

Report from the Observation of the Parliamentary Elections in Ukraine 31 March 2002



This report is based on the observation of the parliamentary elections in Ukraine 31 March 2002. The conclusions of the report are based on election day observations as well as information gathered in Ukraine from international observers, local NGO representatives and local media prior to and after the elections.

The Norwegian Helsinki Committee would like to thank the OSCE/ODIHR Observer Mission to Ukraine, which provided invaluable assistance and background information. We would also like to thank the Norwegian Ministry of Foreign Affairs, which sponsors the Norwegian Helsinki Committee's election monitoring.

This report is written by Helge Blakkisrud and Tomasz Wacko.

Oslo, 8 May 2002

Bjørn Engesland
Secretary General

1. Executive Summary

These were the third multiparty parliamentary elections in Ukraine since independence was declared in 1991. In general the Ukrainian Constitution of 1996 and the Election Law (On Elections of People's Deputies of Ukraine, adopted in October 2001 and amended in February 2002) encompass internationally accepted standards for democratic elections. The legal framework is thus satisfactory.

During the pre-election period, fundamental freedoms were generally respected and the candidates were able to express their views. Election day procedures were carried out in an orderly manner and without major irregularities (although minor violations such as open voting and family voting occurred in most of the polling stations visited by the two teams). There were few signs of overt pressure on the voters. The elections thus signified a step towards implementation of international standards and recommendations.

There were, however, a number of problematic issues, most importantly the use of "administrative resources" to influence the vote. Another problem was the media campaign. Despite the fact that candidates were given access to state media, the overall coverage of the campaign was not very balanced with a strong bias towards political forces associated with President Leonid Kuchma.

In general it is the impression of the Norwegian Helsinki Committee observers that the present parliamentary elections marked an improvement compared to the previous elections we have observed in Ukraine. The Norwegian Helsinki Committee would nevertheless encourage Ukrainian authorities to take steps to facilitate the secrecy of voting, to prevent intimidation of voters, to improve the quality of the voters' registers, to amend the procedures for deregistration of candidates, to introduce legislation to prevent the use of administrative resources in the election campaign and to ensure less biased coverage of the campaign in state media.

2. Introduction

The observer delegation from the Norwegian Helsinki Committee consisted of Helge Blakkisrud and Tomasz Wacko and was sent as a response to an invitation from the government of the Republic of Ukraine to the participating states of the Organisation for Security and Co-operation in Europe (OSCE).

The observers were part of the international delegation of the OSCE Office for Democratic Institutions and Human Rights Observer Mission (OSCE/ODIHR) to Ukraine, led by Ambassador Michael G. Wygant. The Mission co-ordinated the deployment of 38 experts and long term observers (LTOs) and almost 400 short term observers (STOs) including observers from OSCE Parliamentary Assembly, the Council of Europe and the European Parliament.

The Norwegian Helsinki Committee also sent observers to the two previous parliamentary elections in Ukraine (in March 1994 and March 1998).

3. Method and Organisation of the Election Observation

The observers followed the procedures outlined in the *OSCE/ODIHR Election Observation Handbook*. The handbook provides guidelines for the preparation, monitoring and reporting phases of election observation missions.

The Norwegian Helsinki Committee delegation arrived in Ukraine on Tuesday 26 March and left on Tuesday 2 April. The election law and other relevant material were available before the day of departure and gave us a general idea of the electoral procedures. Further information was provided by the OSCE/ODIHR delegation, which held a joint briefing prior to the elections. During the briefing in Kyiv, the STOs were provided with relevant preparatory

material and checklists. In addition, the STOs got a briefing on the regional situation from OSCE/ODIHR regional coordinators/LTOs. The LTOs also conducted the debriefing after the elections.

Prior to election day the delegation from the Norwegian Helsinki Committee had meetings with representatives from the Ukrainian Helsinki Committee, Freedom House and Charter 4 as well as with the Norwegian Embassy in Kyiv to get an overview of the electoral process and the political climate.

