



**European Parliament EU-Ukraine PCC
Members' delegation to Ukraine
observing local and regional elections
of 31 October 2010**

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EU-Ukraine Parliamentary Cooperation Committee
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List of annexes:

1. Letter of President Jerzy BUZEK to Mr Paweł KOWAL authorising Members of the EU-Ukraine PCC to observe the local and regional elections in Ukraine.
2. Letter of President Jerzy BUZEK to Mr Volodymyr SHAPOVAL, Chairman of the Central Election Committee of Ukraine, replying to the invitation of Speaker Volodymyr LYTVYN to observe the local and regional elections in Ukraine.
3. Letter of Mr Paweł KOWAL to Prime Minister of Ukraine Mykola AZAROV on questions related to the local elections in Ukraine.
4. Reply letter of Prime Minister of Ukraine Mykola AZAROV to Mr Paweł KOWAL (in Ukrainian).
5. Letter of Ambassador of Ukraine Kostiantyn YELISEIEV to Chairman Gabrielle ALBERTINI on the conduct of local and regional elections in Ukraine.
6. Background paper on local elections in Ukraine - prepared by the UA embassy in Brussels by the Ukrainian Embassy.
7. Central Election Commission Resolution 327 on conduct of the elections.
8. Joint Statement by Ukraine's Opposition Parties
9. Statement by National Democratic Institute.
10. Report of the Committee of Voters of Ukraine.
11. OPORA Findings of Local Elections Observation – 31 October– 1 November 2010.
12. Non-paper on disappearance of the journalist Mr Vasyl KLYMENTIEV.

1. Introduction

The European Parliament received on 27 September 2010 the invitation by the Speaker of the Verkhovna Rada of Ukraine, Mr Volodymyr LYTVYN, to observe the local and regional elections in Ukraine which were scheduled for 31 October 2010. Although the European Parliament usually does not observe this kind of elections, the Conference of Presidents decided on 19 October 2010 by a written procedure that Members of the European Parliament taking part at the 15th EU-Ukraine Parliamentary Cooperation Committee in Kyiv can travel to Ukraine earlier to be present during the Election Day and report back to the European Parliament after the elections.

Two Members of the European Parliament Delegation to the EU-Ukraine Parliamentary Cooperation Committee decided to travel to Ukraine to watch the elections: its Chairman Mr Paweł KOWAL (ECR, PL) and Mr Jan KOZŁOWSKI (EPP, PL). Apart from many interviews and meetings with politicians and experts they visited polling stations in the Kyiv and Chernihiv oblasts. They were accompanied by Mr Michał CZAPLICKI from the EP Secretariat and Mr Aleksander GRAŁCZEWSKI from the ECR Group. The mission started on 30 October and ended on 2 November 2010. It was immediately followed by the 15th EU-Ukraine Parliamentary Cooperation Committee in Kyiv on 3-5 November 2010.

The International Election Observation Mission, consisting of the representatives of the OSCE Parliamentary Assembly, the Council of Europe, the NATO Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights, was not sent to observe the elections. Therefore the MEPs did not have any specialized instruments to fully assess the election process. Nevertheless representatives of OSCE/ODIHR Expert Mission and the Congress of Local and Regional Authorities of the Council of Europe were present during the Election Day and after.

The Delegation had working contact with both the Ukrainian and international media. The day after the elections the Chair organised a press conference in the premises of

the EU Delegation. The Chair also participated in media meetings organised by UNIAN (Ukrainian Press Agency) and by the Institute of World Policy.

The EP Delegation took also part in a debriefing organised by the EU ambassadors accredited in Kyiv.

The Delegation worked closely with the EU representation in Kyiv, chaired by H.E. Ambassador Jose Manuel PINTO TEIXEIRA, who also attended many of the above-mentioned meetings.

1.1 Meetings with Ukrainian politicians

The EP delegation had the opportunity to meet with the Prime Minister Mykola AZAROV, Deputy Prime Minister Andriy KLYUEV and Minister of Foreign Affairs Kostiantyn HRYSHCHENKO, chiefs of staff of three major political parties: Party of Regions (Mr Leonid KOZHARA), Batkivshchyna (Mr Hryhoriy NEMYRIA) and Strong Ukraine (Mr Kost BONDARENKO) and leaders of two opposition parties: Batkivshchyna (Mrs Yulia TYMOSHENKO) and Front Zmin (Mr Arseniy YATSENYUK). The talks were also held on the initiative of the Chief of the Ukrainian Security Service Mr Valery KHOROSHKOVSKY.

