



<p>European Network of Election Monitoring Organizations <b>International Observation Mission</b> <b>Repeat Elections of the People's Deputies of Ukraine in</b> <b>Five Single-Mandate Constituencies of December 15,</b> <b>2013</b></p>	<p>Європейська мережа організацій, що спостерігають за виборами Міжнародна місія зі спостереження за Повторними виборами народних депутатів України у п'яти одномандатних виборчих округах 15 грудня 2013 року</p>
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# **REPEAT ELECTIONS OF THE PEOPLE'S DEPUTIES OF UKRAINE IN FIVE SINGLE-MANDATE CONSTITUENCIES**

**December 15, 2013**

**FINAL REPORT**

February 2014

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## I. EXECUTIVE SUMMARY

ENEMO's 2003 international observation mission to Ukraine noted that the Repeat Elections of the People's Deputies of Ukraine in Five Single-Mandate Constituencies held on December 15, 2013 met many international standards, improving central aspects of the election process which were problematic at the regular Parliamentary Elections in 2012. However, the pre-election period was negatively affected by serious campaign violations and massive replacements of election commission members at the district and precinct level. Improperly trained election commission members were the reason for a significant number of irregularities recorded during the opening and voting procedures on election day, especially in three of a total of five districts.

In the 2012 parliamentary elections, voters were to elect 450 deputies to the Verkhovna Rada (Parliament) of Ukraine according to the re-introduced mixed electoral system, in which 225 legislators are elected proportionally from closed party lists and 225 through single-mandate districts with a simple majority vote (first past the post). On November 5, 2012, the Central Election Commission (CEC) pronounced that it could not establish the legitimate results of the 2012 parliamentary elections in five districts: #94 (Obukhiv district, Kyiv oblast), #132 (Pervomaisk district, Mykolaiv oblast), #194 (Cherkassy City), #197 (Kaniv district, Cherkassy oblast) and #223 (Kyiv City). In accordance with a CEC proposal, the Verkhovna Rada decided to hold repeat elections in those constituencies on December 15, 2013. To that end, the Verkhovna Rada also passed a single-use law to conduct repeat elections of single-mandate districts No. 94, 132, 194, 197 and 223. This law did not change the election procedures used in the 2012 elections, besides shortening some of deadlines.

The official CEC meetings were open to observers and the media. However, ENEMO stated in its interim report that the access to real decision-making was limited by commissioners in terms of conducting closed-door meetings, prior to the official sessions. As a result of that report, the CEC allowed an ENEMO observer to attend two informal meetings. ENEMO welcomed this step and additional efforts of the election administration to increase the integrity and transparency of the electoral process. However, ENEMO calls CEC to open all its meetings to all observers in future.

The CEC had to cancel the registration of the joint opposition candidate in district #94 following a ruling of the Kyiv Administrative Court of Appeals that he did not fulfill the legal residency requirements. The CEC joined the candidate in appealing the decision, but the appeal was denied by the High Administrative Court. ENEMO welcomed the efforts of the CEC to explore all legal options to allow the candidate registration in that case. ENEMO appeals to legislative bodies to review the five-year residence requirement for candidate eligibility, since its judicial interpretation is not consistent and uniform and this leaves the room for the arbitrary application of the law.

In contrast to the 2012 regular parliamentary elections, the lottery to determine the composition of District Election Commissions (DEC) was drawn for each district separately in 2013, which led to a more representative DEC composition. Furthermore, ENEMO observers did not report any serious complaints about drawing procedures for Precinct Election Commissions (PEC).

However, a high rate of replacements of commissioners remained an urgent issue both in DECs and PECs as was the case in 2012. At least 66 percent of DEC members and over 60 percent of PEC members were replaced prior to election day. The replacement process was ongoing even after commissioners had been trained. ENEMO found some indications that some smaller parties often replaced their DEC and PEC members with people affiliated with more prominent political parties and candidates. Unbalanced PEC and DEC compositions combined with untrained members were the cause of some of observed violations during election day. ENEMO calls on relevant legislative bodies and the CEC to provide legal and technical mechanisms to prevent massive replacements in DECs and PECs in future elections, especially after commission members have been trained.

The intensity of the election campaign varied from district to district. Despite the large number of registered candidates, only few were conducting visible election campaigns through billboards, posters and leaflets. Although the massive protests were unrelated to the re-election in five single-mandate constituencies, in its interim report ENEMO expressed serious concerns about the security situation in Kyiv. However, ENEMO observers in Kyiv did not report any restrictions on freedom of movement that could endanger the election campaign or the voting process on election day. Negative campaigning and the misuse of administrative resources for campaign purposes were widespread during the pre-election period. The domestic monitoring groups OPORA and CVU reported a high number of cases of voter bribery by candidates, and ENEMO observers recorded for some of them. ENEMO expressed serious concerns about the lack of effective sanctions for election campaign violations and calls on the courts and the CEC to act on them in accordance with the law.

On election day, ENEMO observers visited 190 polling stations equally dispersed throughout all five single-mandate districts. They monitored voting procedures in 160 polling stations, opening and counting procedures in 15 PECs, and observed the transfer of protocols to all five DECs. In general, ENEMO observers assessed the opening, voting and counting procedures as quiet and consistent with the appropriate procedures in most of the observed polling stations.

However, ENEMO observers reported 84 violations or irregularities during election day, including improper filling of opening protocols, limiting of voting secrecy, restrictions on observers' rights, improperly sealed ballots, illegal campaigning, presence of unauthorized persons in PS and voter bribery. The majority of the irregularities were reported from districts #94, #194 and #223. ENEMO observers assessed that many recorded violations and irregularities were caused by a lack of knowledge of electoral procedures by the election officials on the

precinct level. ENEMO determined that this was a direct consequence of massive replacements in election commissions that took place after the training of DEC members and PECs managerial staff. Although those election-day irregularities may not have been intentional, they offer an opportunity for manipulation by more experienced commission members.

ENEMO observers assessed the transfer of protocols as orderly in most of the observed cases, but the DEC procedures were chaotic and disorganized in three districts (#94, #132 and #223). As a result, seven ENEMO teams encountered restrictions when attempting to monitor the handover of PEC materials to the DECs. The election results were published on the official CEC website and announced within the legal deadline.

## **I. INTRODUCTION AND ACKNOWLEDGMENTS**

The observation of the 2013 Repeat Elections of the People's Deputies of Ukraine in Five Single-Mandate Constituencies represented ENEMO's seventh election observation mission to Ukraine. Previously, the Network monitored the 2004 and 2010 presidential elections, the 2006, 2007 and 2012 parliamentary elections and the 2006 mayoral elections.

ENEMO's Election Observation Mission (EOM) to Ukraine 2013 began its work on November 10, with the arrival of the three-member Core Team. Seven long-term observers arrived in Kyiv on November 20. ENEMO's long-term observer teams covered all five districts in which repeat elections were taking place. On December 11, ENEMO issued an interim report covering the pre-election period. ENEMO's long-term observers focused on the conduct of the election campaign, the formation and work of election commissions, and official election complaints. Prior to election day, ENEMO observers, including Core Team members, held 243 meetings with election commission members, administrative officials, candidates, candidate representatives, representatives of political parties, representatives of NGOs, journalists and many other domestic and international interlocutors. They observed 18 rallies and protest gatherings as well as 15 DEC sessions and 14 CEC sessions, and visited 114 PECs.

On December 12, 30 additional ENEMO short-term observers arrived to Ukraine. They were specially briefed and trained on the political environment, specifics of the election process and election legislation. On election day, ENEMO deployed 15 teams that observed the opening of polling stations, the conduct of voting inside polling stations, the environment around polling stations and the counting of votes in selected precincts throughout all five districts. ENEMO's methodology is strongly consistent with global standards for international election observation. ENEMO's short-term observation teams operated as mobile teams. They visited 190 polling stations equally dispersed throughout all five districts, followed the voting in 160 polling stations, the opening and counting procedures in 15 PECs, and observed the transfer of protocols to all five DECs. Moreover, ENEMO observers monitored the tabulation process at the DECs. On election day, ENEMO's observation focused on assessing the work of election commissions

(PECs and DEC)s) and the conduct of voting, vote count and tabulation, and on identifying potential irregularities and violations throughout election day. ENEMO issued a statement on preliminary findings and conclusions on December 16, 2013.

