

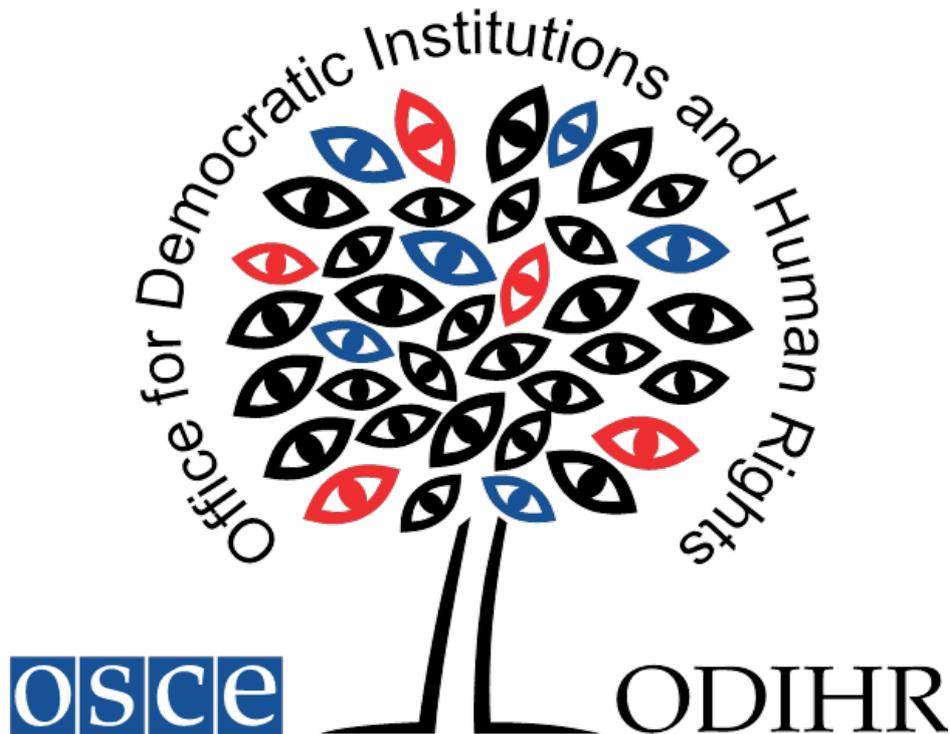


Office for Democratic Institutions and Human Rights

UKRAINE

LOCAL ELECTIONS 25 October 2020

ODIHR Limited Election Observation Mission Final Report



Warsaw
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**UKRAINE
LOCAL ELECTIONS
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ODIHR Limited Election Observation Mission Final Report¹

I. EXECUTIVE SUMMARY

Following an invitation from the Ukrainian authorities and based on the recommendation of a Needs Assessment Mission deployed from 27 to 31 July 2020, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 23 September to observe the 25 October 2020 local elections.² The ODIHR LEOM assessed the compliance of the election process with OSCE commitments and other international standards for democratic elections, and national legislation. The ODIHR LEOM did not carry out systematic or comprehensive observation of election-day proceedings, in line with ODIHR's methodology for limited election observation missions. Mission members did, however, visit a limited number of polling stations on election day.

In its Statement of Preliminary Findings and Conclusions issued on 26 October, the ODIHR LEOM concluded that the elections “were particularly important following recent decentralization reforms that devolved significant powers and resources to local governments. The elections were conducted under a substantially revised legal framework which, despite some improvements, requires further refinement to address remaining shortcomings. The Central Election Commission administered the elections professionally and efficiently, despite the challenges posed by the COVID-19 pandemic, but the work of territorial commissions was often politicized and was negatively affected by frequent replacements of their members. Contestants were able to campaign freely, but cases of misuse of state resources and of office and widespread allegations of vote-buying were of concern. Private media failed to consistently provide unbiased and balanced coverage of electoral contestants, which detracted from the ability of voters to make a fully informed choice. In the limited number of polling stations visited by the ODIHR LEOM on election day, the process was generally calm, well-organized and transparent, and procedures were mostly followed”.

Following the 2019 presidential and parliamentary elections, the national political landscape has been dominated by President Volodymyr Zelenskyy and his Servant of the People (SP) party. The political context of these elections was widely seen as a continued effort by SP to consolidate power and establish a significant presence in local self-government bodies, while other parties aimed to preserve their positions in the regions and challenge the dominance of the ruling party. The elections took place in the context of ongoing armed conflict and other hostilities in the east of the country and the illegal annexation of the Crimean peninsula by the Russian Federation. No elections were held in the Crimean peninsula and in parts of the Donetsk and Luhansk *oblasts* (regions), including in 18 government-controlled territorial communities. The legal framework for the decisions not to hold elections in these government-controlled communities, including some where national elections have recently been organized, did not provide sufficient safeguards for suffrage rights, and implementation of these decisions lacked transparency, which impacted public trust.

¹ The English version of this report is the only official document. An unofficial translation is available in Ukrainian language.

² The ODIHR NAM recommended the deployment of an Election Observation Mission (EOM), subject to health and travel considerations related to the COVID-19 pandemic, but the mission format was subsequently changed to a LEOM.

The local elections were conducted under a substantially revised legal framework. In line with a long-standing ODIHR recommendation to consolidate regulations for all types of elections, a new Election Code was adopted in December 2019, following a generally inclusive but politicized process. The new Code and other legislative changes introduced a more inclusive gender quota for candidate lists, revised sanctions for electoral offences, and facilitated the change of electoral address, which increased the participation of citizens unable to vote at their permanent registered address, including economic migrants and internally displaced persons (IDPs). Still, the late adoption, gaps and lack of clarity of some formulations of the Election Code resulted in inconsistent implementation, and the unfinished reform of the electoral legal framework limited legal certainty and the predictability of applicable legislation, at odds with international standards and good practice. The revised Code does not address a number of ODIHR's long-standing priority recommendations, including those related to the appointment and replacement of election commission members, transparency and clarity of election dispute-resolution mechanisms, meaningful campaign finance oversight, and media regulations. Furthermore, the law does not ensure the integrity of key components of the electoral process, including the delimitation of electoral boundaries, candidate nomination, and counting and tabulation procedures.

The manner in which electoral boundaries were determined did not ensure uniform compliance with legal requirements and international standards and did not always guarantee the equality of the vote. Meanwhile a lack of provision for individual candidatures, the high threshold for electing candidates from open lists, and the possibility for political parties to trigger the imperative mandate mechanism, a system of recall of elected officials, increase the influence of political parties on local self-governance.

The substantive and ongoing legislative changes, the recent administrative-territorial reforms and the public health crisis created challenges for the election administration at all levels. Notwithstanding these challenges, the Central Election Commission (CEC) met all legal deadlines, operated in an overall impartial, open and transparent manner, and enjoyed a high level of trust among most ODIHR LEOM interlocutors. Lower-level commissions implemented most procedures adequately and on schedule, but often lacked professionalism and at times took politically motivated decisions. The extensive replacement of commission members by the nominating parties negatively affected the independence, impartiality and operations of Territorial Election Commissions (TECs) and diminished the value of training on complex electoral procedures. Precinct Election Commissions (PECs) were established on schedule, but some TECs reported to the ODIHR LEOM that PEC members lacked knowledge and experience. Not all commissions received timely or sufficient funds to implement the anti-epidemic measures promulgated by the government. Women constituted a majority of members of lower-level commissions, but only 5 of 17 CEC members are women.

The State Voter Register (SVR) generally enjoyed the confidence of stakeholders met by the ODIHR LEOM. As of 30 September, the SVR contained the records of 35,265,503 voters, 28,622,004 of whom had the right to vote in these elections and were registered in localities where these elections took place. New legal provisions simplified the procedure for voters to change their electoral address, addressing previous ODIHR recommendations, and 101,687 voters used this opportunity, but there were some allegations of abuse, in particular in some smaller communities. Concerns remain about the estimated 20,000–40,000 Roma who are excluded from the voter register due to lack of identity documents. Citizens declared incapacitated by a court on the basis of intellectual or psychosocial disability were not eligible to vote, at odds with international obligations.