1.2 Meetings with international observers

Special meetings have been organised with members of other delegations observing the elections: the OSCE/ODIHR Expert Mission (Mr Jonathan STONESTREET and Ms Luisine BADALYAN), and the Congress of Local and Regional Authorities of the Council of Europe (H.E. Ambassador Ake PETERSON, Mr Nigel MERMAGEN, Mrs Hande Özsan BOZATLI and Mr Henry FERAL).

1.3 Meetings with experts

The Delegation met with independent NGOs and watchdogs, who supervised the elections: the Committee of Voters of Ukraine (Mr Oleksandr CHERNENKO), OPORA (Ms Olga AYZOVSKA), the Gorshenin Institute (Mr Vadim OMELCHENKO and Mr Vladimir FESENKO), the Razumkov Center (Mr Valeryi

CHALY) and the Polissa Foundation for International and Regional Studies (Mr Hennadiy MAKSAK).

1.4 Election Day

The EP observers on the Election Day monitored the polling stations around Kyiv and Chernihiv oblasts. In the Chernihiv region they cooperated with the regional watchdog Polissa Foundation for International and Regional Studies who monitored the elections in cooperation with the OPORA election monitoring organisation.

The following report was prepared on the basis of interviews with the election monitoring organizations and NGO representatives, meetings with politicians, reports from international observers and monitoring of press as well as the direct observation of the electoral process. Few conclusions were drawn also from the meetings during the 15th EU-Ukraine Parliamentary Cooperation Committee in Kyiv.

2. Legal framework of the elections

The Presidential elections in January/February 2010, won by Mr Victor YANUKOVYCH (Party of Regions) "met most OSCE commitments and other international standards for democratic elections", according to the OSCE/ODIHR Election Observation Mission Final Report on the Presidential Election in Ukraine on 17 January and 7 February 2010. Nevertheless the OSCE/ODIHR criticized the 2009 amendments of the election law, which "constituted a step backward compared to previous legislation". The European Parliament Election Observation Mission led by Mr Paweł KOWAL endorsed the conclusions of the OSCE/ODIHR in its final report.

The elections resulted in a significant change on the Ukrainian political scene. The Party of Regions became the strongest political group with coalition majority in the Verkhovna Rada and formed a new government chaired by Mr Mykola AZAROV. Since Mr YANUKOVYCH's victory in the presidential elections, Party of Regions constantly strove to consolidate the divided political scene in Ukraine. One of the most important steps was made on 1 October 2010 by the Constitutional Court, which

cancelled the constitutional reform dating from the end of 2004, thus returning to the Constitution adopted in 1996. This strengthened the president's power and turned the Ukrainian political system back to a presidential republic.

It is worth noting that the consolidation of power raised international concerns about the freedom of speech and the situation of mass media. Detainment of the director of the Kyiv Office of the Konrad Adenauer Foundation Mr Niko LANGE in Kyiv-Boryspil Airport in April 2010 and the disappearance of Mr Vladimir KLYMENTEV, editor-in-chief of the Kharkiv "New style" newspaper (which probably has rather a local, criminal character than political) are only two best known cases. What caused even more concerns was the deprivation of frequencies of two independent TV stations TVi and TV5.

The local elections in Ukraine were conducted according to the new election law, adopted by the Verkhovna Rada on 10 July 2010 and signed by President Viktor YANUKOVYCH on 27 July 2010. It foresaw a mixed proportional-majority system of voting, with one half of the local council deputies elected under proportional (party list) system, and the other half – under majority system. Deputies to the Crimean Supreme Council and regional, district and city councils were elected according to the mixed system and village councils under the majority system. Candidates for city mayors were nominated by the local party-branches, whereas candidates for heads of villages were nominated by parties or self-nominated. Under the Constitution of Ukraine, the term of office of the heads of villages and towns is four years.

According to the local election law, deputies of Kyiv City Council and the city mayor, as well as the deputies of Ternopil Regional Council, were not elected on October 31, because they were elected in the extraordinary elections held after 2006.

Ukraine is subdivided into twenty-four provinces (*oblasti*) and one autonomous republic of Crimea. The capital city Kyiv and the Crimean city of Sevastopol both have a special legal status.

The Central Election Commission of Ukraine formed 670 territorial election commissions of various levels: 24 regional, two city (Kyiv and Sevastopol), 474

district, 166 municipal and four Sevastopol district commissions. According to the law, territorial commissions consisted of 9 to 18 members with up to 15 of them representing parliamentary parties, and three – from other parties chosen by the Central Election Commission by the drawing of lots. The Central Election Commission also set up over 11,000 election commissions of lower level, which in turn organized the work of more than 32,000 polling stations. Polling stations opened at 8:00, and remained open until 22:00 on October 31, 2010.