On election day the international observers were split into teams of two and deployed across Ukraine to observe the voting and counting processes at a representative sample of sites. The observers from the Norwegian Helsinki Committee were deployed as follows:

- Tomasz Wacko in district no. 125, Sokal, in a team together with Jennifer Chase (USA), and
- Helge Blakkisrud in district no. 224 and 225, both in the city Sevastopol, in a team together with Joseph T. Procak Jr (USA).

The two teams visited a total of 24 polling stations during opening hours on election day and a further two polling stations during the count. In addition the second team was responsible for following the initial aggregation process at District Election Commission (DEC) no. 224. This report summarises the findings of the two observer teams.

We realise that the sample of polling stations, the limited geographical coverage and the short duration of the observation make it difficult to draw general conclusions about the conduct of the poll. We still believe that the conclusions of this report reflect not only the impressions of the Norwegian Helsinki Committee but also the general consensus among the international observers.

4. Political Background

Ukraine has recently celebrated 10 years of independent statehood. In the wake of the abortive August Coup in Moscow, in which a group of hardliners tried to prevent a weakening of the Soviet union structure, Ukraine declared independence 24 August 1991. This move was later confirmed in a referendum in December 1991, in which some 90 % of the voters supported the declaration of independence.

After independence Ukraine, as most other post-Soviet states, adopted a presidential system with a strong executive. The president, who is elected directly by the people, is the head of state. He appoints the government (the parliament only has to approve the prime minister's candidacy), the heads of regional administrations (who report directly to the president), and the heads of a number of other state structures (the Prosecutor General, the head of the security service, etc.).

In December 1991, parallel to the above-mentioned referendum, former Ukrainian Communist Party ideologue and Chairman of the Supreme Soviet, Leonid Kravchuk, became Ukraine's first popularly elected president. In 1994 he was succeeded by former Prime Minister (1992–93) Leonid Kuchma. The latter, who was re-elected for a new 5 years period in 1999, has been advocating increased presidential powers. This was partly achieved with the adoption of the new constitution in 1996 and the president's powers can be further extended as a result of the outcome of a controversial constitutional referendum in 2000. The out-going parliament did not, however, adopt the results of this referendum into legislation.

The parliament, the Verkhovna Rada, is the supreme legislative power in Ukraine. The parliament has 450 members: 225 allocated by proportional representation on the basis of party lists and 225 on first-past-the post voting in single mandate constituencies. Due to the imbalance of power between the executive and legislative branch, however, the parliament has played a relatively minor role in Ukrainian politics. Its role has been further undermined by the lack of a stable party system and the constantly shifting alliances within the parliament.

In the 1998 elections eight parties passed the 4 % threshold for representation and subsequently eight factions were established. Before the next election, their number had risen to 12, but in the meantime six factions had been disbanded.

The president has proposed to reduce the number of parliamentarians from 450 to 300, eliminate the parliamentarians immunity, create a bicameral legislature and allow the president to dissolve the body more easily (all suggestions put forward in connection with the 2000 constitutional referendum). As mentioned above, the parliament has refused to adopt the pertinent legislation.

In the current elections 33 parties and blocks were registered to participate. According to most opinion polls published during the election campaign, however, only eight parties, of which four were pro-Kuchma, were likely to pass the 4 % barrier. The four pro-Kuchma parties were For a United Ukraine, the Social Democratic Party of Ukraine – United, Women for the Future and the Green Party. The most important opposition parties were considered to be the Yuila Tymoshenko Bloc and the Socialist Party of Ukraine. The two potentially largest parties outside the pro-presidential group were nevertheless the Communist Party and the centre-right For a United Ukraine (the latter led by former Prime Minister Viktor Yushenko), both of which declined to define themselves as pro- or anti-Kuchma.

