

2015 Local Elections In Ukraine: A View From Outside

**The Right of IDPs to
Vote: International
Practice and Options
for Ukraine**

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**The 2015 Local
Elections in Donetsk
and Luhansk Oblasts
of Ukraine**

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**International Obser-
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Motives at the 2015
Local Elections**

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The publication contains general findings of an analysis of election process in Ukraine. The report is intended for a wide audience, including experts, policy makers and researchers.

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The Right of IDPs to Vote

*International Practice, Options for
Ukraine and Recommendations*

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Introduction

As a result of annexation of Crimea by the Russian Federation followed by the armed conflict in eastern Ukraine between the Ukrainian military forces and pro-Russian separatists there are over 1 million IDPs who fled their habitual places of residence and settled in other parts of the country.

Usually, IDPs face various problems. Among these problems is the right to vote and to participate in political life which is often paid less attention compared to social and economic rights, but in fact it is very important for the integration of IDPs in local communities and for democratic development of the country. In Ukraine internally displaced persons also face restriction in terms of exercising their political right to vote. Article 38 of the Constitution of Ukraine states that: "citizens have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government". Despite this constitutional provision, IDPs were still not permitted to take part in the local elections held on 25th of October according to their current places of residence. Civil society organizations prepared a draft law envisaging amendments to different legal acts in order to ensure the right of IDPs to participate in elections. The draft law was submitted to the Parliament of Ukraine, but it failed to get the necessary support from the MPs. Accordingly, the right of IDPs to vote at local elections still remains a problem.

The purpose of this report is: (1) To review international standards on the right to universal and equal suffrage and find out if this right encompasses the corresponding rights of IDPs too; (2) To examine the practices of those countries which managed to ensure the right to political participation for IDPs and can be considered as best practices; (3) To compare positive and negative sides of those options used in other countries which enable IDPs to exercise their right to vote; (4) To elaborate some recommendations for solving the problem in Ukraine.

International Standards

Prior to analyzing the best practices of specific countries in respect of ensuring the right of IDPs to vote it would be interesting to review relevant international standards. The right to vote and to stand for elections is guaranteed by many international documents. The right to universal and equal suffrage is stated in the Universal Declaration of Human Rights of 1948. Article 21 of the UDHR provides that:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. [...] (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures

The right to political participation is also stated in Article 25 of the International Covenant on Civil and Political Rights (ratified by Ukraine in 1973):¹

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: [...] (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors

¹ See also Art.5 of ICERD; Art.7 of CEDAW; Art.3 of the First Protocol of European Convention on Human Rights

The Copenhagen Document adopted in 1990 by Conference on Security and Cooperation in Europe (later OSCE) is also important. The participating states undertake "to respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes.". It also recognizes the right of adult citizens to vote:²

To ensure that the will of the people serves as the basis of the authority of government, the participating States will [...] guarantee universal and equal suffrage to adult citizens

It was also underscored by the OSCE that "the absence of a permanent residence should not prevent an otherwise qualified person from being registered as a voter".³

There are also international documents dealing specifically with the rights and freedoms of displaced persons. Principle 22 of the UN Guiding Principles on Internal Displacement (1998) determines:

Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: [...] (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right

Principle 29 of the same document states that IDPs have the right "to participate fully and equally in public affairs at all levels and have equal access

² Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, paras. 6-7

³ Existing Commitments for Democratic Elections in OSCE Participating States, Warsaw, October 2003, para.5,p.16

to public service" both in case of their return to permanent place of residence or resettlement in other part of the country.

In 2006 Committee of Ministers of Council of Europe adopted a recommendation on internally displaced persons. Article 9 of the Recommendation set forth the following:

Member states should take appropriate legal and practical measures to enable internally displaced persons to effectively exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature

It can be said that the principle of universal and equal suffrage, which is the cornerstone of democratic elections, also extends to internally displaced persons. The mere fact of displacement should not form the basis for discriminating IDPs relative to other citizens. In many international documents discrimination, among other things, on the ground of "other status" is prohibited.⁴ According to the Compilation and Analysis of Legal Norms⁵, "other status" shall be interpreted broadly and "non-discrimination clauses thus appear to ban discrimination against internally displaced persons based on their status as such." States must take effective measures to ensure that all persons, including internally displaced persons who are otherwise entitled to vote and to stand for elections, are able to exercise these rights. The right to vote may be subject to certain restrictions, but any conditions that apply to the exercise of that right shall be objective and reasonable.⁶

4 See Art. 26 of ICCPR; Art.14 of the European Convention on Human Rights and Fundamental Freedoms

5 United Nations, E/CN.4/1996/52/Add.2, para.52

6 See general Comment No 25: The right to participate in public affairs, voting rights and the right of equal access to public service of High Commissioner for Human Rights (07/12/1996)

International Practice

In this chapter we will review the legislative and practical experience in ensuring the right of IDPs to vote gained by those countries which have massive population of internally displaced persons due to the armed conflict. The main purpose is to examine how the suffrage right of IDPs has been evolving over the years and how it is ensured by domestic legislation of these countries. The different ways of regulating the right of IDPs to vote were taken into account in the process of selecting the countries to be reviewed as well as the progress made by these countries in ensuring the right of IDPs to political participation.

Georgia



In Georgia internal displacement was caused by secessionist conflicts which started in Autonomous Region of South Ossetia and Autonomous Republic of Abkhazia in 1992 after the dissolution of Soviet Union. Moreover, later the number of IDPs increased as a result of another armed conflict which took place in 2008.

For many years IDPs faced the problem of integration in the areas where they resided. Their problems were a complex set of economic, social and political issues. While they still face economic and social problems, considerable progress was made in ensuring their political rights, in particular the right to vote. Until 2003 this right was subject to some restrictions. IDPs were allowed to vote at presidential and parliamentary elections based on proportional representation principle (currently, there is a mixed electoral system for parliamentary election in Georgia consisting of proportional and majoritarian electoral systems), but they were deprived of the right to participate in local and parliamentary elections based on majoritarian principle.

According to the Law on Parliamentary Elections as of 1995, IDPs were not allowed to elect majoritarian Members of Parliament at their current places of residence since they already had their representatives in the Parliament elected from Abkhazia. This was caused by the fact that the national law extended the mandate of eight deputies from Abkhazia elected in 1992 until the complete restoration of jurisdiction of Georgia over the territory of Abkhazia and creation of necessary conditions for holding the election of deputies on this territory once again. Two seats allocated in the Parliament for deputies representing South Ossetia remained vacant due to the same reasons.

Regarding participation in local elections, the "Law on the Election of Local Representative Bodies – Sakrebulo" as of 1998 determined that IDPs did not have the right to vote at the first local elections held in 1998. In Georgia citizens participate in elections according to their place of residence. In order to vote IDPs had to register their temporary place of residence as a new

place of permanent residence. However, according to the law on internally displaced persons which was in force in 1996, this was one of legal grounds for terminating the status of IDP and repealing all the benefits related to this status. Therefore, IDPs were reluctant to undergo this procedure and to vote at a local government election.

The representatives of the ruling party (Citizens Union of Georgia) stated that these restrictions complied with the demands of IDPs as they "prefer not to cast their votes for single-member constituency candidates since it would mean that they have registered permanent residency."⁷ It was also declared that some of the IDPs thought that voting at their current places of residence would mean that they acknowledge de facto territorial situation and by doing so they would relinquish their right to return to their habitual places of residence.⁸ In response to such an assertion made by the government one of the experts pointed out the following: "Such fears are certainly flawed, and they are not dispelled by the Government for political reasons: the right to return to one's place of origin and the right to vote at the local level in order to influence one's living conditions are not mutually exclusive. There is no sensible or objective reason why the internally displaced persons should be banned from voting for the representative of the area in which they are "temporarily" residing nor why should they be deprived of their right to return home once necessary conditions are achieved."⁹

Soon after the local elections in 1998 constitutional complaint was submitted to the Constitutional Court of Georgia with a request to declare unconstitutional the provision denying the right of IDPs to participate in local elections. During the court hearing this request was extended to those provisions which denied the right of IDPs to elect majoritarian MPs in the Parliament as well as provisions regulating the registration of IDPs according to which registration in any area of Georgia after displacement would

7 OSCE/ODHIR Parliamentary Elections 31 October & 14 November 1999 Final Report, Warsaw, February 2000, p.16

8 Erin Mooney and Balkees Jarrah.: The Voting Rights of Internally Displaced Persons: The OSCE Region, An Occasional Paper, The Brookings Institution-John Hopkins SAIS, November 2004, p. 34

9 Simon Bagshaw, Internally Displaced Persons and Political Participation: The OSCE Region, Occasional Paper, The Brookings Institution Project on Internal Displacement, September 2000, p.14

result in the loss of IDP status. The decision was adopted in 2000 and in respect of local elections the Constitutional Court ruled that the restriction concerned only the first local election held on 15th November 1998 and therefore it was already void. However, the Court did not consider unconstitutional the registration rule which, in fact, prevented IDPs from participating in local elections despite the removal of general restriction on the participation in local elections.

In respect of parliamentary elections Constitutional Court noted that the IDPs from Abkhazia already had their representatives in the Parliament and if they were allowed to participate in the election of majoritarian representatives this would violate the principle of equality of vote. The Court also stated that Article 2 of the Constitution, which regulates the right of citizens to participate in the elections under normal conditions, cannot be applied in extraordinary situations and therefore the restriction introduced by the organic law on the participation of IDPs in majoritarian component of the parliamentary elections is also constitutional.

Despite the decision of the Constitutional Court, the right of IDPs to vote became an issue of even greater concern for local and international organizations. As a result of advocacy efforts made by different stakeholders, in 2001 the Parliament adopted an Organic Law on the Unified Election Code which allowed the IDPs to vote in local elections at their temporary place of residence. However, due to the registration rules, which envisaged the loss of IDP status and benefits, the exercise of this right remained questionable. In addition to this, the amendments which entered into force in 2003 enabled the IDPs to vote in parliamentary elections based on majoritarian principle at their current places of residence. Although, the mandate of deputies from Abkhazia still remained in force.

The final important development in respect to IDPs' right to vote was the second complaint filed with the Constitutional Court regarding the registration system of IDPs which in the event of permanent registration in any other part of the country led to termination of IDP status. The Constitutional

Court adopted a decision in November 2003 and declared unconstitutional this provision of the national law on IDPs. In 2004, the extended mandates of deputies from Abkhazia elected in 1992 were revoked pursuant to the amendments made to the election law.

Currently, all types of elections in Georgia are regulated by Electoral Code of Georgia adopted in 2011. According to Article 31 of the Code concerning the general list of voters and its composition procedures, the internally displaced persons are entered into voters' list as other citizens:

*General list of voters shall include the following data on a voter: [...] (e) actual place of residence (temporary place of residence shall be indicated with respect to IDPs from the occupied territories of Georgia [...])
Voters' data shall be incorporated in the general list of voters according to the place of their registration. IDPs from the occupied regions of Georgia shall be incorporated in the general list of voters in accordance with their actual place of residence.*

According to paragraph 5 of Article 31, in case of IDPs the general list of voters shall be composed based on data:

Compiled on IDPs from the occupied territories of Georgia communicated by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodations and Refugees of Georgia and/or its territorial agencies

Paragraph 6 of Article 31 establishes the obligation for relevant public institutions to provide information to the Central Election Commission at certain intervals in order to update the general list of voters. Among these public institutions is the Ministry of Internally Displaced Persons:

For the purposes of updating the general list of voters and an electronic database of this list by the CEC: (a) agencies specified in sub-paragraphs “a”-“c” of this Article, shall, within the terms defined by this paragraph, submit updated or new information to the CEC regarding individuals with voting rights four times a year – on February 1, May 1, July 15 and November 1 of each year [...]

In Georgia, IDPs participate in Presidential, Parliamentary and Local Elections according to their actual place of residence on the same basis as everyone else. The only difference is that on the Election Day the IDPs should also present an IDP certificate in addition to the identification document at the polling station:

(b) [...] Voter shall present to the registrar of voters a personal identification card or a passport of a Georgian citizen, IDPs from the occupied territories of Georgia shall also present an IDP certificate (together with a personal identification card of a Georgian citizen)

At the local elections in 2006, the IDPs were entered into voters' list according to their current place of residence and they only had to present an identity card in order to cast a vote. This fact created the risk of manipulation since it enabled the IDPs to vote several times at different precincts based on the argument that the precinct was the closest one to their actual place of residence. Moreover, if it appeared that the displaced person was not included in the voters' list, the precinct election commission had the right to include him/her in the additional voters' list even on the Election Day. Due to this fact, Georgian Young Lawyer's Association addressed the Central Election Commission to regulate the issue and the CEC issued a decree stating that the IDPs should present an identification document together

with their IDP certificate as a proof of their current place of residence in order to vote on the Election Day. It was also recommended that this issue should be regulated by electoral legislation rather than on ad hoc basis. Accordingly, in 2009 the Election Code was amended and it became mandatory for IDPs to present an IDP certificate along with the identification document in order to vote at the elections.

As for Georgian citizens living abroad, they do not have the right to participate in local elections. This restriction also concerns IDPs. Georgian citizens living abroad, including IDPs, have the right to vote at presidential and parliamentary elections based on proportional representation principle, provided that they were entered in the Georgian consular registry on the Election Day or even if they were not entered in the consular registry, but have undergone consular registration at the PEC formed abroad or in a consular office no later than on the 21th day before the Election Day.