Candidate registration was conducted in a largely inclusive manner. However, TECs did not have a unified approach concerning possible inaccuracies and shortcomings in the submitted registration documents, and some rejections appeared politically motivated, contrary to OSCE commitments and international standards. Independent candidates could only stand for mayor or for councilor in small

communities but not in other elections, challenging OSCE commitments. Candidates from minority communities, including Roma, were nominated by the main national parties in addition to local parties. Positively, the new Election Code increased the gender quota for electoral lists in most council elections, but due to a gap in its regulation, 1,365 lists were registered even though they did not comply with the gender quota. Following these elections, the representation of women in city councils increased from 18.1 to 30.2 per cent, and in regional councils from 15 to 27 per cent.

The election campaign was generally calm, and all contestants were able to campaign freely. The COVID-19 pandemic impacted the campaign environment and limited contestants' ability to conduct larger-scale campaign events, resulting in an extended use of social media and online advertising. Several women candidates featured prominently in the campaign, but ODIHR LEOM interlocutors described prevalent patriarchal attitudes and monitored media allocated disproportionately less coverage to women candidates. The ODIHR LEOM noted several cases of misuse of state resources and of office, including by *oblast* and city administrations, and observed several cases of vote-buying. President Zelenskyy introduced 'opinion polls' at polling stations on election day, funded by his party and related to his administration's policy initiatives, which appeared to create an undue political advantage on election day and blurred the separation of state and party.

According to ODIHR LEOM interlocutors, campaigns were largely financed through parties' and contestants' own funds, but the campaign finance regulatory framework does not ensure accurate reporting, timely disclosure, meaningful oversight, or accountability for irregularities. Donation limits could be easily circumvented, and the absence of expenditure ceilings resulted in excessive spending, at odds with international good practice. Not all TECs or local party organizations published interim reports as required by law, reducing transparency. The role of the National Agency for Prevention of Corruption (NAPC) was limited due to an overall lack of capacity, which undermined effective oversight. Overall, ODIHR LEOM interlocutors consider that the regulatory framework governing campaign finance needs to be further strengthened to provide for meaningful oversight.

The media landscape is diverse but polarized and characterized by a high concentration of politically vested ownership. The Constitution guarantees the freedom of expression and prohibits censorship, while specific laws provide for general media freedoms and conditions for equitable and unbiased coverage of electoral contestants. However, the new Election Code failed to expand the enforcement tools of the media regulator and to provide it with effective sanctioning powers to perform its mandate in a timely manner during an election period, despite previous recommendations by ODIHR. Of the media monitored by the ODIHR LEOM, only public channel *UA:Pershyi* provided mostly neutral and equal coverage of political contestants, while private media failed to consistently comply with legal obligations for unbiased and balanced coverage of electoral contestants. This, together with a high volume of unmarked promotional materials in broadcast media, detracted from the ability of voters to make a fully informed choice.

Mechanisms for electoral dispute resolution are in place, but lack of transparency, public distrust in the judiciary, and inconsistent implementation of law reduced their effectiveness. Courts and election commissions generally adhered to expedited deadlines for election dispute resolution; however, strict admissibility requirements for complaints resulted in the dismissal of a vast number of complaints, limiting effective legal redress. Police initiated a number of criminal cases concerning alleged vote-buying, candidate bribery and obstruction of voting rights, a majority of which did not reach courts during the election process. Concurrent jurisdiction of courts and election commissions for most complaints allows applicants' discretion, and voters' legal standing in election-related disputes is limited to protection of their individual voting rights, contrary to international good practice and long-standing ODIHR recommendations.

The Election Code provides for citizen and international election observation. The presence of established citizen observer organizations such as the Committee of Voters of Ukraine and OPORA enhanced the transparency of the election process; however, at least 100 of the 116 registered national organizations appeared to be linked to political parties or candidates, contradicting principles for non-partisan citizen election observation. Under the Election Code, citizens or nominees of countries determined by the parliament to be an aggressor or occupying state are prohibited from registering as international observers, contrary to OSCE commitments.

In line with ODIHR methodology, the ODIHR LEOM did not observe election-day proceedings in a systematic or comprehensive manner. In the limited number of polling stations visited around the country, the voting process was generally calm, well-organized and transparent, although the secrecy of the vote was at times compromised. Protective measures against COVID-19 were in place, but social distancing was not always respected, and personal protective equipment was not consistently used. The vote counts observed were mostly orderly and transparent, although party observers participated in the counting process in several cases. While the tabulation process at observed TECs was generally orderly, overcrowding and queues occasionally led to tension.

The post-election period was marked by a 27 October Constitutional Court judgment which effectively stalled the country's anti-corruption mechanism and resulted in the closing of the electronic assets declaration registry, endangering the procedure of validation and entry into office of newly elected candidates. This situation affected the legal and political stability of the country while the results for the first round of the elections were established. Although the majority of TECs established the results of the elections by the legal deadline of 6 November, some continued to work on establishing the results days beyond the deadline due to court challenges, recounts and the volume of precincts.

This report offers a number of recommendations to support efforts to bring elections in Ukraine closer in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to the legal framework, the election administration, candidate registration, misuse of administrative resources and abuse of office, sanctions for campaign violations, campaign finance, the media, and the adjudication of election disputes. ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the Ukrainian authorities, and based on the recommendation of a Needs Assessment Mission deployed from 27 to 31 July 2020, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 23 September to observe the 25 October 2020 local elections.³ The mission, led by Ingibjörg Sólrún Gísladóttir, consisted of a 16-member core team based in Kyiv and 66 long-term observers (LTOs) deployed from 29 September to 26 locations around the country. Mission members were drawn from 26 OSCE participating States. The LEOM remained in the country until 15 November.

The ODIHR LEOM assessed the compliance of the election process with OSCE commitments and other standards for democratic elections, and national legislation. The ODIHR LEOM did not carry out systematic or comprehensive observation of the voting, counting and tabulation proceedings on election

³ See previous [ODIHR election reports on Ukraine](#).

day, in line with ODIHR's methodology for LEOMs. Mission members did, however, visit a limited number of polling stations on election day. This final report follows a Statement of Preliminary Findings and Conclusions which was released on 26 October 2020.

The ODIHR LEOM wishes to thank the authorities of Ukraine for their invitation to observe the elections, the Central Election Commission, the Ministry of Foreign Affairs and local authorities for their assistance, and other state institutions, political parties, candidates, media and civil society organizations, and international community representatives for their co-operation.

III. BACKGROUND AND POLITICAL CONTEXT

On 16 July 2020, the Ukrainian parliament (*Verkhovna Rada*) set the date of local elections for 25 October. The elections were held under a new structure of administrative-territorial division adopted a few months prior to the elections.⁴ Voters elected the members of councils of regions (*oblasts*), districts (*rayons*), cities, city districts, territorial communities (*hromadas*), settlements and villages, as well as the mayors of cities, settlements and villages.

The 2019 presidential and parliamentary elections, resulted in the dominance of President Volodymyr Zelenskyy and his Servant of the People (SP) party in national politics.⁵ The political context of these elections was widely seen as a continued effort by SP to consolidate power and establish a significant presence in local self-government bodies, while other parties aimed to preserve their positions in the regions and challenge the dominance of the ruling party. The ongoing decentralization reform fostered discussions over the division of powers between central and local authorities. The increased authority at local levels, including the transfer of ownership of public land and the introduction of taxation authority, increased competition among political and business elites in the elections.