According to the Central Election Commission 490 official foreign observers and 1,913 observers from national non-governmental organizations were registered for the observation of elections.

3. Shortcomings before the elections

Before the day of elections one can point few shortcomings which had a direct impact on the conduct and the result of the elections and which raised concerns on the voting process.

3.1 The date of elections

On 16 February 2010, a majority of representatives of Verkhovna Rada of Ukraine from the Party of Regions, Lytvyn's Bloc and the Communist Party of Ukraine, repealed the law scheduling the local elections for 30 May 2010. A new law on local elections was adopted on 10 July 2010. On 22 July it was signed by the Speaker and on 27 July by the President. The act came into force on 31 July 2010 and set up the date for holding local elections on 31 October 2010. As the law has been adopted late and needed further improvements (see below), the time for good preparations of the elections has been significantly reduced, which had a direct impact on the quality of conduct of the elections.

3.2 Principles of the electoral law

Party blocs were deprived of the right to present candidates which eliminated the opposition BYuT (Yulia Tymoshenko Bloc) and the coalition Lytvyn Bloc from the elections. The groups were forced to register under their party (not parliamentary) names: BYuT as “Batkivschyna” and Lytvyn bloc as „Narodnaya Partya”.

3.3 List number one

Under the electoral law, the party names on the election lists are arranged in order of the submission of registration requests to the local commissions. The fact that the documents of the opposition parties were not accepted by election commissions before the submission of the list of the Party of Regions¹ contributed to the situation that the ruling party gained first places on the lists in 85% of the constituencies.

3.4 Problems with registration of opposition parties

In Kyiv and Lviv oblasts the party „Batkivschyna” was registered on the election lists by people who were not formal members of the party. As a result, Mrs Yulia TYMOSHENKO decided to boycott the elections in the Lviv oblast.

3.5 Other shortcomings

During the election campaign the media reported on some other shortcomings which unfortunately cannot be fully verified because of the lack of instruments to conduct it.

Departure from the rule of the absolute majority in favor of the overall majority in territorial electoral commissions could have created a situation when members of one party decided on the commission works.

Two printing houses which printed ballots without appropriate permits were discovered in Kharkiv. Few thousand illegally printed ballots were found also in the

¹ Such cases were recorded in the circuits of Volyn, Lugansk, Lviv, Kherson and Dnipropetrovsk oblasts.

Khmelnitsky circuit Ivano-Frankivsk. Local election commission in Odessa requested printing the excessive amount of voting cards.

Local election committees in Crimea, refused to register opposition candidates (mainly from the „Svoboda” party), as well as the pro-government factions (Communist Party of Ukraine and Strong Ukraine). Although these parties had reported it to the court and the election committees received the order from the legal authorities to register, candidates of these parties were still not registered. In response, leaders of the CPU, and the “Strong Ukraine” announced a boycott of elections in Crimea.

On 9 September 2010 the city council of Kyiv, on the basis of a new electoral law, abolished the district councils in the city. They ceased to exist on 31 October. This means that the state administration will be subordinated to the head of the city government, appointed directly by the President of the country.

Some of the candidates have been arrested during the electoral campaign, but still they could take part in the elections.

Other major shortcomings and allegations of frauds were reported by the Batkivshchyna party. A detailed documentation of this fact handed to the EP Delegation by the Batkivshchyna party leaders is deposited in the Secretariat of the EU-Ukraine Delegation.

4. Observation of the elections

The elections mostly were conducted in a gentle and well organized manner. The observers noticed a significant presence of the local police around the polling stations. They also took note of the overcrowding inside the polling stations. This may have deprived some voters of the time necessary to make a decision on whom to vote, especially because of the complicated system of voting, which included from 5 to 8 ballots. The EP observers noted a high amount of national observers, mainly of political party origin.

In the polling stations visited the observers did not witness any significant problems.

5. Exit-polls results

The official results of the elections were still not known at the moment of writing of this report.

According to the exit poll conducted by the GfK company commissioned by the opposition Yedynyi Tsentr Party, at the elections to the regional councils the Party of Regions obtained 36,2%, Batkivshchyna Party – 13,1%, “Front Zmin” – 6,8%, the Communist Party – 5,9%, “Svoboda” – 5,1%, “Strong Ukraine” – 4,3%, “Our Ukraine” – 2,3%, “Yedynyi Tsentr” – 1,6%, while 7,2% of voters voted “against everybody”.

Still there is no data about the voter's turnout in the Ukrainian elections. Nevertheless the Central Election Commission of Ukraine announced at the day of the elections that the voters' turnout before 15:00 reached 28.8 percent.