Bosnia and Herzegovina



As a result of armed conflict in the Balkans, hundreds of thousands of persons became refugees and internally displaced persons. In 1995, the parties to the conflict concluded a General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter referred to as BiH) also known as the Dayton Peace Accord (DPA) with the assistance of international community. Among other issues, DPA established a framework for holding the elections. Article I of Annex 3, which is an Agreement on Elections, set forth the following:

The Parties shall ensure that conditions exist for the organization of free and fair elections, in particular a politically neutral environment; shall protect and enforce the right to vote in secret without fear or intimidation; shall ensure freedom of expression and of the press; shall allow and encourage freedom of association (including political parties); and shall ensure freedom of movement

Article IV of Annex 3 regulated eligibility criteria to vote. It was established that a citizen aged 18 or older whose name appeared on the 1991 census should be eligible to vote. In respect of elections, one of the greatest challenges was to ensure the rights of a large group of internally displaced persons to participate in the elections. The same article of DPA envisaged the right of IDPs to choose whether to vote according to permanent place of residence or elsewhere:

[...] A citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, shall be expected to vote in person or by absentee ballot in the aforesaid municipality, provided that the person expressed his/her wish to be registered in that municipality as confirmed by the local election commission and the Provisional Election Commission. However, such a citizen may also apply to the Commission to cast his or her ballot elsewhere

The purpose of enabling IDPs to choose between two places of residence was to encourage them to vote at their permanent place of residence in order to facilitate the process of reintegration, meanwhile a choice to vote at the current place of residence was expected to be an exception rather than a rule.¹⁰

From 1996 to 2000, OSCE administered the elections held in compliance with the DPA and other regulations adopted by the Provisional Election Commission. A draft election law was submitted to the Parliament in 1999. One of the debatable issues was whether to preserve the right of IDPs to choose where to vote or not. The Bosnian party believed that IDPs should not be permitted to vote at the current place of residence, while Serb and Croat parties thought that IDPs should not be allowed to vote in those municipalities where they lived before the war.¹¹ But authors of the draft law did not want to deprive of the right to vote both those IDPs who could not return to their permanent place of residence to vote and those who did not want to vote at their current place of residence where they were ethnic minority. In 2001, the Bosnian Parliament adopted an Election Law which regulated the right of IDPs to vote in more detail.

Election Law establishes that "A citizen of BiH who has the right to vote under this Law and who has a status of a displaced person shall be entered in the Central Voters' Register of basic electoral unit on the grounds of expressed choice of voting place in accordance with the provisions of Article 20.8 of this Law."¹²

Election Law allows internally displaced persons to choose whether to register and vote at his/her permanent place of residence according to the last Census or at his/her current place of residence provided that he/she was registered at the current place of residence no later than six months before the election day. This issue is regulated by Article 20.8:

10 Simon Bagshaw, Internally Displaced Persons and Political Participation: The OSCE Region, Occasional Paper, The Brookings Institution Project on Internal Displacement, September 2000, p. 8

11 Ibid., p.10

12 Article 3.9(4) of the Election Law of Bosnia and Herzegovina

A citizen of BiH who is also a displaced person and has the right to vote under this article, shall register depending on the grounds of expressed choice of voting place located in the municipality where he or she had a permanent place of residence according to the last Census conducted by the State of BiH, except in the case where such person can provide proof of changing his or her permanent place of residence in accordance with the law during the period from the last Census conducted by the State of BiH and up to the day when this person acquired the status of a displaced person, or in the municipality where this person currently resides upon provision of evidence that he or she was registered at the current place of residence no later six (6) months before the election day

In addition to this, first paragraph of Article 20.8 establishes that until otherwise decided by the respective authority a displaced person has the right to register and vote in person or by absentee ballot at the permanent place of residence and in case of voting at the current place of residence he/she should vote only in person.

According to paragraph 4 of the same article, a current place of residence is a municipality where a displaced person temporarily resides until proper conditions are created for his/her return to the municipality where he/she had a permanent place of residence according to the last Census conducted by the State of BiH.

It should be also noted, that one of the problems which the Election Law aimed to solve in respect of IDPs was related to the right of property which was often the cause of conflicts. In order to address this issue, the law determined that a person occupying the property owned by another person shall be deprived of the right to vote. In particular, paragraph 3 of Article 20.8 states that a citizen who occupies a house or an apartment without having an ownership or occupancy right to do so and in the presence of a document on the restitution of a house or an apartment issued by a com-

petent authority, shall have no right to vote at the place of current domicile until she/he leaves the real-estate property owned by another person and registers for voting purposes in the municipality where she/he had a permanent place of residence in accordance to the last Census. Thus, the election law links together the right to vote, the right to property restitution, and the right of IDPs to return to their permanent place of residence.¹³

The law also stipulates that special rights to register and vote granted to displaced persons shall expire on the day to be determined by a relevant authority. The following factors should be taken into account when deciding on the date of expiration of special rights:

(1) Status of implementation of property laws; (2) Number of persons registered as displaced persons; (3) Factors ensuring the possibility of return, including safety of returnees, access to education and services, non-discrimination in employment and labor relations, and proper functioning of the judicial system

Possible Options for IDPs to Vote

As illustrated above in the cases of Georgia and Bosnia-Herzegovina, there are two ways of ensuring the right of IDPs to political participation.

In the case of Georgia, IDPs have the right to participate in all types of elections according to their current place of residence. The exercise of this right does not lead to termination of the IDP status or any benefits related to this

¹³ Erin Mooney and Balkees Jarrah.: The Voting Rights of Internally Displaced Persons: The OSCE Region, An Occasional Paper, The Brookings Institution-John Hopkins SAIS, November 2004, p. 23

status. Voting at the temporary places of residence does not affect their registration at the permanent place of residence and their right to return home. The positive side of this regulation is that the IDPs are able to exercise their right to political participation and take decisions that influence their lives both at local and national level. This regulation also facilitates fast integration of IDPs in the local communities at their current places of residence. The negative side of this regulation is that the IDPs do not have the possibility to choose whether to vote at their current or permanent place of residence.

Contrary to Georgia, IDPs in BiH are entitled to vote either at their current or permanent place of residence. Moreover, in the case of BiH they are allowed to choose whether they want to vote in person or by absentee ballot.

The positive side of this regulation is that the IDPs have the right to decide where to vote at the elections. Voting at the permanent place of residence can contribute to the return of IDPs while launching the process of reconciliation between them and the local communities at their habitual places of residence. In the case of BiH, the purpose of providing this opportunity was to facilitate the reintegration process and the international community expected that displaced persons would vote mostly in those municipalities where they lived before the conflict rather than at their current places of residence.¹⁴

Apart from the positive aspect, the right to choose also has its negative side which should be taken into account when providing this opportunity to IDPs. Experience of some countries has shown that this option was the reason why the IDPs were put under pressure and suffered harassment. The purpose was to force IDPs to vote at certain place of residence. In BiH displaced persons were put under pressure by political groups which forced them to vote at a pre-defined place of residence and used this as a condition for receiving humanitarian aid or other benefits.¹⁵ For example, these

14 International Crisis Group, *Elections in Bosnia and Herzegovina*, 22 September, 1996

15 Lauren Prather and Erik S. Herron, *Enfranchising Displaced Voters: Lessons from Bosnia-Herzegovina*, *Election Law Journal*, Volume 6, 2007, p.367; Erin Mooney and Balkees Jarrah., *The Voting Rights of Internally Displaced Persons: The OSCE Region*, An Occasional Paper, The Brookings Institution-John Hopkins SAIS, November 2004, p. 20

facts were detected in respect of displaced Serbs who were forced by the Bosnian Serb authorities to register and vote in Republika Srpska which was their current place of residence.¹⁶ As a result, the majority of displaced Serbs opted to vote at their current place of residence rather than in the municipalities where they lived in 1991.¹⁷ Due to this fact, the option of voting at current place of residence, which was supposed to be an exception, became a standard practice contrary to the purpose of the Dayton Peace Agreement.¹⁸ In order to prevent this from happening the Provisional Election Commission introduced a restriction according to which the IDPs had the right to vote at their current place of residence only if they moved to a new place of residence no later than 14 months before the Election Day. This term was later reduced to six months.¹⁹ Not only such kind of practice violates the right to freedom of movement and the free choice of place of residence, but it also undermines the principle of free and fair elections.

In the case of voting in person at the permanent place of residence the need for transportation of IDPs on the E-day can be considered as a negative aspect of this option. For instance, in BiH the Parties to the DPA undertook the responsibility to ensure the freedom of movement in order to facilitate the conduct of free and fair elections.²⁰ Though, in reality it proved to be difficult to implement. There were problems related to personal safety of displaced persons and logistical arrangement of transportation. In order to ensure safety of voters special crossing points were established at the Inter-Entity Boundary Lines (IEBL) and only buses were permitted to cross the border. However, authorities failed to organize the bus network which caused unpredicted bus delays on the Election Day thus discouraging many IDP voters from participating in the election.²¹ Besides that, circulation of discordant information regarding the safety of those crossing the

16 International Crisis Group, Elections in Bosnia and Herzegovina, 22 September, 1996, p.35

17 Ibid.

18 Ibid., p.36

19 Jeremy Grace and Erin Mooney, Democracy and the Displaced: Political Participation Rights, in Particular the Right to Vote and be Elected, American Society of International Law, 2007, p.18

20 DPA, Annex 3, Article I(f)

21 International Crisis Group, Elections in Bosnia and Herzegovina, 22 September, 1996, p. 48

border in the conflict area also discouraged many displaced persons from voting at their permanent places of residence.²²

Problems with freedom of movement and transportation of IDPs were also detected at the elections in Moldova. Even though there were some arrangements made to enable people living in Transnistria to participate in the elections on Moldovan-controlled territory, most of the buses carrying the voters were not allowed to cross the border by "Transnistrian authorities" and voters were also subject to intimidation which resulted in low turnout figures.²³

Voting by absentee ballot is an alternative to voting in person at the permanent place of residence for those who cannot travel to places of their origin but still want to vote at their permanent place of residence. In comparison to voting in person at the permanent place of residence, voting by absentee ballot can be considered as a safer way of voting as it does not require transportation of IDPs to the conflict area which can pose a threat to their physical security. However, even in the case of voting by absentee ballot some problems were detected. For example, in BiH some absentee polling stations were too small which caused overcrowding and undermined the ability of voters to vote in a peaceful environment.²⁴ But, surely, this problem can be easily avoided by taking into consideration the number of IDPs who filed the application to vote at the absentee polling stations.

Experience shows that voting at the permanent place of residence is subject to certain risks and problems. Despite this fact, enabling IDPs to choose where to cast a vote may encourage them to participate in the elections and provide them with more freedom to decide where they want to vote and where they belong. However, certain measures ensuring safe and timely transportation of IDPs to their pre-displacement areas should

22 Simon Bagshaw, *Internally Displaced Persons and Political Participation: The OSCE Region*, Occasional Paper, The Brookings Institution Project on Internal Displacement, September 2000, p. 10

23 Erin Mooney and Balkees Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, An Occasional Paper, The Brookings Institution-John Hopkins SAIS, November 2004, p. 47

24 Lauren Prather and Erik S. Herron, *Enfranchising Displaced Voters: Lessons from Bosnia-Herzegovina*, *Election Law Journal*, Volume 6, 2007, p.364;

be taken in the case of introducing the possibility of voting in person at the permanent place of residence in the national legislation. It is also important to provide an absentee voting option as an alternative to voting in person at the permanent place of residence. In this case an adequate number of absentee polling stations should be provided for IDPs who are unable to travel and vote at their habitual place of residence.

Conclusion and Recommendations

The right of IDPs to vote is internationally recognized. Internally displaced persons enjoy the same rights as other citizens, including the right to political participation. They shall not be discriminated based on the fact of displacement. The mere fact of displacement cannot be considered as a reasonable ground for the restriction of their right to vote. Nevertheless, there are various obstacles preventing IDPs from exercising their right to free and fair elections. These obstacles are sometimes created by logistical or practical issues, and sometimes by the policy of public authorities embedded in the national legislation. It is important to bring national legislation in accordance with the international standards and fully guarantee the right of IDPs to vote.

Participation in elections allows every citizen to influence the development of his/her country and local community. In every democratic state this is an essential right which is used by citizens to express their will and make decisions about political, economic, social and other issues concerning them. Marginalized IDPs who face many problems shall not be deprived of the right to participate in public affairs and make decisions which influence their lives. Besides that, exclusion of IDPs from political life may have a

negative effect on the legitimacy of the elections and democratic development of the country. In addition to this, participation of IDPs in the political life will facilitate their fast adaptation to the current situation on the one hand and their return and reintegration on the other hand.

In order to fully ensure the right of IDPs to vote in Ukraine it is recommended to do the following:

- To review domestic legislation and grant internally displaced persons the right to participate in all types of elections;
- To allow internally displaced persons to vote at their current place of residence. This is especially important if the conflict will last for several years. Voting at the place of displacement should not result in the annulment of registration at the permanent place of residence, or in the loss of IDP status, or any benefits related to this status;
- To adopt relevant amendments to the legislation in reasonable time before the next elections in order to have enough time to provide IDPs with the information about their voting rights and procedures;
- To ensure that civil society organizations, political parties and other stakeholders have the opportunity to participate in the working group meetings and other events dedicated to the discussion of voting rights of IDPs and drafting of legislative amendments.

