

The Bureau of the Congress

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Information report on the elections in Ukraine (25 October 2020)

Remote meetings (19-20 October 2020)

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Summary

On 4 August, the Congress received an invitation by the Central Election Committee of Ukraine to observe the local elections scheduled for 25 October 2020. Due to the ongoing COVID-19 pandemic and in line with Congress Resolution 455 (2020), a remote election observation procedure was carried out on 19 and 20 October 2020. This included a smaller delegation of Congress members who are all representatives or alternates of the Council for Democratic Elections of the Venice Commission, as well as an expert from the Group of Independent Experts on the European Charter of Local Self-Government. The programme allowed for online meetings with the same interlocutors and stakeholders that a fully-fledged mission would have implied.

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Taking into account the complexity of the electoral process in Ukraine, the recent introduction of significant changes to the Electoral Code, as well as the Congress' inability to be present in polling stations on the Election Day, except for one local observer assistant, who visited 15 polling stations, this report focuses on aspects which were discussed during the two-day remote observation procedure.

A relevant issue in this context is the restructuring of local and regional governments as from 2015, resulting in the amalgamation of municipalities and regional entities which reduced the number of local self-government units. The subsequent re-apportionment of constituencies at the local and regional level affected the elections.

At the same time, issues surrounding candidate registration, campaign financing, training of electoral staff, and voter registration, particularly within the Roma community, were evident.

The overall situation for IDPs improved following a June 2020 amendment to the Election Code, which allowed persons who are not official residents in the constituency to change their voting address to the place where they live. This improved also the situation of students and other persons living outside of their homestead.

Given extenuating circumstances, the Congress was able to receive a coherent and general overview of the pre-election situation in Ukraine. The present report takes into account also the feedback from the local observer assistant and reports from domestic observer organisation as well as the limited election observation mission from OSCE/ODIHR. Due to the nature of this remote procedure, it does not contain a Recommendation to the Committee of Ministers but, instead, proposals for legal amendments and changes that should be implemented well ahead of the next local elections due in October 2025.

1. INTRODUCTION⁴

1. Following an invitation from the Central Election Committee of Ukraine, received on 4 August 2020, the Bureau of the Congress decided to conduct a remote election observation procedure in order to evaluate the local elections scheduled for 25 October 2020. The delegation comprised the Congress members represented on the Council for Democratic Elections/Venice Commission, including Stewart DICKSON (United Kingdom, ILDG), Jos WIENEN (Netherlands, EPP/CCE), Rosaleen O'GRADY (Ireland, ILDG) and Vladimir PREBILIČ (Slovenia, SOC/G/PD). The team was supported by Professor Markku SUKSI, member of the Group of Independent Experts on the European Charter of Local Self-Government.

2. Due to the conditions created by the ongoing COVID-19 pandemic, the remote exercise was carried out following a methodology of distance observation pursuant to the Report on local and regional elections in major crisis situations,⁵ adopted by the Statutory Forum of the Congress on 22 September 2020. This meant that no physical mission was deployed to Ukraine, instead, a series of online meetings with key interlocutors were held remotely. As a consequence, the Congress delegation was not in a position to secure nation-wide observations and first-hand impressions from the Election Day. However, services of an experienced local election observer were used as well as that of a local staff member to gather some impressions from the day of the elections.

3. The following information report focuses specifically on issues arising out of exchanges held with Congress interlocutors in the context of the 25 October 2020 local elections in Ukraine (see programme in Appendix). The Congress wishes to thank all those who met with the delegation for their open and constructive dialogue. Unfortunately, due to an important political debate that took place in the Parliament of Ukraine on 20 October 2020, the meetings with the political parties, scheduled for that day, had to be cancelled. Instead, the delegation managed to meet a number of mayoral candidates who were running in the elections.

2. POLITICAL CONTEXT

4. Ukraine is a unitary state with the central government in Kiev with and additional three layers of government or self-government (municipalities, districts and regions), added with some asymmetrical elements.⁶ The legislative power is vested in the unicameral *Verkhovna Rada*. In the last parliamentary elections held in July 2019, the Servant of the People party won 43.2 % of the vote and 60 % of the seats and became the largest political party. The President, Mr. Volodymyr Zelensky, elected in April 2019, also belongs to the Servant of the People party.

5. The 2020 local elections were the first general local elections after the presidential and parliamentary elections, which both took place in 2019. Apparently, the Servant of the People party attempted to consolidate itself as a political force at lower levels of administration as well, by having the president tour the country almost as if he was campaigning himself. The local elections therefore acquired a national dimension and were perceived as a popularity test of the party dominating national politics.

6. For many years, the Ukrainian legal order has been in flux. The legislative and organisational changes and amendments extend themselves to local and regional government, and many of the changes are very recent or on going. An entirely new Election Code was approved in December 2019, unifying the provisions of all elections into one single piece of law and introducing open list proportional election system for councils of municipalities larger than 10,000 voters. The Election Code entered into force on 1 January 2020 but was amended several times in June, July and September of 2020.⁷

⁴ Prepared with the contribution of expert Prof. Markku SUKSI, Finland, member of the Group of Independent Experts on the European Charter of Local Self-Government.