ENEMO takes the opportunity to express its highest acknowledgments to the National Democratic Institute for International Affairs (NDI), which funded the Election Observation Mission (EOM) to Ukraine 2013. Additionally, ENEMO wishes to express its appreciation to the CEC for its cooperation and assistance in the course of EOM registration.

## II. LEGAL FRAMEWORK AND BACKGROUND

On October 28, 2012, Ukraine conducted parliamentary elections. Voters were to elect 450 deputies to Verkhovna Rada (Parliament) of Ukraine according to the re-introduced mixed electoral system, in which 225 legislators are elected proportionally from closed party lists and 225 through single-mandate districts with a simple majority vote (first past the post). The change of electoral system was initiated by the ruling party. However, electoral system changes were pushed through without public discussion and without attempts to build consensus with other political parties. The new law on parliamentary elections prohibited the participation of electoral blocs and allowed individual candidates to self-nominate in single mandate districts. The threshold for political parties to get mandates through proportional representation was increased from three to five per cent of votes in a single nationwide constituency.

The fundamental change of the electoral system and the adoption of a new election law 11 months before election day raised concerns about the ability of political parties and electoral authorities to cope with new significant challenges in organizing parliamentary elections in Ukraine. As stated in the final report of ENEMO EOM to Ukraine 2012, the re-introduction of a mixed electoral system led to an increase of electoral violations during the pre-election period.<sup>1</sup> The election law also lacked transparent rules for oversight of campaign finances such as income and expenditures, included inexplicit provisions and tight deadlines for election commission lotteries, and lacked effective sanctions for campaign violations. On a positive side, the new election law extended the rights of domestic nonpartisan organizations to register observers with the right to lodge complaints.

International observing missions, including ENEMO, found that the 2012 parliamentary elections were competitive in offering voters a choice of various political parties and candidates. However, the election campaign and tabulation of results were negatively affected by serious flaws and gross violations. On November 5, 2012, the CEC pronounced that it could not establish the legitimate results of the Parliamentary Elections in five districts: #94 (Obukhiv district, Kyiv oblast), #132 (Pervomaisk district, Mykolaiv oblast), #194 (Cherkassy City), #197

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<sup>1</sup><http://enemo.eu/press/Ukraine2012/ENEMO%20Final%20Report%20UKRAINE%202012.pdf>

(Kaniv district, Cherkassy oblast) and #223 (Kyiv City). In accordance with a CEC proposal, the Verkhovna Rada decided to hold repeat elections in those constituencies and, on September 5, 2013, passed a single-use law on repeat elections of single-mandate districts No. 94, 132, 194, 197 and 223.

During the past year, within the framework of the European Union (EU) association process, Ukraine prepared a draft law amending the Parliamentary Election Law, and the Minister of Justice requested the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization of Security and Co-operation in Europe (OSCE/ODIHR) to comment on the text. The draft law was passed by Parliament and signed by the President end of the year 2013.

The law on elections of single-mandate districts No. 94, 132, 194, 197 and 223 introduced the schedule for conduct the re-elections on December 15, 2013. Besides shortening some of deadlines, it did not change the election procedures used in the 2012 elections. Therefore, the principal law regulating the conduct of parliamentary elections was still the Law on Election of People's Deputies, adopted in November 2011. Specifically, articles 104 and 107 cover the conduct of repeat elections. In addition to this, the legal framework includes the Constitution of Ukraine, the Law on the Central Election Commission, the Law on the State Voter Register, the Criminal Code, and the Code on Administrative Procedures, as well as the instructions and regulations passed by the CEC.

### **III. ELECTION ADMINISTRATION**

The three-level election administration for the preparation and conduct of the 2013 Repeat Elections of the People's Deputies of Ukraine in Five Single-Mandate Constituencies in Ukraine consisted of the CEC, five DEC's and 649 PEC's.

#### **Central Election Commission**

The Central Election Commission conducted daily sessions, which were open to observers and the media. The vast majority of the CEC decisions were approved unanimously without substantial debate. Usually, the CEC held closed meetings ("naradas") prior to the regular public meetings. On December 6, ENEMO's observer monitoring the CEC accidentally obtained access to a Narada agenda, whereas no agenda for the official CEC session was provided to observers and media representatives. As a result, although the CEC voting process was public, the real decision-making was not.

Announcements of the CEC sessions were rarely posted on the commission's official website. Moreover, neither the draft nor final agenda was posted online and it was usually provided just before the meeting. Attendees did not have access to draft resolutions and all the supplementary



documents upon which draft resolutions were based. On average, the CEC members spent two to three minutes voting for a resolution at the official sessions, without discussion. Regardless of whether they understood the decisions, observers and journalists were unable to see the actual text until it was posted on the CEC website.

For these reasons, in the interim report ENEMO could not assess the overall work of the CEC as fully transparent. The CEC allowing the ENEMO observer to attend two of the informal meetings on December 14 and December 18; this should be considered as a step forward. ENEMO welcomed this step and additional efforts of the election administration to increase the integrity and transparency of the electoral process. However, ENEMO calls the CEC to open all its meetings to all observers in the future.

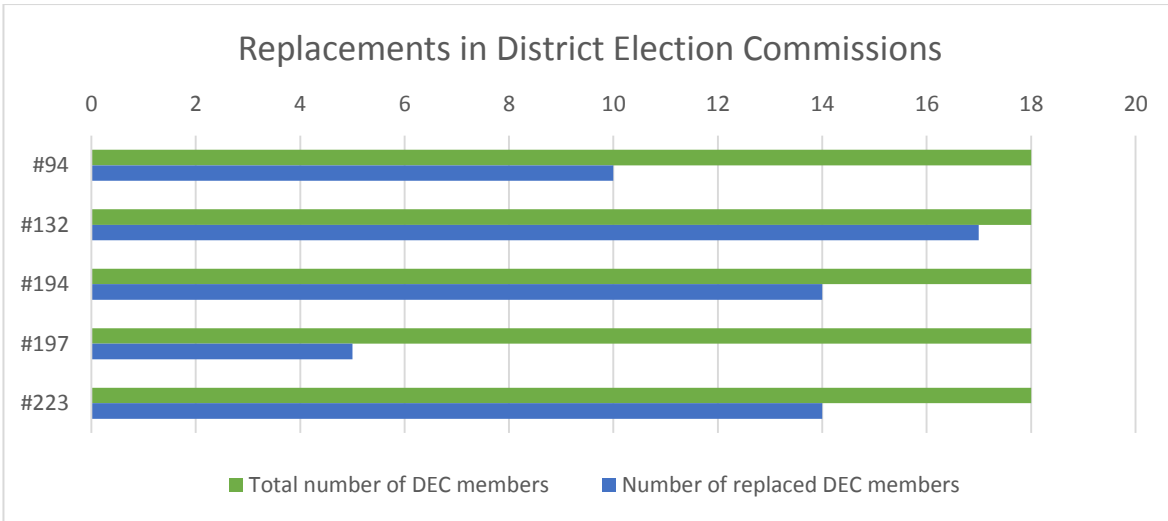
### **District Election Commissions and Precinct Election Commissions**

The CEC conducted the lottery to determine the composition of DEC members on October 25, 2013. Political parties with representation in Parliament had the right to place one representative in each DEC. The remaining positions were filled by drawing lots. The lottery was drawn for each district separately, which led to a more representative composition of DEC members than during the regular parliamentary elections in 2012. ENEMO observers attended four of the five lotteries (districts #94, #132, #194 and #223) conducted by DEC members to determine the composition of the PECs. Beside some delays caused by technical and organizational problems, ENEMO observers reported no serious complaints about the drawing procedures. Representatives of the domestic election monitoring group OPORA claimed limited access to the PEC lottery in district #194.

