



International Observation Mission to
Ukraine Presidential Elections 2010

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**Ukrainian Presidential Elections
ENEMO ELECTION DAY FINDINGS
*Preliminary Report***

The European Network of Election Monitoring Organizations (ENEMO) has fielded 450 short-term observers to monitor all stages of the voting process, including the opening, the vote, the vote count and the tabulation of results in polling stations and district electoral commissions for the 2010 Presidential Elections. In total, ENEMO observers monitored the opening of 194 polling stations, voting procedures in 2120 polling stations and the vote count in 196 polling stations. In addition, ENEMO deployed 11 short term observers to monitor election day in Ukrainian embassies and consulates in Russia (Moscow, Saint Petersburg, Rostov-on-Don, Vladivostok), Republic of Moldova (Chisinau), Belarus (Minsk) and Romania (Bucharest).

ENEMO observed significant improvement in the 2010 Ukrainian presidential elections over the 2004 poll. The election environment surrounding the first round of these elections was generally free of pressure, intimidation or harassment against any contender. In stark contrast to 2004, there were no reports of centralized misuse of administrative resources and ENEMO observers reported only isolated cases of pressure on voters and observers. While election day proceeded without reports of systematic fraud, there were significant procedural and organizational problems concerning the updates made to the voter lists and the uneven enforcement of the provisions regarding mobile voting. Furthermore, ENEMO remains deeply concerned about pressures and threats directed against its observers in Donetsk oblast by unidentified election commissioners, particularly in the city of Kramatorsk (DEC 48) and calls for an immediate investigation of state authorities.

ENEMO observers note that in general the Central Election Commission (CEC) has functioned in a professional, transparent and timely manner. However, throughout election day the CEC continued its practice of adopting decisions in closed meetings to which observers were not allowed.

Opening

ENEMO observers noted that 87% of the monitored polling stations opened on time while 12% of the Precinct Election Commissions (PECs) opened up to 15 minutes late. Delays of over an hour were recorded in Ivano-Frankivsk (DEC 90, PEC 104; DEC 95, PEC 88) Sumy (DEC 159, PEC 2) and Zaphorozhye (DEC 82, PEC 10). In Donetsk oblast, PEC 62 (DEC 46) has never opened.

Overall Evaluation of Opening

Compared to previous elections, ENEMO observers noted a significant improvement of the opening procedures and of the overall work of the election commissions. ENEMO observers reported in a positive manner about 94% of the PECs they visited.

Number of PEC Members

ENEMO's pre-election report warned of multiple resignations among PEC members and threats that the PECs would be understaffed or without a legal quorum. However, most of the PECs and DEC had enough members present to function on election day.

Improper Sealing of Ballot Boxes and Improper Filling of Protocols

ENEMO observers noted several cases of improper sealing of ballot boxes or failure to insert control sheets in ballot boxes as required by law. These incidents were usually related to commissioners claiming to be unaware of the procedures or that they were given insufficient sealing materials. Such instances were witnessed at Kiev (DEC 95, PEC 10; DEC 96, PEC 88), Khmelnytsky (DEC 192, PEC 227), Zakarpatya (DEC 69, PEC 29), Odessa (DEC 144, PEC 2, PEC 11), Kherson (DEC 185, PEC 11) and Chernigiv (DEC 211, PEC 75). In Zakarpatie (DEC 74, PEC 103) one stationary ballot box could not be properly sealed because it was badly damaged. However, it was used during the voting process. Other technical problems faced by commissioners were only corrected after the short-term observers brought them to the attention of the PEC chairperson.

Insufficient number of ballots and ballot boxes

According to the election legislation, the amount of ballots PECs are to receive from the higher-standing commissions equals the amount of voters in the list plus a reserve. Observers noted several cases where the number of ballots received was less than the number of voters on the lists following the updates made during election day. While the level of turnout ensured that there were sufficient ballots for all that wanted to vote, this could have potentially disenfranchised a significant number of voters. Such cases were reported in Odessa (DEC 106, PEC 106; DEC 142, PEC 101; DEC 143, PEC 119); Poltava (DEC 148, PEC 68; DEC 151, PEC 129), Kiev (DEC 214, PEC 32) and Kherson (DEC 189, PEC 3).