⁵ CG-FORUM(2020)01-05 22 September 2020.

⁶ Ukraine signed the European Charter of Local Self-Government on 6 November 1995 and ratified it on 11 September 1997. Ukraine signed the Additional Protocol to the Charter on the right to participate in the affairs of a local authority on 20 October 2011 and ratified it on 16 December 2014.

⁷ The Election Code entered into force on 1 January 2020, except subclause 3 of clause 3 of the final Chapter, which concerned political advertising and which came into force on 1 July 2020, and subclauses 2 and 3 of clause 3 of the final Chapter referring to the exercise of powers of the State Voter Register administration and maintenance bodies by the regional and territorial representative offices of the CEC, which came into force on the day following the day, when the CEC adopts a decision on the commencement of the work of its regional and territorial representative offices. As of yet, such a CEC decision appears not to have been adopted.

7. A new local and regional government structure was implemented between 2015 and 2020 resulting in mergers of municipalities and regional entities. The amalgamation of municipalities took place in three rounds of mergers that reduced the number of local self-government entities. The delineation of the various municipal and regional entities thus changed the borders of constituencies. As a consequence of this re-apportionment of constituencies at the local and regional level, it may have been difficult for voters to understand for which of the elected bodies they should cast their vote, or even who each candidate represented. In addition, the powers of the regional and local levels of administration are not entirely determined as of yet, and the configuration of powers of the various levels of government is likely to change in the future. This means that the voters may not have known very well what functions the various elected bodies might perform once instituted, while the representatives elected to the positions might not have known what their powers will entail following their inauguration. The drafting of a new law on local self-government will continue after the elections of 2020. All of these changes in the legal order are surrounded by the pending Constitutional reform of the provisions on local and regional self-government, expected to take place at the end of 2020.

3. ADMINISTRATIVE STRUCTURE AT LOCAL AND REGIONAL LEVEL

8. Ukraine has a three-tiered system of territorial organization. As of 2020, the sub-state levels are in principle formed by *hromadas* (hereinafter: municipalities) and cities, *rayons* (hereinafter: districts) and *oblasts* (hereinafter: regions), although the actual picture is more complicated and ever-changing.

9. Decentralisation has been a political aim since 2014, and between the local elections of 2015 and 2020, numerous first-time elections of amalgamated municipalities were organized each year. By April 2020, more than 1400 amalgamated municipalities have been created out of some 11000 original units, most of them by means of voluntary mergers,⁸ and another 350 were expected to be created before the organization of local government is fully reformed, implying a drastic reduction in the number of local government entities by way of creating larger entities. In March 2021, first elections in a new set of amalgamated municipalities will be held. The new municipal structure would also be furnished with tasks transferred from the districts and funded by local tax powers. The decentralisation reform will streamline the local level administration and is expected to strengthen local self-government.

10. The regions are 24 and consist of 136 rural districts and 118 urban districts located in cities.⁹ For the re-apportioned districts, the 2020 elections were actually the first elections. The elected bodies at the region and district levels are matched by state administration at the same levels. Kyiv, the capital city, is a city with special status under a separate piece of law and has its own particular form of organisation, where the elected mayor and council interact with an administrative structure that belongs to the state administration. Plans exist to change the status of Kiev. Ukraine has one autonomous territory – Crimea – that is currently under Russian occupation. In Crimea, there is another city with special status, Sevastopol.

4. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

11. Local elections are regulated by the Election Code, which was recently enacted.¹⁰ However, several amendments to the Election Code were made during the summer of 2020 (17 June and 16 July) with the latest amendment introduced on 15 September 2020, less than six weeks prior to Election Day. This is not in line with the principle which states that election legislation and the electoral system should not undergo amendments or changes during the year preceding the elections.¹¹ The unification of election legislation is a recommendation of the OSCE/ODIHR, but according to ODIHR, not all of its recommendations concerning the contents of the election law have been implemented in legislation, such as steps to enhance the oversight of campaign finance and media obligations.¹² While the lower tiers of the election administration are regulated in the Election Code, there is a separate act on the

⁸ Law on voluntary association of territorial communities of 5 February 2015. However, during 2020, hundreds of new amalgamated municipalities were created by administrative decision of the Government.

⁹ The district (*rayon*) structure of Soviet provenance was abolished in July 2020, and the previous 490 districts were turned into 136 new enlarged districts, of which 119 are located in government-controlled areas of Ukraine.

¹⁰ Election Code of Ukraine of 19 December 2019 (entered into force on 1 January 2020, as amended September 2020), ODIHR-IFES unofficial translation v1 2020-10-8.

¹¹ See Para. II.2.b of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

¹² Ukraine Local Elections 25 October 2020, ODIHR Needs Assessment Mission Report of 27-31 July 2020, p. 5.

