

Address: VneshExpo Bldg, 25Turhenivska St., Kyiv 01054, Ukraine
Tel: +38 044 537 79 01/02/03/04
Fax: +38 044 537 79 05
E-mail: reception@eom.org.ua
www.osce.org/odihr

**INTERIM REPORT 5
2 November – 10 November 2004**

I. EXECUTIVE SUMMARY

- On 10 November, the CEC announced that Mr Yushchenko received 39.87% and Mr Yanukovych 39.32% of the votes in the 31st October election. As no candidate received an absolute majority, a second round has been announced for 21 November 2004.
- In some regions, where preliminary results indicated relatively narrow margins between the two leading candidates, a high number of complaints on the voting and counting process were filed, and the tabulation process encountered serious difficulties and delays.
- Following serious problems with the computerised results tabulation system, the Central Election Commission (CEC) decided to abandon the process of announcing unofficial preliminary computerised results. At that time, Mr Yanukovych led Mr Yushchenko by a narrowing margin while Mr Yushchenko protested that the preliminary unofficial results had been manipulated in Mr Yanukovych's favour.
- From discussions between the EOM and CEC members, it appeared that during the process of tabulating Territorial Election Commissions (TECs) results protocols, the CEC modified its records on the number of ballots issued to TECs to coincide with the number of ballots reported as having been received by TECs on their protocols. This raises serious concern for the CEC's ability to securely and accurately regulate ballot production and distribution.
- Almost all TECs visited since Election Day have informed observers that inaccurate voter lists were the main technical shortcoming. The time available to correct deficiencies in the voter lists before the second round is limited.
- The law provides that the campaign period for the second round begins only after the CEC formally calls for a second round to be held. This provision has restricted normal campaign activities. Only very few campaign events have taken place.
- Early preliminary monitoring results indicate that the media coverage of the two front running candidates is less biased than before the 31 October election. The majority of private TV channels are providing the opposition with more airtime. However, the State-funded television *UTI* continues to exhibit bias in favour of Mr Yanukovych and against Mr Yushchenko.
- Complaints have been filed with local courts and courts of appeal challenging the protocols issued by some PSCs and TECs. The EOM is aware of two instances where complaints challenging PSC protocols have been successful in local courts. The results for three entire TECs have been invalidated, but this invalidation is subject to judicial review.

- In general, the main political forces welcomed the IEOM Preliminary Statement of 1 November. The authorities expressed their determination to address the shortcomings identified in the Statement and to continue their assistance to the EOM.¹

II. ELECTION ADMINISTRATION

Tabulation of Election Results at TEC level

After observing the vote count at polling stations, observers travelled to Territorial Election Commissions (TECs) to observe the tabulation of results. The EOM received 120 reports of the tabulation process at TECs on 31 October – 1 November. In some 20% of reports, observers assessed the organisation of the TEC as bad or very bad. Overall, some 12% of observers assessed the conduct of the tabulation of results at the TEC negatively, due to a variety of shortcomings.

In almost half of the TECs visited, Polling Station Commissions (PSCs) were completing or amending their results at the TEC premises. In 13% of reports, at least some election material did not arrive in sealed packages. Observers were not given access to examine PSC results in some 18% of TECs visited. In almost 33% of TECs visited, observers were denied access to observe the entry of data into the computerised tabulation system. A relatively high number of unauthorised persons were present (in 37% of TECs), including police officers and local government officials, with a few interfering in the work of the TEC. In one TEC in Uzhgorod, observers were prevented from entering the TEC by a group of young men, despite the presence close by of the police.

TEC protocols provide an aggregate total of the election results for a particular election district as well as an annex detailing all Polling Station results within the election district. The speed at which TECs finalised their protocols varied between the different regions of the country. In some central regions, where preliminary results indicated relatively narrow margins between the two leading candidates, a high number of complaints on the voting and counting process were filed and the tabulation process encountered serious difficulties and delays.