Secrecy of the Ballot

Another concern on election day was adhering to the secrecy of the ballot. ENEMO observers noted numerous instances in which the set up of the voting booths could not

ensure full discretion for voters when casting their votes. Such cases were registered in Kiev (DEC 95, PEC 29), Poltava (DEC 148, PEC 10, 12, 68), Ternopil (DEC 165, PEC 7), Cherkasy (DEC 200, PEC 1 and 8), Mykolayiv (DEC 130, PEC 43) and Vinnytsya (DEC 15, PEC 70). Furthermore, suspicions of attempted vote buying were raised in Kiev oblast (DEC 95, PEC 29; DEC 99, PEC 162) after some voters were seen taking photos of their ballots.

Disorganized Election Precincts

ENEMO observers reported a series of cases in which the activity of the PECs unfolded in a disorderly manner due to an improper set-up of the precinct. Significant such cases were recorded, among others, in: Zakarpatya (DEC 69, PEC 42), Odessa (DEC 136, PEC 43), Poltava (DEC 151, PEC 129), Donetsk (DEC 43, PEC 56) and Mykolayiv (DEC 129, PEC 46, PEC 47; DEC 130, PEC 6, PEC 20). In Donetsk (DEC 44, PEC 46) the work of the commission and the voting process were brought to a halt after one of the commissioners left the precinct with 40 control sheets.

In addition, ENEMO observers noted several instances of commissioners issuing ballots to voters without proper identification. This was the case in Cherkasy (DEC 200, PEC 43), Zakarpatia (DEC 74, PEC 35) and Mykolayiv (DEC 130, PEC 36).

Unauthorized Persons in Polling Stations

Observers noted several cases where individuals believed to be in a position of authority influenced the activities of PECs, voters or observers. ENEMO recommends that such activities should be investigated with rigor, since they undermine the work of the commissioners and jeopardize the fairness and transparency of the electoral process. Such cases were observed in Donetsk (DEC 47, PEC 26), Odessa (DEC 135, PEC 7), Ternopil (DEC 165, PEC 4, PEC 21), Poltava (DEC 151, PEC 128; DEC 148, PEC 12) and Kherson, (DEC 189, PEC 42). In Cherkasy oblast (DEC 200, PEC 65, DEC 201, PEC 8, 10) individuals from an undisclosed polling institute asked voters about their votes while soliciting their IDs.

Limitation of Observers' Rights

In general, the electoral process was transparent and ENEMO observers were allowed to monitor all stages of the electoral process on election day. However, observers were initially prevented from entering the polling station or monitoring all stages of the voting process in, Odessa (DEC 145, PEC 47), Zakarpatya (DEC 69, PEC 47), Kherson (DEC 186, PEC 17), Kiev (DEC 91 PEC 28) and Crimea (DEC 1, PEC 35).

More serious incidents occurred in Donetsk oblast (DEC 42, PEC 41; DEC 48, PEC 4; DEC 55, PEC 24) where ENEMO observers were not only prevented from properly conducting their monitoring activities but they were threatened and evicted. ENEMO considers such acts as breaching the international observation standards as well as the Ukrainian laws. The electoral law provides the right to the international observers to monitor all stages of elections once they are accredited by the CEC.

Mobile Voting

In its pre-election report ENEMO feared that the lack of clear provisions regarding the conduct of homebound voting would lead to arbitrary decisions of lower commissioners across oblasts. The Kiev Administrative Court of Appeals (KACA) on January 12 upheld the CEC decision to exempt voters from any requirement to submit medical proofs together with a written request to vote at home. However, various attempts to overturn this decision increased the level of uncertainty regarding the proper course of action for election commissions.

ENEMO reports suggest that during election day PEC members followed their own understanding of this situation. Thus, in places like Chernivtsy (DEC 207, PEC 14, 25, 26) and Zakarpattia commissioners accepted all requests for mobile voting (whether or not accompanied by a medical certificate), while in Mykolayiv (DEC 132, PEC 105) the head of commission refused to consider those requests which lacked medical proof. In Odessa (DEC 135, PEC 73), and Mykolayiv (DEC 129, PEC 5, PEC 87) a number of voters received the opportunity to vote at home without submitting a request. In Sumy (DEC 162, PEC 15) and Kiev (DEC 218, PEC 10) district electoral commissions sent to PECs their decisions regarding mobile voting without adjoining documents.

A further source of concern regarding mobile voting was determined by reports suggesting that a significant number of requests seemed written by the same person. Such incidents were reported in Donetsk (DEC 53) and Kiev (DEC 95).

Because only a limited number of requests for mobile voting were registered, it is unlikely that problems with mobile voting procedures will influence the election results. However, ENEMO remains concerned that unclear provisions will continue to generate uneven application of the law and will offer grounds for further complaints.