Central Election Committee¹³ and an act on the public authority in charge of continuous voter registration, the State Register of Voters.¹⁴ The political parties are governed by a separate act.¹⁵

12. Local elections produce council members and mayors for a five-year mandate. The electoral systems vary between two types of council elections and two types of mayoral elections, as established in Art. 192 of the Election Code.¹⁶ As concerns council elections in municipalities and city councils with less than 10,000 voters, and city district councils, elections are held in accordance with the system of relative majority in multi-member election districts, which are created in the territory of the respective municipality. No less than two and no more than four council members shall be elected in each of the election districts. This means that the electoral system is based on the principle of a modified first-past-the-post system (single non-transferable vote, SNTV), where territorial proportionality or distribution is created on the basis of voting in electoral districts.

13. In larger entities (region, district, district in city, city, municipalities with 10,000 or more voters), elections are held based on the system of proportional representation by using open electoral lists of candidates for local council members in multi-member election districts, into which the unified multimember election district is divided. Such a proportional election is a new feature introduced in 2019 and specified in July 2020,¹⁷ replacing the previous majoritarian system. Again, territorial proportionality is created on the basis of electoral districts, but political proportionality is created on the basis of open-list proportional election where the voter can alter the order of the candidates proposed by the nominating party. The position of the candidate is altered on the list of candidates if he or she receives more than 25 % of the individual votes cast for the list, but the position of the first candidate on the list cannot be altered, which guarantees a certain advantage to the nominating party. It is thus possible to say that the electoral system is partly based on an open list. The support threshold is 5 % for a list.

14. As concerns mayoral elections in a municipality or city (cities with less than 75,000 voters), the election is based on the relative majority plurality electoral system, that is, first-past-the-post. The election of a city mayor in cities with 75,000 or more voters is based on the absolute majority plurality electoral system in a single city election district. This means that in the larger constituencies where mayors are elected, there may emerge a need to hold a second round of elections if no candidate acquires absolute majority in the first round.

15. The electoral system in the local elections is thus complex and may involve several simultaneous election operations for the voter depending on where he or she is voting. However, the interlocutors did not appear concerned with the complexity issue, although there was a prediction of potential problems at the counting stage.

5. ELECTION ADMINISTRATION

16. The election administration in Ukraine has a multi-tiered structure. The Central Election Committee (CEC) leads the election administration and also has functions in relation to local elections. The CEC appoints the Territorial Election Committees (TEC) which appoint the Precinct Election Committees (PEC). The CEC is appointed for a term of seven years, while the TECs are in principle permanent, although new TECs were established for the local elections. There may exist two tiers of TECs, depending on the territorial structure, because the original appointment of TECs on 10 August 2020 did not cover all cities and smaller municipalities, in which case the relevant TEC appointed subordinated TECs for a certain part of its area. TECs are mainly in charge of the local elections. The PECs were appointed by the TECs, albeit at a very late stage, by 9 October 2020. Altogether, several thousand persons were involved as members of election committees. Voting took place in around 29,000 polling stations.

13 Law on Central Election Commission, 2004.

14 Law on State Register of Voters, 2007.

15 Law on Political Parties in Ukraine, 2001. Other pieces of law that are of relevance in relation to local elections are, inter alia, the following: Law on Local Self-Governance in Ukraine, 1997; Law on the Status of Local Councilors, 2002; Code of Administrative Adjudication, 2005; Criminal Code of Ukraine, 2001; Code of Administrative Offense, 1984.

16 For the various types of elections, see Expanded Overview of Elections in Ukraine (September 2020). Arlington, VA: International Foundation for Electoral Systems, 2020, pp. 27-29.

17 OPORA Statement on the Adopted Changes to the Electoral Law, 20 July 2020, at https://www.oporaua.org/en/statement/vyborv/mistsevi-vybory/mistsevi_2020/20178-zaiava-opori-shchodo-priiniatikh-zmin-do-viborchogo-zakonodavstva (accessed on 7 November 2020).

17. There appears to exist confidence in the professionalism of the election administration. Nevertheless, the many withdrawals from the various electoral commissions, leading to many last-minute replacements on the commissions, is likely to have impacted the training and preparedness of the election administration. Because many of the members of the different bodies in the election administration are new and unexperienced and the Election Code as well as electoral system are new in many respects, the training needs have likely increased substantially. There is also a curious mechanism that makes possible the linking of TECs and PECs to the national level: groups of Members of Parliament have the possibility to nominate members of TECs and PECs through establishing political co-operation with local party branches. While the principle of the composition of these election management bodies is that members come from political parties and that the contestants in the political competition thus control each other in the administrative bodies, the linkage to the national level may retract something from the local nature of the local elections.

18. The Chairperson of the CEC stated that the local elections of 2020 are probably the most complicated elections in the history of Ukraine. The CEC carried out distance training of TECs and PECs in a comprehensive manner, but the complexity of the electoral system was to some extent reflected in the counting and tabulation processes after the election, with a new electoral system that uses ballots of another kind. According to some interlocutors, the PECs often failed to make use of the guidelines of the CEC as concerns the good order of counting, which resulted in longer counting times than would have been necessary. Despite many challenges, the CEC enjoyed confidence of a broad range of interlocutors, even after an alleged pressure that has been reportedly exerted on the CEC Chairperson and other three members by the office of the President of Ukraine.