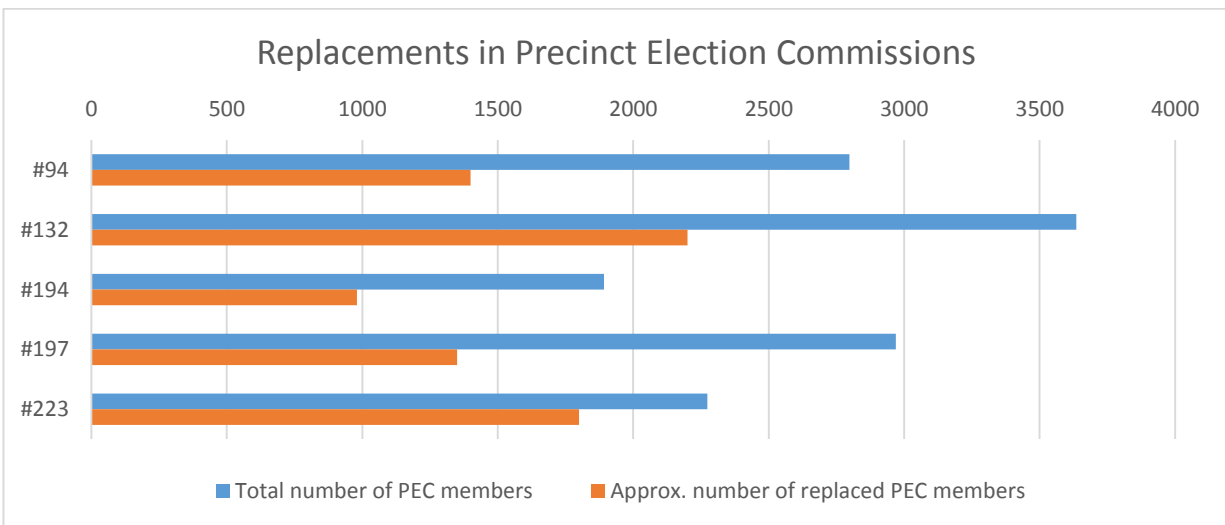
However, a high rate of replacements of commissioners remained an urgent issue both in DEC members and PECs. According to information provided to ENEMO observers by DEC members, at least 60 of a total 90 DEC members (over 66 percent) were replaced in all five districts prior to election day. The highest rate of replacements was reported in district #132, where 17 of the 18 DEC members were substituted. In districts #194 and #223, at least 14 replacements took place. In district #223 the Social Patriotic Assembly Slavs Party, People's Party Environment and Socio-Ecological Union even exchanged their DEC members twice. Data compiled by ENEMO observers at the district level are illustrated in the table below.

<b>Replacements in District and Precinct Election Commissions</b>						
	<b>#94</b>	<b>#132</b>	<b>#194</b>	<b>#197</b>	<b>#223</b>	<b>Total</b>
Total number of DEC members	18	18	18	18	18	90
Number of replaced DEC members	10	17	14	5	14	60
Replaced DEC members in %	55,6	94,4	77,8	27,8	77,8	66,7
Total number of PEC members	2798	3636	1892	2970	2274	13570
Approx. number of replaced PEC members	1400	2200	980	1350	1800	7730
Replaced PEC members in % (approx.)	50	60	50	45	80	57





As reported by ENEMO observers, over 7,700 of a total of 13,570 selected PEC members (57 percent) were replaced as of December 7, 2013 in all five districts. The ultimate number is even higher, but ENEMO observers were provided with updated numbers only by DEC #194, where the number of replaced PEC members increased from 754 to 978 of total 1,892 as of December 12. Considering this update, ENEMO estimates that the final number of substitutions in all five districts was no less than 60 percent. The highest replacement rate was reported in district #223, where over 80 percent of PEC members were substituted (in district #132 the rate is at least 60 percent, in #194 over 52 percent, in #94 at least 50 percent, in #197 at least 45 percent).



The replacement rate and a high number of candidates for PEC members nominated by more than one political subject (e.g. 115 duplicate nominations in district #197 and 120 in district #132) raise concerns that many applications were submitted without knowledge of the nominees to allow parties and candidates to exchange them after their selection. In 2012, there was hard evidence of this technique, especially by so-called “technical parties,” which often replaced their DEC and PEC members with people affiliated with more prominent political parties and

candidates. The fact that some PEC members did not know or did not want to provide ENEMO observers with information about which political party or candidate they officially represent (e.g. in two PECs in district #94 or in 12 PECs in district #132, where in PEC #480702 even the PEC chairman could not provide this information) seem to harden those suspicions. Replacements were one of the reasons for the late establishment of PECs. ENEMO observers did not find any members when visiting 15 of a total 114 PECs visited prior to election day.

Since the CEC trainings for PEC managerial staff took place in the first week of December 2013, when the process of replacements was still ongoing, the rotation negatively affected the work of PECs on election day. Unbalanced PEC and DEC compositions combined with untrained members were some of the reasons for violations of the electoral law on election day. ENEMO calls on the relevant legislative bodies and the CEC to provide legal and technical mechanisms to prevent massive replacements in DECs and PECs in future elections, especially after commission members have been trained.

#### **IV. VOTER REGISTRATION**

The right to vote is granted to Ukrainian citizens who are at least 18 years old on election day, with the exception of citizens declared legally incompetent by a court. The registration of voters is maintained by the State Voter Register (SVR), which is responsible for the regular update of the centralized voter database. Voters were given the opportunity to verify their data on preliminary voter lists and request inclusion or corrections of errors during the verification period. As in 2012, ENEMO noted that there is a need to further improve the quality of the voter lists and offer voters and the public more flexible means for inspection and data verification (e.g. online methods).

Prior to the 2012 parliamentary elections, the CEC changed its resolution related to the voters' right to change their voting places. According to the new regulation, the maintenance body of the SVR was allowed to only change the voting place of electors within the borders of the same single-mandate district. An exception was made only for the members of DECs and PECs who performed their duties on election day. All other voters could request a change of address for voting in another polling station only in the same district to prevent the massive migration of voters from one election district to another. In 2012, ENEMO welcomed the decision of the Central Election Commission to restrict possible massive voter transfer from one major district to another. The same practice stayed in power for the partial repeat elections as well. However, citizens located in hospitals and prisons where repeat elections took place were allowed to vote in the corresponding district irrespective of their actual voting place. The OSCE/ODIHR election observation mission reported that the results announced in those facilities were disproportionately in favor of the winning candidates.<sup>2</sup> After visiting special polling station

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<sup>2</sup><http://www.osce.org/odihr/elections/110818>

#711027 (district #194), ENEMO observers confirmed that there was no regular voters' list. Instead, the PEC used a handwritten voters' list, which offers a possibility of manipulation.

According to the CEC website, the estimated number of voters in the five districts was 763,712. On election day, ENEMO observers reported that some voters were not found on the voters list in 18 polling stations (12 percent of observed voting procedures). Of these 18, 12 were reported in district #223. Most significant incidents were reported from PS #800980 and #801001 (both in district #223), where ENEMO observers were told that 15 and 50 voters respectively could not vote because of technical errors and spelling mistakes in the voters lists. In contrast, no problems related to voters' lists were recorded in district #197.

## V. CANDIDATE REGISTRATION

The right to stand for elections to the Ukrainian parliament was granted to citizens of Ukraine with the right to vote who were at least 21 years old and had been residing in Ukraine for the previous five years. Citizens convicted of deliberate crimes were not eligible as candidates unless their criminal record had been cleared or cancelled.

Candidate nomination lasted from October 16 to November 14, 2013, and the registration process was completed on November 18, 2013. According to its website, the CEC received a total of 268 applications and registered 207 candidates.<sup>3</sup> A record-breaking number of 84 candidates were registered in district #94, whereas in district #223 a total of 75 candidates were registered. In at least three districts, so-called clones of prominent candidates applied for nominations (e.g. of candidates Yurii Levchenko and Viktor Pylypyshyn in district #223, of candidate Viktor Romanyukin in district #94, and of candidate Mihail Sokolovin in district #132). However, 59 candidates withdrew after their registration. As of December 15, 2013 there were 151 candidates still running in these repeat elections. Of these, 108 were self-nominated and 43 were nominated by political parties.<sup>4</sup>

A total of 56 nominees were denied registration, mostly on technical grounds. Nominees either did not submit the necessary documents or the documents contained minor inaccuracies. Examples of the grounds for refusal include:

- no declaration of the obligation to terminate any activity that is not compatible with the MP's mandate, or no statement that the candidate does not perform such activities;
- no information about the candidate's occupation and place of employment; no data regarding the candidate's public service;

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<sup>3</sup> District #94 – 84 candidates, district #132 – 13 candidates, district #194 – 17 candidates, district #197 – 18 candidates and district #223 – 75 candidates.