The elections took place in the context of ongoing armed conflict and other hostilities in the east of the country and the illegal annexation of the Crimean peninsula by the Russian Federation. Despite a nominal ceasefire that has been in effect for five years, the situation in conflict-affected parts of eastern Ukraine remains tense and volatile and is characterized by persistent attacks on fundamental freedoms and a deteriorating humanitarian situation.⁶ No elections were held in the Crimean peninsula and in certain parts of the Donetsk and Luhansk *oblasts* (regions) which have been declared by the parliament as temporarily occupied territories.⁷

Based on information received from the respective civil-military administrations in government-controlled areas affected by the conflict, on 8 August, the CEC decided not to hold elections in 18 territorial communities in Donetsk and Luhansk *oblasts*.⁸ This decision effectively disenfranchised some 500,000 voters and was criticized by ODIHR LEOM interlocutors as lacking transparent criteria, which undermined public trust in the process, in particular with respect to decisions not to organize

⁴ According to [Resolution of the Parliament no. 807-IX "On Rayons Formation and Liquidation"](#) of 17 July 2020, the previous 490 districts (*rayons*) subordinated to regions (*oblasts*) were consolidated into 136 *rayons*.

⁵ In the current composition of the *Verkhovna Rada* (parliament), out of a total of 423 seats, SP have 246, Opposition Platform for Life (OPFL) – 44, European Solidarity (ES) – 27, Fatherland – 24, For the Future (FF) – 24, Trust – 24, Voice – 19, non-affiliated – 19. Eighty-seven members, or some 20 per cent, are women.

⁶ See previous [UN Office of the High Commissioner for Human Rights reports on Ukraine](#).

⁷ See the [15 July 2020 Resolution no. 795-IX](#), which explicitly excluded elections in the Autonomous Republic of Crimea and the City of Sevastopol (Crimea) and in certain parts of Donetsk and Luhansk *oblasts*, which are declared by the parliament as temporarily occupied territories.

⁸ *Rayon*-level elections were conducted, but voters from these areas did not participate, as no polling stations were established there. See [CEC Resolution no. 176](#) of 14 August, and Articles 205 and 255 of the Election Code.

elections in certain communities where the 2019 elections had been held.⁹ Consequently, the legal framework, and its implementation, did not provide sufficient safeguards for suffrage rights, and constitutional limitations on derogation were not adhered to, which raised public concerns about the legitimacy of the decisions.¹⁰

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The local elections were conducted under a substantially revised legal framework that included the Constitution (last amended in 2019), the new Election Code (adopted in December 2019 and last amended in September 2020), the Law on the Central Election Commission, and the Law on the State Voter Register (both as amended in July 2020), and supplemented by regulations of the CEC.¹¹ Ukraine has ratified major international and regional human rights instruments pertaining to the conduct of democratic elections.¹²

Constitutional guarantees of freedoms of assembly and expression remained limited by the legal framework that outlaws some political parties.¹³ The Constitution guarantees the freedom of assembly, while courts are entitled to restrict it.¹⁴ There are penalties for violating rules on public gatherings, while

⁹ See [CEC Resolution no. 161](#). The CEC published on its website the reports it received from the civil-military administrations of [Donetsk oblast](#) and [Luhansk oblast](#). The CMA's reports do not contain the criteria and methodology under which the security situation was assessed, or its dynamics since the 2019 elections. The conduct of local elections is contingent on the implementation of conditions stipulated in the Law on Interim Local Self-government Order in Certain Areas of Donetsk and Luhansk Regions, including non-interference of military groups in the electoral process and consultations with representatives of these communities; such consultations are currently substituted by the assessments of CMAs.

¹⁰ Article 4(1) of the 1966 [International Covenant on Civil and Political Rights](#) (ICCPR) allows for derogation from human rights “[i]n time of public emergency[...] the existence of which is officially proclaimed”; paragraph 25.1 of the [1990 OSCE Copenhagen Document](#) requires that “measures derogating from [international human rights] obligations must be taken in strict conformity with the procedural requirements laid down in those instruments”, see also paragraph 25.2. See also article 15 of the [1950 European Convention on Human Rights](#).

¹¹ Recent electoral and administrative-territorial reforms affected the entire legal framework relevant to elections, including the Law on Political Parties, the Code of Administrative Offenses and the Criminal Code (all amended in 2020), the anti-corruption legal framework and regulations on the territorial and administrative division of the country, local self-government, and civil-military administrations (CMAs) in Donetsk and Luhansk *oblasts*. Draft laws pending in parliament affect the territorial division in a number of communities, competences of *rayon* and *oblast* councils and city mayors, and extend the grounds for forming CMAs in territories where elections could not be organized.

¹² Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 2003 Convention Against Corruption (CAC), and the 2006 Convention on the Rights of Persons with Disabilities (CRPD). Ukraine is also a member of the Council of Europe's European Commission for Democracy through Law (Venice Commission) and Group of States against Corruption (GRECO), and is a party to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, 1995 Framework Convention for the Protection of National Minorities, and the 2001 Convention on Cybercrime.

¹³ The Law on Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of their Symbols has been [assessed](#) by ODIHR and the Venice Commission as not being fully in line with regional and international obligations related to the freedoms of assembly and expression. Paragraph 24 of the [1990 OSCE Copenhagen Document](#) provides that “any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of the law”.

¹⁴ Part 2 of Article 39 of the Constitution allows the courts to restrict assembly in line with the law and in the interests of national security and public order, to prevent riots or crimes, and to protect public health or rights and freedoms of others.

their organizational aspects remain unregulated, detracting from legal certainty.¹⁵ Contrary to a prior ODIHR recommendation, the Law on Supporting the Functioning of the Ukrainian Language as the State Language maintains undue limitations on the rights of national minorities to use languages other than Ukrainian, impacting their participation in the election process.¹⁶

Consideration should be given to reviewing legal restrictions on fundamental rights and freedoms, including of opinion and expression, and relevant implementation practice, to ensure that any such restrictions are proportionate, have the character of exception, are precisely formulated and are imposed only when necessary.

The decentralization reforms affected the systems of local government and their respective electoral processes and were criticized by ODIHR LEOM interlocutors for promoting centralization of political powers, discouraging grassroots political activity due to limitations on independent candidatures, and blurring the competences of *rayon*-level local self-government.¹⁷ The top-down approach to the decentralization process was also criticized for failing to genuinely reflect the will of local communities.

In line with a long-standing ODIHR recommendation to consolidate regulations for all types of elections, a new Election Code was adopted in December 2019, following an inclusive but politicized process. The late revision of the electoral legislation, changing *inter alia* the electoral system in a vast number of communities and eliminating possibilities for independent candidatures, led to allegations of political motivation and is at odds with international good practice requiring stability of fundamental elements of the electoral system.¹⁸

Positively, the new Election Code increased the gender quota for most candidate lists, though the regulation could be clarified and its enforcement mechanisms strengthened (see *Candidate Registration*), and expanded opportunities for voters to change their electoral address, which facilitated the participation of internally displaced persons (IDPs) and other voters. However, the new Code does not address a number of ODIHR's long-standing priority recommendations, including those related to

¹⁵ Article 39 of the Constitution conditions public assemblies to a notification procedure, but the procedure is not developed. In 2001, the Constitutional Court interpreted Article 39 so that in the absence of the relevant legal provisions the deadlines for submission of the notification to local self-government or executive authorities shall not limit the right to assemble but shall suffice to challenge it at the court. A number of draft laws regulating public assemblies failed to receive approval of the parliament; the last unsuccessful attempt ended in the withdrawal of the draft law in late 2019. In 2016, the previously applicable 1988 Decree on organization of public assemblies was proclaimed unconstitutional by the Constitutional Court. Articles 185¹ and 185² of the Code of Administrative Offenses establish fines or 15-day imprisonment for the violations of rules of organizing and holding of public gatherings, and for creating conducive conditions for holding public gatherings in violation of the established rules.

¹⁶ Upon MPs' petition, in July 2020 the Constitutional Court initiated the evaluation of constitutionality of the law with respect to safeguarding the language rights of national minorities. In its 2019 [opinion](#), the Venice Commission recognized that the law failed to ensure due balance in language policy and protection of linguistic rights of national minorities living in Ukraine.