6. VOTER REGISTRATION

19. Voter registration is automatic and electronic in the State Register of Voters (SRV). It is managed by the CEC, regional and local registration administration and maintenance bodies in a manner that appears to secure to all qualifying citizens the right to vote without any separate registration procedures. However, military servicemen, citizens of Ukraine who reside abroad, persons declared legally incapacitated by a court, and citizens of Ukraine who are detained in penitentiary institutions by a court sentence are considered as persons who do not belong to any municipality and who thus do not have the right to vote in local elections. These relatively broad restrictions may be problematic, in particular concerning an estimated 41,000 persons who have been declared legally incapacitated, because such persons may have the right to participate in elections on the basis of the UN Convention on the Rights of Persons with Disabilities. Coincidentally, 41,000 Roma, out of a total of 300,000, are not registered as voters because they do not have identity documents.

20. Due to the illegal annexation of Crimea by the Russian Federation and Russian aggression in Eastern Ukraine, around 1.45 million persons were internally displaced (IDPs) in Ukraine at the end of July 2020.¹⁸ They have previously been excluded from the right to vote in local elections. However, the Election Code was amended in June 2020 so as to allow persons who are not official residents in the constituency to change their voting address to the place where they live, thereby improving the situation of, inter alia, the IDPs, but also of students and other persons living outside of their homestead. This gives additional effect to the abolishment of the *propiska* certificate, which was declared unconstitutional in 2001.¹⁹ Only around 101,687 persons used their right to register an electoral address, perhaps in large part due to the system which was recently instituted and the registration had to be completed prior to the start of the registration of candidates, that is, 30 days before the elections. Some registrations of electoral addresses were concentrated to the same physical address, and the law-enforcement agencies have been investigating allegations that this practice might constitute an attempt to inflate the list of voters in some municipalities so as to influence the election result. Nevertheless, the possibility to register an electoral address is a positive phenomenon, in particular for IDPs.

21. It was estimated in July 2018 that the total population of Ukraine was 43.9 million persons. The entire body of voters in Ukraine is 35.2 million persons, while the number of registered voters for the

18 UNHCR Ukraine, Registration of Internal Displacement, at <https://app.powerbi.com/view?r=eyJrIjojY2RhMmExMjgtZWVhMmEwNDkwYzdmYTU0IiwidCI6ImU1YzY3OTgxLTY2NiQzNDZlYzY1NDNkMmFmODBiZSIsImMiOiJh9> (accessed on 4 November 2020).

19 Constitutional Court strikes down internal passport system, at <https://web.archive.org/web/20040927193711/http://www.ukrweekly.com/Archive/2001/470102.shtml> (accessed on 2 November 2020).

local elections of 2020 was 28.6 million persons.²⁰ The total number of people who voted in the local elections was 10.5 million, resulting in a low turnout, only 36.99 %. This is 10 percentage points lower than the turnout in the 2015 local elections.

7. CANDIDATE REGISTRATION

22. Candidate nomination featured some new elements in comparison with earlier elections. Parties were generally in charge of nominating candidates, while limitations were placed on the nomination of independent candidates. So-called self-nominated candidates were possible along party candidates in municipalities with less than 10,000 voters, while self-nomination was not possible in municipalities with more than 10,000 voters. This means that independent candidates, not affiliated with any party, were excluded in the larger municipalities, which runs counter to the principle that it should always be possible to nominate independent candidates. This limitation could, however, be avoided by creating a political party, and it appears that in addition to the national parties and their local branches, a large number of local parties have been created, because the total number of parties that fielded candidates was as high as 360. This limitation could also be avoided under the rule that a party may nominate candidates who are not member of the party, ostensibly independent candidates. It appears that such independent candidates on the party list would probably not be able to achieve a minimum of 25 % of individual votes, which means that the votes cast for such an individual candidate benefit the party list.

23. A gender quota was instituted for the nomination so that every group of five candidates on a list had to feature a minimum of 40 % of either women or men in municipalities with more than 10,000 voters and 30 % in the smaller municipalities. This appears to have worked reasonably well, but when withdrawals of women from the lists of candidates occurred after the registration of candidates had closed 30 days prior to the elections, those replacing the women were often men. This meant that the original gender balance was not necessarily reflected in the final lists of candidates presented to the voters in the polling stations.

24. For the registration of candidacy in mayoral and council elections, a cash deposit was required. The deposit is refundable, if the party list exceeds the 5 % threshold of votes and participates in the distribution of mandates or if the self-nominated (mayoral or council) candidate is elected. However, the lists that do not qualify, along with those self-nominated council and mayoral candidates who are not elected, suffer a loss of the deposit to the budget of the respective local government entity. As a reaction to criticism, the fee was lowered in July 2020 and ultimately, the size of the fee was probably not inhibitive at least in the smaller municipalities, but could be so at the regional level, where the deposit was quite high. In principle, such an entrance fee for participation in politics is dubious. The right to stand for election is a human right and it should be free of charge.