<sup>4</sup> District #94 – 38 candidates, district #132 – 11 candidates, district #194 – 16 candidates, district #197 – 16 candidates, district #223 – 70 candidates.

- no information about the candidate's citizenship and the period of time the candidate has been living on the territory of Ukraine;
- absence of any document certifying that a financial deposit was made;
- no information on past criminal convictions;
- no information on the candidate's place of birth;
- no information on the candidate's party membership; or
- absence of the candidate's telephone number.

In addition, errors in the date of submission were also considered as mistakes. According to the law, candidates shall be given two days to correct errors and inaccuracies detected in the submitted documents. Although the law states that those errors should not be cause for refusal, there are no explicit requirements that would oblige the CEC to make sure that the candidates' rights are not violated in this respect.

On December 5, 2013 the CEC had to cancel the registration of the joint opposition candidate in district #94, Viktor Romanyuk, following court decisions that ruled that the candidate had not resided in Ukraine for some time during the past five years (for details please see the section about electoral disputes). The five-year residence requirement is one of the vaguest legal requirements in Ukraine's electoral legislation. It is not clear if this requirement obliges the candidate to reside in the country permanently. Moreover, the judicial interpretation is not consistent and uniform, and this leaves the room for the arbitrary application of the law and disproportionate restrictions.

ENEMO appeals to legislative bodies to follow the recommendations of the Venice Commission and to review the requirements for candidate eligibility, especially the five-year residence requirement.

## **VI. ELECTION CAMPAIGN**

The intensity of the election campaign varied from district to district. Most campaign activities were observed in districts #94 and #223, whereas campaigning in districts #197 and #132 could be described as quiet. Despite the large number of registered candidates, only few were conducting a visible election campaign through billboards, posters and leaflets. EuroMaidan protests were strongly used by Batkivshchyna, UDAR and Svoboda for promoting their political parties in Kyiv and Cherkassy. Svoboda's candidate Levchenko (district #223) actively participated in the protests and his main competitor Pylypyshyn offered free food and sleeping places for participants. However, ENEMO observers noticed no significant agitation related to the re-elections during the protests, aside from one case when leaflets of candidate Levchenko were distributed among protest participants on December 1.

Although the protests were not related to the re-election in the five single-mandate

constituencies, ENEMO expressed serious concerns about the security situation in Kyiv in its interim report. However, ENEMO observers did not report any restrictions on the freedom of movement in Kyiv that could endanger the voting procedures on election day.

At least 23 cases of negative campaigning were recorded by ENEMO observers in districts #94, #132, #194 and #197, mostly discrediting joint opposition candidates Viktor Romanyuk (#94), Arkadii Kornatsky (#132), Mykola Bulatetskiy (#194) and Leonid Datsenko (#197), but also self-nominated candidates Mykola Kruglov (#132), Ruslan Badaev and Yurii Karmazin (both #94).

Domestic observer groups OPORA and CVU and other interlocutors reported a high number of cases of voter bribery by candidates. ENEMO observers collected evidence and indicators for three of such cases. In district #94, ENEMO observers attended a comedy show sponsored by self-nominated candidate Badaev, during which a candidate's representative distributed bags with sports equipment and footballs to all schools from Obukhiv. The bags containing gifts were marked with the candidate's name and the representative openly invited the public to vote for Badaev to receive more gifts. In district #132, ENEMO observers reported that pensioners were provided free glasses in a campaign tent of the self-nominated candidate Sokolov before he announced his withdrawal from the election. In district #194, an internet video shows people registered as official candidate activists of candidate Poplavskiy confirming that they received a certain amount of money, but actually do not work as candidate activists at all. Broad reports and rumors about direct and indirect vote buying published by local media and domestic monitoring groups were the reason why Cherkassy City Council appealed officially to prosecutors and requested them to verify relevant information.

ENEMO observers registered at least six cases of election agitation of candidates in government events such as openings of playgrounds or promoting scholarships for students, especially in districts #94 (by candidate Badaev), in #132 (by candidate Kruglov) and in #223 (by candidate Pylypyshyn). Campaigning materials of candidate Pylypyshyn were discovered by ENEMO observers in school no. 73, where two PECs in district #223 are located. In district #94, the website of the local administration was used to promote activities of candidate Badaev. Additionally, ENEMO observers recorded three large billboards on which "citizens of Vasilkiv" thanked candidate Badaev for a new swimming pool.

Batkivshchyna representatives complained about limited access to billboards in districts #94, #132 and #194. ENEMO observers confirmed that billboards of the Batkivshchyna candidate in district #94 are underrepresented compared with his main competitor, Badaev. Additionally, Batkivshchyna officials claimed that two candidates (candidate Valentyn Kuzomenskiy in district #194 and candidate Serhii Vlasenkoin district #223) used Batkivshchyna's logos, symbols and colors in their campaigns despite not representing the party in these races.

During meetings with ENEMO observers, different sources claimed intimidation of employees in the public sector and schools in districts #132 and #197, where they were threatened with losing their jobs if they did not vote for candidates Kruglov and Serhii Chervonopyskiy, respectively. Those claims were difficult to verify, but the high number of those reports is of particular concern.

## **VII. MEDIA**

The ENEMO EOM to Ukraine 2013 did not conduct a full-scale media monitoring effort, but ENEMO observers held meetings with journalists and media representatives and generally followed the coverage of election-related events at the national and local level.

Compared with massive protests which started during the pre-election period, election-related events were covered poorly, especially on nationwide media. However, negative campaigning as noticed by ENEMO observers in all five districts. Negative campaigning was mostly practiced in form of newspapers which were distributed in a noticeable edition and spread false information discrediting candidates running in repeat elections. It is remarkable that all five joint opposition candidates were targeted by negative campaigning. However, this technique also was used against some self-nominated candidates (for details please see section about election campaign).

In the regions, media representatives did not report any kind of harassment or pressure to ENEMO observers. On the other hand, journalists were targeted by physical attacks on the part of security forces and other unknown people during the demonstrations in Kyiv. The attacks were the reason for a joint statement, led by the Institute of Mass Media and signed by 40 IFEX members, stating that 51 local and foreign journalists have been beaten or suffered injuries in Kyiv during the period from November 29 to December 1, 2013.<sup>5</sup>

## **VIII. ELECTION DAY – DECEMBER 15, 2013**

On election day, ENEMO observers visited 190 of a total of 649 polling stations (29.2 percent), equally dispersed throughout all five single-mandate districts. They followed voting procedures in 160 polling stations (PS), opening and counting procedures in 15 PS, and observed the transfer of protocols to all five DECs.

### **Opening**

In general, ENEMO observers assessed the opening process positively in 14 of the 15 observed PS, and all of them opened on time. However, incomplete information materials were posted at the opening of five of the 15 observed polling stations. Throughout election day, ENEMO

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<sup>5</sup> [http://www.ifex.org/ukraine/2013/12/10/attacks\\_condemned/](http://www.ifex.org/ukraine/2013/12/10/attacks_condemned/)

observers reported 16 cases when opening protocols were not filed at all or filed after the observers asked for access to them (eight PS in district #194, five PS in #94, two PS in #197 and one PS in #223). In many of cases, ENEMO observers determined that opening protocols were not filed because PEC members were not familiar with the proper procedures.

Another irregularity caused by a lack of knowledge of opening procedures took place at PS #800965 (district #94), where only 250 of a total of 1,416 ballots were taken out of the safe prior to the opening of the precinct. The remaining ballots were taken out one hour after opening, when the PEC lawyer confirmed that the previous procedure violated the electoral law.