¹⁷ The decentralization reform was to be finalized with the adoption of the Law on the Foundations of the Administrative Division of Ukraine, which was withdrawn twice from parliamentary procedure, in January and September 2020. The administrative division was finalized by resolutions of the Cabinet of Ministers that delineated the borders of *hromadas* in July 2020, which led to several amendments of [CEC Resolution no. 117](#) on polling stations. Under paragraph 29 of Article 85 of the Constitution, the formation of boundaries of *rayons* and cities belongs to the competence of the parliament, while such competence is not stipulated for the government, although it is not excluded given the open list of its competences.

¹⁸ Paragraph II.2.b of the [2002 Venice Commission Code of Good Practice in Electoral Matters](#) states that "the fundamental elements of electoral law, in particular the electoral system, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendments less than one year before an election". Paragraph 58 of the [2016 Venice Commission Rule of Law Checklist](#) states "[...]the law must, where possible, be proclaimed in advance of implementation and be foreseeable as to its effects: it must also be formulated with sufficient precision and clarity to enable legal subjects to regulate their conduct in conformity with it".

the appointment and replacement of election commission members, transparency and clarity of election dispute-resolution mechanisms, meaningful campaign finance oversight, and media regulations. Moreover, the law does not ensure the integrity of key components of the electoral process, including delimitation of electoral boundaries, candidate nomination, counting and tabulation, necessitating clarifications by the CEC, which at times provided contradictory instructions.¹⁹ The Election Code and the Law on the CEC require harmonization to eliminate remaining contradictions, in particular with respect to the CEC's competences in electoral dispute resolution and criteria for complaint admissibility.

The late adoption, gaps and ambiguous formulations of the Election Code resulted in inconsistent implementation.²⁰ The unfinished reform of the electoral legal framework limited legal certainty and the predictability of applicable legislation, at odds with international standards and good practice.

The reform of the electoral legal framework should be continued in an open and inclusive manner to address outstanding ODIHR recommendations. Consideration should be given to reviewing the Election Code to eliminate regulatory fragmentation and to address remaining gaps, errors, and conflicting and ambiguous formulations. To ensure legal certainty and stability of the law, the reform process should be completed well in advance of the next elections.

Local self-government bodies are directly elected for a five-year term. Mayors are directly elected under a one-round plurality system in administrative units with fewer than 75,000 voters, while an absolute majority was required in 37 cities with 75,000 and more voters, with a second round if no candidate wins in the first round. Councilors in communities with fewer than 10,000 voters are elected in a relative majority system in which two to four councilors are elected from each multi-member constituency; the candidates with the highest numbers of votes receive seats until all seats are filled. The Election Code determines the number of councilors in relation to the size of the respective electorate.²¹ Following the July 2020 amendments to the Election Code, the possibility for independent candidacy is limited to council elections in communities of up to 10,000 voters and mayoral elections; such limitations are at odds with international commitments.²²

Councilors in *oblasts*, *rayons*, cities, and city *rayons* with 10,000 or more voters are elected under a proportional representation system with open lists, in multi-member constituencies. Political parties compete by putting forward a unified candidate list for the entire electoral district, as well as additional lists of designated candidates drawn from the unified list for each territorial constituency within the

¹⁹ The CEC adopted additional regulations regarding the validity of ballots, admissibility of identity documents and acceptable discrepancies in electoral and registered addresses of voters for voting, as well as a request for governmental agencies to adopt and implement measures for ensuring epidemiological safety during the elections. [CEC Resolution no. 204](#) of 28 August extended the list of criteria for delineation of electoral districts beyond the scope of the Election Code; see also CEC Resolutions [no. 193](#) of 21 August on financial deposits for local elections and [no. 258](#) of 14 September on indirect vote-buying.

²⁰ Including implementation of rules on delineation of electoral districts in communities with a proportional representation system, assessment of candidate nominations by election commissions (see *Candidate Registration*), and electoral dispute resolution, in particular with respect to admissibility criteria (see *Complaints and Appeals*). Gaps remain in regulation of candidate nomination, campaign activities, counting and tabulation, and the second round of elections.

²¹ The composition of local councils varies from 22 councilors in communities below 10,000 voters to 120 councilors in communities with over 2 million voters. The system allows for substantial differences in representation of similar-sized communities (e.g., in communities with 249,000 and 251,000 voters the difference in representation would constitute 12 mandates, while communities with some 50 per cent difference in the number of voters will be represented by councils of equal size).

²² In paragraph 7.5 of the [1990 OSCE Copenhagen Document](#), OSCE participating States undertook to “respect the right of citizens to seek political or public office individually or as representatives of political parties or organizations, without discrimination”. See Article 25 of the 1966 [ICCPR](#) and the 1996 [UN Human Right Committee \(UNHRC\) General Comment no. 25](#) to Article 25 of the ICCPR.

district. Parties that receive 5 per cent of valid votes participate in the distribution of mandates. The mandates are distributed under the *Hare-Niemeyer* method of largest remainder. The open list system only applies to candidates who achieve 25 per cent of the electoral quota (i.e., the ‘cost’ of a mandate). In practice, the open-list system appeared to be well-received by voters, but reaching the 25 per cent threshold appeared challenging for candidates, especially in smaller election districts, which limited the possibility for voters to influence the results.²³ The votes unattributed in the distribution of mandates among open-list candidates are distributed among candidates on the territorial and unified lists in accordance with the order determined by the party, increasing the influence of parties on the composition of councils. In addition, parties determine the heads of their lists, who are guaranteed a seat as long as the party passes the 5 per cent threshold, irrespective of the outcome on the open lists.

In line with OSCE commitments, consideration should be given to enabling independent candidates to run in elections, including those conducted under a proportional representation system.

The formation of electoral districts affords vast discretion to the respective Territorial Election Commissions (TECs) and, in light of the fact that TEC members are nominated by political parties, did not enjoy public trust and led to disputes (see *Complaints and Appeals*). Delimitation of electoral boundaries by politically nominated bodies is not in line with international good practice.²⁴ For elections of upper-level councils and in locations with 10,000 or more voters, the Election Code recommends electoral districts to be aligned with territorial-administrative units and allows a two-district deviation.²⁵ The Code requires that equality of the vote be retained across constituencies in the same district, in relation to the number of mandates per constituency, with a maximum deviation of 15 per cent from the average number of voters per mandate for the council elections in locations with up to 10,000 voters.²⁶ Many of these electoral districts showed larger deviations, thus failing to ensure equal suffrage, at odds with paragraph 7.3 of the 1990 OSCE Copenhagen Document and international good practice.²⁷

To ensure public trust and compliance with international good practice, consideration should be given to empowering an independent and impartial body with the task of drawing electoral boundaries.

²³ For example, candidates got elected from unified lists with fewer votes than their counterparts in open lists in Dnipropetrovsk, Kirovohrad, Rivne, Ternopil, Volyn and Zhytomyr *oblasts*. [General Comment no. 25](#) states that “any system operating in a State party must be compatible with the rights protected by Article 25 [of the ICCPR] and must guarantee and give effect to the free expression of the will of the electors.”

²⁴ See, *inter alia*, paragraph I.2.2 vii. of the [2002 Code of Good Practice](#) and paragraph 17 of the Explanatory Report that state “The political ramifications of (re)drawing electoral boundaries are very considerable, and it is therefore essential that the process should be non- partisan and should not disadvantage national minorities. [...] The new democracies should adopt simple criteria and easy-to-implement procedures. The best solution would be to submit the problem in the first instance to a commission comprising a majority of independent members”; see also the [2017 Venice Commission Report on Constituency Delineation and Seat Allocation](#).

²⁵ The territory of the community electing the council is divided into constituencies. The number of constituencies is determined by dividing the number of councilors by 3 for communities with less than 10,000 registered voters, or by 10 for communities with 10,000 or more registered voters. The TECs have discretion to divide the territory of the community into the exact number of districts, plus or minus two districts.