25. According to our interlocutors, candidates for the council mandates and for mayoral positions do not have to be local residents, that is, there is no residence requirement for the candidates.²¹ This means that the registration of “external” candidates not living in the constituency is possible. This possibility may be somewhat questionable from the perspective of local self-government at least with regard to council members, but the difficulty to recruit candidates inside the constituency was mentioned as one reason for the possibility to use “external” candidates coming from anywhere in Ukraine. Such candidates can, however, be public figures who have no intention to actually assume the tasks but will attract votes and withdraw after the elections to make way for another person on the list. It is, of course, entirely the task of the voters in the constituency to decide whether to elect a resident candidate or an external candidate who has been “parachuted” to the constituency. From that perspective, the mechanism of “external” candidates may be regarded as being in line with the principles of local self-government.²² However, this rather generous mechanism also facilitates the use of fake or clone

20 ODIHR Limited Election Observation Mission: Ukraine – Local Elections, 25 October 2020, Statement of Preliminary Findings and Conclusions, p. 10.

21 One example mentioned was a director of a corporation (which had its main operation in another part of the country) who became a mayoral candidate in a city where he was not a resident and where he did not work, but where the corporation had a subsidiary. This “external” candidate may have placed his leadership competence at the service of the city, perhaps because he was interested in leading the city to which he had no obvious connection, but it is also possible to think that there may exist some ulterior motives for such candidacy.

22 According to Article 1, Sub-section 4.1., of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, “[e]ach Party shall recognise by law the right of nationals of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside.” Residence of nationals, that is, citizens, is thus the expectation, but Sub-section 4.2. introduces a possibility of exception to this main rule that might in first sight deal with non-nationals: “The law shall also recognise the right of other persons to so

candidates, that is, persons with the same name registered as candidate in a constituency only to cause confusion and prevent the local candidate from collecting votes. Apparently, several cases of this kind were detected. A residence requirement would prevent clone candidates or at least reduce the phenomenon.

26. It appears that a requirement of proof of no criminal record for candidacy was cancelled only a few days prior to the closing of the registration of candidates. Many persons already paid for such a certificate, however because other candidates were able to register without a certificate after the cancellation of the requirement, the situation was perceived as unfair.

8. OBSERVERS

27. In light of the COVID-19 situation, international observation of the Ukrainian local elections was of a relatively limited nature. The CEC accredited 310 international observers nominated by nine organizations and six foreign states. The OSCE/ODIHR organised a limited election observation mission in Ukraine from 23 September until the week after the elections, involving a core team of 16 analysts and 66 long term observers deployed around the country from 29 September on, however no short-term observers were deployed. Domestic election observation was carried out by organizations, many of which had links to the political parties, but a number of organisations appear to have been civic organisations not politically affiliated. The parties were able to place their own observers at polling stations, PECs and TECs.

9. TERRITORIES EXCLUDED FROM ELECTIONS

28. The ongoing illegal annexation of Crimea by the Russian Federation and the Russian aggression in Eastern Ukraine made it impossible to hold elections in these territories.²³ This means that a sizable group of persons with the right to vote who remain in these areas were not able to vote.

29. In addition, along the governmentally controlled side of the conflict zone, the so-called contact line, a civil-military administration has taken over the functions of local and regional government. In those government-controlled areas, which are essentially under direct state authority, local elections were not held, with the exception of district elections (in which the persons living in the area of the contact line could not participate).²⁴ This resulted in the disenfranchisement of up to 450,000 persons with the right to vote. The elections of 25 October 2020 were thus not carried out in the above-mentioned parts of Ukraine for security reasons which was criticized by some of the Congress interlocutors.

10. CAMPAIGN ENVIRONMENT

30. COVID-19 affected campaigning in several ways, such as limiting the number of persons that could participate in campaign events. It can be said on the basis of the various meetings with interlocutors and on the basis of the materials collected that the campaign was relatively orderly. However, some threats of violence and violent actions against media and political activists who were campaigning were reported, and it appears that such violations were neither vigorously investigated nor condemned by political leaders.²⁵

participate where the party, in accordance with its own constitutional order, so decides or where this accords with the party's international legal obligations." According to the Explanatory Report to the Additional Protocol, the "guarantee at international level contained in the previous paragraph is limited to nationals of the Party who reside within the area of the local authority". The purpose of Sub-section 4.2. is, according to the Explanatory Report, "to make clear that the Additional Protocol does not oppose the granting of electoral rights by the Party to other persons, such as nationals not resident in the local authority or non-nationals". Here, the point is made that also nationals not resident in the local authority could have the right to participate in the affairs of a local authority, but the requirement is, If the Party chooses to grant such a right, that it is done by law. However, there appears to be no explicit provision in the Election Code that allows "external" candidates.

²³ The parliamentary resolution of 15 July 2020 on holding local elections excluded elections in Crimea and in certain parts of the Donetsk and Luhansk regions. On 8 August 2020, the CEC cancelled the first local elections in non-government-controlled areas of Crimea and Donetsk and Luhansk regions.