## **Voting**

ENEMO observers followed the voting process in 160 polling stations. Overall, they assessed 92 percent of the monitored PS as very good or good at conducting voting procedures. However, precinct set-ups were evaluated as unacceptable in 12 PS (7 percent of observed PS), mostly due to improper accommodation of the precincts. Large crowds were reported from 14 PS (9 percent), but PEC members handled the situation well in those cases. Three precincts (#800997 and #800998 both in district #223, and #320768 in district #94) were assessed as completely disorganized and their PECs lost control over the process. In 18 cases (11 percent), ENEMO observers noticed that some voters were not on the voters' list, but in only one of them (#711027 in district #94) the number of affected voters was assessed as significant.

ENEMO observers reported a total of 84 violations on election day, as illustrated in the tables below.<sup>6</sup> Most of them were recorded during the observation of voting procedures.

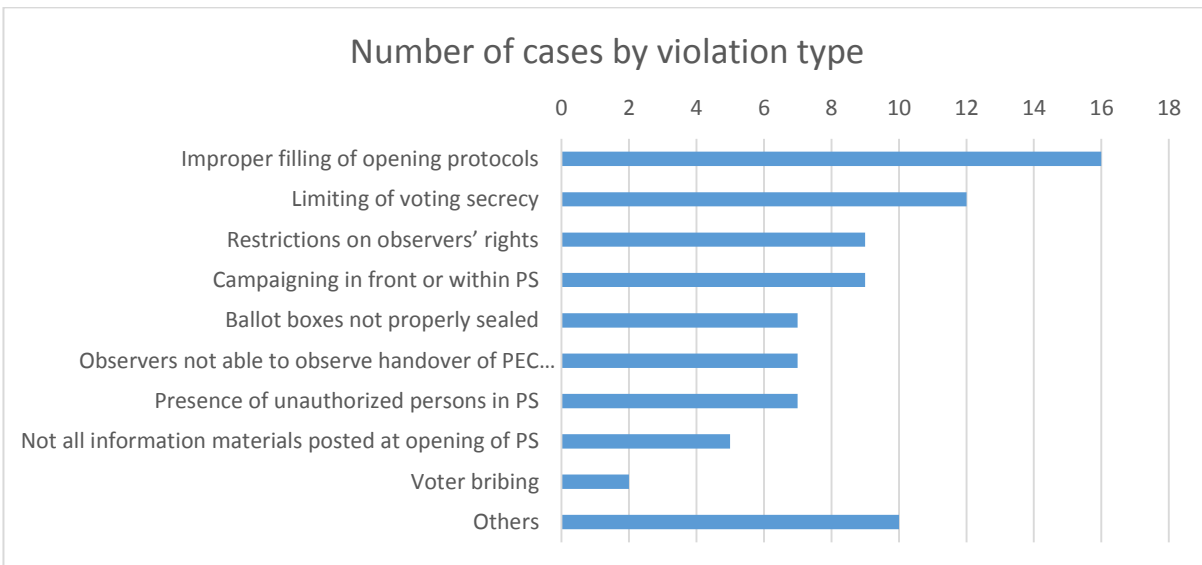
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<sup>6</sup> In its preliminary statement of December 16, ENEMO presented a table with a total of 44 incidents. It should be noted that in the final report, all violations and irregularities have been considered and merged together, including the observer findings from opening, voting, counting and tabulation procedures. Additionally, the latter analysis of observer forms brought some additional findings which were not a part of real time reports to the ENEMO headquarters during election day.

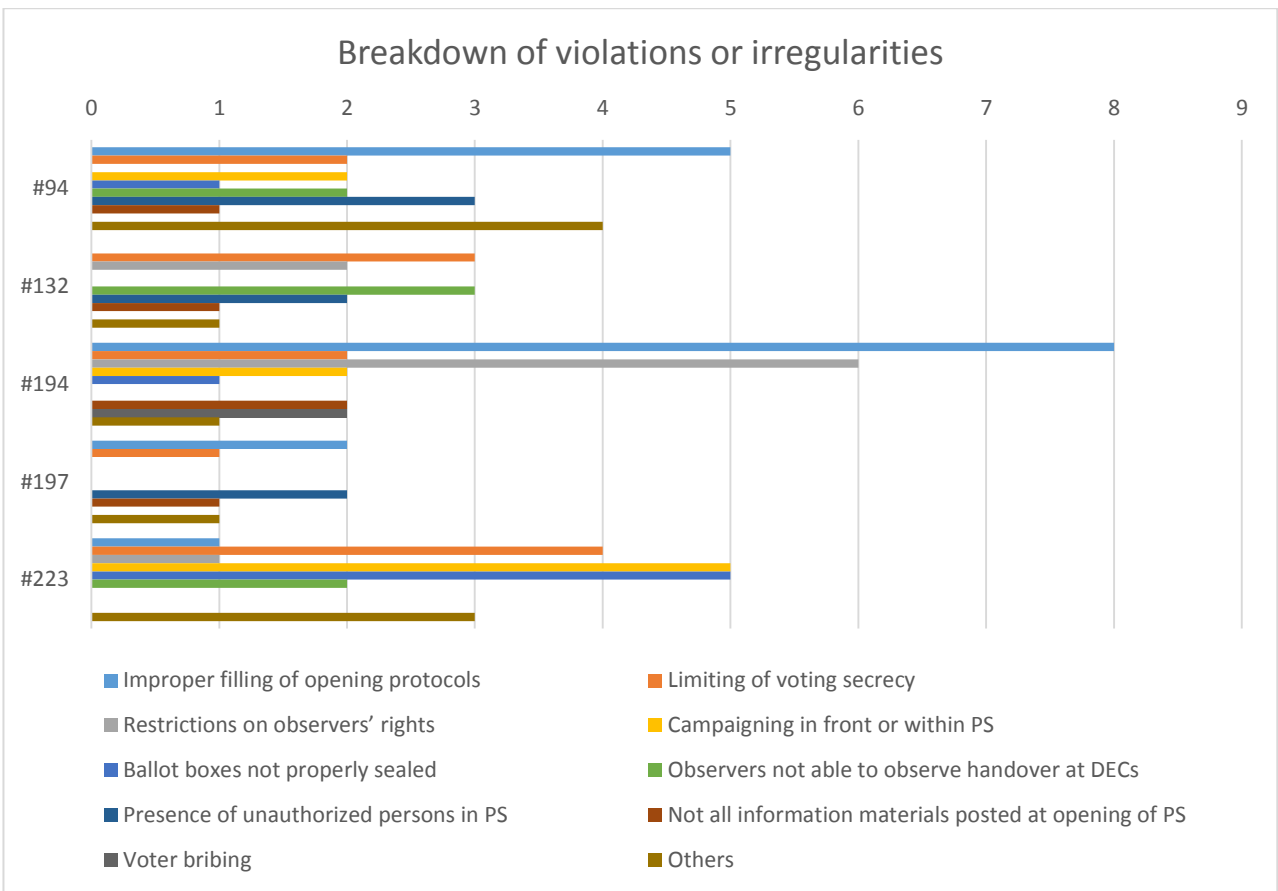
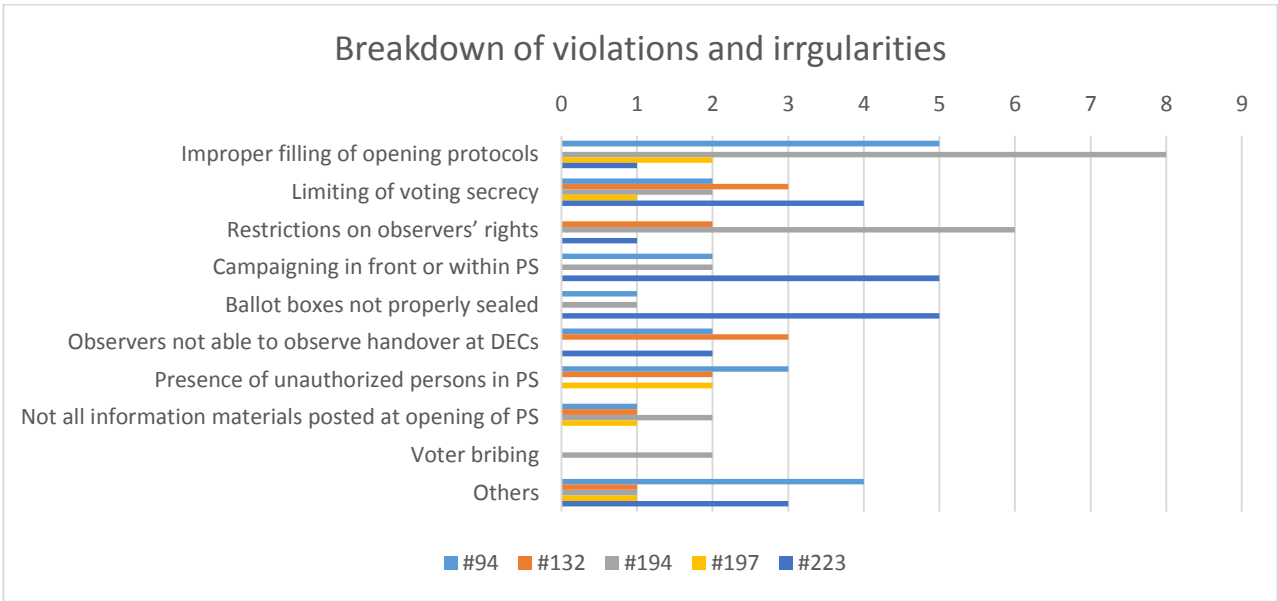