In the single mandate constituencies 1,690 party or coalition nominated candidates and 1,754 independent candidates were initially registered. Of the 450 members of the out-going parliament 403 ran for re-election, either on party lists or in the single mandate constituencies. In the weeks leading up to the elections, however, were de-registered due to irregularities (mostly due to inconsistencies in their income declarations).

The current elections took place against an economically and politically problematic backdrop. Ukraine has struggled to overcome its Soviet economic heritage. Although economic grievances was one of the reasons why many Ukrainians wanted to break loose from the union (Ukraine was perceived as subsidising other parts of the union), the disintegration of the Soviet economic space and the gradual introduction of market mechanisms caused great problems. In the early 1990s Ukraine experienced hyperinflation and a sharp drop in output (in 1999 the total output was less than 40 % of the 1991 level). In addition Ukraine's dependence on imported energy, especially natural gas (some 85 % of the required energy has to be imported), made the economy very vulnerable to price fluctuations on the international energy market.

During Kuchma's first term as president relative economic stability was realised with inflation falling to 10-15 % annually. In September 1996 the new national currency, *hryvnia*, was finally introduced. Ukraine was however hard hit by the collapse of the Russian rouble in August 1997, which led to the hryvnia loosing 50 % of its pre-crisis value. Under the Yushenko government (2000) Ukraine saw the first increase in GDP since independence. The lack of a consistent and coherent reform policy nevertheless threatens to undermine a more long-term positive trend. Moreover the development over the last decade have created an ever increasing gulf between those who have been able to benefit from the economic transition and the large share of the population living on incomes below the official poverty line.

Politically Ukraine has been shaken by several political scandals over the last 1,5 years, commencing with the accusations put forward in November 2000 by Oleksandr Moroz, a former speaker of the parliament. Moroz claimed to be in possession of audiotapes implicating President Kuchma and senior figures in the presidential administration in the disappearance and subsequent killing of journalist Georgiy Gongadze. The tapes scandal provoked political unrest and demonstrations with repercussions in the political elite. In January 2001, Kuchma fired the highly profiled oligarch-turned politician Yulia Tymoshenko from the Yushenko government (she was then Deputy Prime Minister for Energy). Tymoshenko subsequently became a leader of the opposition and the anti-Kuchma movement. Three months later the reformist Viktor Yushenko was replaced as prime minister by President Kuchma's close ally Anatoliy Kinakh.

5. The Electoral System

This section summarises the electoral procedures as regulated by the newly adopted Law of Ukraine on Elections of People's Deputies of Ukraine, signed by the President of Ukraine 18 October 2001 and amended in February 2002.

5.1 Basic principles

The 450 members of the Verkhovna Rada are elected for a four-year term by universal, equal, direct, secret and free suffrage. All citizens of the Republic of Ukraine who are over 18 years of age on election day have the right to vote, except persons who are recognised as incompetent by a court. The candidates must be over 21 years of age and must have resided in Ukraine for at least the last five years prior to the elections.

5.2 Distribution of seats in the parliament

The electoral system in Ukraine is a mixed type based on both proportional representation and a majoritarian system. Of the 450 seats in the Verkhovna Rada 225 are allocated for proportional representation and filled by candidates elected on the nation-wide party lists. The proportional mandates are distributed among the parties and blocs that receive more than 4 % of all valid votes polled. The remaining 225 deputies are elected in single mandate constituencies. These candidates are considered elected if they have received the highest number of valid votes, although not necessarily a majority of the votes cast.

5.3 Electoral bodies

The Central Electoral Commission (CEC) is the supreme electoral body, responsible for the conduct of the elections to the Verkhovna Rada. The CEC is responsible for the national aggregation and publishing of results. The CEC consists of 15 members who are proposed by the President and approved by vote of the Verkhovna Rada. The members themselves appoint a chairman, a deputy chairman and a secretary. All political parties and electoral blocs of parties whose candidate lists are registered for participation in the elections have right to send one representative to the CEC as a delegate with the right of a deliberative voice in its sessions.