²⁴ The CEC cancelled the elections in 18 such municipalities on 8 August 2020 for security reasons based on authoritative opinions from the civil-military administrations in Donetsk and Luhansk regions. According to the OSCE Special Monitoring Mission to Ukraine (SMM) Daily Report 255/2020, issued on 26 October 2020, between the evenings of 23 and 25 October, the SMM recorded altogether 48 ceasefire violations in the Donetsk and Luhansk region (but in the prior reporting period, no violations were recorded). The conflict is thus on-going and the security concerns behind the cancellation of the elections in the contact line are real.

²⁵ See 'Civic Space and Fundamental Freedoms ahead of 2020 Local Elections in Ukraine', Early Warning Briefing Note of 17 September 2020, UN Human Rights Monitoring Mission in Ukraine.

31. The media in Ukraine suffers from unclear ownership is often accused of pushing the agenda of private business owners, which means that balanced reporting may be difficult to get. In spite of the campaign curfew, Congress interlocutors reported that campaign posters were sometimes left in place although they should have been removed two days prior to the elections. Social media is important as a campaign platform, but not covered by any rules including campaign finance, allowing for an unlevel playing field.

32. In addition to the local elections, the party of the President, Servant of the People, decided to carry out an opinion poll or a survey with five questions in conjunction to the elections. The five questions were of little relevance for local government and dealt with issues of national level politics.²⁶ The concern voiced by Congress interlocutors was that the survey would disturb the election, be used to manipulate its results, and constitute prohibited campaigning on Election Day. The survey, which was neither an election nor a referendum, was carried out as an exit poll outside of around 55 % of the polling stations without actual party insignia displayed, however the party did cover the associated expenses.

33. Campaigns are financed by a party²⁷ or by means of a candidate's own resources and through private donations. There is no ceiling on campaign expenditure and also no limit on how much campaign funds a party can give to its candidate, but private donations of individuals are limited to ten minimum salaries. Anonymous and foreign donations and donations from legal entities are prohibited. Campaign funds of a candidate are managed through a separate bank account and each candidate must file a declaration of income and assets. The campaign funds and incomes and assets of candidates are made public.

11. ELECTION DAY

11.1 COVID-19

34. The 2020 local elections were held under the exceptional circumstances created by the COVID-19 pandemic. The well-being of the voters and of staff of the election administration was of great importance in this context. On the proposal of the CEC, the Government issued guidelines for how to ensure safe conditions in the polling stations.²⁸ These measures included wearing a mask in order to enter or stay in the polling station; monitoring existing symptoms of respiratory diseases; providing hand sanitizers; measuring the temperature of voters; allowing only a limited number of voters in the polling station at the same time; keeping distance between individuals. Special polling booths were designated for risk groups, in particular for persons who were in self-isolation but who did not have any medical certificate on the basis of which to request home-voting.

35. The local government was placed under the duty to cover protective gear out of its own funds,²⁹ which strained their budgets in addition to the ordinary scarcity of funds. State funding for protective gear was allocated to local governments, however in several municipalities, the local government did not use these special funds from the Pandemic reserve fund out of fear of making mistakes due to a perceived lack of competence, because there was no budget line for counter-measures against the pandemic. The criticism that was voiced dealt mainly with the relatively strict requirements of home-voting, including a medical certificate, which meant that many persons in so-called risk groups had to physically go to polling stations thereby potentially exposing themselves to the virus. There was also criticism voiced by some of the Congress interlocutors about insufficient quantities of masks and other protective gear at the polling stations.

26 1) Should there be life imprisonment for corruption on an especially large scale? 2) Do you support the creation of a free economic zone on the territory of Donetsk and Luhansk regions? 3) Should the number of MPs reduced from 450 to 300? 4) Do you agree with legalizing cannabis for medicinal purposes to reduce pain in critically ill patients? 5) Should Ukraine take initiative at the international level to use the security guarantees determined by the Budapest Memorandum to restore its state sovereignty and territorial integrity?

27 According to one interlocutor, a small party was exceeding the support limit of 2 %, whereby it would have been entitled to public support, but the government denied to give such funding to the party.

28 Procedure for implementing the anti-epidemic measures during the organization and conduct of elections, resolution No. 641 of 22 July 2020 of the Cabinet of Ministers of Ukraine, as amended by resolution No. 846 of 14 September 2020.

29 See Section 43-1, Subsection 3, of the Government resolution No. 846 of 14 September 2020: "Expenditures related to the implementation of the anti-epidemic measures connection with the organization and conduct of the elections shall be covered by local budgets (including the reserve funds of these budgets)."

11.2 Voting

36. The voters in larger municipalities than 10,000 voters and voters in district and regional elections were confronted with a new electoral system and thus also with an entirely new type of ballot papers in the now proportional council elections. The ballot papers in the different elections were distinguished from each other by colour, but in addition, the voters received a varying number of ballot papers depending on where they live.

37. In Kyiv voters received two ballots, one for the mayor of the city and another for the members of city council, while in Donetsk and Luhansk regions (in the Ukrainian government-controlled territory) registered voters received three ballots: the mayor of the municipality; the members of the respective municipal council; and the members of the district council. Obviously, persons living along the contact line received no ballots at all, because elections were not held there. In a majority of municipalities voters received four ballots: the mayor of the municipality; the members of the respective municipal council; the members of the district council; the members of the regional council. The maximum number of five ballots were given to voters in cities that in addition to the four electoral operations mentioned previously have city district councils, which is the case in five municipalities, namely Zhytomyr, Kryvyi Rih, Kropyvnytskyi, Poltava and Kherson.