Violation or Irregularity	#94	#132	#194	#197	#223	Total number of cases
Improper filling of opening protocols	5	0	8	2	1	16
Limiting of voting secrecy	2	3	2	1	4	12
Restrictions on observers' rights	0	2	6	0	1	9
Campaigning in front or within PS	2	0	2	0	5	9
Ballot boxes not properly sealed	1	0	1	0	5	7
Observers not able to observe handover at DEC's	2	3	0	0	2	7
Presence of unauthorized persons in PS	3	2	0	2	0	7
Not all information materials posted at opening of PS	1	1	2	1	0	5
Voter bribing	0	0	2	0	0	2
Others	4	1	1	1	3	10
<b>Total number of cases per district</b>	<b>20</b>	<b>12</b>	<b>24</b>	<b>7</b>	<b>21</b>	<b>84</b>

Besides the improper filing of opening protocols (see section above) and restrictions on observers' rights (for more details see section "Election Observation"), most widespread violations were related to the secrecy of voting and illegal campaigning during election day.



The secrecy of voting was not respected in 12 PS, mostly because the presence of few persons in the voting booths, but also because in two cases voters revealed their vote. In four PS, the secrecy of the vote was not guaranteed due to improper precinct set-up or overcrowded PS. Additionally, a video camera was installed closely to voting booths in PS #321333 (district #94). The Head of the PEC stated to ENEMO observers that it was installed by representatives of one of the candidates to detect violations, but he could not identify who. Although video recording within PS is allowed (see section about election observation), domestic non-partisan observers claimed that some voters showed their ballots in front of the camera.

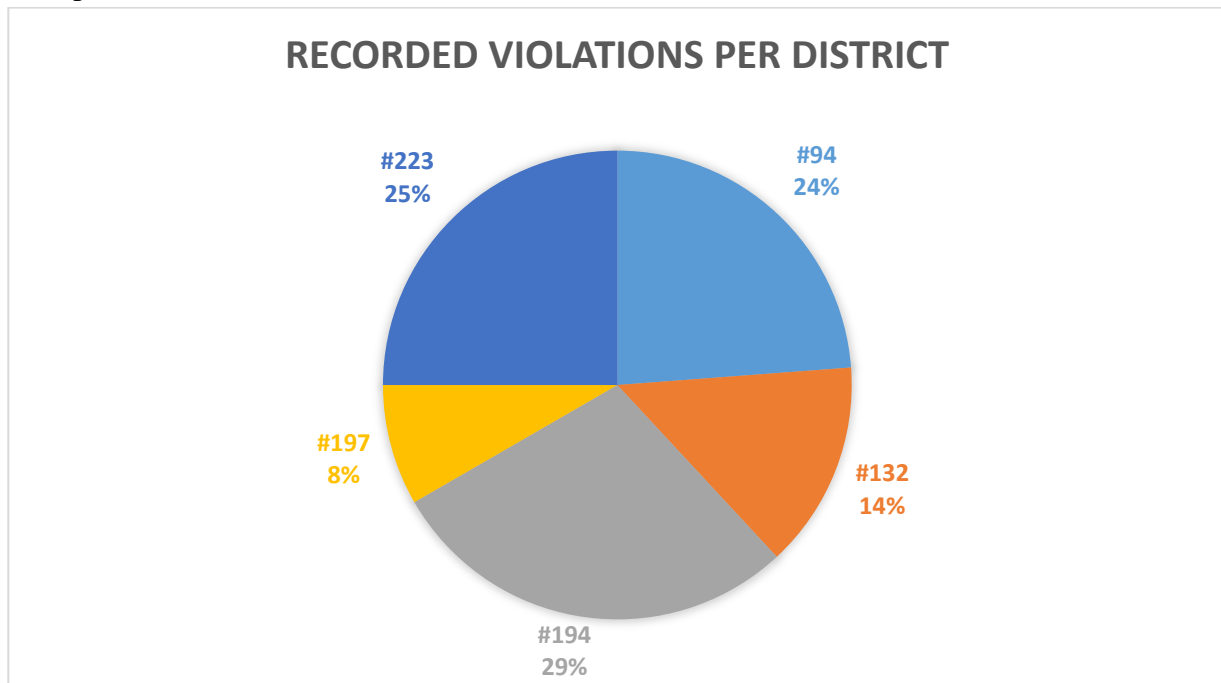


During election day, domestic observers reported a high number of cases of voter bribery. ENEMO observers collected indicators for two of such cases, both in district #194. In PS #710978, an elderly female voter asked the PEC for money after she voted, stating that it was

promised to her. She did not want to give any further information to ENEMO observers after being refused by PEC members. Pre-printed notices titled as “applications” were found in PS #710997, which seemed to be blank forms for receiving money after voting. Significantly, the highest number of reports and rumors about vote buying in the pre-election period came from district #194 as well.

Among other violations, ENEMO observers reported one case of ballot issuing without proper identification in PS #320741 (district #94), and one case of an absence of quorum in the village of Yabluniv (PS #710309 in district #197) when only two PEC members were present on the precinct during the visit of observers. They made excuses for the absence of other members stating that they were busy with “household issues”.

Concerning the breakdown of recorded violations and irregularities per district, most of them were reported by ENEMO observers from districts #194 (24 cases or 29 percent), district #223 (21 cases or 25 percent) and district #94 (20 cases or 24 percent). A comparatively low number of violations was reported from districts #197 (seven cases or 8 percent) and #132 (twelve cases or 14 percent).



As described above, many recorded violations and irregularities were assessed to be caused by a lack of knowledge of electoral procedures, especially those related to improper filing of opening protocols, limiting the rights of international observers and improper sealing of ballot boxes. ENEMO determined that this is a direct consequence of massive replacements in election commissions that took place after the CEC’s official training DEC and PEC leaders. Although those election-day failures may not have been intentional, they offer an opportunity for manipulation and fraud by more experienced commission members.

## Counting

Beside long delays in two PS in district #223 (#801006 and # 800972), no major violations were observed by ENEMO observers during the counting process. In the latter PS, observers had a limited view of ballots due to the continuous interference of a woman with press accreditation. That PS was the only one of a total of 15 that was assessed negatively on following the counting procedures.