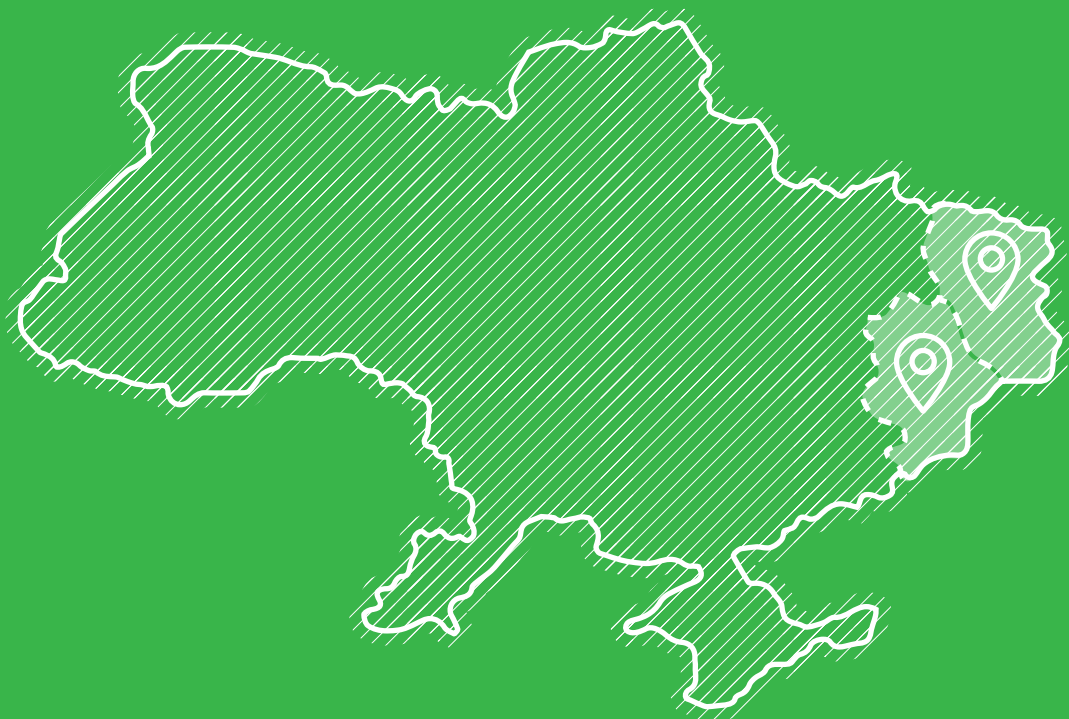
Executive Summary

Present report considers the right of IDPs to vote in elections in Ukraine. Usually, IDPs face various problems and among these problems is the right to vote and to participate in political life. In Ukraine internally displaced persons also face restriction in terms of exercising their political right to vote. IDPs were not permitted to take part in the local elections held on 25th of October according to their current places of residence.

In order to elaborate some recommendations relevant for solving the problem related with the voting right of IDPs in Ukraine international standards and practice of those countries which managed to ensure the right to political participation for IDPs are reviewed in the report.

Based on the carried out analysis it can be said that the principle of universal and equal suffrage, which is the cornerstone of democratic elections, also extends to internally displaced persons. Participation in elections allows every citizen to influence the development of his/her country and local community. In every democratic state this is an essential right which is used by citizens to express their will and make decisions about political, economic, social and other issues concerning them. Marginalized IDPs who face many problems shall not be deprived of the right to participate in public affairs and make decisions which influence their lives.

Due to this it is important to fully ensure the right of IDPs to vote in Ukraine. To that end it is recommended to grant internally displaced persons the right to participate in all types of elections.



The 2015 Local Elections

*in the Donetsk and Luhansk Oblasts
of Ukraine*

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Introduction

In October and November 2015, local elections were held in the Donetsk and Luhansk oblasts – as they were in the entire territory of Ukraine – against the background of the armed conflict in the east and a constitutional reform process aiming at decentralization.

These processes in both oblasts deserve special attention: On the one hand, the region is directly affected by military actions. Approximately one-third of the total territory of the region is currently not under the control of the Ukrainian government. On the other hand, the decentralization process, especially in the Donetsk and Luhansk regions, can be regarded as a tool for strengthening the principle of subsidiarity that will quell separatist sentiments fueled by outside interests. However, these processes – depending on their interpretation – may also contribute to a certain institutionalization of such sentiments. Besides that, the local elections – which followed the early parliamentary and presidential elections in Ukraine in 2014 and could generally be viewed as a test for the ruling coalition after the Maidan events – have been of key importance, especially in the so-called “liberated territories” in the Donetsk and Luhansk oblasts. These territories were directly affected by armed conflict over the last year and were temporarily not under the control of the Ukrainian government. After the so-called “referendum” on the separation of certain parts of the region, the commitment of some segments of the local population to the Ukrainian state has been partially put under question. At the same time, it is evident that local governments lack some degree of legitimacy due to the abolition of certain administrations and the establishment of temporary ones.

Election Legislation

The law on local elections²⁵, adopted by the Parliament on July 14, 2015, and signed by the President on August 6, 2015, establishes a separate legislative framework for local elections. The law provides three different electoral systems: local councils at the level of settlements and villages, as well as mayors in towns with less than 90 000 voters are elected on the basis of a relative majority principle. In cities with more than 90 000 registered voters, the law provides for election of mayors according to the absolute majority principle. Elections of deputies to all other local councils (city, rayon, regional, and oblast councils) are based on the party-list proportional representation system.

These party lists usually consist of the main candidate and, if available, other candidates from each of the parties in every constituency. If a party gets elected, the first mandate is awarded to the main candidate of the party. The distribution of additional seats in the council is based on the ratio of party votes received in the constituencies.

The proportional representation electoral system based on party lists caused discontent and criticism during the pre-election period. Supporters of the new law on local elections regard party lists (which form the basis of the proportional representation system) as "open lists," and thus view them as fulfilling the basic requirements for electoral law reform prescribed by civil society and international organizations. The introduction of "open lists" was postulated in Ukraine primarily for the purpose of ensuring greater transparency, in order to give voters more influence on the selection of

²⁵ "The Law of Ukraine on Local Elections": zakon1.rada.gov.ua/laws/show/595-19.

candidates, and thus prevent fraudulent practices in the process of allocation of places in the candidate lists. However, in reality the electoral system provides voters with no opportunity to influence either the party lists or the procedure for the election of candidates. Therefore, such party lists can in no way be called "open lists." They are, rather, fixed or closed lists.²⁶ Moreover, the specific structure of the proportional representation system could subsequently lead to either excessive or insufficient representation of some constituencies. The election constituencies vary greatly in size and parties are not obliged to form their own list of candidates for each constituency. Nevertheless, the selection of mandate holders representing the party is still based on the distribution of votes in favor of the party or corresponding candidates per each constituency. Therefore, two candidates representing one party in a smaller constituency can get elected, whereas no candidate representing the same party in a larger constituency will be elected even in the event of getting a much greater number of votes.

The new law on elections has raised the electoral threshold from 3 to 5 percent, which became an obstacle for smaller parties. Furthermore, self-nomination of a formally independent candidate is now possible only at the level of village and settlement councils and in city mayoral elections. While the independent candidates' eligibility for public office was supposed to promote the development of the Ukrainian party system, OSCE feels that such a restriction runs counter to the Copenhagen Document, signed in 1990 by all member states of the OSCE.²⁷

In addition to the complexity of the new electoral system as well as non-transparent and rushed development and adoption of the law on

26 See also: Democracy also Reporting International: New Local Election Law: A Missed Opportunity, Briefing Paper 58, October 2015: democracy-reporting.org/files/briefing_paper_new_local_election_law_en.pdf.

27 OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission Ukraine, Local Elections, 25 October 2015; Interim Report: osce.org/odihr/elections/ukraine/191281.

elections²⁸, the law on elections has also been criticized for its ambiguous and weak mechanism of dispute resolution, candidate registration, regulation and funding of election campaign, and media coverage during the election process.²⁹

Specifics of Organizing Elections

In the context of the armed conflict in the region, local elections in the Donetsk and Luhansk oblasts were held only in some parts of the two oblasts. In the Donetsk oblast, which has the largest number of registered voters

28 In February 2015, the Ukrainian parliament appointed a commission of experts, which, according to the coalition agreement, should have worked on the development of reform of the law on local elections. This expert commission consisted of deputies of different factions and experts on election law, representatives of civil society organizations in the field of elections, and representatives of international governmental and non-governmental organizations that consulted Ukraine on reforming the electoral system. One of the draft laws developed by the commission of experts was submitted for consideration to the parliament later on. Three other draft laws were also submitted to the parliament, but none were presented and discussed publicly. Finally, on June 18, one of the aforesaid draft laws (proposed by deputies representing Petro Poroshenko Bloc "Solidarity," Narodniy Front (Popular Front), and the Radical Party) was adopted in first reading by Parliament. Other draft laws, including the one developed by the commission of experts, were rejected. After registration of amendments to the law, the parliament finally adopted them one month later. The law was signed and adopted on August 6 and 7, 2015, respectively – less than a month before the elections. Election observers of the OSCE/ODIHR mission, with reference to the 'Code of Good Practice in Electoral Matters' of the Venice Commission of the Council of Europe, stated that Ukraine's reform of local election legislation does not conform to internationally accepted standards due to the lack of public discussion and short-term development of the draft law. See also: Democracy Reporting International: New Local Election Law: A Missed Opportunity, Briefing Paper 58, October 2015; democracy-reporting.org/files/briefing_paper_new_local_election_law_en.pdf and OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission Ukraine, Local Elections, 25 October 2015, Interim Report: osce.org/odihr/elections/ukraine/191281.

29 OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission Ukraine, Local Elections, 25 October 2015, Interim Report: osce.org/odihr/elections/ukraine/191281

among all oblasts in Ukraine, only one third of a total of 3,306,745 voters was called on to participate in the local elections. In the Luhansk oblast, which totals nearly 1,774,843 registered voters, only 450,000 people were able to participate in the local elections.³⁰

Since the elections were not held in the entire territory of the Donetsk and Luhansk oblasts, the election of representatives at the oblast level did not take place – in contrast to all other oblasts of Ukraine.³¹ Voters in the region were only able to elect representatives at the level of village, settlement, city, and rayon councils, as well as the corresponding heads of administrations (city mayors). No elections were scheduled in areas that are currently outside the control of the Ukrainian government and are recognized as temporarily occupied territories according to the law “On the special order of local self-government in separate regions of Donetsk and Luhansk oblasts” as of March 17, 2015.³² In addition, the Central Election Commission (CEC) adopted a decision, as of August 29, 2015, which determined that local elections on October 25, 2015, would not be held in an additional 122 territorial communities, 91 of which are in the Donetsk oblast and 31 in the Luhansk oblast.³³ According to the CEC, this decision concerned 525,888 voters living in both oblasts.³⁴ The above-mentioned territorial communities are considered to be under the control of the Ukrainian government, but located in close proximity to the zone of conflict.

30 See also: The Central Election Commission: “Summarized information about the number of voters who received voting papers at the polling stations”, 26.10.2015: cvk.gov.ua/vm_2015/yavka_po_reg_vm_2015.pdf.

31 The exception is the Autonomous Republic of Crimea where local elections didn't take place due to annexation of this peninsula by Russian Federation.

32 See Concluding and Transitional provisions in Section XV of the Law on Elections: zakon1.rada.gov.ua/laws/show/595-19, Decision №189 cvk.gov.ua/pls/acts/ShowCard2daa.html?id=41076, (Donetsk Oblast) and Decision №190 cvk.gov.ua/pls/acts/getdbfcb.html?id=41078&, (Luhansk Oblast) adopted by the CEC as of 28.08.2015. The conditions for holding local elections in these regions constitute an integral part of the package of measures developed by the OSCE Tripartite Contact Group for the implementation of Minsk-II Agreement which was published on February 12, 2015. See also: osce.org/ru/cio/140221.

33 Decision №207 and №208 of the Central Election Commission as of 29.08.2015: cvk.gov.ua/pls/acts/ShowCard7737.html?id=41109 and also cvk.gov.ua/pls/acts/ShowCard3f60.html?id=41111.

34 Non-appointment of elections in the regions that are beyond the control of the Ukrainian Government affect 343,546 registered voters in the Donetsk oblast and 182,342 voters in the Luhansk oblast. This is nearly 10% of all registered voters in each of the oblasts.