38. The greater the number of electoral operations to be performed, the longer time a voter needed inside a polling station and in the polling booth. If a voter wanted to use the possibility of the open list and cast a vote for a specific candidate, the person had to mark the party of his or her choice and in addition write in the number of the preferred candidate.

39. Due to the low turnout, the polling stations were able to process the low numbers of participants relatively well. Yet, reportedly, isolated irregularities also took place in some polling stations, such as family voting, attempts to receive ballot papers in violation of the procedural requirements, voting outside the polling booth, showing the marked ballot papers publicly and photographing of the ballot papers. These indicate some violations of the secrecy of the vote and a potential for vote buying, which are now being investigated by the police along with some violations of the campaign silence and destruction of electoral documentation.³⁰ However, according to domestic observers, the irregularities do not appear to have been organized and coordinated, but isolated events which occurred at a relatively low scale without potential to impact negatively on the legitimacy or the results of the elections.³¹ The CEC also took the view that the reported violations did not significantly effect the results.³²

40. In an opinion poll inquiring into the reasons for non-participation in the elections, a sizable group (19 %) said they did not vote because they did not live in the place of residence, which is an indication that the procedure for registering an electoral address has to become more broadly implemented in future elections. Many voters also did not know whom to vote for (14 %), a reason potentially linked to the recent introduction of a proportional electoral system operated on a party basis instead of individual candidates in majoritarian elections. The main reason for not voting appears to be the health concerns linked to the COVID-19 situation (20 %).

12. ELECTION RESULTS

41. On 25 October 2020, members of 22 regional councils, 119 district councils, and of municipal councils, as well as mayors, were elected in 1,439 municipalities. The second round of elections of mayors was held in communities with 75,000 voters or more on 15 November.³³ Voter turnout on 15 November was 24% according to the CEC, which is more than 10% less than on 25 October. Some

30 It also appears that investigations by the police and other law-enforcement agencies may have been used in relation to incumbent mayors as a means to hamper their electoral campaigns.

31 'OPORA Acknowledges the Competitive and Lawful Nature of Local Elections in Ukraine – The Recorded Irregularities are not Centrally Administered', Civil Network OPORA – Elections in Ukraine, 26 October 2020, at https://www.oporaua.org/en/news/vybory/mistsevi-vybory/mistsevi_2020/21972-opora-konstatuie-konkurentnii-ta-zakonnii-kharakter-mistsevikh-viboriv-v-ukrayini-zafiksovani-porushennia-ne-buli-tsentralizovano-splanovanimi (accessed on 5 November 2020).

32 ODIHR LEOM, p. 23.

33 Results should be announced by 20 November for Kramatorsk (Donetsk oblast); Kamianets-Podilskyi (Khmelnitskyi oblast); Lutsk (Volyn oblast); Odesa (Odessa oblast); Sumy (Sumy oblast); Ukrainka (Kyiv oblast); Kherson (Kherson oblast).

municipalities will hold the second round of mayors' elections on 22 November.³⁴ In the capital Kyiv, the incumbent mayor Vitali KLITSCHKO was re-elected in the first round with 50.52 per cent of votes.³⁵

13. CONCLUSIONS

42. The local elections took place after unprecedented amendments and changes to the structure of local administration and election law. This resulted in a situation when recently adopted amendments or still ongoing legislative changes created an environment for elections which was entirely new to the stakeholders.

43. A number of COVID-19 protection measures were in place during the elections. It appears, in the light of information issued by the WHO that on 26 October 2020, the day after the elections, there was a record number of confirmed cases of COVID-19, which means that on the Election Day, the incidence of COVID-19 was high. Some two weeks after the elections, there was yet another record with almost double the number of cases compared to that of Election Day. It is unclear, however, if the surge in the number of cases can be attributed to the fact that elections were held during the pandemic, because a similar surge is also noted in other countries where elections were not held.

44. The turnout was very low, with COVID-19 related health concerns cited as one of the main reasons for not voting in the elections. This was a unique moment in time but the preparedness for major crisis situations, which may occur also in future, should be increased. However, also other reasons were mentioned with respect to the low turnout, such as persons not being registered in the municipality where the elections would have been relevant and difficulty in finding a candidate. These latter reasons underline the importance of facilitation of registering electoral addresses in the place of actual residence, voter education and simplification of the voting procedures.

45. There was considerable uncertainty about the powers and boundaries of different elected bodies and the voters had a poor understanding of how things have changed, what the mandates of the elected councils and mayors will be, for whom they should vote and what the elections mean. The situation was clearly challenging and voter education and training for election officials should be stepped-up.

46. The electoral system puts independent candidates in a disadvantaged position and does not allow such candidates in municipalities with more than 10,000 voters, which is problematic from the point of view of electoral standards. The exclusion of mentally incapacitated persons from the electorate is against provisions in international law, and the numerous Roma persons excluded from voting because of lack of identity documents is a serious problem. These are also issues to be addressed by the authorities well in advance of the next local elections.