6. Recommendations

- A comprehensive review of the Election Code should be carried out in order to eliminate shortcomings after amendments from 30th of August 2010. Draft of the new Election Code should take into account the recommendations by the European Parliament, OSCE/ODIHR, and European Commission for Democracy through Law (Venice Commission). The new Code ought to be based on the draft which has been submitted to the Verkhovna Rada in May 2009;
- All political forces should unite in the effort of reforming the legal framework for elections and to demonstrate the political will to adopt a Unified Election Code and a new electoral system, in line with recommendations of the Venice Commission and with the cooperation with the European Parliament, well before the next parliamentary elections;

- It seems that the reform of the Election Code will not be truly successful without substantial reform of the local government according to the principle of subsidiarity;
- Equal opportunities for candidates in the elections are crucial for the democratic system. Independent contenders should be granted the right to contest in municipal elections;
- Political parties should be encouraged to take further steps to increase women's participation in parties' activities and as candidates;
- Verkhovna Rada should adopt the Law on Peaceful Assemblies, on the basis of recommendations and comments made by the Venice Commission;
- The decision of the Constitutional Court of Ukraine of 1 October 2010 that cancels the constitutional reform from 2004 should prompt the Verkhovna Rada to initiate a comprehensive and inclusive constitutional reform process with the view of bringing Ukraine's Constitution fully in line with European standards and values with a clear division of powers and a system of checks and balances;
- The successful implementation of a new constitutional reform should be based on wide political consensus and public support;
- Wider respect for democratic freedoms is one of the main achievements in Ukraine's democratic development in recent years. Any regression in the respect for and protection of these rights would be undesirable;
- The increasing number of allegations that democratic freedoms and rights, such as freedom of assembly, freedom of expression and freedom of the media, came under pressure in recent months are a cause for concern. Interference of state administration, such as security services, in the work of journalists and media organisations creates a discrepancy within the democratic society. Ukrainian authorities should fully investigate all violations of rights and freedoms. In addition, the authorities should ensure that any legal proceedings result in limitations of media

freedoms and take all necessary measures to protect media freedom and pluralism in Ukraine and cease any attempts to control, directly or indirectly the mass media;

- Amending existing media regulations in order to create transparent legal framework of ownership in media sector would have a positive impact on democracy in Ukraine;

- The relatively low voters' turnout before 3 o'clock PM, announced at the day of the elections by the Central Election Commission of Ukraine and the significant percent of people voting "against all" suggest that people in the country are tired with the permanent controversy on the political scene. The major parties, either coalition or opposition should elaborate at least the common strategy towards the European integration. It could be done by bringing into existence an institutional body coordinating the political attitude towards the European Union. The body should consist of coalition as well opposition representatives.

- It seems necessary to establish a common European Union institution for observation of all types of elections in the ENP states. This body should have all necessary instruments to effectively assess outcomes of elections and provide European Parliament observers with sufficient data to report back to the House.

7. Conclusions

The municipal elections in Ukraine which took place on 31 October 2010 were the first local and regional elections in Ukraine, observed by the European Parliament, which were not conducted alongside with the parliamentary elections. This and the fact that the elections were not observed by the International Election Observation Mission contributed to the situation in which there was not possible to effectively compare them with other local elections. They attracted much attention of international organizations and politicians and experts, disproportionately to the actual meaning of the local government in Ukraine. The election campaign was conducted in the atmosphere of political controversy between the Party of Regions and the opposition forces.

The general assessment of the elections is hard to conduct because of the lack of the instruments to fully evaluate the electoral process. According to the monitoring of press, direct observations of the mission participants and meetings with politicians, observers and NGOs it seems that the 2010 municipal elections in Ukraine were conducted in general in an orderly manner. It is important to point out that during the elections some incidents did occur; it is, however, difficult to assess their impact on the final results. One should notice the willingness of the governmental authorities as well as the representatives of the opposition to cooperate with the observers from the European Parliament. The declaration of the Central Government to amend the existing Election Code should be treated seriously and with hope.

Nevertheless one should stress that the 31 October 2010 local and regional elections in Ukraine did not create a new positive standard. Although there were only minor irregularities during the voting, the elections caused many international concerns because of the adoption of the Election Code which seemed in practice to favour the ruling party. The most disturbing fact is that the opposition parties like for e. g. Batkivshchyna could not effectively take part in the elections in three oblasts.

Although the local and regional elections in Ukraine had a significant international publicity one needs to stress that the local government in Ukraine does not have any substantial power. Therefore it is recommended to adopt not only the new Election Code but also to conduct the local government reform to strengthen it according to the principle of subsidiarity.