²⁶ See also section I.2.2.vii. of the [2002 Code of Good Practice](#) and paragraph 17 of its Explanatory Report, which recommend reconsideration of election districts boundaries outside an election period in a non-partisan process and allows a 10 per cent deviation within electoral districts. See also the [2017 Venice Commission Report on Constituency Delineation and Seat Allocation](#).

²⁷ For example, discrepancies were identified in 50 districts in Dnipropetrovsk *oblast*, 29 districts in Odesa *oblast*, 26 districts in Volyn *oblast*, and 34 in Zaporizhzhia *oblast*. In paragraph 7.3 of the [1990 OSCE Copenhagen Document](#), OSCE participating States committed themselves to “guarantee universal and equal suffrage to adult citizens”. Paragraph 21 of [General Comment No. 25](#) provides that “[t]he drawing of electoral boundaries and the method of allocating votes should not distort the distribution of votes or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely”.

Parties' influence on local councils was further strengthened with the 17 July amendments to the Law on the Status of Councilors that entitled political parties to trigger the imperative mandate mechanism, through which nominating parties can initiate the recall of elected deputies by signature collection for, *inter alia*, their failure to duly implement party programmes. This mechanism is at odds with international standards.²⁸

In line with international commitments and good practice, provisions entitling political parties to initiate the recall of elected councilors should be removed.

V. ELECTION ADMINISTRATION

The local elections were administered by the CEC, 1,642 TECs corresponding to the new territorial-administrative divisions, and 29,084 Precinct Election Commissions (PECs).²⁹ In the election administration, women constituted a majority of lower commission members, but only 5 of 17 members of the CEC are women.³⁰ The CEC in its current composition was appointed in October 2019; the previous CEC was dismissed before the expiration of its mandate following the 2019 parliamentary elections.³¹ According to media reports which were partially corroborated by the CEC chairperson, the presidential administration pressured the CEC chairperson and three members to resign ahead of the elections, raising concerns about attempts to undermine the independence of the election administration.³²

Overall, the CEC met all legal deadlines, operated with impartiality and openness, and enjoyed a high level of trust among most ODIHR LEOM interlocutors. Most CEC decisions were posted on its website, enhancing transparency, and sessions of the CEC were open to accredited observers and streamed on the commission's website. However, the CEC's formal sessions often lacked substantive debate, which took place at working sessions without public attendance, detracting from the overall transparency of its work. The CEC also launched extensive voter education campaigns, including on its social network pages and its educational online platform (*Prosvita*).³³ However, the CEC did not publish timely or complete information on the election results, detracting from transparency.³⁴

TEC and PEC members were nominated by local organizations of political parties with a faction in the *Verkhovna Rada* or those with a declared political co-operation with a group of MPs, as well as by local

²⁸ Paragraph 7.9 of the [1990 OSCE Copenhagen Document](#) commits OSCE participating States to “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures”. See also Article 3 of Protocol 1 to the [European Convention on Human Rights](#), the [2009 Venice Commission Report on the Imperative Mandate and Similar Practices](#), and the [2019 Venice Commission Amicus Curiae Brief for the Constitutional Court of Ukraine on Draft Law 1027 on the Early Termination of the Deputy's Mandate](#).

²⁹ Including 928 special polling stations established in hospitals and in inpatient care facilities handling COVID-19 cases.

³⁰ Some 74 per cent of all TEC members in first-level commissions (i.e., the 532 TECs of *oblasts*, *rayons*, cities of *oblast* significance, and Kyiv and its *rayons*) were women, including 67 per cent of chairpersons, 75 percent of deputy chairpersons, and 82 per cent of secretaries.

³¹ The CEC is appointed by parliament for a term of seven years, on the basis of nominations by the president, taking into consideration proposals by parliamentary factions and groups.

³² See the [14 August media report](#), the [presidential administration's response](#), and the [response of the CEC chairperson](#).

³³ The CEC used TV and Internet, including Facebook and YouTube, for its information campaign.

³⁴ In paragraph 7.4 of the [1990 OSCE Copenhagen Document](#), participating States committed themselves to “ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public”. See also paragraph 19 of [General Comment No. 34 to Article 19](#) of the ICCPR.

organizations of non-parliamentary parties registered in the respective administrative subdivision.³⁵ PEC members could also be nominated by independent candidates. ODIHR LEOM interlocutors criticized the political principle in the nomination of election commissions, as well as the lack of required professional criteria and the practice of extra payments to commissioners by political parties, which is against the law and undermined the independence of the commissions.³⁶ The ODIHR LEOM received allegations and observed politicization and personal conflicts within election commissions and lack of professionalism of commissions, including TEC members' non-participation in sessions and other obligations.³⁷ PECs were established on schedule, but some TECs reported to the ODIHR LEOM that PEC members lacked knowledge and experience. Many party nominees refused to serve as PEC members, and some appointed PEC members later resigned, for reasons that included concerns related to COVID-19, low salaries, complexity of the electoral procedures, and long travel distances to PECs. Many ODIHR LEOM interlocutors raised concerns about widespread misuse by political parties of their seats in election commissions for profit.³⁸ In 2020, bribery of election commission members was criminalised, but investigations were not concluded during the reporting period.

Professional selection criteria and compulsory training and certification for commission members could be introduced. Additional mechanisms for recruitment of commission members could also be considered, such as introducing a national register and higher remuneration. To ensure independent and impartial performance of the election administration, law-enforcement bodies should investigate allegations of payments from candidates and parties to commissioners.

The Cabinet of Ministers identified anti-epidemic measures related to preventing the spread of COVID-19 during the conduct of elections and assigned the related expenditures to the budgets of local administrations.³⁹ Specifically, this resolution extended mobile voting to voters with symptoms of respiratory diseases, allowed commissions to conduct health-assessment procedures on voters, and

³⁵ [CEC Resolution no. 156](#) of 1 August 2020 acknowledged that the administrative-territorial reform created gaps and challenges in the application of the Election Code and partially clarified, based on guidance from the Ministry of Justice, certain conditions for nominations from local party organizations. If members of an election commission are nominated by more than one organization of the same political party, the candidacy submitted by the higher-level party organization shall be taken into account. On 10 August, the CEC established the composition of the 532 first-level TECs; these TECs subsequently established the TECs for the remaining cities and smaller communities. All TECs established the respective PECs by 9 October.

³⁶ Article 160 of the Criminal Code establishes criminal liability for offering or accepting an illegal benefit by a commission member.

³⁷ The Vasytkiv city TEC (Kyiv *oblast*), Rubizhne city TEC (Luhansk *oblast*), Odesa city TECs, Karolino-Bugaz city TEC and Tairove settlement TEC (Odesa *oblast*), Berdyansk city TEC (Zaporizhzhia *oblast*), Kaharlyk TEC (Kyiv *oblast*), Lviv city TEC (Lviv *oblast*), Dobrovelyckivska village TEC (Kirovohrad *oblast*), and the Ivano-Frankivsk *oblast* TEC were dissolved and re-established by the CEC for failure to fulfil their mandate; the Mykolaiv city TEC became dysfunctional following an internal political conflict. Velikoseveryvka village TEC (Kirovohrad *oblast*) was dismissed due to disagreement with the upper-level TEC. The dismissal of the Odesa city TEC resulted in the withdrawal of a significant number of PEC members. The ODIHR LEOM received complaints by TEC chairpersons about the continuous absence of some members in Voronkivi village TEC (Chernihiv *oblast*), Myronivka and Kaharlyk city TECs and the Kalyta settlement TEC (Kyiv *oblast*), Kovel city TEC (Volyn *oblast*), and several *rayon* and city TECs in Kherson and Odesa *oblasts*. In Mohyliv-Podilskyi city TEC (Vinnytsia *oblast*), the ODIHR LEOM observed attempts by TEC members to disrupt a session, and internal conflicts in the TEC led to the dismissal of several TEC members.

³⁸ ODIHR LEOM interlocutors noted that some political parties are established for the sole purpose of obtaining positions in election commissions and later selling those seats to other interested stakeholders and that sometimes entire political parties can be “bought” before elections.