34 Brovary (Kyiv oblast); Dnipro (Dnipropetrovsk oblast); Drohobych (Lviv oblast); Lviv (Lviv oblast); Mykolaiv (Mykolaiv oblast); Poltava (Poltava oblast); Rivne (Rivne oblast); Sloviansk (Donetsk oblast); Uzhhorod (Zakarpattia oblast).

35 <https://www.ukrinform.net/rubric-elections/3131537-vitali-klitschko-wins-in-first-round-of-kyiv-mayor-election.html>

APPENDIX

FINAL PROGRAMME

Remote Meetings - 19 – 20 October 2020

Local Elections in Ukraine (25 October 2020)

Monday 19 October 2020

- 09:00 – 09:10 **Welcome and presentation of the Congress delegation by Ms Renate ZIKMUND**, Congress Secretariat of Local and Regional Authorities of the Council of Europe
- 09:15 – 10:00 Briefing with **representatives of the International community in Kyiv**:
- **Mr James ROED-MOOR**, First Secretary Political, British Embassy to Ukraine
 - **Mr Goran PROKOPEC**, Second Secretary, Embassy of the Republic of Croatia in Ukraine
 - **Mr Aaro YLITALO**, Second secretary, Embassy of Finland
 - **Mr Denis CURANOVIĆ**, Attache, Embassy of the Republic of Slovenia
(meeting in English)
- 10:15 – 11:45 Briefing with **ODIHR**
- **Mr Stefan KRAUSE**, Deputy Head of Mission, ODIHR Limited Election Observation Mission Ukraine
 - **Ms Ingibjörg Sólrún GISLADÓTTIR**, Director of the OSCE Office for Democratic Institutions and Human Rights
 - **Mr Dimash ALZHANOV**, Political Analyst (campaign environment and participation of national minorities)
 - **Ms Elena KOVALYOVA**, Legal Analyst (legal framework, election system, and complaints and appeals)
 - **Mr Rashad SHIRINOV**, Election Analyst (election administration and candidate registration)
 - **Ms Nadine HAAS**, Election Analyst (voter registration and observers)
 - **Ms Eirini SKOUZOU**, Campaign Finance Analyst
 - **Ms Veronica LAPUTSKA**, Media Analyst
(meeting in English)
- 11:45 – 13:15 Lunch break
- 13:15 – 14:15 Briefing with **Mr Oleh DIDENKO**, Chairman of the Central Election Commission of Ukraine *(meeting with English/ Ukrainian interpretation)*
- 15:45 – 16:30 Briefing with **Mr Harald JEPSEN**, International Senior Advisor for Ukraine (**IFES**) *(meeting in English)*

Tuesday 20 October 2020

- 09:00 – 10:15 Associations of local and regional self-governments
- **Mr Oleksandr SLOBOZHAN**, Executive director, Association of Ukrainian Cities
 - **Mr Serhii ZAMIDRA and Mr Ihor ABRAMIUK**, Ukrainian Association of Communities
 - **Ms Valentina POLTAVETS**, Executive Director, Association of Amalgamated Territorial Communities
 - **Mr Ivan FURSENKO**, Chair of the Association of Village and Town Councils
(*meeting with English/Ukrainian interpretation*)
- 11:40 – 12:20 Briefing with **Mr Vitali KLITCHKO**, Mayor of Kyiv
(*meeting with English/Ukrainian interpretation*)
- 12:30 – 13.00 Briefing with **Ms Olena ZHADKO**, Mayor of Marhanets, and **Mr Oleksandr BAKLYKOV**, Mayor of Lebedyn
- 13:15 – 13:45 Briefing with **Mr Gennadiy TRUKHANOV**, Mayor of Odessa
(*meeting with English/Ukrainian interpretation*)
- 16:30 – 17:00 **Debriefing session** with delegation, secretariat and expert
(*meeting in English*)

Delegation

Congress Members

- Mr Stewart DICKSON**, ILDG, R, United Kingdom
(Council for Democratic Elections/Venice Commission – full member)
- Mr Jos WIENEN**, EPP/CCE, L, Netherlands
(Council for Democratic Elections/Venice Commission – full member)
- Ms Rosaleen O’GRADY**, ILDG, R, Ireland
(Council for Democratic Elections/Venice Commission – alternate member)
- Mr Vladimir PREBILIC**, SOC/G/PD, L, Slovenia
(Council for Democratic Elections/Venice Commission – alternate member)

Expert

Mr Markku SUKSI, Finnish member of the Group of Independent Experts on the European Charter of Local Self-Government

Congress Secretariat

- Ms Renate ZIKMUND**, Head of the Department of Statutory Activities, External Relations and Co-operation
- Mr Adam DRNOVSKY**, Election Observation Officer
- Ms Jovana VUJANOVIC**, Election Observation Officer
- Ms Martine ROUDOLFF**, Assistant, Local and Regional Election Observation

Council of Europe Office in Kyiv

Ms Svitlana GRYSHCENKO, Project Manager, Council of Europe Office in Kyiv, Ukraine