## IX. ELECTION OBSERVATION

As stipulated in Articles 77, 78 and 79 of the Parliamentary Electoral Law, the legal framework offers various possibilities for domestic and international observers to monitor the preparation and conduct of elections. All registered observers and candidate proxies are allowed to monitor the entire election process and to make photographic, audio or video recordings, if these do not violate the secrecy of the vote. The law also allows all registered observers and candidate proxies to attend official meetings of election commissions at all three levels. Domestic observers, both partisan and nonpartisan, have the right to file an official statement on election violations and to “address the relevant election commission or a court seeking the elimination of violations of the [Electoral] Law.”<sup>7</sup> Ukrainian citizens working and acting as interpreters are also allowed to enter polling stations and election commissions’ meetings with international observers.<sup>8</sup>

According to the CEC website, 2,962 observers from 14 domestic NGOs, 6,145 candidates’ observers and 249 candidates’ proxies were accredited as observers for the repeat elections in five districts as illustrated in table below:<sup>9</sup>

	Candidates' proxies	Candidates' observers	Domestic NGO observers
<b>#94</b>	25	1150	778
<b>#132</b>	26	1236	1006
<b>#194</b>	25	471	373
<b>#197</b>	23	972	533
<b>#223</b>	150	2361	272
<b>Total</b>	<b>249</b>	<b>6190</b>	<b>2962</b>

Additionally, the CEC registered 385 international observers, 307 nominated by international organizations and 78 by foreign states. The whole registration process was inclusive, and no related complaints or problems were recorded.

<sup>7</sup> Law on Election of People’s Deputies of Ukraine (adopted in November 2011), Art. 78, § 9.

<sup>8</sup> Law on Election of People’s Deputies of Ukraine (adopted in November 2011), Art. 79, § 3.

<sup>9</sup> <http://www.cvk.gov.ua/pls/vnd2012/wp009e?PT001F01=903>

The domestic observer groups with the largest number of observers were the Civic Network OPORA and the Committee of Voters of Ukraine (CVU). OPORA observers conducted parallel vote tabulation (PVT) and presented its results on December 17, 2013.<sup>10</sup> In general, the PVT results matched the official results announced by the CEC.

On election day, ENEMO observers reported nine cases of restrictions on their observer rights during voting and counting procedures. In five of those cases, limited access was caused by overcrowded polling stations or insufficient precinct accommodation. In four cases, full access was denied by members of the PEC. Additionally, the interpreters of ENEMO observers were prohibited to enter the polling stations in three cases, but could enter after pointing out to PEC members the corresponding paragraph in the Electoral Law. Along with other violations caused by a lack of expertise on election day, this is an indicator that PEC staff was not well trained on legal provisions.

## **X. TABULATION AND ANNOUNCEMENT OF RESULTS**

The transfer of protocols and voting materials to DEC's was made in an orderly and proper manner in all 15 observed cases. However, in seven of them (DEC's #132, #94 and #223) the ability of ENEMO observers to properly monitor the handover of PEC materials to the DEC's was restricted due to large crowds. Beside queues caused by improper accommodation of DEC's, dozens of unknown people gathered in front of DEC's #223 and #132 since their openings, increasing the disorder at the entrance area. Because of large crowds, two of three ENEMO observer teams could not enter the DEC #94 at all. Due to those facts, ENEMO could not fully assess the tabulation process in that district.

However, ENEMO observers and other interlocutors did not report significant violations during the tabulation process. Although representatives of some PEC's were sent back for correction of PEC protocols due to minor technical mistakes, no related irregularities were recorded by ENEMO observers. In DEC #132, the non-transparent reception of several ballot bags resulted in chaos. Tensions and verbal disputes among commission members, but also between DEC staff and other people present caused disruptions of the tabulation process. After 30 minutes, the situation calmed down and the process continued in a proper manner.

The CEC published the official results on its internet website within the legal deadline as illustrated in the tables below.<sup>11</sup>

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<sup>10</sup><http://oporaua.org/news/4376-pidsumky-golosuvannja>

<sup>11</sup><http://www.cvk.gov.ua/pls/vnd2012/wp039e?PT001F01=903>

<b>District #94 (Obukhiv)</b>		%	Total
Badaev Ruslan Hennadiiovych	Self-nominated candidate	58.25	53 363
Lozovoi Andrii Serhiiovych	Radical Party of Oleh Liashko	21.91	20 080
Karmazin Yurii Anatoliiovych	Self-nominated candidate	15.28	14 000
Romanyuk Viktor Mykolaiovych	Self-nominated candidate	0.73	674
Tkachenko Valerii Valentynovych	Communist party of Ukraine	0.58	534
Others		3.24	2959

<b>District #132 (Pervomaisk)</b>		%	Total
Kruglov Mykola Petrovych	Self-nominated candidate	47.85	32947
Kornatsky Arkadii Oleksiiovych	All-Ukrainian Union Batkivshchyna	45.31	31198
Romanyuk Anatoli Serhiiovych	Communist party of Ukraine	3.10	2140
Radetskiy Ruslan Stanislavovych	Self-nominated candidate	0.81	562
Naida Oleh Volodymyrovych	Radical Party of Oleh Liashko	0.63	438
Others		2.29	1557

<b>District #194 (Cherkassy)</b>		%	Total
Poplavskiy Mykhailo Mykhailovych	Self-nominated candidate	53.54	37331
Bulatetskiy Mykola Ivanovych	All-Ukrainian Union Batkivshchyna	35.87	25014
Radutsky Oleksandr Romanovych	Self-nominated candidate	2.77	1936
Drahunov Viktor Yuriiovych	Communist party of Ukraine	1.94	1358
Mamalyha Volodymyr Volodymyrovych	Self-nominated candidate	1.71	1194
Others		4.15	2885

<b>District #197 (Kaniv)</b>		%	Total
Datsenko Leonid Mykolaiovych	All-Ukrainian Union Batkivshchyna	63.51	33372
Chervonopyskiy Serhii Vasylovych	Self-nominated candidate	23.30	12243
Roienko Viktor Hryhorovych	Communist party of Ukraine	3.01	1584
Hubskiy Andrii Volodymyrovych	Self-nominated candidate	1.84	967
Danko Liudmyla Mykolaivna	Self-nominated candidate	1.62	853
Others		6.70	3520

<b>District #223 (Kyiv)</b>		%	Total
Pylypyshyn Viktor Petrovych	Self-nominated candidate	44.89	34684
Levchenko Yurii Volodymyrovych	SVOBODA Party	40.58	31358
Montian Tetiana Mykolaivna	Self-nominated candidate	3.29	2543
Buzyna Oles Oleksiiovych	Russian Block Party	3.11	2409
Levchenko Andrii Illarionovych	Self-nominated candidate	1.87	1451
Others		6,25	4819

## XI. COMPLAINTS AND APPEALS

The election dispute resolution as stipulated by the election law provides two ways for addressing election disputes: election commissions and the courts. Decisions, actions or inactions of election commissions and other actors during the electoral process is granted to candidates and their proxies, political parties with electoral lists and their representatives, NGO observers, election commissions, and voters. Complaints regarding decisions, action or inaction of PEC can be filed with the respective DEC and/or with local general courts. Complaints regarding a decision, action or inaction of a DEC might be challenged before a district administrative court and complaints about the inaction of a DEC might be filed with the CEC. The decisions, action or inaction of the CEC can be challenged before the Kyiv Administrative Court of Appeals and appealed before the High Administrative Court of Ukraine.

ENEMO observers collected information and followed nine court cases in the pre-election period. In district #132, a lawsuit was filed against opposition candidate Kornatsky concerning the legality of his Ukrainian citizenship. Also, the domestic monitoring group CVU appealed against the ban on rallies in Cherkassy. The Kyiv Administrative Court of Appeals denied the appeal against the opposition candidate in district #194, Bulatetskiy, which was filed by another candidate asking to cancel Bulatetskiy's registration. In district #194, three minor cases related to PEC lotteries were rejected by court decisions. Candidate Karmazin (district #94) appealed against DEC activities, and the candidate registration of opposition candidate Romanyuk (district #94) was discussed on two different court hearings. All complaints and appeals stayed without of legal consequences yet, with exception of Romanyuk's case.

On October 21, 2013 the CEC registered Viktor Romanyuk as an MP candidate in district #94. Romanyuk was the only candidate nominated by the three main opposition parties, Batkivshchyna, UDAR and Svoboda. His registration was cancelled on December 5, 2013 by the CEC, following the final decision of the High Administrative Court of Ukraine.

