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## **Pre-Election Assessment Report: 2002 Parliamentary Elections**

### **Introduction**

The International Republican Institute (IRI) deployed an eight-member delegation to Ukraine to evaluate the impact of Ukraine's new parliamentary election law on the pre-election environment for the March 31, 2002, parliamentary and local elections. This assessment mission was conducted from February 4-9, 2002, and was made possible by funding from the National Endowment for Democracy.

On September 13, 2001, the Verkhovna Rada, Ukraine's parliament, passed a new law governing the parliamentary elections. This law will govern Ukraine's third parliamentary elections since the country declared its independence in 1991. A new election law was required after the Constitutional Court of Ukraine declared several articles of the previous law unconstitutional during the 1998 parliamentary elections. IRI has monitored each of the two previous parliamentary elections in Ukraine, in 1994 and 1998, as well as the 1999 presidential election, each time recommending a series of legal and administrative changes to Ukraine's Central Election Commission (CEC). The CEC has implemented many of these recommendations and over the course of the past eight years, IRI has witnessed significant improvements in the administration of elections and in the ability of political parties to campaign effectively.

While the actual balloting and tabulation process in Ukraine has significantly improved, one area that continues to demand closer scrutiny is the pre-election period. First, Ukraine's further political development continues to be marred by the lack of a thriving independent media, a factor that contributes significantly to a biased and ineffective campaign period. Secondly, Ukrainian law is exceptionally weak in regulating how an elected or appointed official uses the trappings of incumbency toward his or her reelection effort. Allegations of inappropriate use of "administrative resources," correct or not, have become so commonplace as to significantly impact citizens and candidates' views of how elections are being administered.

IRI therefore determined that the pre-election period of the March 31 elections was an area that demanded particular scrutiny. The findings of IRI's pre-election assessment mission will be part of a final report that will include the results of an election day observation mission. This report will be made available to election officials, political party representatives, candidates and members of the media in Ukraine and the United States.

### **Assessment Team Members**

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## **Methodology**

IRI examined five categories of the election environment in order to evaluate the application of the new election law and the atmosphere under which political parties can effectively participate in Ukrainian elections. The five categories were election administration, media, political parties and candidates, adjudication/judicial oversight, and non-governmental organizations.

To collect information on each category, IRI conducted approximately 85 interviews in Kyiv, and four regions of Ukraine (Odesa, Kharkiv, Ivano-Frankivsk and Chernihiv). Interviews were conducted with government officials, election commissioners, journalists from state and independent media outlets, chairmen of political party campaign headquarters, independent and party-affiliated candidates, judges and representatives of non-governmental organizations.

### **I. Election Administration**

The new election law stipulates a fundamental change in the conduct of Ukraine's local and parliamentary elections with the requirement that election commissions include representatives of political parties as members. Article 20 of the law states that constituency and polling station commissions consist of representatives of parties or blocs that received four or more percent of ballots cast in the last election. Parties were required to submit their list of commission representatives to the CEC by January 9, 2002.

The result is that vast new groups of people will be administering elections for the first time. While a significant amount of effort and money have been invested over the past several years in training election commissioners, the new law requires the training of an entirely new corps of commissioners. Both the CEC and non-governmental organizations have conducted training, including the distribution of training materials for commissioners on constituency election commissions (each constituency election commission has jurisdiction over the territory of one of the 225 single-mandate constituencies to national parliament). Much of this training was underway during IRI's assessment mission, and commissioners from Ivano-Frankivsk, Kharkiv and Chernihiv said they had participated in such training. Preliminary reports demonstrate that the process of integrating political party members into constituency election commissions is working reasonably well. Future assessment teams should focus on similar issues regarding the integration of political party representatives into polling station commissions.

An area that will require significant review is the role of the CEC in providing "interpretations" of the election law, a role that legally belongs to the courts of Ukraine. For example, commissioners in Kharkiv told the delegation they expect the CEC to provide interpretations and complained that the CEC had not provided adequate guidance to the field on how to apply the

new law. Even though CEC Chairman Ryabets has publicly stated that it is not the role of the CEC to interpret the law, the CEC has nonetheless distributed a manual to constituency election commissions, providing guidelines on interpretation of the election law. Future assessment teams should focus on whether lower level commissions are receiving the guidance necessary from the CEC in order for them to do their jobs effectively and in accordance with law.

The most common complaint from each region was the need for more funding and equipment from the CEC so that the constituency election commissions could better fulfill their duties. However, the majority of commissioners interviewed replied that the process was going smoothly. In addition, another complaint heard in several regions was that the CEC showed favoritism in appointing the chairmen and secretaries of constituency election commissions. The appointment of the commission officers is a distinct and important departure from the previous law, under which commissioners themselves voted for each commission chairman and secretary.

A few commissioners also expressed concern about the number of ballots that will be presented to voters on election day, an area that demands future scrutiny. The combination of local and national elections means voters will receive 6-7 ballots. One district election official in Ivano-Frankivsk said this would be a problem again this year, as in 1998, particularly for older voters who find the process confusing.

The composition of polling station commissions was finalized on February 23, after the delegation concludes its pre-election review. However, members of the delegation asked commissioners about their understanding of how polling stations are to be formed, and in most instances, were told that no problems were expected. One exception to this was in Chernihiv, where a commissioner expressed complete confusion on how the polling station commissions should be formed or if parties had adequate representatives to fill the seats. Similarly, while most delegates reported that constituency election commissions had adequate plans in place to train polling station commissioners, the commissioner from Chernihiv was not sure where he would find the resources to conduct such training. Again, the formation and training of polling station commissions, and the selection of their officers, is an area which future assessments should focus on.