³⁹ Resolution no. 846 of 14 September 2020. Article 142 of the Constitution states that expenditures of bodies of local self-government that arise from decisions of bodies of state power shall be compensated by the state. On 10 October, the CEC applied to the Cabinet of Ministers and other relevant central and local bodies to urgently address the issue of creating appropriate conditions for the implementation of anti-epidemic measures during the organization and conduct of the elections.

established protective measures for election administration members and the organization of voting and commission premises. Some crucial issues were regulated and implemented with a significant delay, including the procurement of personal protective equipment, undermining the effectiveness of preparations. On 22 October, the CEC adopted a resolution further specifying anti-epidemic measures. Several TECs informed the ODIHR LEOM of inadequate or late receipt of funds to implement anti-epidemic measures, while others found the funding sufficient.⁴⁰

Authorities should ensure timely, adequate and effective allocation of funds in order to cover the costs associated with the organization of elections.

Several issues remained challenging for the election administration, including those connected to the complex electoral system and the reformed territorial-administrative system (such as the number of elections, complexity of the ballot, and establishing new electoral districts) and the lack of sufficient human resources and technical capacities at the TEC and PEC levels. The planned establishment of CEC regional offices did not take place prior to the elections. The CEC's 'Vybory' information-analytical system, used in previous elections for the tabulation and transmission of results, could not be used due to lack of time and funds to update the software to accommodate the complicated electoral system.⁴¹ The CEC issued several resolutions and prepared manuals to clarify procedures related to voting, counting and transmission of results.⁴² In some cases, issues with the accuracy of information printed on ballots were noted prior to election day.⁴³

The CEC conducted online training for TEC and PEC members.⁴⁴ Several ODIHR LEOM interlocutors raised concerns about reduced interactions and attendance in non-mandatory online training compared to in-person training and stressed that the online training was particularly challenging for commission members in rural areas due to technical capacities. As in previous elections, a significant number of TEC and PEC members were replaced late in the process, mostly by their nominating party.⁴⁵ This practice, which ODIHR has previously recommended to address, negatively affected the independence

⁴⁰ These interlocutors explained complications related to the allocation of local funds for this purpose, and that the resolution particularly affected smaller communities with smaller budgets.

⁴¹ The CEC with the OSCE Project Co-ordinator in Ukraine launched the 'TEC Electronic Cabinet,' an online resource for TECs to enter and process data from PECs. On 2 October, [CEC Resolution no. 331](#) clarified that information entered and posted in the software is preliminary, without any legal consequences. TECs were instructed to send information on candidate registration, results data and other information to the CEC through the State Voter Register (SVR) network.

⁴² For instance, on 10 October, the CEC adopted two resolutions on the procedures regarding marking the ballot and distribution of ballots by PEC members to voters.

⁴³ Inaccurate and unreadable information, missing names of candidates on ballots were reported to the ODIHR LEOM and confirmed by TECs in Voznesenski rayon (Mykolaiv oblast), Kropivnitski city (Kirovohrad oblast), Kharkiv city (Kharkiv oblast), Chernivtsi rayon (Chernivtsi oblast). In Mariupol city (Donetsk oblast) the majority of some 300,000 ballots received and distributed to PECs contained printing errors, necessitating their reprinting shortly before election day. The Brovary city TEC (Kyiv oblast) included unique serial numbers on the ballots, in contradiction to the CEC-approved design and potentially violating the secrecy of vote. On election day, the TEC instructed all PECs to cut out the serial numbers from ballots. On 9 November, the District Administrative court of Kyiv invalidated the decision of the Brovary city TEC on the results for both mayoral and council elections in the city of Brovary.

⁴⁴ Overall, the CEC conducted 462 online training sessions for 8,968 TEC members and 366 training sessions for PEC members. Some international organizations and political parties also conducted training for TEC and PEC members.

⁴⁵ By law, nominating subjects are free to recall their nominees from commissions up to and after election day. By 10 November, the CEC terminated the powers of 5,264 TEC members (361 TEC chairpersons, 308 TEC deputy chairpersons, 369 TEC secretaries, and 4,226 members).

and impartiality of TECs and the continuity of their operations, and also diminished the value of training.⁴⁶

In order to ensure stability and safeguard the independence of the election administration, deadlines, as well as provisions on clear and restrictive grounds, should be introduced for the replacement of TEC and PEC members.

Voters who cannot independently cast their ballot could request assistance from another voter of their choice. No assistive tools or technologies were provided in polling stations to enable voters with visual impairments to vote autonomously, but the Election Code mandates that informational materials should be produced in accessible formats for use before and on election day, taking into account requirements established by the CEC. ODIHR LEOM interlocutors noted that the complexity of the electoral system and of the territorial constituency ballots created particular challenges for voters with visual impairments and those with intellectual disabilities who retain voting rights.⁴⁷ In December 2019, the CEC created a working group on the electoral rights of persons with disabilities, with the participation of disabled persons' organizations. However, organizations met by the ODIHR LEOM explained that further efforts are required to enable the autonomous participation of voters with various kinds of disabilities, including through legislative amendments to adjust national norms and standards to the requirements of universal design, which are beyond the CEC's mandate to implement.⁴⁸

VI. VOTER REGISTRATION

Citizens who were at least 18 years old on election day were eligible to vote, except those declared incapacitated by a court on the basis of intellectual or psychosocial disability.⁴⁹ Deprivation of the right to vote on the basis of disability is at odds with Ukraine's international obligations under the 2006 UN Convention on the Rights of Persons with Disabilities (CRPD).⁵⁰ In addition, military conscripts and citizens living abroad or serving a prison sentence cannot vote in local elections.⁵¹

In line with international obligations, all restrictions on electoral rights on the basis of intellectual or psychosocial disability should be removed.

⁴⁶ The CEC noted to the ODIHR LEOM that commissions members appointed later in the process were usually less professional than the ones appointed earlier. Section II.3.1.77 of the explanatory report of the [2002 Code of Good Practice](#) states that "bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence. Discretionary recall is unacceptable...".

⁴⁷ Articles 12 and 29 of the [2006 UN Convention on the Rights of Persons with Disabilities](#) (CRPD) require that "States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity" and ensure that "voting procedures, facilities and materials are appropriate, accessible and easy to understand and use".

⁴⁸ For instance, the Ministry of Regional Development developed [provisions](#) that specify norms of universal design for the inclusiveness of buildings. However, these norms and standards are to be enforced and observed by local authorities, and the CEC does not have control over this process.

⁴⁹ According to the CEC, this limitation affected 36,600 voters.

⁵⁰ Paragraph 9.4 of the [2013 CRPD Committee's Communication No. 4/2011](#) provides that "an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability". See also paragraph 48 of the [2014 CRPD Committee's General Comment No. 1 to Article 12](#).

⁵¹ Paragraphs 7.3 and 24 of the [1990 OSCE Copenhagen Document](#) state that participating States will "guarantee universal and equal suffrage to adult citizens," and that "...any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law".

Voter registration is passive and continuous and voter lists for each precinct are extracted from a permanent State Voter Register (SVR). Amendments in July 2020 to the Law on the CEC liquidated the SVR Administration and shifted its authority to a new department within the CEC secretariat. The SVR is maintained by 27 Registration Administration Bodies (RABs) and 759 Register Maintenance Bodies (RMBs).⁵² It is updated monthly based on data from different state institutions.⁵³ As of 30 September, the SVR contained the records of 35,265,503 voters. Of these, 28,622,004 voters had the right to vote and were registered in localities where the local elections took place.⁵⁴ The publication of disaggregated registration statistics by locality on the SVR website contributed to its transparency.

ODIHR LEOM interlocutors did not raise major concerns regarding the accuracy and inclusiveness of the SVR. However, interlocutors estimated that some 20,000 to 40,000 Roma remain excluded from the voter register due to lack of identity documents. International organizations have previously expressed concern about barriers to the access of personal documents for Roma.⁵⁵

With a view to ensure universal suffrage, increased efforts should be made to facilitate access to personal identity documents for Roma.