The Central Election Commission decided not to hold elections in these territories upon the recommendations of Donetsk and Luhansk oblast civil-military administrations. These administrations, appointed by the central government, claimed that they could not guarantee adequate security for elections in their regions. Local election observers have criticized the Central Election Commission for accepting the recommendations of the civil-military administrations without public discussion. In particular, the observers placed emphasis on the absence of transparent criteria, which have been applied by the civil-military administrations and provided the basis for their recommendations.³⁵ Since the decision to hold the elections did not necessarily correspond with existing administrative boundaries, in some cases this also entails problems of legitimacy. For example, the deputies of Kostyantyniv rayon council were elected in only 13 out of 20 constituencies.³⁶

Further influencing political participation in the Donetsk and Luhansk oblasts was impaired by the fact that Internally Displaced Persons (IDP) from the area of conflict were deprived of the right to participate in the elections. This issue concerns primarily the Donetsk and Luhansk oblasts, since about half of the total of 1,500,000 registered IDP are located in these two oblasts, according to the Ministry of Social Policy of Ukraine.³⁷

35 "Committee of Voters of Ukraine in Donetsk proposed to refrain from holding local elections in several populated areas of Donetsk region", August 28, 2015: cvu.dn.ua/ru/news/donecke-kvu-proponuie-ne-provoditi-miscevi-vibori-v-ryadi-naselenih-punktiv-na-donechchini?language=ru. Infographics for certain election constituencies where the local elections were either appointed or not appointed, prepared by the Ukrainian Center for Social Research: sites.google.com/site/socialdataua/home/Donbas-Elections-2015-ukr-rayons-full2.jpg see also sites.google.com/site/socialdataua/home/Donbas-Elections-2015-full.jpg.

36 "Komitet izbirateley somnevayetsya v legitimnosti vyborov v Konstantinovke VIDEO", November 21, 2015: novosti.dn.ua/details/264102.

37 On September 15, 2015, the total number of officially registered refugees from the territories of Donetsk and Luhansk oblasts, which are beyond the control of Ukrainian Government, reached 1,505,600 people. At that point there were 558,100 registered refugees in the Donetsk oblast, and 223,100 in the Luhansk oblast. See: unhcr.org.ua/attachments/article/1299/UNHCR%20UKRAINE%20Operational%20update%2006OCT15%20FINAL.pdf.

Election Results

Local elections in the Donetsk and Luhansk oblasts contributed to an unusually high level of political competition in the region. In particular, government bodies at the local and regional levels in the Donetsk and Luhansk oblasts were traditionally dominated by the Party of Regions. The domination of the Party of Regions during the controversial elections in 2010³⁸, was particularly expressed by the fact that the party of the former President of Ukraine, Viktor Yanukovich, won 93.3% of the Donetsk oblast council seats and 85.5% of the Luhansk oblast council seats. After the collapse of the Party of Regions during Maidan protests and the resulting loss of influence and power by the former ruling party, the political spectrum in the Donetsk and Luhansk oblasts is currently shaped by several competing political forces.

These political forces include, in particular, the parties ***Opposition Bloc***³⁹, ***Nash Krai***⁴⁰, ***the Bloc Petro Poroshenko – Solidarity***⁴¹, and ***Batkivschyna***.⁴² These parties, some of which were proactively involved in local elections throughout the country (***Bloc Petro Poroshenko – Solidarity*** and ***Batkivschy-***

38 For example, see the Report of European Parliament Delegation as of November 10, 2010: europarl.europa.eu/meetdocs/2009_2014/documents/afet/dv/201/201011/20101118_reportelecukr_en.pdf.

39 The so-called Opposition bloc appeared publicly in the form of a party for the first time during the 2015 parliamentary election. The party consists of former members of the Party of Regions and can be de facto considered as its successor.

40 The Nash Krai party was initially established as a bloc party in 2011 and was renamed later on in July 2015. The same as in the case of Opposition Bloc, it mostly consists of former members of the Party of Regions. On the contrary to the Opposition Bloc, Nash Krai party is regarded as a political force which is loyal to the incumbent President Petro Poroshenko. There is a lot of evidence which points to the fact that this party is a political project of local celebrities supported by the administration of President Poroshenko and is aimed at providing political competition in those southeastern regions which in the past were considered to be the base of support for the Party of Regions. See also: "Kak by mne, ryabine, k dubu perebratsya..". 21.08.2015: gazeta.zn.ua/internal/kak-by-mne-ryabine-k-dubu-perebratsya-_html.

41 "Petro Poroshenko Bloc "Solidarity" was established in August 2015 after the merger of Petro Poroshenko Bloc and UDAR parties (Vitaliy Klichko).

42 Batkivschyna party is a member of ruling coalition and is headed by former Prime-minister Yulia Tymoshenko.

na) while the others were proactive only in the southeastern (**Opposition Bloc**) or eastern (**Nash Krai**) regions of Ukraine, provide the largest amount of campaigning resources.

None of these parties held a political monopoly over the region prior to the elections, and none of them managed to gain monopoly after the elections. The Opposition Bloc obtained the best result in the elections, as it managed to win an absolute majority of council seats in five cities of oblast subordination in the Donetsk oblast (Slavyansk, Kramatorsk, Dymytrov, Dobropillya, and Mariupol), as well as in two cities of oblast subordination in the Luhansk oblast (Lysychansk and Rubizhne). However, local councils in other cities of oblast subordination in the Donetsk oblast (Selydove, Novogrodivka, Druzhkivka, and Vugledar) and the Luhansk oblast (Severodonetsk) will have to form a coalition of different parties in order to reach a ruling majority. The only exception in the Donetsk oblast is the city of Krasnoarmiisk, where the party Vidrozhennya⁴³ won an absolute majority of council seats.⁴⁴

The high level of political competition is furthermore reflected in the fact that a runoff election was scheduled for November 15, 2015, in one out of three cities in the Donetsk oblast and in one out of two cities in the Luhansk oblast where, due to the presence of more than 90,000 registered voters, candidates for city mayor must receive an absolute majority of votes in order to be elected in the first round. In Kramatorsk, the current administrative center of the Donetsk oblast, Andriy Pankov received 52.6% of the votes and defeated Maxym Yefimov in the runoff. Despite the fact that both were officially registered as independent candidates, Andriy Pankov is clearly connected to the party Opposition Bloc, while Maxym Yefimov is

43 Vidrozhennya party, founded in 2004, didn't play any significant role until the local elections in 2015. The party is primarily managed by former members of the Party of Regions originating from the Dnipropetrovsk region. It is recognized that this party is in the sphere of influence of oligarch Ihor Kolomoiskiy. Compare: "Oct. 25 Local elections highlight battle under way to fill eastern Ukraine power vacuum," October 14, 2015: kyivpost.com/content/ukraine/oct-25-local-elections-highlight-battle-under-way-to-fill-eastern-ukraine-power-vacuum-399940.html

44 See also: results.vybir.info/result_election_info.jsp?city=krasnoarmiisk&hq_id=18.

supported by the party Nash Krai. In Severodonetsk, the incumbent mayor Valentyn Kazakov, who was elected back in 2010, defeated Volodymyr Grytsyshyn in the mayoral runoff after receiving 62.4% of the votes.

Finally, despite the fact that the aforementioned parties had access to more resources than their competitors and that the electoral threshold was raised from 3% to 5%, small parties managed to achieve at least partial success in the region. The party Samopomich, led by Lviv mayor Andriy Sadovy, managed to win 3 out of 36 council seats in the cities of Slovyansk, Lysychansk, and Severodonetsk. The party Democratic Alliance won 4 out of 26 council seats in the city of Novogrodivka. Also, the party Syla Lyudei, which was established in August 2014, had some success by winning 3 out of 34 council seats in the city of Dobropillya and 5 out of 54 council seats in the city of Mariupol.

Certain problems pertaining to proportional representation, to which there had been objections already prior to the elections (see above), have been confirmed by the elections results. An illustrative example is the composition of the Kramatorsk City Council, where candidates for deputy did not win a single mandate in 10 out of 42 constituencies, while as many as 2 candidates received council seats in 6 constituencies. In the rest of 26 constituencies, one candidate for deputy was elected to the city council.⁴⁵

Turnout of Voters

Despite increasing political competition, voter turnout in the Donetsk and Luhansk oblasts was lower than in other regions of Ukraine. While the nationwide voter turnout amounted to 46.6%, in the Luhansk oblast only 35.3%

⁴⁵ Compare: "Rozpodil terytorialnyh viborchyh okrugiv m. Kramatorsk za kilkistu kandidativ, zakriplenyh za nymy, shcho otrymaly pravo na misce u miskij radi", November 6, 2015: sites.google.com/site/socialdataua/home/Kramatorsk_Districts_25.10.2015-01.jpg

of voters exercised their right to vote on October 25, 2015. In the Donetsk oblast, the turnout figures were lower still: only 31.7%.⁴⁶ Considering the total number of voters in the Donetsk and Luhansk oblasts, only about 8.3% of all registered voters in the region wished or were able to cast their votes on October 25, 2015.⁴⁷

NUMBER OF VOTERS IN DONETSK AND LUHANSK OBLASTS ON OCTOBER 25, 2015⁴⁸

| REGION | TOTAL | IN AREAS BEYOND THE CONTROL of the Ukrainian government | IN AREAS CONTROLLED BY THE UKRAINIAN GOVERNMENT where the elections were not appointed | INVITED TO VOTE | ABSOLUTE VOTER TURNOUT (%) [shown as percentage of total number of registered voters] |
|--------------------|-----------|---|--|-----------------|--|
| Donetsk oblast | 3,306,745 | 1,875,088 | 343,546 | 1,088,111 | 264,716 (31.65 %) [7.46 %] |
| Luhansk oblast | 1,774,843 | 1,414,511 | 182,342 | 450,990 | 159,047 (35.27 %) [8.96 %] |
| Throughout Ukraine | | 3,289,599* | 525,888 | 29,808,774 | 13,777,182 (46.61 %) |

* Except those voters who were registered in the territory of Autonomous Republic of Crimea.

46 According to observers, the turnout of voters in the second round of local elections on November 15 in Kramatorsk (Donetsk oblast) was 41.4 % while in Severodonetsk (Luhansk) – 27.9 %. See: novosti.dn.ua/details/263670, and novosti.dn.ua/details/263668.

47 264,716 out of 3,306,745 registered voters have casted their votes on October 25, 2015 in the Donetsk oblast, while in the Luhansk oblast 159,047 out of 1,774,843 registered voters cast their votes. See: cvk.gov.ua/vm_2015/yavka_po_reg_vm_2015.pdf.

48 Author's presentation. Compare https://drv.gov.ua/portal/!cm_core.cm_index?option-ext_num_voters&pdt=2, and cvk.gov.ua/vm_2015/yavka_po_reg_vm_2015.pdf.

There are several reasons for the relatively low turnout figures registered in this region during the elections on October 25. In the Donetsk oblast, the low turnout figures resulted from the fact that the elections in Krasnoarmiisk (which has nearly 60,000 registered voters) and Mariupol (which has 340,000 registered voters and is the largest city in the Donetsk oblast controlled by the Ukrainian government) were scheduled on time, but took place only on November 29.⁴⁹ At the same time, the low voter turnout in this region as compared with the rest of the country can also indicate a high level of distrust in political parties and candidates among the local population. The low turnout should furthermore be viewed in the context of the fact that the election campaign and outreach activities aimed at attracting voters in the Donetsk and Luhansk oblasts were less intensive than in other regions. Besides that, fewer parties took part in the elections in these two oblasts than in other regions. Furthermore, the political parties that participated in the elections nominated fewer candidates than in other regions due to difficulties with recruiting candidates in the territorial communities of the Donetsk and Luhansk oblasts.⁵⁰ In the settlement of Novoaydar (Luhansk oblast), the lack of candidates resulted in the decision to void the local council elections. Based on the election results, only 20 out of 34 council seats could be filled by eligible candidates – which is less than two thirds of the total number of available seats, as prescribed by law.⁵¹

49 See below on p.11.

50 International Election Observation Mission (IEOM). Ukraine – Local Elections, October 25, 2015; Statement of Preliminary Findings and Conclusions, October 26, 2015, S. 9; osce.org/odihr/elections/ukraine/194406

51 Nash Krai party won 14 council seats based on the election results having registered only two candidates. Furthermore, Batkivschyna had more council seats (9) than registered candidates (7). Compare.: "KVU: v Novoaydari 11 peremozhtsiv vidmovylys vid mandata, budut dovybory", December 02, 2015; radiosvoboda.org/content/news/27331883.html. Re-elections are scheduled for December 20, 2015.