Voter Lists

Despite implementing a fully centralized voter registry in Ukraine, the accuracy of the voter lists remained a challenge for this round of elections. The ENEMO mission expressed concerns in its pre-election report about the quality of the voter lists, which often contained outdated and missing information. In particular, ENEMO noted the lack of clear procedures for updating the voter lists during election day at the level of PECs.

These concerns were reflected during election day by the number of reports noting an uneven implementation of legal provisions by PEC members. While it is impossible to determine the number of voters affected by these contradictory decisions of the commissioners, the following examples suggest that this phenomenon remains widespread across the country. Thus, in Ternopil (DEC 166, PEC 95), Khmelnytsky (DEC 192, PEC 227), Zakarpattia (DEC 69, PEC 42; DEC 73, PEC 14, 16, 28, 103; DEC 74, PEC 35), Kiev (DEC 222, PEC 57), Lviv (DEC 127, PEC 86; DEC 118, PEC 15), Chernivtsy (DEC 207, PEC 2), Mykolayiv (DEC 130, PEC 38) and Donetsk (DEC 45, PEC 40, 42, 45, 51, 56, 57; DEC 55, PEC 3, 11, 13) polling station commissioners

included people in the voters list without a decision of a higher commission or a court, as is required by law. Reports suggest that pressures from voters demanding to be included in the lists might, as in Mykolayiv (DEC 130, PEC 65) and Kherson (DEC 186 PEC 17), might contributed to PECs decisions.

Overall Evaluation of the Voting Process

ENEMO acknowledges improvements in the conduct of PECs during the voting process compared to previous elections. This year, 94% of the ENEMO observers reported positively on the activities of the election commissioners during voting procedures.

Counting and Tabulation of Results

Reports from ENEMO short-term observers suggest that no major incidents were witnessed during the count, as of early morning on the day following the election. However, a series of irregularities marred the vote counting in various precincts. Thus, in Kiev (DEC 218, PEC 32), Chernighiv (DEC 210, PEC 116), and Odessa (DEC 135, PEC 73; DEC 136, PEC 140) commissioners seemed unaware of the counting procedures and failed to meet the legal requirements for filling in the protocol. In Zakarpatya (DEC 71, PEC 1) some 30 ballots were wrongly invalidated by PEC members..

Overall evaluation of Counting

Counting procedures has also been a major field of improvement compared to previous elections, with 93% of the visited PECs evaluated as positive. .

Transfer and DEC activity

Several PECs have witnessed significant delays in the transfer of protocols and other related materials to DEC. In Lviv (DEC 117, PEC 2; DEC 118, PEC 15 and DEC 126, PEC 283) ENEMO observers reported delays of up to four hours.

While over 90% of ENEMO observers have rated the activity of DEC as good and very good during the transfer of election materials from PECs, a number of DEC behaved in a disorderly fashion. In Ternopil (DEC 167) a policeperson prevented ENEMO observers from accessing the DEC premises on the grounds that the commission was already overcrowded.

Administrative Courts

According to Ukrainian legislation, administrative courts are empowered to decide cases related to the election process. The High Administrative Court of Ukraine hears claims related to the election results whereas local administrative courts are entitled to hear and deliberate on claims made during election day. During election day, the administrative court of Kyiv decided on cases related to inclusion of voters on voter lists. In a majority of decisions the court ruled in favor of the petitioners.

CONCLUSIONS AND RECOMMENDATIONS

ENEMO recognizes the efforts of the Ukrainian authorities to comply with international standards for democratic elections. ENEMO will offer a full assessment and recommendations at the end of all stages of the 2010 Presidential Elections. However in order to prevent the problems listed above from marring the second round due on February 7, ENEMO recommends the following:

- The Central Election Commission should offer clarifications and unified procedures regarding mobile voting requests
- The Central Election Commission should offer clarifications and unified procedures regarding updates to the voter lists during election day
- Election authorities and candidates should further facilitate the preparation of election officials
- Election authorities should harmonize election procedures and provide for a stable and predictable legal framework
- The Central Election Commission should clarify the provisions regarding the rights of the domestic and international observers
- ENEMO also recommends that the activities of unauthorized persons during the electoral process be investigated with vigor

This report was written in English and remains the only official version

European Network of Election Monitoring Organizations (ENEMO) is a group of 22 civic organizations from 17 countries of the former Soviet Union and Central and Eastern Europe. These nonpartisan organizations are the leading domestic election monitoring groups in their countries. In total, ENEMO member organizations have observed 200 national elections in their countries, monitored more than 110 elections abroad, and trained over 100,000 election monitors. All previous statements and other information are available at www.enemo.eu.