In line with 2020 amendments to the Law on the State Voter Register, the CEC simplified the procedure for voters to change their electoral address by abolishing the requirement to submit supporting documentation. This policy addressed previous ODIHR recommendations and was welcomed by most stakeholders as facilitating the participation of IDPs, economic migrants, and other citizens. However, only 101,687 voters requested a change of their electoral address before the legal deadline of 10 September.⁵⁶

The CEC should consider extending the deadlines for address change requests and continuing voter education activities related to this procedure.

In several precincts, unusually high numbers of address change requests were observed.⁵⁷ The CEC published a list of PECs for which the number of requested changes exceeded 15 per cent of the total number of voters registered at that precinct and called on citizen observers and party representatives to closely monitor the elections in these specific polling stations. The CEC also appealed to law

⁵² Transitional provisions of the Election Code that were not implemented in time for the local elections subsume the responsibilities of RABs and RMBs to the local offices of the CEC, once established.

⁵³ Including the Civil Register Office (information on voters who turned 18, deceased voters, acquisition/loss of citizenship), military units (conscripts), *rayon* courts (voters declared incapacitated), penitentiary institutions (persons who started serving/ended prison sentences), social services (homeless persons), diplomatic institutions abroad (citizens arriving/departing), Ministry of Defense (military servicemen abroad), and Ministry of Health or healthcare establishments (voters with a permanent disability that affects their mobility).

⁵⁴ Excluding, *inter alia*, voters not registered in-country and in localities where elections took place.

⁵⁵ See paragraph 15 of the [2020 UN Committee on Economic, Social and Cultural Rights' Concluding observations on the seventh periodic report](#), paragraph 12 of the [2013 UN Human Rights Committee \(CCPR\) Concluding observations on the seventh periodic report](#), and paragraphs 35 and 40 of the [1990 OSCE Copenhagen Document](#).

⁵⁶ Of these, 12,138 deregistered from Luhansk and Donetsk *oblasts* as well as the Autonomous Republic of Crimea and the City of Sevastopol (Crimea). According to civil society interlocutors and the head of the SVR Administration, the procedure was estimated to potentially enfranchise 3.5 million economic migrants, 1 million citizens without a registered address in the SVR, and 1.2 million IDPs whose residential address lies in territories declared by the parliament as temporarily occupied.

⁵⁷ According to the CEC, civil society organizations, and ODIHR LEOM observations, unusually high increases were registered in precincts in the following *oblasts (rayons)*: Cherkasy (Chyhyryn), Chernihiv (Chernihiv), Chernivtsi (Chernivtsi), Dnipropetrovsk (Kryvyi Rih, Synelnykove), Donetsk (Mariupol), Kherson (Skadovsk), Khmelnytsky (Kamianets-Podilsky), Kirovohrad (Kropyvnytskyi), Kyiv (Bila Tserkva, Boryspil, Brovary, Bucha, Fastiv, Obukhiv), Lviv (Drohobych, Lviv, Stryi), Odesa (Bilgorod-Dnistrovskyi, Odesa), Zakarpattia (Mizhghirsky, Uzhhorod), and Zaporizhzhia (Shyroke, Zaporizhzhia).

enforcement bodies to investigate instances of a high number of such requests from identical IP addresses requesting a change of electoral address to the same households, in three communities in Odesa *oblast*. In the days prior to election day, citizen observer organizations reported high numbers of electoral address changes to small communities in Dnipropetrovsk, Khmelnytsky, Kyiv, Lviv, and Odesa *oblasts*, as well as cases of citizens who received voter invitations to their homes that were addressed to people unknown to them.⁵⁸ The National Police declared that they were investigating cases of manipulation of voter registration data in Odesa, Ternopil and Zhytomyr *oblasts*. Citizen observer reports and complaints filed on election day alleged violations such as vote-buying or carousel voting as well as organized transport of groups of voters were reported from some places that had previously registered significant address changes.⁵⁹ Overall, ODIHR LEOM interlocutors assessed these cases of possible abuse of voter registration procedures as important for the election results in the localities concerned, but not as a significant or systemic phenomenon at the national level.

RMBs and PECs should forward suspected cases of abuse of voter registration procedures to law enforcement bodies who should ensure proper and timely investigation.

Some RMBs and TECs met by the ODIHR LEOM reported initial confusion regarding the territory for which they were responsible following the territorial-administrative reform. The CEC adopted a clarifying resolution which linked each TEC to a specific RMB.⁶⁰ Voter lists were compiled by RMBs for each election precinct under their responsibility and displayed at PEC premises for public review. Voters could request corrections until 20 October, including electronically, although few changes were requested.⁶¹ In line with the legal deadlines, RMBs sent the updated voter lists to PECs by 23 October. For the second rounds of mayoral elections, RMBs established new voter lists that reflected changes from the regular update of the SVR, which included voters who turned 18 years of age and excluded newly deceased voters. Voters could not submit new requests for changes to their electoral address.

The SVR includes a special note for entries of voters with a permanent disability that affects their mobility (1.56 per cent of voters for these elections). Based on this information, PECs prepared and publicly displayed voter list extracts for the organization of mobile voting. ODIHR LEOM interlocutors criticized this lack of protection of voters' private data and the automatic assignation of mobile voting as stigmatizing for persons with disabilities.⁶²

The CEC should guarantee a responsible treatment of disability data of voters. The procedure that allows voters to request the removal of the special disability note from the SVR should be simplified.

⁵⁸ Such cases were reported, for example, in the following *oblasts (rayons)*: Dnipropetrovsk (Kryvyi Rih, Synelnykove), Kyiv (Obukhiv), and Lviv (Drohobych).

⁵⁹ In Sambir city (Lviv *oblast*), official complaints were filed because of alleged manipulation of address changes, voter transport, voter bribery, carousel voting, and pre-completed ballots. In Zatoka village (Odesa *oblast*), where a 30 per cent increase in voters had been registered, citizen observers reported groups of voters being brought to polling stations in buses. In Shyroke village (Zaporizhzhia *oblast*), where organized massive address changes had been reported, a criminal investigation was opened because of alleged vote buying and falsification of results protocols.

⁶⁰ CEC [Resolution No. 203](#) of 28 August 2020.

⁶¹ According to the CEC, 3,724 voters requested their inclusion on the voter lists and 3,230 the correction of mistakes.

⁶² According to Article 29 of the [CRPD](#), state parties shall “promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others”.

VII. CANDIDATE REGISTRATION

Citizens with the right to vote may be elected as a local council member or a village, settlement or city mayor. Citizens who have been convicted of a grave or especially grave crime, a crime against citizens' electoral rights, or a corruption crime, may not be elected, unless this record has been lifted or expunged; however, prospective candidates are not obliged to submit any documentation related to a criminal record. There is no requirement for residency within a respective community in order to stand for local office.

Candidate lists for council elections and mayoral candidates could be nominated by local branches of political parties in the corresponding election district.⁶³ Self-nomination of candidates was possible only for mayoral elections and for council elections in communities with fewer than 10,000 voters, challenging OSCE commitments. A person may be nominated (by the same entity) or self-nominated as a candidate in a multi-member district in up to two different levels of local councils, or as a candidate for mayor in addition to one local council. Candidates can stand in one election district. The decentralised system of election administration for local elections made it difficult to verify compliance with this requirement. ODIHR LEOM interlocutors noted that the nomination process for partisan candidates is highly decentralized and often inextricably linked to local business interests, with various combinations of parties' pre-electoral alliances across regions.

Recent amendments to the Election Code generally reduced the amount of the financial deposit required for all contestants, but also introduced a deposit for elections in smaller communities, where no deposit was previously required.⁶⁴ ODIHR LEOM interlocutors did not raise major concerns related to the deposits; however, many noted that women are more affected by financial barriers to candidacy, and by the fact that local councilors do not receive monetary compensation. In addition, some candidates from minority communities reported difficulties in personally paying the deposit introduced in smaller communities where there is no party structure.