Election Process in the East of Ukraine

In areas of the Donetsk and Luhansk oblasts where local elections were scheduled and held on October 25, the election process faced similar problems as witnessed in other regions of the country. Typically, all actors involved in the electoral process had to deal with technical or procedural issues based on the general shortcomings of the electoral law. At the same time, all involved actors lacked time to thoroughly review the specifics of the new electoral law. Inevitably, also the aforesaid misunderstandings and shortcomings in the electoral legislation related to dispute resolution, registration of candidates, regulation of election race, and control on campaign finance were unable to avoid. Problems with candidate registration occurred primarily in Lysychansk, in the districts of Novoposkov and Kreminna (Luhansk oblast), and in Kramatorsk and Slovyansk (Donetsk oblast). In Slovyansk, the stalled registration of the Opposition Bloc mayoral candidate Vadym Lyakh resulted in the Central Election Commission's decision to terminate the office of the Territorial Election Commission (TEC) in Slovyansk. A judgment of the administrative court, ruling that the actions of the TEC were illegal, was passed earlier.⁵² Apart from these isolated cases, it should be, however, noted that violations of the electoral law recorded

52 Competent election commission in the city of Slovyansk was unable to adopt a decision on registration of candidate Lyakh at the first attempt. After representatives of the Opposition Bloc filed a complaint against the Election Commission, the competent administrative court ruled as illegal the inactivity of the election commission regarding the registration of the candidate. The Central Election Commission thus adopted a decision on dismissal of territorial election commission in Slovyansk. Following the appointment of new members of the election commission candidate Lyakh was registered out-of-time. See.: OPORA: Report Nomination and Registration of Candidates: Key Issues and Tendencies, October 8, 2015: oporaua.org/en/news/40111-3191-1446983788-zvit-vysuvannja-i-rejestracija-kandydativ-kljuchovi-problemy-ta-tendenciji.

prior to the elections, as well violations that occurred on election day, were not of a systematic nature. This general impression was confirmed on election day in Mariupol and Krasnoarmiisk on November 29, 2015.⁵³

Political Leverage on Election Commissions

Despite the fact that local elections in the Donetsk and Luhansk oblasts were generally held in accordance with the law, it turned out that the existing political competition and the frequently reported high level of mistrust between the parties in the electoral process were reflected in the excessive politicization of some election commissions. This applies especially to Mariupol, where the local elections did not take place on October 25, 2015, in accordance with the established procedure. Problems in the conduct of the elections arose not because of security issues, as predicted by the Donetsk oblast civil-military administration back in August 2015,⁵⁴ but due to the tense political climate and strained relations between representatives of certain forces within city election commissions: on October 17, seven members of the Mariupol city election commission adopted the decision to print ballot papers in the "Priazovskiy robochiy" printing house, whereupon four other members of the commission challenged the legality of this move, pointing out that such a decision ought to have been adopted by a

53 Compare: "Statement on Observation Results of 29 November 2015 Regular Local Elections in Cities of Mariupol and Krasnoarmiisk, Donetsk Oblast", November 30, 2015: oporaua.org/en/news/41843-statement-on-observation-results-of-29-november-2015-regular-local-elections-in-cities-of-mariupol-and-krasnoarmiisk-donetsk-oblast.

54 "Zhebrivsky argumentiroval TsIK nevozmozhnost mestnykh vyborov v Mariupole", 26.08.2015: zn.ua/POLITICS/zhebrivskiy-argumentiroval-cik-nevozmozhnost-mestnykh-vyborov-v-mariupole-186645_.html

majority vote by the original 18 members of the commission. The day before, the Central Election Commission had dismissed another seven members of the Mariupol city election commission for improper performance of professional duties. The seven vacant commission seats were not filled prior to voting on the decision on October 17. On October 21, the responsible administrative court delivered a judgment stating that the implementation of this dubious decision by the Mariupol city election commission was indeed a lawful action.⁵⁵ However, the conflict around the ballot printing location continued and ultimately the election commission refused to issue ballot papers produced by the "Priazovskiy robochiy" printing house.⁵⁶ The basis of this conflict lies in the fact that the printing house is owned by a corporate group of the oligarch Rinat Akhmetov. As Rinat Akhmetov is considered to be a supporter of the Opposition Bloc party⁵⁷ and as the candidate for mayor, Vadym Boychenko, is also the current head of "Metinvest," a holding company owned by Akhmetov, the so-called "Democratic forces" – an informal alliance of Batkivshchyna, UKROP,⁵⁸ and Radical Party – suspected that systematic election fraud would occur in the printing house. Representatives of the Opposition Bloc interpreted these suspicions as an attempt by political rivals to undermine the elections.

Although the law on local elections complies with the general rules for holding repeat elections, it does not make a provision for cancelling the elections on the ground of absence of ballot papers.⁵⁹ Therefore, repeat

55 "Preliminary Observation Summary of 25 October 2015 Local Elections by OPORA", November 23, 2015; opora.ua/en/news/40742-1475-1446984246-zvit-poperedni-vysnovky-opory-shchodovyborchogo-procesu-na-miscevyh-vyborah-25-zhovtnja-2015.

56 "Izbirkom Mariupolya poprosil perenesti vybory v gorode na 15 noyabrya", November 24, 2015; lb.ua/news/2015/10/24/319189_izbirkom_mariupolya_poprosil.html.

57 See also: "Oct. 25 local elections highlight battle under way to fill eastern Ukraine power vacuum", October 14, 2015; kyivpost.com/content/ukraine/oct-25-local-elections-highlight-battle-under-way-to-fill-eastern-ukraine-power-vacuum-399940.html.

58 UKROP party („Ukrainian Association of Patriots“) was founded in summer 2015. It is headed by Henadiy Korban who is considered to be a trustee of Kolomoiskiy.

59 The situation is different in Svatovo where a competent territorial election commission declared the invalidity of voting bulletins due to serious formal errors right on the Day of Election. Furthermore, in the Novoaydar region the local election was recognized void by the territorial election commission (see above, on p. 9). Based on the Law on Elections, repeat election should have been appointed in Svatovo on December 27, 2015, and in the Novoaydar region - on December 20, 2015.

elections in Mariupol were scheduled only after the parliament adopted a corresponding law on November 10, with the consequence that the elections were scheduled for November 29. In order to ensure a fair election process, the CEC this time authorized one representative from each parliamentary party to monitor the process of production and distribution of ballot papers.⁶⁰ Moreover, a new TEC was appointed. However, the election process as such was not re-scheduled. This decision of the Central Election Commission included banning any political agitation in the lead-up to the November 29 elections, since, according to the CEC, the election campaign stage had ended the day before the elections of October 25, pursuant to the law on local election.⁶¹ The simultaneous regulation of the local elections in Mariupol by two different laws was sharply criticized by civil society observers.⁶²

The local elections in the city of Krasnoarmiis'k, on November 29, were conducted on the same regulatory and legal bases as the elections in Mariupol. The Territorial Election Commission in Krasnoarmiis'k also experienced problems with the production of ballot papers prior to the appointed elections of October 25. Members of the Territorial Election Commission found a technical error in the ballots just before sending them to the polling stations and adopted a decision to reprint the ballot papers. However, the election commission's decision to print ballot papers in a privately owned printing house was invalidated by the Administrative Court of the Donetsk oblast on the grounds that there existed prior and binding agreements with other printing houses. Consequently, the election commission voted against transferring the ballot papers (printed the night before in Kramatorsk) to the polling stations.

60 Decision № 573 of the CEC of Ukraine, as of November 19, 2015: [195.230.157.53/pls/acts/ShowCard?id=41821&](https://www.cec.gov.ua/acts/ShowCard?id=41821&).

61 Decision № 570 of the CEC of Ukraine, as of November 19, 2015: [195.230.157.53/pls/acts/ShowCard?id=41817&](https://www.cec.gov.ua/acts/ShowCard?id=41817&).

62 See also: "Donetske KVVU vvazhae absurdom zaboronu agitatsii na vyborakh v Mariupoli ta Krasnoarmiysku", November 20, 2015: cvu.dn.ua/uk/news/donecke-kvu-vvazhaie-absurdom-zaboronu-agitaciyi-na-viborah-v-mariupoli-ta-krasnoarmiysku.

Problems with the election process that occurred at TEC-level were also observed during the second round of mayoral elections on November 15 in Kramatorsk. As had already occurred in previous elections, the method of calculating election results by adopting vote-counting protocols from individual polling stations faced strong bureaucratic obstacles that made the process vulnerable to political influence and disputes. In the particular case of Kramatorsk, such disputes – which broadly arose in the process of accepting PEC protocols by the TEC after polling stations had closed – came only to an end when a candidate for mayor, Maksym Yefimov, officially admitted his defeat to Andriy Pankov and stated that he was not going to challenge the election results. Up until that moment, the Kramatorsk city election commission was refusing to accept about half of all vote-counting protocols submitted by individual polling stations. To a certain degree, the responsible commission issued no justification for its decisions, which suggests that its work was guided by political motives.⁶³

Conclusion

The local elections in the Donetsk and Luhansk oblasts were characterized by political competition and contributed to the diversification of the political spectrum in the region. The results of local elections clearly confirmed the dominance of Opposition Bloc as the de facto successor of the Party of Regions. Nevertheless, the party was not able to gain political monopoly over the region as it had been able to in the past. Increasing political competition has resulted in tightening the mutual control of all stakeholders of the election process and thus helped to establish political balance to some extent. This is particularly noticeable in the fact that the use of administrative resources and systematic violations of electoral law were

⁶³ Maksym Efimov vyznav porazku v Kramatorsku», November 17, 2015: opora.ua/org/novyyny/41696-donechchyna-maksym-yefimov-vyznav-porazku-v-kramatorsku.

not a common practice. It remains to be seen whether the level of political competition has been established on a permanent basis and how it will evolve in the mid-term and long-term perspective in the course of everyday political practice. Civil society, which is less firmly rooted in this region than in other regions of the country, will continue to play an important role in either case. In particular, civil society election observation proved to be a key component for meeting the high requirements for democratic elections in the Donetsk and Luhansk oblasts.

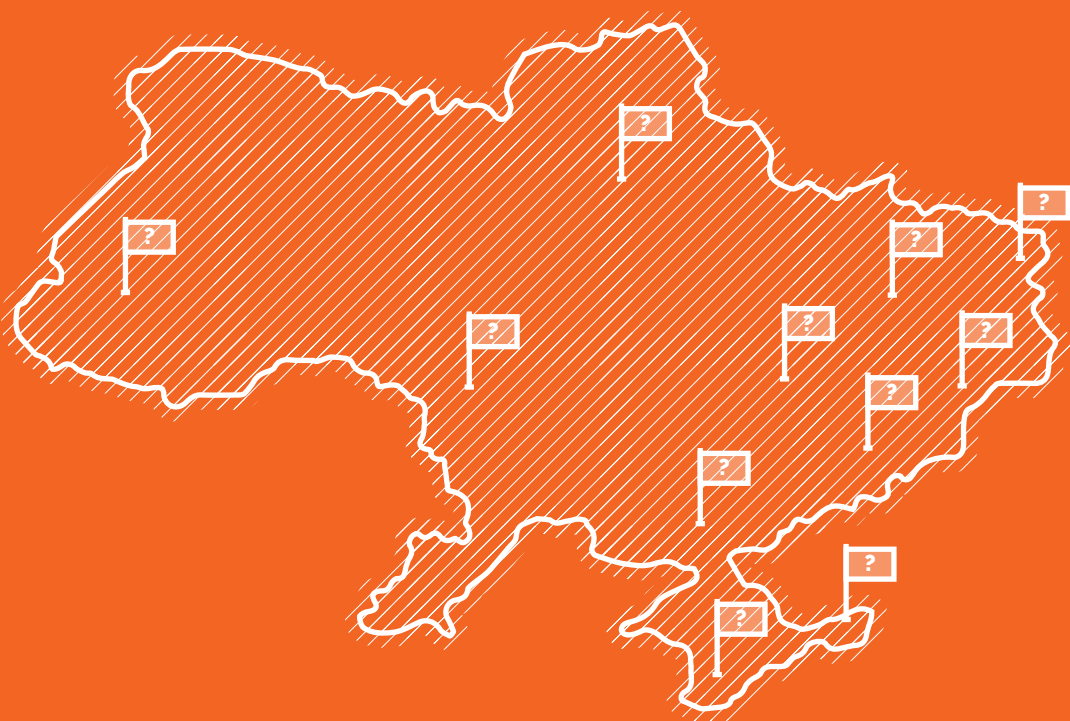
A successful continuation of the launched process now also requires the immediate initiation of all necessary measures to conduct elections in those areas controlled by the Ukrainian government of the oblasts of Donetsk and Luhansk, where no elections had been scheduled for October 25, 2015. A public and transparent discussion about criteria for fair elections would go a long way to oppose the impression that the decision to not hold elections in 122 territorial communities was primarily based on political calculations.

Finally, although local elections in the so-called "Donbass" region can be considered as a step forward in comparison with previous elections, they still cannot be treated as a total "reboot" of Ukraine's political system and the specific political culture in Ukraine in general. The law on local elections contains a number of shortcomings that affect the legal equality of opportunities of political parties and candidates. In particular, parties and candidates with large financial resources still have better chances of winning than smaller parties and independent candidates, due to the absence or the inadequacy of legal provisions regulating the process of election campaign and party financing. At the same time, the current situation facilitates investments in political parties as "political projects" and allows investors to influence politics through elections. The problem of the proper conduct of local elections – which arises out of the politicization of election commissions, and which became most obvious in Mariupol – can in this case be regarded as a consequence of the existing level of political

competition. At the same time, the revealed problems also result from a high level of mistrust between the parties and stakeholders involved in the electoral process. This also highlights the general problem of merger of politics and business, as well as the dominant role of certain enterprises that can have a strong influence on political decision-making processes, particularly at the local level.

