



<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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## **Interim Report**

### **22 November – 10 December 2013**

The ENEMO Election Observation Mission for the Repeat Elections of the People's Deputies of Ukraine in Five Single-Mandate Constituencies in Ukraine began its work on November 10, 2013 with the arrival of the Core Team composed of three members. Seven long-term observers arrived in Kyiv on November 20, 2013 and were deployed after training. They were specially briefed and trained on particularities of the political environment and specifics of the electoral legislation. ENEMO's long-term observer teams cover all five districts in which Repeat Elections are taking place. For this interim report the focus of ENEMO's long-term observers was on the conduct of the election campaign, the formation and work of election commissions, and official election complaints. The work of the Central Election Commission has been observed as well. The findings on this report are based on 16 reports received from long-term observers. From the beginning of the mission, ENEMO observers have held 176 meetings, out of which 46 have been with election commission members and administrative officials, 24 with candidates, candidate representatives and representatives of political parties, 11 with representatives of NGOs, 14 with media representatives and many other domestic and international interlocutors. They observed 11 rallies and protest gatherings as well as 12 District Election Commission (DEC) sessions and eight Central Election Commission (CEC) sessions, and visited 41 Precinct Election Commissions (PECs). On election day, ENEMO will deploy 30 additional short-term observers (STOs) to monitor the opening, voting, counting and protocol filling procedures within the polling stations. ENEMO's International Election Observation Mission to Ukraine 2013 is being conducted with the support of the National Democratic Institute for International Affairs.

## SUMMARY OF FINDINGS AND RECOMMENDATIONS

- The Repeat Elections of the People's Deputies of Ukraine in Five Single-Mandate Constituencies will be held on December 15, 2013 according to the decision of the Verkhovna Rada. The legal framework is provided by the Law on Election of People's Deputies and by the Law on Repeat Elections of Single-Mandate Districts No. 94, 132, 194, 197 and 223.
- Although the EuroMaidan protests are not directly related to the re-election in five single mandate constituencies, ENEMO expresses serious concerns about the security situation in Kyiv. *ENEMO appeals to all stakeholders and decision-makers to undertake all necessary steps to ensure a secure environment and freedom of movement for voters, especially on election day, December 15, 2013.*
- The CEC meetings are open to observers, media and political parties. However, access to real decision-making is limited by closed-door meetings. *ENEMO urges the election administration to make additional efforts to increase the integrity and transparency of the electoral process, such as providing the draft resolutions ahead of CEC meetings, allowing proper hearings, and handling of election-related complaints.*
- The CEC had to cancel the registration of the common opposition candidate in district #94, Viktor Romanyuk, following the decision of the Kyiv Administrative Court of Appeal and the Higher Administrative Court of Ukraine. *ENEMO welcomes the efforts of the CEC to explore all legal options to allow the registration of the candidate Romanyuk. Additionally, ENEMO appeals to legislative bodies to review the five-year residence requirements for candidate eligibility.*
- At least 59% of DEC members and over 55% of PEC members have been replaced as of December 10, 2013. The replacement process is still ongoing. Unbalanced PEC and DEC compositions combined with improperly trained members might lead to violations of the voting and tabulation procedures on election day. *ENEMO calls on relevant legislative bodies and the CEC to provide legal and technical mechanisms to prevent massive replacements in DEC and PECs in future elections.*
- Negative campaigning and misuse of administrative resources for campaign purposes is widespread. The domestic monitoring groups OPORA and CVU reported a high number of cases of voter bribery by candidates. *ENEMO expresses serious concerns about the lack of effective sanctions for election campaign violations and calls on the courts and the CEC to act on them according to the law.*

## **LEGISLATIVE FRAMEWORK**

On October 28, 2012, Ukraine held parliamentary elections. On November 5, 2012 the Central Election Commission (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), #197 (Khaniv district, Cherkassy oblast) and #223 (Kyiv). In accordance with the CEC proposal, the Verkhovna Rada decided to hold repeat elections in those constituencies. On September 5, 2013 the Verkhovna Rada also passed the single-use law on repeat elections of single-mandate districts No. 94, 132, 194, 197 and 223.

During the last year, within the framework of the EU association process, Ukraine has prepared the draft law amending the Parliamentary Election Law and the Minister of Justice requested the Venice Commission and the OSCE/ODIHR to comment on the text. The draft law is passed, but has not been signed by the President yet and the law on elections of single-mandate districts No. 94, 132, 194, 197 and 223 introduces just the schedule for conduct the re-election on December 15, 2013.