The District Electoral Commissions (DECs) are responsible for supervising the polling station commissions and organising the elections in the constituencies. The DECs are also responsible for publishing the constituency election results. The DECs are formed by the Central Electoral Commission upon nomination of candidates by political parties or blocks. The DECs consist of a chairman, a deputy, a secretary and not less than 8 members-representatives of political parties or electoral blocs of parties. There are 225 DECs in Ukraine.

The Polling Station Commissions (PSCs) are responsible for the practical arrangements in polling stations on election day, the compilation of the lists of voters at the polling station and the counting of ballot papers. The PSCs are formed by the DECs on the basis of applications submitted by political parties and candidates. The PSCs consist of a chairman, a deputy and a secretary and have not less than 8 members. Separate polling stations may be organised in hospitals, sanatoriums and other places of temporary residence of voters. The electoral authorities established a total of 32,966 polling stations for the current parliamentary elections.

5.4 Nominations of candidates

The political parties and electoral blocs nominate one list of candidates each for the proportional elections. Candidates in the single mandate elections are nominated by political parties and electoral blocs or by citizens as independent candidates. A candidate may be nominated only in one party list and only in one single mandate constituency.

5.5 Election campaign

According to the electoral law, all candidates, political parties and electoral blocs have the right to participate in the election campaign on an equal basis. Candidates may publish their programmes and express their opinion freely at meetings, conferences and in mass media. All candidates, political parties and blocs shall have equal access to all the sources of information that they need during the election campaign. The Central Election Commission and District Election Commissions cover costs of printing pre-election posters and the candidates' programmes in official newspapers, for air time on radio and television and for usage of premises for the conduct of meetings organised by electoral commissions. Additional commercial coverage, paid by candidates, political parties and electoral blocs is also allowed. Campaign activities are prohibited on the day of elections.

5.6 Polling station activities

Polling stations are open from 08.00 a.m. to 20.00 p.m. on election day. Before voting, the voter must provide a personal identification document. The voter then signs in the space next to his or her name in the voters register and is supplied with two ballots, one for the single-mandate constituency and another for the proportional election constituency. Voting shall take place in secrecy and the voters shall complete the ballot inside the booths. No voting is permitted outside of the polling station. Voting on behalf of other persons is not allowed. After completing the ballots the voter shall personally put them in the ballot box. The electoral commission must bring mobile ballot boxes to voters who are unable to come to the polling stations. The counting of votes takes place in the polling station and shall commence immediately after the closing of the polling station. When the counting is completed, the electoral commission shall prepare a protocol in three copies, and then deliver this with all electoral documents to the District Election Commission.

6. Observations and Assessment of the Elections

6.1 The electoral system

The Norwegian Helsinki Committee considers the Ukrainian electoral system and the recently adopted election law to generally meet international standards for free and fair elections. The electoral system provides a legal framework that on principle ensures the citizens' rights to vote freely and provides for a non-discriminatory pre-election period. However, these principles were not always adhered to, especially during the pre-election period.

6.2 The campaign and pre-election period

We did not observe the pre-election period directly. Our assessment of the campaign is therefore based on secondary sources, in particular background information and reports provided by the OSCE/ODIHR.

The campaign

During the election campaign there were several reports of alleged intimidation and harassment against candidates and voters as well as isolated cases of politically motivated violence. There were several reports of alleged intimidation and harassment against candidates and voters as well as isolated cases of politically motivated violence. The campaign was also marred by two murders (the first, on a PSC chairman, was apparently not election related, whereas the second, on a candidate from the Social Democratic Party of Ukraine – United, was).

Still some observers claim that the current campaign was the dirtiest ever. Not because of the temperature in the public campaign, but in the sense that administrative resources were decisive in determining the outcome. According to one independent observer we met, "everything was resolved at the top level in advance" and as a result on the face of it the campaign and the elections proceeded peacefully without excesses.