TEC 100 in Kirovohrad, an area where preliminary results indicated a close election contest, experienced serious problems during the immediate pre-election period, on election day and in the days thereafter. A large number of PSC members were illegally dismissed on the eve of the election. In addition some other PSC members were prevented from serving in polling stations on election day. During the tabulation of results at the TEC, sensitive material was observed being transported to local administration offices. Tabulation was stopped at an early stage because a large number of TEC members were not present.

On 9 November the CEC decided to dismiss the entire TEC membership for failing to carry out its duties, and the day after it also decided to invalidate election results for the entire election district. Before the results were invalidated, preliminary unofficial results gave Mr Yushchenko a lead in this district. Our Ukraine announced it would appeal the decision to invalidate the election result to the Supreme Court.

In one TEC in Sumy region, observers received a report that the results from four PSCs were incorrectly entered in the TEC protocol of results. Observers have documentary evidence in three cases. These results have been changed to Mr Yanukovych's benefit.

¹ Mr Stepan Havrysh, election proxy of Mr Yanukovych, wrote on 8 November 2004 to the Head of the EOM that this Statement "has quite professionally and impartially assessed the election campaign and the first round of elections in a positive manner [...]"

Tabulation and Publication of the Election Results by the CEC

The Election Law does not establish a deadline for TECs and PSCs to complete and submit their results protocols to the CEC. However, the Law does provide that the CEC must determine the official first round election results no later than 10 days after the election (10 November).² These must be published no later than 3 days after the results are determined by the CEC. In its Statement of Preliminary Findings and Conclusions issued on 1 November, the International Election Observation Mission called upon “the CEC to promptly publish all PSC results on its website to enhance the transparency of this vital stage in the process”.³

On 1 November, the CEC began tabulating the official election results on the basis of TEC protocols (election results). During this process, it appears that the CEC modified its records on the number of ballots issued to TECs to coincide with the number of ballots reported as having been received by TECs in their protocols. On 28 October, the EOM wrote to the CEC requesting information on the number of ballots printed and distributed to TECs before election day. However, to date it still has not received this information despite repeated oral requests to CEC officials. It is of the utmost importance that the CEC provides accurate information in a transparent and timely manner on the number of ballots printed and distributed to TECs and PSCs abroad.

Starting on the early morning of 1 November, the CEC began to provide partial, unofficial, aggregate election results on its website on the basis of data sent electronically to the CEC by TECs. However, according to law, the official election results are tabulated by the CEC on the basis of protocols compiled by the 225 Territorial Election Commissions (TEC protocols) as well as the results of voting outside the borders of Ukraine (out-of-country vote).

A number of candidates or their campaign teams complained that the October 31 poll was manipulated, including: Viktor Yushchenko, Yulia Tymoshenko, Oleksandr Moroz and Anatoliy Kinakh. Mr Yushchenko stated that the partial results released by the CEC were “untrue” and alleged that more absentee ballots were cast than issued.⁴ Mr Moroz complained that votes had been stolen from him through “abusing government resources,” and that the results were determined in advance.

The opposition alleged serious irregularities in the CEC’s computerised results tabulation system. At CEC level, problems with the computerised tabulation of preliminary results became evident during a period when the gap between the two candidates was narrowing rapidly. On 2 November, the system stopped adding additional PSC results, with 97.6% of the results processed. At that time, Mr Yanukovich had a narrow lead over Mr Yushchenko. According to the CEC, the stoppage was caused by a technical malfunction. The CEC dismissed the Head of the IT Department and established a working group to investigate the matter. However, although the CEC stated publicly that it did not have knowledge of the architecture of their computer system, it ruled out any chance of fraud. The opposition claimed that the failure to provide complete information on the election results was a ploy to deny Mr Yushchenko the leading position. One week after the election, the opposition announced that according to its own, parallel tabulation of the election results, Mr Yushchenko had received more votes than Mr Yanukovich.

² Regarding the second round (repeat voting), the CEC must determine the results no later than 15 days after the election (6 December).

³ The International Election Observation Mission (IEOM) Preliminary Statement can be found at:
http://www.osce.org/odihr/elections/field_activities/?election=2004ukraine

⁴ While the CEC did announce the number of absentee certificates printed by the CEC, it provided no information on the number issued to voters or on the number of persons who voted using absentee certificates. The law does not require the CEC to reconcile this data.