Therefore, the principal law regulating the conduct of parliamentary elections is 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 Procedure and the instructions and regulations passed by the CEC.

Ukraine has a mixed electoral system. The Parliament, the Verkhovna Rada, consists of 450 members (deputies): 225 elected proportionally from closed party lists and 225 elected in single mandate districts with a simple majority vote.

## **ELECTION ADMINISTRATION**

### **Central Election Commission (CEC)**

The sessions of the Central Election Commission are held on a daily basis and are generally open to observers. The vast majority of the CEC decisions are approved unanimously without debate. Usually, the CEC holds closed meetings ("naradas") prior to the regular public meetings, where the actual decision-making process takes place. On December 6, 2013 ENEMO's observer responsible for the CEC accidentally had access to a narada agenda, whereas no agenda for the official CEC session was provided to observers and media and party representatives. So, although the CEC voting process is public, the real decision making is not. Therefore, ENEMO cannot assess the overall work of the CEC as fully transparent.

According to the election law, party representatives have a right to be present at the meetings of the CEC and also participate and contribute to the discussions. Although theoretically they can exercise their right of advisory vote, the general environment at the CEC meetings and the process of decision-making on the whole makes their attendance nominal. Party representatives

are not provided the documents necessary for full participation in decision-making despite the provisions of the law. The agenda is not always available for everyone present and it is mostly provided just before the meeting; neither the draft nor final agenda are posted on the CEC website. Party representatives do not have access to draft resolutions and all the supplementary documents upon which draft resolutions are based. On average, the CEC members spend 2 to 3 minutes voting for a resolution at the official sessions without discussion. No matter whether party representatives, observers and journalists get the clear picture, they are not able to see the actual decisions until they are posted on the CEC website.

*ENEMO urges the election administration to make additional efforts to increase the integrity and transparency of the electoral process, such as providing draft resolutions ahead of CEC meetings, allowing proper hearings, and handling of election-related complaints.*

### **District Election Commissions (DECs) and Precinct Election Commissions (PECs)**

The CEC conducted the lottery for the composition of District Election Commissions (DECs) on October 25, 2013. Political parties with the status of a parliamentary faction in the Verkhovna Rada 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 DECs than during the regular Parliamentary Elections in 2012. ENEMO observers attended four of the five lotteries (districts #94, #132, #194 and #223) for composition of the Precinct Election Commissions (PECs). Beside some delays caused by technical and organizational problems, no serious complaints about drawing procedures were reported by ENEMO observers. 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 remains an urgent issue both in DECs and PECs. According to information provided to ENEMO observers, at least 53 of a total 90 DEC members (59%) were replaced in all five districts prior to December 1, 2013. The highest rate of replacements was reported in district #132, where 17 of the 18 DEC members were substituted. In district #223, at least 12 replacements took place, and the Social Patriotic Assembly Slavs Party and People's Party Environment even exchanged their members twice.

As it was reported by ENEMO observers, over 7,500 of a total 13,570 selected PEC members (55%) were replaced as of December 7, 2013 in all five districts. The highest rate of replacements was reported in district #223, where over 80% of PEC members have already been substituted (in district #132 the rate is around 60%, in #94 over 50%, in #197 over 45% and in # 194 about 40 %).

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 of knowledge of the nominees in order 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 subject they officially represent (e.g. in PECs #320768 and #320767 in district #94; the Chairman in PEC #480702 in district #132) seem to harden those suspicions. Replacements were one of the reasons for a late establishment of PECs. ENEMO observers did not find any members when visiting five PECs in district #197, three PECs in #194 and at least one PEC in #132, although the deadline for their establishment was already over.

Since the trainings for PEC members already took place in the first week of December and the process of replacements is still ongoing, the rotation could negatively affect the work of PECs on election day. Unbalanced PEC and DEC compositions combined with untrained members might lead not only to violations of voting procedures, but also to problems with vote counting and tabulation, which were the main reasons for conducting re-elections in these five single mandate constituencies. ***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.***

## **CANDIDATE REGISTRATION**

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 of them.<sup>1</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 Levchenko and Pylypyshyn in district #223, of candidate Romanyuk in district #94 and Sokolov in district #132). However, a large number of candidates withdrew after their registration. As of December 4, 2013 there were 152 candidates still running in these repeat elections.<sup>2</sup>

The number of nominees denied registration was 56. Grounds for refusals were mostly technical. Nominees either did not submit necessary documents or the documents contained minor inaccuracies. Examples of the grounds for refusals include:

- No declaration of the obligation to terminate any activity, which 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;
- No information about the candidate's citizenship and the period of time the candidate has been living on the territory of Ukraine;

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<sup>1</sup> District #94 – 84 candidates, district #132 – 13 candidates, district #194 – 17 candidates, district #197 – 18 candidates and district #223 – 75 candidates.