The Media

Compared to the preceding campaigns, the current campaign was characterised by better access for candidates, parties and election blocs through TV debates, free air time and paid advertising. Nevertheless the media did not play a neutral role. Both state and private media promoted some parties while being negatively biased towards others. Of special concern is the fact that state-funded television gave disproportionate coverage to the pro-presidential candidates.

6.3 Election day

On election day we visited all together 24 polling stations in district no. 125 Sokal, district no. 224 Sevastopol and district no. 225 Sevastopol. The polling stations were located in urban as well as rural areas. We observed the opening of two polling stations, the voting throughout the day and the closing of two polling stations. In the two latter polling stations we also witnessed the counting of votes and the subsequent preparation of the polling station protocols. Moreover, the Sevastopol team followed the initial aggregation of the results at DEC no. 224.

Our general impression is that the election committees were competent. Despite the fact that the new election legislation requirements meant that a large number of election committee members did not have previous experience they carried out their duties in a satisfactory manner. We observed no attempts at overt manipulating the results or instances of violence or intimidation of voters. There were, however, smaller irregularities observed in a number of polling stations:

Crowding and congestion

The polling stations were not always well organised. Most problems occurred during peak hours of voting, when the polling stations were generally congested and chaotic. There was no queue control; voters were simply allowed to enter the polling stations regardless of how many voters were already inside.

Secrecy of voting and protection against intimidation

In most of the polling stations visited family voting and open voting were observed. In many cases more than one voter was allowed into a booth at a time. Particularly during peak hours of voting, when the polling stations were crowded, voters filled in the ballots everywhere in the polling stations and not only inside the booths. These problems meant that secrecy of voting was not adequately secured. It was also difficult to make sure that the assistance the voters gave each other did not amount to intimidation of voters.

Local and regional elections

In addition to the parliamentary elections, several local elections took place simultaneously. In some constituencies as many as six different elections took place at once. For the voters this meant that many different ballots had to be completed, some of which were very large and cumbersome to handle. This added to the crowding in the polling stations, because the voting process took a long time. Furthermore it was difficult for some voters to complete the large stack of ballots inside the booths and this led to open voting. Finally, due to the fact that the process was quite complicated, voters would consult each other and fill in ballots together.

Voters' registers

The single largest problem during election day was clearly the inaccuracy of the voters' registers. In all polling stations visited by the observer team in district no. 125 Sokal there were instances of people having been refused to vote because of not being registered in the voters' register (the problem seemed less widespread in district no. 224 and 225). We ran into several cases where a person had been registered to vote in the same constituency for the preceding elections, but now for some unknown reason did not appear in the register. Although a person could turn to the court for getting registered on election day, it is clear that

many people did not make use of this opportunity after being turned away at the polling station.

Despite these problems/shortcomings, we would nevertheless also like to highlight some positive developments:

Candidate proxies/ domestic non-partisan observers

Current legislation does not provide for domestic non-partisan observers to take part in the parliamentary elections. As regards local elections, however, domestic observers are allowed to monitor the electoral process, and several NGOs made use of this "loophole" to observe the parliamentary elections. In addition candidate and party proxies observed the electoral process. In all polling stations visited there were a large number of proxies present. In some cases as many as 10-15 observers monitored the voting in a single polling station. This contributed to safeguarding against fraud and manipulation, both during voting and the count. Most of the observers we interviewed were satisfied with the conduct of the elections and did not report major irregularities.

Proxy voting

Another positive development was that we did not observe any instances of proxy voting. In the 1994 election we observed many instances where people were allowed to vote on behalf of others who did not turn up at the polling stations themselves. This practice has been virtually eliminated, and the electoral administration should be commended for its efforts to root out the problem.

