildings and equipment and similar offences.

D. Proposals regarding Media

The law should provide for a certain amount of free air time for parties or candidates during the electoral campaign, in order to give the possibility even to candidates with less resources to communicate their message to the electors.

There is a need to transform National Television and Radio Broadcasting Council (NTRBC) to become a professional and independent media regulatory body that would oversee the conduct of media and guarantee compliance with international standards and the requirements of the election laws related to media in providing impartial information and conducting of election campaign. Also, law needs to change in a way to provide for all media-related complaints and violations to be dealt with timely and with adequate remedy, as the sanctions should be proportionate to the gravity of violations.

If NTRBC is not to be transformed, then another institution should be in charge of monitoring media conduct during election campaigns and this change should be clearly defined in the law (perhaps even a body within the CEC). This body should be provided with sufficient technical, methodological and financial means to be able to properly monitor the very diverse media landscape of Ukraine and, especially, vested with the power to impose efficient sanctions against media that violate the legal provisions. Media monitoring reports of this body, related to elections should be presented to the public regularly and available on its website. Also, lawmakers and/or NTRBC should consider introducing precise regulation regarding the conduct, as well as monitoring of printed media outlets as well. Even though there are no concrete international standards related to the code of conduct of internet media (political blogs, party and candidate websites, on-line media, social networks, etc.) some countries have already developed certain

mechanisms of control that could be considered by Ukraine's authorities, at least in the long run, especially due to a rising influence and use of such media in Ukraine and worldwide.

XV. MISSION INFORMATION AND ACKNOWLEDGEMENTS

The European Network of Election Monitoring Organizations (ENEMO) is an international network consisting of 22 leading election monitoring organizations from 18 countries of Central and Eastern Europe and Central Asia, including three European Union countries. To date, ENEMO has organized 21 international election observation missions to seven countries; the EOM for the Local Elections 2015 was the 10th election observation mission to Ukraine. ENEMO member organizations have monitored more than 200 domestic elections and trained more than 200,000 observers.

ENEMO seeks to support the international community's interest in promoting democracy in the region by assessing electoral processes and the political environment and offering accurate and impartial observation reports. ENEMO's international observation missions use international benchmarks and standards for democratic elections and the host country's legal framework to evaluate the electoral process.

The ENEMO Election Observation Mission for the Local Elections of 25 October 2015 in Ukraine has started its activity with the deployment of the Core Team, composed of 8 experts, in Kyiv. 50 long term observers were additionally deployed across the country to assess the pre-electoral period, Election Day, run-off elections, counting and tabulation of results and the post-electoral process, including complaints and appeals. 180 short term observers were deployed in teams of two throughout the country to observe Election Day on 25 October and 90 for the second round on 15 November. Additionally, two teams of long term observers have monitored the elections and the post-electoral period in Mariupol and Krasnoarmiysk on 29 November.

This report is based on observations of the long-term and short-term observers and their findings in reference to compliance with international standards for democratic elections, national legislative framework and OSCE commitments.

ENEMO Mission wishes to express its appreciation to the Central Election Commission for their cooperation and assistance in the course of the observation. ENEMO also takes this opportunity to express the highest acknowledgements to the European Union for the support of the election monitoring mission.