On 10 October the CEC announced the final official results of the 31 October election. In contrast to unofficial preliminary results, Mr Yushchenko was the leading candidate with 39.87% of the vote to Mr Yanukovich's 39.32%. The only other candidates who scored over 1% were: Mr Moroz (5.81%), Mr Symonenko (4.97%) and Ms Vitrenko (1.53%). According to the final results, the sum of votes cast for the 16 least scoring candidates is less than 500,000; the number of signatures required to register as a candidate. Mr. Nechyporuk, the lowest placed candidate, received only 6,141 votes, almost one hundred times less than the 579,389 signatures which he had submitted to the CEC. Members of TECs and PSCs appointed by all first round candidates retain the right to remain on these bodies for the second round. As only two candidates secured in excess of 7% of the vote, the remaining 22 candidates will each forfeit the UAH 500,000 (approximately Euro 72,000) electoral deposit.

Voter Lists

On the 31 October election day, IEOM observers noted a large number of errors and/or omissions in the voter lists that challenged the principle of universality of the vote. Indeed, a number of voters found that their names did not appear on voter lists, despite their inclusion in previous elections at the same polling station. On election day, an average of 800 voters applied to each TEC to be included in the voter lists or to correct their information, an inordinately high number. Others went to court to receive certificates to enable them to vote. However, some voters omitted from lists did not appeal, for example because the TEC was too far, and were thus unable to vote. Some courts charged voters for the issuance of certificates enabling them to vote, while others did not. Since election day, almost all TECs visited have informed observers that inaccurate voter lists are a significant problem and the issue represents the main technical electoral shortcoming.

EOM observers report that the large majority of TECs were awaiting the CEC's announcement of a second round and instructions from the CEC before taking any action on voter lists issues. However, the TEC's and PSCs will have only seven days to update and make corrections to the voter lists. Producing accurate voter lists would normally require considerably more time. Observers have reported that in the few election districts TECs and local government bodies have already started to update the lists on their own initiative (e.g. at TECs in Zaporizhia, Donetsk and Uzhgorod). However, on 10 November in Donetsk, observers visited one PSC, where persons were working on what appeared to be a typed voter list. When asked if they were members of the PSC, they replied that they were Yanukovich campaign workers and that the PSC would begin its work the next day.

On 3 November, the Prime Minister issued an instruction to government authorities to ensure that correct information concerning the places of citizens' residence is supplied to election commissions during the process of correcting the voter list.

III. RESOLUTION OF ELECTORAL COMPLAINTS

Complaints have been filed with various local courts and courts of appeal challenging some PSC and TEC protocols. The EOM is aware of two instances where complaints challenging PSC protocols have been successful in local courts. The media has reported, but the EOM has not been able to confirm, that two complaints challenging TEC protocols have been successful in courts of appeal – resulting in invalidation of the entire TEC voting results (TECs 200 and 203). The EOM has written to the Supreme Court requesting data on all complaints related to election day, categorised by region. Reports from observers indicate that the majority of complaints submitted on the 31 October election concern inaccuracies in the voter lists.

While the CEC has received some complaints, consideration of these has been delayed due to the CEC's priority of determining the results of the voting in the first round. Thus, the exact number of complaints filed with the CEC concerning election day is not known.

IV. THE CAMPAIGN

The law provides that the campaign period for the second round does not begin until the CEC adopts a resolution calling for the second round. This suggests that campaign activities, including public endorsements of the remaining candidates by any of the 22 unsuccessful first round candidates, are not permitted until a CEC resolution is adopted on the voting results. As the CEC decided to use the full time given to it by law to announce the final election results and the second round, the successful candidates would have only nine days to campaign. This limits the time available to voters to decide on their electoral choices. Furthermore, a restrictive application of the law, could infringe the rights of free expression and assembly.