On November 29, 2013 the plaintiff Volodymyr Shpakovych addressed the Kyiv Administrative Court of Appeals requesting to repeal the CEC decision registering Romanyuk as an MP candidate. The plaintiff claimed that Romanyuk had not lived in Ukraine for the past five years as required by the law. The Kyiv Administrative Court of Appeals decided to partially satisfy the claims of the plaintiff. The court said that the CEC decision to register Romanyuk was illegal and overturned it. The decision was challenged by all parties in the upper court.

On December 4, 2013 the High Administrative Court of Ukraine passed a decision to cancel Romanyuk's registration. The appellant was again Volodymyr Shpakovych (although he did not attend any court session related to this case), along with Romanyuk and the CEC. Shpakovych asked the court to consider the CEC's inaction as illegal. On the other hand, the CEC and Viktor Romanyuk asked the court to overturn the decision of the Kyiv Administrative Court of Appeals.



However, the court did not take their arguments into consideration. Among other legal arguments, the CEC claimed that a five-day limit prescribed by the Code of Administrative Legal Proceedings for appealing decisions or inactions of the CEC was not met. Also, the CEC decision did not violate the rights and interests of the plaintiff himself, because the plaintiff was not a voter in district #94. The High Administrative Court of Ukraine obligated the CEC to cancel Romanyuk's registration as a candidate, but dismissed the plaintiff's demand to recognize the CEC's decision as illegal and null.

The Kyiv Administrative Court of Appeals found the case admissible even though the legal time limit for applying to the court had already passed. The plaintiff addressed the CEC on November 28 to inform that Romanyuk was not compliant with the legal requirements, even though the candidate registration process had ended on November 19. The High Administrative Court considered the findings of the Kyiv Administrative Court of Appeals legitimate, even though it agreed that the legal time limit was not met. According to Andriy Mahera, the Deputy Chairman of the CEC, "if cancellation of Romanyuk's registration had taken place within the period provided by the law for appealing against CEC decisions, Batkivshchyna would still have had the time to nominate another candidate. Now there is no such opportunity for them."<sup>12</sup>

ENEMO appeals to legislative bodies to review the five-year residence requirement for candidate eligibility. Additionally, ENEMO calls courts to respect the deadlines for appeals provided by law in the future. ENEMO welcomed the efforts of the CEC to explore all legal options in the case of candidate Romanyuk and supports the CEC announcement to request a clear guidance of the Supreme Court related to the current five-year residence requirement.

As stated by the CEC on election night, the CEC received approximately 3,000 documents related to 2013 re-elections, among which were 26 complaints regarding the pre-election period. The CEC specified that 17 of complaints were related to election campaign violations, two complaints to inactivity of the DEC's, one complaint to a DEC decision and one complaint to a CEC decision. Two complaints were rejected, one complaint was canceled by the complainant, 22 complaints were dismissed (returned back to the complainants) and only one (related to vote buying) was sent to the general prosecutor's office. Additionally, the CEC received only one complaint related to the election day proceedings, submitted by a candidate's proxy from district #132.

ENEMO expresses serious concerns about the lack of effective sanctions in cases related to election campaign violations. ENEMO calls on the courts and the CEC to react to election violations in the future and to issue administrative and criminal sanctions against any involved persons, including candidates, in accordance with the law.

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<sup>12</sup>[http://www.bbc.co.uk/ukrainian/politics/2013/12/131205\\_romaniuk\\_election\\_vc.shtml](http://www.bbc.co.uk/ukrainian/politics/2013/12/131205_romaniuk_election_vc.shtml)

## **XII. RECOMMENDATIONS**

Based on observations and analysis of various parts of the election process, ENEMO presents the following recommendations for improving the election legislation and the electoral process in general. These recommendations address various stakeholders in accordance with their competencies.

### **Proposal for the Law Enforcement Bodies and General Prosecution**

1. It is of utmost importance to investigate impartially all election offences, timely prosecute and hold accountable the perpetrators of gross violations, especially related to reported cases of voters' bribery and abuse of administrative resources. An atmosphere of impunity for election offences does not contribute to the rule of law and undermines public confidence in the election process.

### **Proposals for the Legislative Bodies**

2. There is an urgent need to pass amendments to the Law on Parliamentary Elections to enable a long-term environment that allows for partial or full repeat elections in cases of invalidation of results or gross violations, including a clear deadline for conducting repeat elections.
3. The five-year residency requirement for candidate eligibility should be reviewed, since it is excessive and difficult to enforce. The judicial interpretation is not consistent and uniform and this leaves room for the arbitrary application of the law and disproportionate restrictions.
4. A requirement to collect signatures might be suggested to minimize the impact of technical and virtual candidates. This would ensure more balanced DEC and PECs, reduce the size of election commissions and the number of party observers and make the voting and counting procedures more efficient and less chaotic.
5. The dual system of handling election disputes by election commissions and administrative courts often results in overlapping and conflicting decisions. A clear system of handling election complaints and appeals with deadlines is required for various stages of the electoral process. Sanctions shall be proportional to the severity of the violations committed.
6. There is a lack of regulations of transparent campaign finance for political parties and candidates. The sources and expenditures of campaigns shall be publicly known before and after the elections, and there is a need for institutionalized campaign finance monitoring, oversight and sanctions.

## Proposals for the CEC

7. Even though the CEC increased the transparency of its work, additional improvements are needed. In particular, the CEC shall always provide the draft resolutions ahead of CEC meetings and open its informal meetings to all observers.
8. Replacement of election commissioners at the district and precinct levels shall be subject to reasonable restrictions to ensure competence, impartiality and training of election commissions.
9. The CEC should undertake a more consistent and systematic approach to training election officials of DEC and PEC in order to avoid most common errors and breaches of procedures. If the number of technical parties is reduced according to recommendations mentioned above and this results in smaller election commissions, the CEC should consider to train all PEC members and not only the PEC managerial staff. Additional trainings should be held for new election officials in cases of replacements of PEC and DEC members.
10. The CEC shall make arrangements to comply with the law as errors and inaccuracies should be subject to correction and should not be a reason for refusing candidate nominations.
11. More flexible approaches are needed for verification, data corrections and accuracy of voter lists that would increase public confidence in the election process. More flexible approaches such as web-based tools for voter data verification may be developed.

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## ABOUT ENEMO

*The European Network of Election Monitoring Organizations (ENEMO) is an international network of nongovernmental organizations founded on September 29, 2001 in Opatija, Croatia. It consists of 22 leading domestic monitoring organizations from 17 countries of Central and Eastern Europe and Central Asia, including two European Union countries.*

*ENEMO seeks to support the international community's interest in promoting democracy in the region by assessing electoral processes and the political environment and offering accurate and impartial observation reports. ENEMO's international observation missions use international benchmarks and standards for democratic elections to evaluate the electoral process and the host country's legal framework. ENEMO and all of its member organizations have endorsed the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations.<sup>13</sup> Each ENEMO observer signed the Code of Conduct for International Observers.*

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<sup>13</sup> [http://www.gndem.org/sites/default/files/declaration/Declaration\\_of\\_Global\\_Principles\\_0.pdf](http://www.gndem.org/sites/default/files/declaration/Declaration_of_Global_Principles_0.pdf)

*ENEMO member organizations have monitored more than 200 national elections and trained more than 200,000 observers. To date, ENEMO has monitored 17 election processes in seven countries: Albania (2005 parliamentary elections), Georgia (2008 early presidential elections), Kazakhstan (2005 presidential elections), Kosovo (2009 municipal and mayoral elections; and 2010 early parliamentary elections), Kyrgyzstan (2005 presidential elections; 2005 parliamentary elections; 2007 early parliamentary elections; 2009 presidential elections; 2010 parliamentary elections and 2013 local elections), and Ukraine (2004 presidential elections; 2006 parliamentary elections; 2006 mayoral elections in Chernihiv, Kirovograd and Poltava; 2007 parliamentary elections; 2010 presidential elections and 2012 parliamentary elections).*

*ENEMO's international observation mission to Ukraine 2013 was conducted with the support of the National Democratic Institute for International Affairs.*