Executive Summary

The 2015 local elections in the Donetsk and Luhansk oblasts of Ukraine – both directly affected by military actions – were characterized by political competition and contributed to the diversification of the political spectrum in the region. Increasing political competition has resulted in intensifying the mutual control of all stakeholders of the election process and thus helped to establish political balance to some extent. In particular, the use of administrative resources and systematic violations of the electoral law were not a common practice. Therefore, the local elections in the region can be considered as a step forward in comparison with previous elections. However, particularly due to a number of legislative shortcomings which affect the equality of opportunities of political parties and candidates, the local elections still cannot be considered as a total “reboot” neither of Ukraine’s political system nor the specific political circumstances in the region. Moreover, it remains to be seen whether the level of political competition has been established on a permanent basis and how it will evolve in the mid- and long-term day-to-day political practice. Now, for a successful continuation of the launched process, the immediate initiation of all necessary measures to conduct elections in those areas controlled by the Ukrainian government of the oblasts of Donetsk and Luhansk, where no elections had been scheduled for October 25, 2015, is required. A public and transparent discussion about criteria for fair and secure elections would also counter the impression that the decision not to hold elections in more than one hundred territorial communities was primarily based on political calculations.



International Observation

*with Political Motives at the
2015 Local Elections*

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Introduction

Politically motivated observation of the electoral processes in Ukraine, as in many other countries in the post-Soviet space, can be broadly differentiated into two categories: (1) individual observers whose loyalty is bought by (the representatives of) candidates or political parties, and (2) international observation missions that are inherently politically motivated. This report addresses the second category in relation to Ukraine.

In Ukraine, fake observation missions of the electoral processes have been engaged by two main actors: Ukrainian political parties, most important the now defunct Party of Regions (Partiyarehioniv) of former President Viktor Yanukovich, and Russian structures interested in promoting Russia's interests in Ukraine. While buying the loyalty of individual observers has been practiced in Ukraine since the country regained independence in the beginning of the 1990s, fake observation missions are a relatively new phenomenon originating in Russia. There, this phenomenon has been part of a more general strategy consisting, as Rick Fawn argues, in "establishing alternative mechanisms and practices for [international election observer missions] that aim to give legitimacy to [the] alternative conception of democracy".⁶⁴

The need for the controlled observation missions arose from Russia's perceived geopolitical defeats in the post-Soviet space in 2003-2005.

Since the 1990s, there has been a number of democratic attempts to confront electoral authoritarian regimes in the post-Soviet space. These attempts are primarily associated with international election observer missions led by the Organisation for Security and Cooperation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR). Since the mid-1990s, these organisations have conducted numerous election

⁶⁴ Rick Fawn, "Battle over the Box: International Election Observation Missions, Political Competition and Retrenchment in the post-Soviet Space", *International Affairs*, Vol. 82, No. 6 (2006), p. 1133 (1133-1153).

observation missions, and their evaluation of the fairness, openness and credibility of elections has become an important factor in assessing the level of democratisation of political systems in the post-Soviet space.

The significance of the international electoral observation missions led by the OSCE and ODIHR, yet also by the European Union (EU) and Parliamentary Assembly of the Council of Europe (PACE), has increased even more following a series of "colour revolutions" in Georgia (2003), Ukraine (2004) and Kyrgyzstan (2005). The "Revolution of Roses" in Georgia in November 2003 was largely modelled on the Serbian "Bulldozer Revolution" that had led to the overthrow of Slobodan Milošević's regime in 2000, and prevented pro-Russian Eduard Shevardnadze from "winning" the fraudulent presidential elections. Already after the "Revolution of Roses", Vladimir Putin's regime realised the threat of "colour revolutions" to the Russian domination in post-Soviet space and started taking countermeasures against international election observation missions whose conclusions about unfair electoral procedures played an important role in mobilising societies against the electoral fraud. Controlled observation missions became part of the Kremlin's countermeasures against the genuinely democratic observation missions.

CIS-EMO

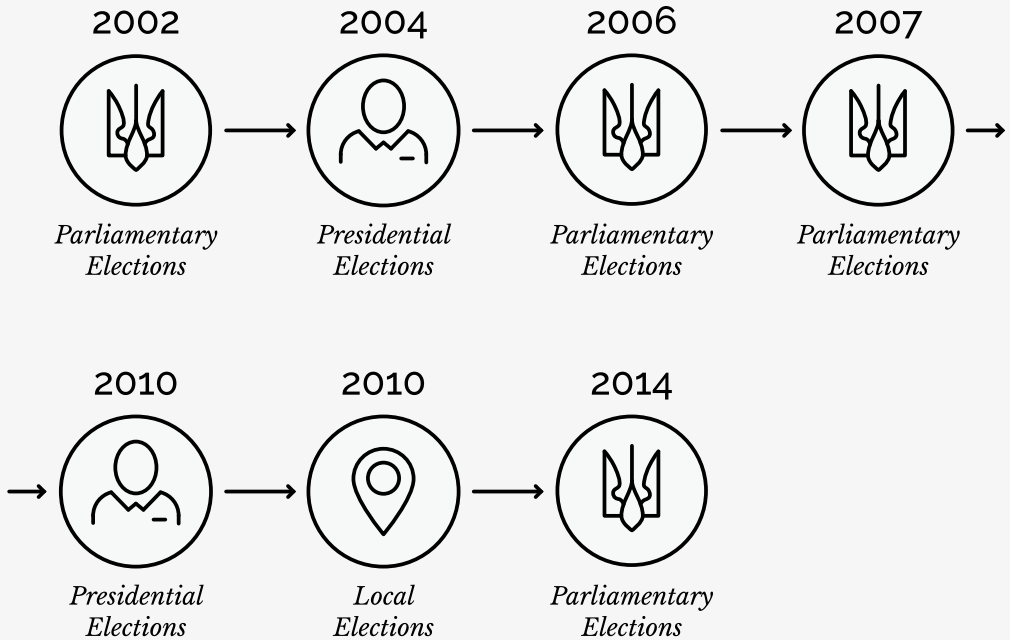
One such mission is CIS-EMO established by Aleksey Kochetkov, former member of the Russian fascist organisation Russian National Unity (Russkoe natsional'noe edinstvo, or RNE). It was founded in 2003 under the name "Autonomous Non-commercial Organisation for Monitoring Elections in CIS States". At that time, Russia did have a state-controlled organisation that was involved in monitoring elections: this was one of the functions of the Russia-dominated Interparliamentary Assembly of the CIS Member Nations (IPA CIS).

However, the dependence of the IPA CIS on Russian foreign policy was too obvious, and naturally it did not have the credentials of independence and impartiality comparable to those of the OSCE or ODIHR. CIS-EMO, which was formally a non-governmental organisation (NGO), could by no means be considered an alternative to OSCE/ODIHR, but the Russian authorities could capitalise on its status of an NGO to strengthen the "impartial image" of the IPA CIS.

One of the first observation missions for CIS-EMO was the 2004 presidential election in Ukraine. The election was marked by a political struggle between pro-Russian Viktor Yanukovych and pro-Western Viktor Yushchenko, and Moscow sent to Ukraine its best political consultants, including the Kremlin's "gray cardinal" Gleb Pavlovsky, to help Yanukovych with the electoral campaign. Kochetkov himself acted as a *piarshchik* of Yanukovych's election campaign team, and openly supported his Party of Regions.

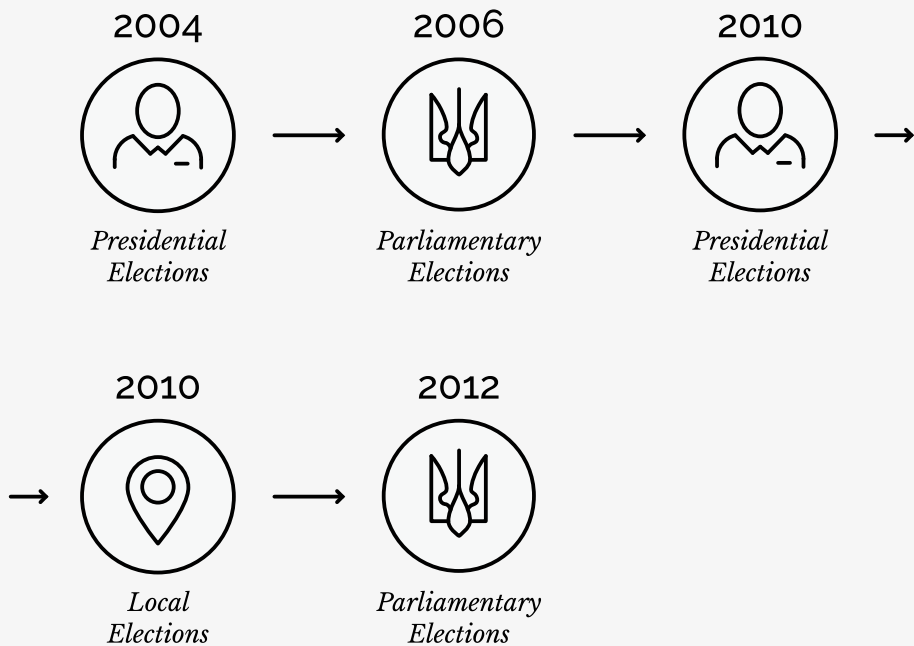
Yanukovych, who was then Prime Minister of Ukraine, had almost all the advantages of administrative leverage that allowed him and his high-ranking supporters to rig the election and "win" the second round. International observers neither from OSCE/ODIHR, nor from the EU, PACE or NATO Parliamentary Assembly declared the elections free and fair. CIS-EMO, however, stated that Ukraine's presidential elections were legitimate, free and fair

Elections in Ukraine, observed by the IPA CIS:



Since 2005, CIS-EMO took part in more than 40 observation missions at elections in countries such as Azerbaijan, Estonia, France, Germany, Kazakhstan, Kyrgyzstan, Poland, Russia, Turkey and Ukraine, as well as in generally unrecognised, breakaway states such as Abkhazia, South Ossetia and Transnistria.

Elections in Ukraine, observed by the CIS-EMO:



CIS-EMO received official support, in particular, from Russia's Foreign Ministry. For example, when Kochetkov and his colleague were arrested in Moldova for a brawl in July 2005, it was foreign minister Sergey Lavrov himself who called the arrest "an unacceptable act".

However, CIS-EMO worked not only for the Russian structures directly, but also for the pro-Russian parties in Ukraine. Apparently hacked communications of Kochetkov provide insights in the internal workings of the CIS-EMO. In the context of the 2010 presidential election in Ukraine, Kochetkov wrote:

We have built a long track record of working in the area of the electoral processes of all levels that allows us to work not only in the capacity of independent arbiter of specific elections, but also to exert influence on the coverage of the electoral process, as well as its development (and, consequently, results of the elections). The implementation of the project will allow to create an efficient mechanism of influencing the voters (shaping public opinion, attitudes towards a specific candidate, increasing or lowering voter turnout). Furthermore, the project will provide the information support for countering the structures engaged in the anti-Russian activities during the electoral campaign (supposedly OSCE ODIHR, UCCA [Ukrainian Congress Committee of America], NDI [National Democratic Institute], IRI [International Republican Institute], organisations that are financed by the US State Department, etc.). As a result, the implementation of the project will allow for exerting influence on the elections in the interests of the Russian Federation.⁶⁵

Documents recovered after the 2014 Ukrainian revolution from one of the offices of the Party of Regions provided proof that CIS-EMO's services were a paid job. CIS-EMO monitored the local elections in Ukraine in autumn 2010, and the documents testify that the total daily allowance for 65 observers amounted to \$10,500 (approximately €7,450 at that time), while the remuneration for the entire mission amounted to \$51,000 (€36,184).⁶⁶

Over the years, CIS-EMO has cooperated with two other politically motivated observation organisations that were founded in the EU but whose

65 Sergey Il'ko, "Na vybory v Ukraine opredelen smotryashchiy ot Kremlya?", UNIAN, 23 February (2012), www.unian.net/politics/612744-na-vyiboryi-v-ukraine-opredelen-smotryashchiy-ot-kremlya.html

66 "Yak Yanukovych namahavsya kupyty loyal'nist' svitu (dokumenty)", Espresso TV, 21 May (2014), espresso.tv/article/2014/05/21/yak_yanukovych_namahavsya_kupyty_loyalnist_svitu_dokumenty.

activities have been characterised by clear pro-Russian stances: (1) the Poland-based European Centre of Geopolitical Analysis and (2) the Belgium-based Eurasian Observatory for Democracy & Elections.

European Centre for Geopolitical Analysis

Mateusz Piskorski, who founded the European Centre of Geopolitical Analysis (Europejskie Centrum Analiz Geopolitycznych, ECAG) in 2007 in Poland, started his international election monitoring career in 2004 when he was sent to observe parliamentary elections in Belarus by now-deceased Andrzej Lepper, leader of the right-wing populist Self-Defence of the Republic of Poland (Samobrona Rzeczypospolitej Polskiej). According to the joint report of the OSCE and ODIHR, the 2004 parliamentary elections in Belarus “fell significantly short of OSCE commitments”, while “the Belarusian authorities failed to create the conditions to ensure that the will of the people serves as the basis of the authority of government”.⁶⁷ Piskorski’s conclusion, however, was predictably affirmative, as he considered the elections free and fair.