## **II. Media**

The lack of an independent media sector in Ukraine, coupled with Ukrainian journalists' legitimate fears for their own physical safety, has prevented the full development of a competitive campaign environment in the country. Until a truly independent media sector exists in Ukraine, citizens will not have access to objective information about candidates and issues and will lack the information necessary to make fully-informed decisions about the individuals they choose to represent them.

The IRI delegation evaluated two areas of media coverage in the election environment. The first being how media outlets respond to Article 50 of the election law, which states that the pre-election campaign may be commenced fifty days before the election, or February 9, 2002. The law specifically forbids carrying out any pre-election publicity campaign beyond these time

constraints. The second area is whether journalists felt pressure to cover certain candidates or aspects of the elections.

The IRI review determined that Article 50 of the election law is inherently difficult to enforce and IRI questions the constitutionality of the regulation. Under Article 50 there is no distinction among the campaign period, the agitation period, or pre-election publicity period. By restricting what media can cover, the law denies the constitutional guarantee for freedom of press and speech during the election period. Furthermore, the law is exceptionally vague, and IRI delegates cited numerous examples of violations of this regulation. For example, numerous state newspapers ran coverage of incumbent candidates, many of whom were affiliated with the pro-presidential bloc For a United Ukraine. Yet, because the law does not set a strict standard, it is difficult to define what is campaigning.

IRI delegates also witnessed a sense of fear on the part of many journalists. Journalists in Odesa and Chernihiv specifically expressed concern about their personal safety. One journalist in Odesa reports he was told to carry a gun to protect himself and another in Chernihiv said if he "even considered investigating allegations against state media it would be equal to suicide." This view was not uniform throughout the country, however, as an independent journalist in Ivano-Frankivsk remained positive in his view of how he was able to cover the election. Future assessments should place a strong focus on the media's ability to provide coverage of campaign events without fear of reprisal.

### **III. Political Parties/Candidates**

The IRI team interviewed national and local representatives of political parties as well as party-affiliated and independent candidates. IRI witnessed national and local level campaign operations at varying degrees of sophistication and overall improvements in the ability of political parties to participate in the nomination, registration and agitation components of the election.

One significant change under the new election law is the affiliation fee required from candidates and parties/blocs in order to be registered as opposed to the previous law's requirement of collecting signatures. More than 50 parliamentary deputies in mid-January requested that the Constitutional Court of Ukraine rule on the legality of the fee and on February 6, the Court recognized this fee as constitutional. Political party representatives and candidates had mixed views on this subject. Most party candidates reported that there was no hindrance with the new requirement. On the other hand, two independent candidates from Chernihiv, one running for a Verkhovna Rada seat, the other for mayor, both said the fee was prohibitive and prevented people from participating in the election process.

Article 50 also seemed to be loosely applied as far as political parties and candidates were concerned. Delegates heard several accusations about candidates from the For a United Ukraine bloc putting up billboards before the official February 9 start of the campaign period. There were also reports of candidates from the Social Democratic Party United circulating flyers and painting campaign slogans on the sides of buses.

When questioned on the adequacy of the 50-day campaign period, there was no uniform answer. Some candidates said the length of the campaign was adequate, others expressed frustration with the short time period. There is also no common thread concerning candidates' views toward media availability. For example, one candidate from Nasha Ukraina expressed satisfaction that advertising rates for all regional media outlets were available ahead of time. For this candidate, it was not so much a question of availability, but of finding the resources to purchase the advertising. On the other hand, a Yabloko candidate from Kharkiv said that candidates from his party will not be allowed to purchase advertising because of the existence of a "black list" of parties that will be prohibited from advertising.

The election law also introduces new demands on political parties by requiring them to identify hundreds of local party members across the country who could serve as both constituency and polling station election commissioners. Most parties reported they could fulfill this role, with only minor exceptions reported in Chernihiv.

#### **IV. Adjudication/Judicial Oversight**

IRI reviewed how judges understood Article 29 of the new election law. While the law allows both legal and administrative remedies for election law issues, this provision states that when a case with similar facts is filed with a commission and a court, the commission should cease hearing the matter until the court has rendered a decision. In addition, the IRI delegation asked judges if they were prepared to handle large numbers of cases as a result of confusion over the new election law. The IRI delegation heard a wide variety of views on this subject. One judge in Chernihiv expressed complete satisfaction with the new law. He had participated in a seminar in Kyiv in January on how to interpret the law and said the Chernihiv oblast court was planning to conduct similar programs for lower district courts. On the other hand, the chief judge of an Odesa oblast court said he was still awaiting further clarification on how to interpret the law, particularly Article 29.

#### **V. Nongovernmental Organizations**

IRI interviewed several Ukrainian nongovernmental organizations (NGOs) to assess their views of how the election is being conducted. In general, most politically-oriented NGOs assumed the role of "watch dog" organizations and were willing to publicize allegations of abuse and fraud. Two of the organizations IRI interviewed included the Committee of Voters of Ukraine and the Kharkiv-based Eastern Ukrainian Development Democracy Fund.

However, members of the IRI delegation heard from various political party representatives that many of the claims made by these organizations, while well-intentioned, were not always accurate. IRI believes that any NGO publicizing allegations of fraud and abuse would benefit from the advice of legal counsel.

#### **Recommendations**

IRI recommended to the head of the Central Election Commission that in the future, the law on Election of Deputies should include a clear standard for campaigning, as opposed to party

propaganda. For example, the standard might include language defining campaigning as "advocating the election or defeat of a particular party, bloc or candidate." In addition, IRI recommended including in any new or amended law a provision restoring the CEC's power to provide interpretations of the election law.

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