Notwithstanding the legal provision which appear to restrict campaign activity, a few campaign events have taken place. This led to mutual accusations from both the Yushchenko and Yanukovych campaigns that the other was campaigning illegally. On 5 November, the CEC Chairman Serhii Kivalov warned that the CEC has the authority to withdraw a candidate's registration if found to have campaigned illegally. Overall, observers report very limited campaign activity.

On 1 November, Viktor Yanukovych's electoral proxy announced that he would contest a second round against Viktor Yushchenko. Petro Symonenko, leader of the Communist Party, called on his supporters to vote against both candidates.⁵ On 6 November, the media reported that Oleksandr Moroz, the Socialist Party leader, signed an agreement backing Mr Yushchenko in exchange for Mr Yushchenko's support for constitutional reform, to be enacted before 1 January 2005. The agreement was followed by a well-attended pro-Yushchenko event in Kyiv. On 7 November, the Progressive Socialist Party, led by Nataliya Vitrenko, held a demonstration during which it criticised Mr Yushchenko and other opposition leaders. Ms Vitrenko has publicly announced her support of Mr Yanukovych. On 8 November, Anatoliy Kinakh, former Prime Minister and leader of the Party of Industrialists and Entrepreneurs, announced that he would back Mr Yushchenko in the second round, accusing the authorities of "blatantly violating this basic principle throughout the campaign, the right to vote freely." Mr Omelchenko (Unity) and Mr Chernovetskyi have also publicly backed Mr Yushchenko.

Observers report that at local level, Mr Yanukovych's campaign for the second round will focus on raising the turnout in areas where he enjoys support. Observers received allegations that in Donetsk, campaigning in favour of Mr Yanukovych was happening in the workplace. In Odessa, the Yanukovych campaign team held out the prospect of unfreezing of Soviet era savings accounts. In Dnipropetrovsk, the Yushchenko campaign is encouraging voters to check the voter lists.

The Yanukovych campaign claimed in meetings with the EOM that voters were bribed and intimidated into voting for Mr Yushchenko, and that massive electoral fraud had occurred in the western regions of Ukraine using the identity documents of Ukrainians resident abroad. However, at local level, observers received no allegations of intimidation to vote for Mr Yushchenko although one allegation was made regarding misuse of identity documents. No evidence was offered to support the claims.

⁵ The election law provides that voters may "vote against all candidates". These are considered as "valid votes" when tabulating the election results.

V. THE MEDIA

On 2 November, the EOM recommenced its monitoring of six nationwide TV channels, two channels with partial national-level coverage, the main newscasts of several regional TV channels and nine daily newspapers.⁶ Between 2 and 9 November, the media have been actively covering the activities and opinions of the two leading first round candidates, Mr Yanukovych and Mr Yushchenko. However, Mr Yanukovych has derived much of his media exposure in his capacity as Prime Minister, thereby gaining an advantage prior to the commencement of the official campaign period.

It is yet too early to draw any conclusions on the media's electoral and political coverage after the first round, particularly as the official campaign period has yet to commence. Early preliminary monitoring results indicate that the State-funded television *UT1* continues to exhibit bias favouring Mr Yanukovych and against Mr Yushchenko and fails to grant the opposition significant airtime to express its political views. This repeats a pattern criticised by the EOM prior to the first round, and underlined in the 1 November IEOM Statement that "In news and current affairs programmes, the State-funded media failed to provide impartial and fair coverage of the main candidates and thus did not meet its legal obligations or commitments under paragraph 7.8 of the OSCE Copenhagen Document."

Nevertheless, some new trends are emerging: On 3 November, a presenter of the main evening news program, refused to read a statement by Mr Yanukovych's campaign headquarters on the issue of TV debates, reportedly saying that if were to be aired it would also be necessary to present the opinions of the main opposition candidate. On 9 November, a senior manager of State television reported to the EOM that the news presenter was no longer an employee of *UT1*.

Prior to the election, seven journalists working for the *1+1* TV channel's newsroom had resigned in protest at the existence and usage of so-called "temnyky".⁷ To date, some 330 journalists from a variety of TV channels signed a statement against censorship on the main TV stations.