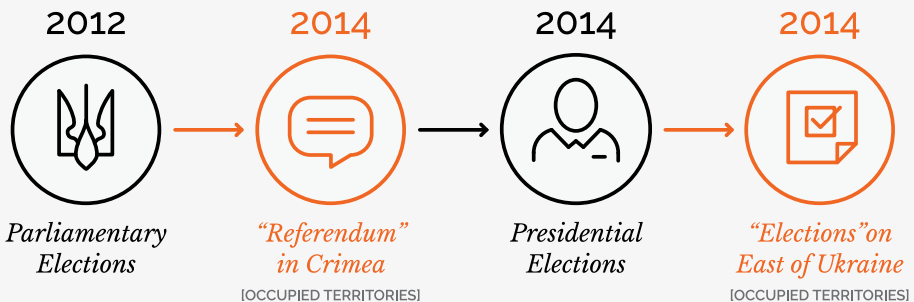
During his visit to Transnistria as an observer of the “parliamentary elections” in December 2005, he already worked with CIS-EMO. Piskorski cooperated with CIS-EMO for several years and built a variety of contacts with Russian officials. In January 2007, Piskorski and his associates registered their own organisation, ECAG, that would provide electoral monitoring service to the interested parties.

⁶⁷ OSCE/ODIHR, Republic of Belarus. Parliamentary elections. 17 October 2004. OSCE/ODIHR Election Observation Mission. Final Report (Warsaw: OSCE/ODIHR, 2004), p. 1.

In 2009, there was an attempt to expand the ECAG internationally, and, in addition to the pre-existing organisation in Russia, a branch of the European Centre of Geopolitical Analysis was established in Germany under the management of Piotr Luczak, a member of the left-wing Die Linke party. In its promotional booklet, the ECAG, as an international structure, did not conceal its Russo-centric nature. It claimed that their "monitoring services [had] been already twice highly estimated by the Central Electoral Commission of Russian Federation", while its intended activities as a "Euro-Russian dialogue platform" included "publishing articles and/or interviews in Russian journals and on Russian websites, publishing books in Russian translation, participating in conferences, seminars and roundtables in Russia, [and] giving interviews for the main Russian mass media".⁶⁸

Piskorski's ECAG provided monitors to the observation missions of CIS-EMO, but it also carried out individual observation activities.

Elections in Ukraine, observed by the ECAG



68 European Center of Geopolitical Analysis (Moscow: [n.a.], 2009), p. 2.

The ECAG and CIS-EMO have dramatically reduced cooperation since 2010-2011. The break between Kochetkov and Piskorski seemed to be the competition over Russian funding and a conflict over personal issues. Moreover, in 2011, another Russian electoral monitoring organisation, namely the Civic Control Association, started playing a more significant role in coordinating – and, hence, distributing funds for – international observers at dubious elections.

Eurasian Observatory for Democracy & Elections

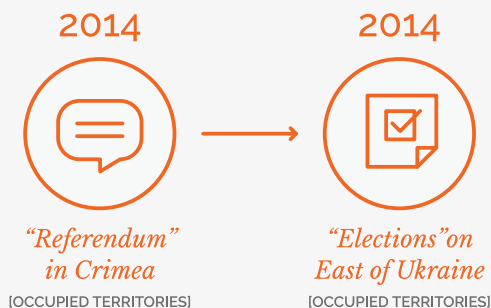
The Eurasian Observatory for Democracy & Elections (EODE) was founded by Belgian Luc Michel, the leader of the right-wing extremist Communitarian National-European Party (Parti Communautaire National-Européen, PCN), in 2007 as an “electoral monitoring organisation”.

In 2006, Michel, as well as PCN's General Secretary Fabrice Beur and a member of the party's political bureau Jean-Pierre Vandersmissen, took part – on the invitation from CIS-EMO – in observing the “Transnistrian independence referendum”.

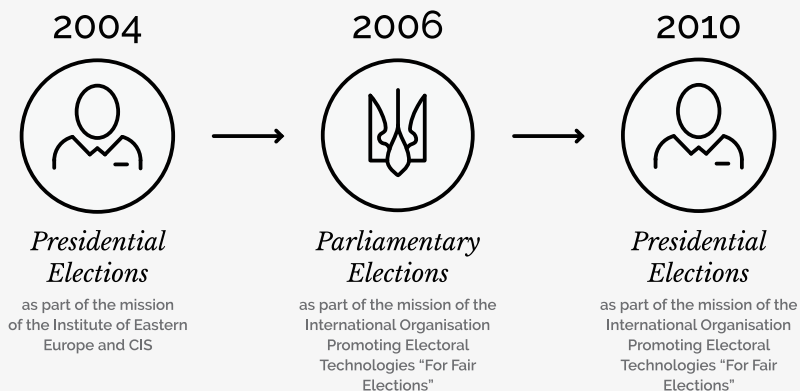
In Ukraine, the EODE generally did not carry out individual observation missions, but provided monitors for the CIS-EMO and ECAG missions, as well as co-organising observation missions during the dubious electoral processes together with the ECAG.

Throughout its history, apart from the ECAG and CIS-EMO, the EODE has cooperated with the International Expert Centre for Electoral Systems (ICES) established in 2005 in Israel and headed by Alexander Tsinker. The latter has been in the fake election observation “business” in Ukraine since 2004.

The EODE co-organised the observation missions in:



Alexander Tsinker participated in the observation of:



Civic Control

The Russian organisation Civic Control headed by Aleksandr Brod, director of the Moscow Bureau for Human Rights, is what can be called a "GON-GO", i.e. a "government organised non-governmental organisation", as the groups that compose this association are loyal to the Kremlin, while the key figures in the management of the association are members of – or, at least, closely associated with – the Russian parliament and the Civic Chamber of the Russian Federation. The implicit objective of Civic Control is to legitimise and declare fair controversial elections, and criticise results of international monitoring missions from democratic institutions such as OSCE.

While Civic Control did not send individual observation missions to Ukraine, it did coordinate observation of the "referendum" in Crimea and "elections" in the occupied East Ukrainian territories in 2014 with the ECAG and EODE. For his involvement in the observation of the illegal electoral processes in Ukraine, Brod was sanctioned by the Ukrainian authorities in 2015.

Fake international observers *at the local elections in Ukraine in 2015*

None of the organisations that were involved in the fake electoral observation activities in Ukraine in the past – IPA CIS, CIS-EMO, ECAG, EODE, Civic Control, ICES – have participated in observing the local elections in Ukraine in autumn 2015. This can be explained by the fact that their activities have been publicised in the international and Ukrainian media, so they might have anticipated the problems in Ukraine and did not even try to register

with the Central Electoral Commission of Ukraine (CEC), or they were denied registration by the latter.

However, a different organisation, namely the International Civil Organisation "Political Initiative", was registered with the CEC on the eve of the 2015 local elections in Ukraine, and seemed to play the same role as the above-mentioned organisations did.

Composition of the International Civil Organisation "Political Initiative"

| NAME | COUNTRY | POLITICAL AFFILIATION | UKRAINIAN CITY |
|-------------------------|----------------|--|----------------|
| Stanislav Berkovec | Czech Republic | ANO 2011 | Dnipropetrovsk |
| Sergejs Blagoveščenskis | Latvia | N/A | (?) |
| Rainer van Raemdonck | Germany | Alternative for Germany | Dnipropetrovsk |
| Jarostaw Gromadzki | Poland | Stonoga Polish Party | (?) |
| Andrzej Dariusz Dotecki | Poland | United Left | Dnipropetrovsk |
| Jurij Zajcev | Latvia | Latvian Russian Union | (?) |
| Olaf Kießling | Germany | Alternative for Germany | Dnipropetrovsk |
| Zoltán Magyar | Hungary | Jobbik | (Mariupol?) |
| Janusz Niedźwiecki | Poland | Change | Dnipropetrovsk |
| Zdeněk Ondráček | Czech Republic | Communist Party of Bohemia and Moravia | Mariupol |
| Thomas Rudy | Germany | Alternative for Germany | Dnipropetrovsk |
| Tamás Gergő Samu | Hungary | Jobbik | Mariupol |
| Ludwig Flocken | Germany | Alternative for Germany | Dnipropetrovsk |
| Corinna Herold | Germany | Alternative for Germany | Dnipropetrovsk |
| Piotr Chmielowski | Poland | Democratic Left Alliance | (?) |
| Anna Čurdová | Czech Republic | Party of Civic Rights | Mariupol |
| Balázs Szabó | Hungary | Jobbik | Mariupol |
| Christina Schade | Germany | Alternative for Germany | Dnipropetrovsk |

As seen from Table 1, three observers came from the Hungarian far right **Jobbik** party, which is considered an openly pro-Moscow party.⁶⁹ One of Jobbik's leading members, Béla Kovács, is currently being investigated by the Hungarian authorities on charges of spying for Russia against the EU institutions, and the EU lifted his MEP immunity on 14 October 2015. Kovács was also one of the fake observers of the "referendum" in Russia-occupied Crimea on 16 March 2014, while two other members of Jobbik, namely Márton Gyöngyösi and Adrienn Szaniszló, observed "parliamentary elections" in the occupied East Ukrainian regions. Gyöngyösi and Szaniszló were officially sanctioned by the Ukrainian authorities,⁷⁰ and the author's sources tell that Kovács was sanctioned too. Jobbik's members of the European Parliament tend to vote against all resolutions critical of Russia's aggression against Ukraine. For Jobbik's **Balázs Szabó**, the local elections in Ukraine are not the first experience of observation. For example, as part of the ECAG's observation mission, Szabó and Kovács monitored elections in Russia in 2011 at the invitation of the Civic Control.

Six observers came from **Alternative for Germany** (Alternative für Deutschland), a Eurosceptic party that, in the recent years, has shifted from the centre right to right-wing populism. Under the leadership of Frauke Petry the party has become increasingly pro-Moscow.⁷¹

Sergejs Blagoveščenskis is the head of the "Political Initiative" organisation. He took part in the observation mission of CIS-EMO at the 2010 local elections and headed the observation mission of the "Political Initiative" at the 2012 parliamentary elections in Ukraine. He positions himself as the

69 Attila Juhász, Lóránt Győri, Péter Krekó, András Dezső, "I Am Eurasian". The Kremlin Connections of the Hungarian Far-Right (Budapest: Political Capital Kft./Social Development Institute Kft., 2015).

70 See the full list here: president.gov.ua/storage/j-files-storage/00/10/80/2d4767fb72f7b288e15059d6867f9a3c_1442423766.pdf.

71 "German AfD Founder Leaves Party Decrying Xenophobic Shift", Reuters, 8 July (2015), reuters.com/article/us-germany-politics-eurosceptics-idUSKCN0Pl25720150708; "Alternative for Germany's New Leader Promises Closer Ties with Russia", Sputnik, 5 July (2015), sputniknews.com/politics/20150705/1024234752.html.

defender of the Russian language in Latvia,⁷² as well as being critical of the democratic developments in Latvia and supporting the Latvian pro-Russian political party Harmony Centre (Saskaņas Centrs).⁷³ Together with his colleagues from the ECAG and EODE, he observed the 2012 presidential elections in Russia.

Stanislav Berkovec is a member of the Czech ANO 2011 political party led by the Czech billionaire Andrej Babiš. As part of the joint ECAG/EODE observation mission, he monitored the Crimean "referendum".⁷⁴ Berkovec is also known for his pro-Russian positions.⁷⁵ In 2015, he also observed illegitimate "elections" in Transnistria, a breakaway state in Moldova, and the parliamentary elections in Azerbaijan.

Jarostaw Gromadzki is a member of the Stonoga Polish Party (Stonoga Partia Polska) founded and led by anti-Semitic politician and businessman Zbigniew Stonoga. For some time, Stonoga was an advisor to Samoobrona, Piskorski's former party. In summer 2015, Stonoga published thousands of pages of classified documents from the ongoing investigation into the leak of secret recordings that resulted in the destabilisation of the Polish state in 2015. According to then Prime Minister Donald Tusk, the leak was orchestrated by Russian actors with the aim of undermining the Polish state.⁷⁶

Jurij Zajcev is a member of the pro-Russian Latvian Russian Union (Latvijas Krievu savienība) political party.⁷⁷ The party is co-chaired by Tatjana Žda-

72 Sergey Blagoveshchenskiy, "Latyshskie politiki v isterike", CIS-EMO, 18 November (2011), cis-emo.net/ru/news/latyshskie-politiki-v-isterike.

73 Sergey Blagoveshchenskiy, "Obrashchenie k deputatam XI Seyma ot Tsentra Soglasiya", blago.lv, 16 December (2011), blagolv.blogspot.com/2011/12/xi.html; Sergey Blagoveshchenskiy, "Latviyskaya demokratiya v deystvii", blago.lv, 17 February (2012), blagolv.blogspot.com/2012/02/blog-post.html.

74 "Evropeyskie nablyudateli v Sudake: Zdes' vsyo ne tak, kak nam pokazyvayut", Sudak, 16 March (2014), sudak.me/articles/politic/evropeyskie-nablyudateli-v-sudake-zdes-vse-ne-tak-kak-nam-pokazyvayut.html.

75 "Vecher k yubileyu Pobedy dlya rossiyskikh i cheshskikh veteranov v RTsNK v Prage", Rossotrudnichestvo, 6 May (2015), rs.gov.ru/de/node/8762.

76 Annabelle Chapman, "Secret Tapes in Polish 'Waitegate' Scandal Could Cost Warsaw's Government a Key European Commission Post", Newsweek, 15 July (2014), newsweek.com/secret-tapes-polish-waitegate-scandal-could-cost-warsaws-government-key-258912.