<sup>2</sup> District #94 – 39 candidates, district #132 – 11 candidates, district #194 – 16 candidates, district #197 – 16 candidates, district #223 – 70 candidates.

- Absence of any document certifying that a financial deposit was made;
- No information on 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 to these reasons, 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 submitted documents. Although the law states that those errors should not be cause for refusals, 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 the court decisions which stated that the candidate was not residing 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.***

## **ELECTION CAMPAIGN**

The intensity of the election campaign intensity varies from district to district. Most campaigning activities were observed in districts #94 and #223, whereas campaigning in districts #197 and #132 can be described as quiet up to now. Despite the large number of registered candidates, only few are conducting a visible election campaign through billboards, posters and leaflets. EuroMaidan protests are strongly used by Batkivshchyna, UDAR and Svoboda for promoting their political parties in Kyiv and Cherkassy. Svoboda's candidate Levchenko (district #223) is actively participating in the protests and his main competitor Pylypyshyn is offering free food and sleeping places for participants. Anyway no large agitation related to re-elections was noticed by ENEMO observers during the protests yet, beside of one case when leaflets of candidate Levchenko were distributed among protest participants on December 1, 2013.

Although the protests are not related to the re-election in the five single mandate constituencies, ENEMO expresses serious concerns about the security situation in Kyiv. Since the protests also are taking part in district #223, ***ENEMO appeals on all stakeholders to undertake all necessary steps to ensure a secure environment and freedom of movement for voters, especially on election day on December 15, 2013, but also in the remaining pre-election period.***

At least 19 cases of negative campaigning were recorded by ENEMO observers in districts #94, #132, #194 and #197, mostly discrediting joint opposition candidates Romanyuk (#94), Kornatsky (#132), Bulatetskiy (#194) and Datsenko (#197), but also independent candidates Kruglov (#132), Badaev and 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 in order 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 is showing 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 were the reason for Cherkassy City Council to appeal officially to prosecutors and ask them to check relevant information published in local media.

In the last weeks, 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 Pylypishyn). Campaigning materials of candidate Pylypishyn 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 Vasilkiiv" are thanking candidate Badaev for a new swimming pool.

Batkivshchyna representatives are complaining 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 claim that two candidates not being nominated and supported by their political party are using Batkivshchyna's logos, symbols and colors in their campaigns. Related to that issue, they are preparing an appeal against candidate Kuziomenskiy in district #194 and against candidate Vlasenko in district #223.

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

## **ELECTORAL DISPUTES**

ENEMO observers collected information and followed up eight court cases. In district #132, a lawsuit was filed against opposition candidate Kornatsky concerning the legality of his Ukrainian citizenship; domestic monitoring group CVU appealed against the ban on rallies in Cherkassy. 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 made a decision to register 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 was claiming that Romanyuk had not lived in Ukraine for the past five years. 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 the 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 the 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>3</sup>

***ENEMO welcomes the efforts of the CEC to explore all legal options to allow the registration of candidate Romanyuk. Additionally, ENEMO appeals to legislative bodies to review the five-year residence requirements for candidate eligibility.***

***Furthermore, ENEMO expresses serious concerns about a lack of effective sanctions in cases related to election campaign violations. ENEMO calls on the courts and the CEC to react to election violations and to issue administrative and criminal sanctions against any involved candidates according to the law.***

This report was written in English, which remains the only official version.

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The European Network of Election Monitoring Organizations (ENEMO) is an international network consisting of 22 leading domestic monitoring organizations from 17 countries of Central and Eastern Europe and Central Asia. 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.

ENEMO operates in full compliance with international standards for international elections observation. ENEMO endorsed the 2005 Declaration of Principles for International Elections Observation. All ENEMO member organizations endorsed the 2012 Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations. All ENEMO observers have signed the Code of Conduct for International Election Observers.

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<sup>3</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)