By law, *UT1* should allocate no less than one hundred minutes for a televised debate between the two candidates five days prior to the second round of election. Should one of the candidates refuse to participate in the debate, all the airtime is given to his/her opponent. On 2 November, Mr Yushchenko publicly announced his readiness to debate with Mr Yanukovych.⁸ On 4 November, Mr Yanukovych stated that he was not going to participate in a debate as Mr Yushchenko had insulted him during the first round campaign. However, on 10 November, Mr Yanukovych agreed to debate with his rival.

In a positive development, *UT1* has aired public information advertisements, produced by a well-known NGO, the Committee of Voters of Ukraine, to increase voters' awareness of electoral provisions, citizens' participation in the poll and to encourage the public to check their entries in the voter lists.

⁶ Television: State-funded *UT1*, Private *Inter*, *1+1*, *ICTV*, *STB*, *Novy Kanal*, *TRK Ukraina* and *Channel 5*. Newspapers: State *Uriadovy Kurier*, *Golos Ukrainy*, Private *Facty I Komentarii*, *Segodnia*, *Den*, *Silski Visty*, *Ukraina Moloda*, *Zerkalo Tyzhna* and *Vechirni Visti*.

⁷ These instruct editors to cover only certain points of view on political themes, events and issues while omitting others. They are issued by persons unknown, constraining the public's free access to balanced information.

⁸ He urged that the debate should be a live broadcast, moderated by an unbiased presenter, and the conditions should be equal for both candidates.

In contrast to the coverage by *UTI*, during the limited monitoring period (2-9 November) the majority of private TV channels have generally provided more balanced coverage, with a greater diversity of views.⁹ It is of potential significance that, in contrast to their pre-election coverage, two of the main private channels, *I+I* and *ICTV*, have provided the opposition with more airtime and opportunities to challenge the political opinions of their opponents. The TV channels *STB* and *Novy Kanal* have also adopted a similar editorial line. Conversely, *TRK Ukraine* and to a lesser extent *Inter*, have continued to offer Mr Yanukovych much more coverage than Mr Yushchenko. *Channel 5* has continued to offer Mr Yushchenko favourable coverage.

The print media continue to provide a plurality of views, but show strong favouritism for or against one of the candidates. The State-funded newspaper *Uriadovy Kurier* continues to demonstrate its support to the Prime Minister, whereas another State-funded newspaper, *Golos Ukrainy*, has been critical of Mr Yanukovych in its political and election reporting. Private newspapers monitored by the EOM are sharply divided in their attitudes towards the two second round candidates. While *Facty* and *Segodnia* have showed support to Mr Yanukovych, *Silsky Visty*, *Vecherni Vesti* and *Ukraina Moloda* have been clearly against him and provided favourable coverage to Mr Yushchenko. Another private newspaper *Den* has so far offered a more balanced coverage of the two front running candidates.

⁹ The EOM has been analysing the political and election content of prime time news broadcasts that focus on the two front running candidates.

ANNEX: Election Results

First Round Results - As Announced by CEC on 10.11.04		
	Votes	%
V. Yushchenko	11125395	39.87
V. Yanukovych	10969579	39.32
O. Moroz	1621154	5.81
P. Symonenko	1388045	4.97
N. Vitrenko	426897	1.53
A. Kinakh	260890	0.93
O. Yakovenko	218214	0.78
O. Omelchenko	136502	0.48
L. Chernovetskyi	127311	0.45
D. Korchynskyi	49641	0.17
A. Chornovil	36806	0.12
M. Hrabar	19550	0.07
M. Brodskiy	16400	0.05
Y. Zbitniev	16249	0.05
S. Komisarenko	13692	0.04
V. Volga	12874	0.04
B. Boyko	12714	0.04
O. Rzhavskyi	10664	0.03
M. Rohozhynskyi	10242	0.03
V. Kryvobokov	9280	0.03
O. Bazyliuk	8917	0.03
I. Dushin	8598	0.03
R. Kozak	8369	0.02
V. Nechyporuk	6141	0.02
Against All Candidates	553565	1.98
Void (Invalid)	829870	2.97
Total Votes	27897559	100