77 "Parlamentskie vybory: nazvany 'lokomotivy' Russkogo soyuza Latvii", CIS-EMO, 14 July (2014), cis-emo.net/ru/news/parlamentskie-vybory-nazvany-lokomotivy-russkogo-soyuza-latvii.

noka and Miroslavs Mitrofanovs who observed the Crimean “referendum”. Zajcev observed the “referendum” too. He also positions himself as the defender of the Russian language in Latvia.⁷⁸

Janusz Niedźwiecki is a member of the Change (Zmiana), a Polish far right political party founded by Mateusz Piskorski, together with former member of Samoobrona Konrad Rękas and the leader of the fascist Falanga organisation Bartosz Bekier. Like Jobbik, Zmiana is an openly pro-Moscow party that fully supports the Kremlin's foreign policy.⁷⁹

Anna Čurdová is a member of the Party of Civic Rights (Strana Práv Občanů) founded in 2009 by current President of the Czech Republic Miloš Zeman who is known for his xenophobic and openly pro-Russian views.⁸⁰ In Ukraine, she was observing presidential and local elections in 2010, as a member of the PACE and “For Fair Elections” missions correspondingly, parliamentary elections in 2012, as a member of the “For Fair Elections” mission; and parliamentary elections, as a member of the ICES mission. Together with the ECAG's observation missions, she monitored, in particular, the parliamentary and presidential elections in Russia in 2011 and 2012 correspondingly, and the parliamentary elections in Armenia in 2012.

As this brief analysis of the composition of the observation mission of the “Political Initiative” demonstrates, its representatives at the 2015 local elections in Ukraine have generally pro-Russian views, and, theoretically, would be interested to support pro-Russian political forces in Ukraine.

78 Aleksandr Livchak, “Daugavpils – miting za russkie shkoly sostoyalsya, nesmotrya na provokatsii”, News TTS LT, 1 October (2014), news.tts.lt/site/ru/Litva_i_strani_baltii/25861-Daugavpils_miting_za_russkie_shkoly_sostojalsja_nesmotrja_na_provokacii.htm; Vyacheslav Samoylov, “Yuriy Zaytsev: ‘Borolsya i budu borot’sya za ravnopravie russkikh’”, Stoletie, 24 April (2015), stoletie.ru/politika/jurij_zajcev_borolsa_i_budu_borotsa_za_ravnopravije_russkikh_548.htm.

79 Henry Foy, “Poland’s Pro-Russia Zmiana Party Urges Embrace of Putin”, Financial Times, 16 March (2015), ft.com/cms/s/0/a088379e-cbdb-11e4-beca-00144feab7de.html.

80 “UN High Commissioner for Human Rights: Czech Republic Is Systematically Violating Refugees’ Rights, Czech President Is a Xenophobe”, Romea, 23 October (2015), romea.cz/en/news/world/un-high-commissioner-for-human-rights-czech-republic-is-systematically-violating-refugees-rights-czech-president-is-a; Henry Foy, Christian Oliver, “Czech President Milos Zeman in War of Words over Russia Stance”, Financial Times, 9 February (2015), ft.com/cms/s/0/b0f5c6a2-adfc-11e4-8188-00144feab7de.html.

“Political Initiative” *evaluates elections in Dnipropetrovsk and Mariupol*

While, at the time of writing, it was not possible to establish where exactly all of the observers of the “Political Initiative” monitored the elections, the existing evidence suggests that most of them went to the cities of Dnipropetrovsk and Mariupol. This choice might be determined by the fact that both Dnipropetrovsk and Mariupol strongly supported candidates, who were previously associated with the pro-Russian Party of Regions and, in 2015, represented the Opposition Bloc (Opozitsiyny Blok) - the successor to the Party of Regions. Thus, the idea behind fake observation was to either declare that the elections were democratic and fair in case the representatives of the Opposition Bloc won, and do the opposite in case they did not. The statements of the representatives of the “Political Initiative” seem to corroborate this assumption.

The first round of the elections of the head of the Dnipropetrovsk city council held on 25 October 2015 revealed that the Opposition Bloc's Oleksandr Vilkul led in the elections: he obtained 37.94% of the vote, while his nearest competitor, Borys Filatov, representing the UKROP party obtained 35.77% of the vote. At the press conference on 26 October 2015, Rainer van Raemdonck, Corinna Herold, Thomas Rudy, and Christina Schade declared that the elections generally conformed to the European standards despite minor “flaws” such as transparent ballot boxes.⁸¹ As will be shown below, the representatives of the “Political Initiative” at least twice negatively commented on the use of transparent ballot boxes at two different locations. In

81 “Porazila otdalenyonost' uchastkov ot zhilykh domov, – nemetskie nablyudateli”, Dnepr vecherniy, 26 October (2015), dv-gazeta.info/dneprnews/porazila-otdalenyonost-uchastkov-ot-zhilyih-domov-nemetskie-nablyudateli.html

fact, reputable organisations such as the OSCE recommend using transparent boxes as a measure to increase transparency of the elections,⁸² and Ukraine uses transparent ballot boxes to minimise a common fraudulent practice such as ballot stuffing. Thus, statements of the representatives of the “Political Initiative” about the alleged inexpediency of the use of transparent ballot boxes can be interpreted as attempts to misinform Ukraine while ignoring the recommendations of the OSCE.

On the day of the second round of the elections of the head of the Dnipropetrovsk city council held on 15 November 2015, representatives of the “Political Initiative” publicised a statement, signed by Stanislav Berkovec, Andrzej Dariusz Dołdecki, Thomas Rudy, Ludwig Flocken, and Janusz Niedźwiecki, warning of the alleged provocations against the “front-runner in the elections”. They did not mention the name, but considering the fact that Vilkul won the first round of the election, the signees of the statement might have implied that he was the “front-runner”. In particular, the statement said:

Unfortunately, we are compelled to say that we have been informed by a credible source about the mass provocations in the making aimed at the disruption of the electoral process. We know that some people were specifically hired – many of them having a criminal past – and were instructed to attack members of electoral commissions, burst into polling stations, damage the ballots and use other illegal means to disrupt the elections. [...] They were paid a large honorarium to turn themselves voluntarily in to the police and claim that they were working on behalf of one of the mayoral candidates. We also know that these claims are manipulative and aimed at precluding the front-runner in the elections to win in a lawful manner.⁸³

82 See, for example, “OSCE Provides Additional Transparent Ballot Boxes for Armenia”, OSCE, 19 May (2003), [osce.org/yerevan/55313](https://www.osce.org/yerevan/55313).

83 “Mezhdunarodnye nablyudateli preduprezhdayut o vozmozhnosti sryva vyborov v Dnepropetrovske”, 056.ua, 15 November (2015), 056.ua/news/1029569.

A similar argument that was voiced by a Ukrainian social activist Ivan Krasikov on 13 November 2015 supports the assumption that the "Political Initiatives" considered Vilkul to be the "front-runner in the elections". According to Krasikov, "the elections will be disrupted at the polling stations where, potentially, Oleksandr Vilkul will be winning. These people may claim that they represent Vilkul".⁸⁴ It should be stressed here that it is not possible to say whether any candidate is winning at any polling stations before the votes are counted.

None of the activities that the "Political Initiative" warned of ever took place, and Filatov won the elections as he obtained 52.31% of the vote, while Vilkul obtained 44.92%. On 16 November 2015, the representatives of the "Political Initiative", namely Janusz Niedźwiecki, Thomas Rudy and Corinna Herold, stated that the second round of the elections could not be considered democratic and conforming to the European standards. In particular, they told about the alleged bribery of 80 thousand voters and that the fighters of the radical right-wing Right Sector (Pravy Sektor) party were present at the polling stations.⁸⁵

The representatives of the "Political Initiative", namely Zdeněk Ondráček, Tamás Gergő Samu, Anna Čurdová and Balázs Szabó, did not notice any violations of the electoral process at the city council elections in Mariupol,⁸⁶ apart from minor "flaws" such as transparent ballot boxes.⁸⁷ If we are right to assume that the "Political Initiative" was working in favour of the Opposition Bloc, they could not have any concerns about the electoral process, as following the elections in Mariupol the Opposition Bloc managed to secure more than 80% of the seats in the city council.

84 "Aktivisty ozhidayut provokatsiy na vyborakh mera Dnepropetrovska (video)", Segodnya, 13 November (2015), segodnya.ua/regions/dnepr/aktivisty-ozhidayut-provokaciy-na-vyborakh-mera-dnepropetrovska--667037.html.

85 "Vyborny v Dnepropetrovske ne'z'ya priznat' demokraticnymi i sootvetstvuyushchimi evropeyskim standartam –mezhdunarodnye nablyudateli", Golos, 16 November (2015), ru.golos.ua/uncategory/vyiboryi_v_dnepropetrovske_nelz'ya_priznat_demokraticnymi_i_sootvetstvuyushchimi_evr.

86 "Mezhdunarodnye nablyudateli ne uvideli narusheniy na vyborakh v Mariupole (VIDEO)", 0629.com.ua, 29 November (2015), 0629.com.ua/news/1045017.

87 "Urny dlya golosovaniya ne dolzhny byt' prozrachnymi" – vengerskiy nablyudatel (VIDEO)", Mariupol, 29 November (2015), mariupol.tv/news/elections/mariupol/7551/urny_dlya_golosovaniya_ne_dolzhny_byt_prozrachnymi_vengerskiy_nablyudatel_video.html.

Conclusion

Since 2002, several politically motivated election observation organisations have worked in Ukraine. First and foremost, these are the Interparliamentary Assembly of the CIS Member Nations (Russia), CIS-EMO (Russia), and the European Centre for Geopolitical Analysis (Poland). In relation to Ukraine, these organisations also cooperated with the Eurasian Organisation for Democracy and Elections (Belgium) and Civic Control (Russia) to promote pro-Russian national interests in Ukraine.

In the course of the years, however, there has been a decline of the participation of these organisations in the observation of the official electoral processes in Ukraine. Thus, only the ECAG observed the presidential and parliamentary elections in Ukraine in 2014. At the same time, one can notice that the above-mentioned organisations have moved, since 2014, to observing illegitimate and illegal "electoral processes": the ECAG, EODE and Civic Control have co-organised and coordinated observation of the "referendum" in Crimea in March 2014 and "elections" on the occupied territories in Eastern Ukraine in November 2014. According to the author's sources, the ECAG, EODE and Civic Control planned to observe "local elections" on the occupied territories in Eastern Ukraine in October-November 2015, but these elections violated the Minsk-II agreement and were cancelled. If legitimate elections take place on the currently occupied territories in Eastern Ukraine according to the Ukrainian law in 2016, one can expect the participation of the ECAG, EODE and Civic Control in their observation.

Despite the current decline of the activities of organised fake observers of the electoral processes in Ukraine, which can be partially explained by Russia's war on Ukraine and the disclosure of the activities of fake observers, relatively new organisations start to appear on the "market" of fake observation. This is the case of the International Civil Organisation "Political Initiative" that observed the local elections in Ukraine in autumn 2015. The analysis of the composition of the monitoring mission of the "Political

Initiative" reveals that some of its members have already participated in fake observation of elections in Ukraine as well as observation of illegitimate electoral processes such as the "referendum" in Crimea (March 2014) and "parliamentary elections" (November 2014) in some East Ukrainian territories occupied by the Russian troops and pro-Russian separatists. The above-presented analysis also shows that most of the members of the mission of the "Political Initiative" hold pro-Russian views or are members of the political parties that are openly pro-Russian. During their monitoring activities in Ukraine, specifically in Dnipropetrovsk and Mariupol, they seemed to be working in favour of the Opposition Bloc – a successor to the now defunct pro-Russian Party of Regions.

Executive Summary

Since 2002, several politically motivated election observation organisations have worked in Ukraine: the Interparliamentary Assembly of the CIS Member Nations (Russia), CIS-EMO (Russia), and the European Centre for Geopolitical Analysis (Poland). In relation to Ukraine, these organisations also cooperated with the Eurasian Observatory for Democracy and Elections (Belgium) and Civic Control (Russia) to promote pro-Russian national interests in Ukraine.

In the recent years, there has been a decline of the participation of these organisations in the observation of the official electoral processes in Ukraine. However, the above-mentioned organisations have moved, since 2014, to observing illegitimate and illegal "electoral processes": the ECAG, EODE and Civic Control have co-organised and coordinated observation of the "referendum" in Crimea in March 2014 and "elections" on the occupied territories in Eastern Ukraine in November 2014.

Nevertheless, relatively new organisations start to appear on the "market" of fake observation. This is the case of the International Civil Organisation "Political Initiative" that observed the regional elections in Ukraine in autumn 2015. The analysis of the composition of the monitoring mission of the "Political Initiative" reveals that some of its members have already participated in fake observation of elections in Ukraine as well as observation of illegitimate electoral processes such as the "referendum" in Crimea and "parliamentary elections" in some East Ukrainian territories occupied by the Russian troops and pro-Russian separatists. Most of the members of the mission of the "Political Initiative" hold pro-Russian views or are members of the political parties that are openly pro-Russian. During their monitor-

ing activities in Ukraine, specifically in Dnipropetrovsk and Mariupol, they seemed to be working in favour of the Opposition Bloc, a successor of the now defunct pro-Russian Party of Regions.

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