Voting in prisons

We observed the voting in one prison-district no.125-Sokal. The voting was well organised and orderly. Many people in the prison were satisfied that also prisoners were allowed to take part in the democratic rule of their country.

6.4 The count and aggregation of results

The counting of votes was carried out without major problems in the two polling stations where we stayed to observe this process. Due to the large number of ballot papers that had to be processed, however, the process was slow. Only a dozen of the regular polling stations had been processed by DEC no. 224 when we had to leave at 06.00 a.m.

According to the official results, six parties and blocs passed the 4 % threshold: Our Ukraine got 23.5 % of the votes cast in the proportional elections, the Communist Party 20.0 %, For a United Ukraine 12.0 %, the Yulia Tymoshenko Bloc 7.2 %, the Socialist Party 6.9 % and the Social Democratic Party of Ukraine – United 6.2 %. Due to the number of independent candidates elected in the single mandate constituencies and representatives who belong to parties that did not pass the threshold for party lists (all together 101 out of 225), the final make up of the parliament is unclear at the time of writing. The six party factions apparently control approximately the following number of seats:

For a United Ukraine:	119
Our Ukraine:	113
The Communist Party:	66
The Yulia Tymoshenko Bloc:	23
The Socialist Party of Ukraine:	23
The Social Democratic Party of Ukraine – United:	17

7. Conclusions and Recommendations

The overall impression from these elections is rather mixed. Generally, the elections took place in a peaceful atmosphere and the organisation was in most cases satisfactory. However, the regional variations were great, and there were instances of irregularities both in the pre-election period and on election day.

The problems witnessed on election day were to some extent due to the complex process of conducting many elections at the same time. However, they were also caused by unclear procedures (e.g. the lack of a final deadline for deregistration of candidates) and to some extent by the inadequate training of the polling station committees (a result of the high turnover in staff due to the new procedures for forming PSCs). We are of the opinion that the Ukrainian authorities should consider taking measures to address the following issues:

- **Secrecy of voting:** In order to ensure the secrecy of voting, family voting and open voting should not be allowed to take place. Polling station committees should be instructed not to let more people into the polling stations than they are able to process and they should make sure that the voters fill in the ballots inside the booths.
- **Intimidation of voters:** Although we did not feel that overt intimidation was a large problem in these elections, congested polling stations where people are in effect forced to vote outside the booths may facilitate intimidation.
- **Voters' registers:** The lack of accurate voters' registers may undermine public confidence in the electoral process. Ukrainian authorities should therefore give priority to establishing mechanisms for ensuring more accurate voters' registers for future elections.
- **Registration of candidates:** The continued de-registration of candidates up until the very start of the vote also contribute to undermining the legitimacy of the elections. The procedures for de-registration seemed to be vague and without apparent legal deadlines. An illustrative, although extreme case is the one of Leonid Hrach, Speaker of the Crimean Supreme Council, who was de-registered but still ran for elections, got the most votes in his constituency and then subsequently was "re-registered" by the Ukrainian Supreme Court almost three weeks *after* the elections had taken place! There ought to be a set, final deadline for when candidates could be de-registered, a deadline which would give due possibility to try the de-registration in the courts. Likewise, there ought to be a deadline for when the ballot papers should be finalised, a deadline beyond which there would not be possible to further change the composition of the ballot paper.
- **Administrative resources:** The continued abuse of administrative resources to influence the electoral outcome was one of the most worrying aspects of the current campaign. The failure of the state administration at all levels to create equal conditions for all participants in the elections and the misuse of state property in favour of pro-presidential candidates must be addressed. Such practices seriously undermine Ukraine's transition to a full-fledged democracy and must be eliminated
- **Media campaign:** Despite the fact that all candidates were given access to state media, the overall coverage of the campaign was not very balanced with a strong bias towards political forces associated with President Leonid Kuchma. State authorities should therefore take measures to further improve the media campaign with a special emphasis on the campaign coverage in state media.