Consideration could be given to further reducing the deposit on candidacy, with a view to promoting the participation of all eligible candidates.

TECs registered 278,859 candidates for council members (227,943 on proportional lists and 50,916 in multi-member constituencies) and 2,936 mayoral candidates. The CEC informed the ODIHR LEOM that 1,131 candidates from proportional council lists and 37 mayoral candidates withdrew or were deregistered. The long-standing issue of 'technical' candidates with identical names, a tactic used by some contestants to confuse voters, presented a challenge for some TECs.⁶⁵ In 11 cases, law-enforcement bodies initiated criminal proceedings involving potential 'technical' candidates.⁶⁶

⁶³ While a clarification about nominations by parties was made by the CEC in Resolution No. 156, and ODIHR LEOM interlocutors opined that in practice the higher-level party organizations made most decisions about nominations at lower levels, the legal framework failed to address which party organization is entitled to nominate candidates if several party branches represent the same administrative-territorial level within newly formed administrative divisions.

⁶⁴ The new Election Code had raised the amount of the financial deposit required for all contestants but was later reduced by subsequent amendments. The amount of the deposit depends on the number of voters registered in the respective community and ranges from 20 per cent of the minimum monthly salary in communities with up to 10,000 registered voters, to four minimum monthly salaries per 90,000 voters in communities with more than 75,000 voters. The current minimum monthly salary is 5,000 Ukrainian *Hryvnia* (UAH; approximately EUR 150).

⁶⁵ For instance, the Uman city TEC (Cherkasy *oblast*) registered the current mayor and two namesakes of his, who both officially changed their names close to the elections, in June and July 2020. Similar cases were observed in Chernihiv, Dnipropetrovsk, Kherson, Luhansk, Odesa, and Zakarpattia *oblasts*.

⁶⁶ Amendments to the Criminal Code in July 2020 established criminal liability for offering or accepting a bribe to register as a candidate.

While candidate registration was conducted in a largely inclusive manner, in some instances TECs lacked a unified approach to candidate registration concerning possible inaccuracies and shortcomings in the submitted documents.⁶⁷ Some TECs also experienced confusion regarding the level of party organization which could submit the deposit on behalf of a candidate.⁶⁸ The restrictive interpretation and inconsistent implementation of candidate registration rules in several instances hindered the right to stand for candidates on an equal basis, contrary to OSCE commitments and other international obligations and standards.⁶⁹ In some instances observed by the ODIHR LEOM, including in the cities of Dnipro (Dnipropetrovsk *oblast*), Kaharlyk (Kyiv *oblast*), Khmelnytsky (Khmelnytsky *oblast*), Kropyvnytsky (Kirovohrad *oblast*), Mykolaiv (Mykolaiv *oblast*), and Odesa (Odesa *oblast*), TEC decisions on registration of certain candidates and party lists appeared politically motivated and aimed at excluding certain political forces from participating in the elections.⁷⁰

Effective notification mechanisms could be introduced so that prospective candidates are informed by the election administration of mistakes or omissions in their nomination documents, enabling them to correct such mistakes.

The new Election Code increased the gender requirements for electoral lists in most council elections.⁷¹ Several ODIHR LEOM interlocutors, including the CEC, raised concerns regarding noncompliance. The CEC informed the ODIHR LEOM that 1,365 out of 7,877 lists were registered despite not complying with the gender quota and that the CEC was not able to challenge these decisions as legal deadlines for appeal had passed by the time relevant information was received by the CEC. In addition, there is no requirement to respect the quotas when making changes to candidate lists after registration, and in case an elected candidate does not accept the mandate, nominating parties are not required to ensure that the candidate who fills the vacant seat is of the same gender. After the close of registration, women comprised some 45 per cent of candidates in electoral lists and some 16 per cent of mayoral candidates.

Consideration should be given to enforcing the gender quota for candidate lists at all stages of the electoral process, including during nomination and registration.

⁶⁷ According to data from the Unified Register of Judicial Decisions, as of 15 October, 296 cases related to candidate registration were examined on merits by courts countrywide. The ODIHR LEOM noted that common grounds for refusal of registration were technical deficiencies in nomination documents submitted to the TECs (i.e., unsigned or unduly drafted nomination statements, unsigned or unstamped certificates), late submission of documents, and failure to comply with gender quota and financial deposit requirements. In a number of cases, applicants claimed that TECs failed to notify them in a timely manner of deficiencies in their nomination documents, which could otherwise have been eliminated, allowing these applicants to run.

⁶⁸ CEC Resolution [no. 193](#) of 21 August established that either the local political party organization that nominated a candidate or the local organization of a higher administrative level can submit the financial deposit on behalf of the candidate.

⁶⁹ Paragraph 15 of [General Comment No. 25](#) states that “any restrictions on the right to stand for election ... must be justifiable on objective and reasonable criteria”. Paragraph 24 of the [1990 OSCE Copenhagen Document](#) provides that any restrictions on rights must be “strictly proportionate to the aim of the law”. See also the [2009 Additional Protocol to the European Charter of Local Self-Government](#) on the right to participate in the affairs of a local authority.

⁷⁰ On some occasions, including in Dobrovelychkivka (Kirovohrad *oblast*) and Kaharlyk (Kyiv *oblast*), the CEC suspended TECs’ activities due to their refusal to register candidates, and candidate registration was completed after re-establishment of these TECs.

⁷¹ Each gender must be represented by at least 40 per cent of candidates on party lists for local councils of communities of 10,000 or more voters (with no less than two candidates of each gender in each group of five candidates on the list), and 30 per cent in smaller communities.

VIII. CAMPAIGN ENVIRONMENT

Contestants could begin campaigning on the day following their registration by the respective election commission and were obliged to cease campaign activities one day prior to election day, though the ODIHR LEOM observed several breaches of the silence period. Although the law prohibits early campaigning, many ODIHR LEOM interlocutors noted that several parties engaged in *de facto* campaigning prior to the registration of candidates, such as with the placement of billboards across the country.⁷²

The law should set a uniform date for the start of the official campaign period, for all contestants and for each round of elections, in order to ensure the equality of opportunities for contestants and uniform application of the law. Political activities prior to the official campaign period should not be prohibited and should be regulated.

The election campaign for the first round was generally calm but was marked by allegations of misuse of state resources and isolated instances of violence.⁷³ The fundamental freedoms of expression and assembly were generally respected, and contestants were able to campaign freely. However, the COVID-19 pandemic and the ongoing adapted quarantine impacted the campaign environment and limited contestants' ability to conduct large-scale campaign events. Government regulations required the use of personal protective equipment for campaigning in public areas and limited participation in mass events to 50, 30 or 20 people depending on the epidemiological zone. The volume and nature of campaign activities varied across regions but intensified closer to election day. The distribution of party newspapers and leaflets, street tents, as well as small-scale meetings with voters prevailed among other means of traditional campaigning.⁷⁴

The ODIHR LEOM received many allegations of misuse of state resources by *oblast* and city administrations, and numerous instances were observed and verified, including public events at which state or city officials supported certain candidates.⁷⁵ Incumbent Kyiv City mayor Vitaly Klitschko, who was running for the Ukrainian Democratic Alliance for Reforms (UDAR), and other incumbent mayors from Dnipro, Kharkiv, Khmelnytsky, Odesa, and Vinnytsia supplemented highly visible campaigns with well-publicized official duties, such as inaugurating new infrastructure projects.

⁷² For instance, billboards of ES, FF, Kernes Bloc, OPFL, Proposition, SP, Victory of Palchevsky, Voice, and UDAR.

⁷³ For instance, in Lozova (Kharkiv *oblast*), police opened investigations into the arson of cars of ES and SP mayoral candidates. In Kharkiv city, an SP campaigner was assaulted; the case was reported to police. In Dnipro city, the incumbent mayor from Proposition was sprayed with ammonia during an electoral meeting. In Odesa city, police opened an investigation after a Fatherland city council candidate was injured in a car explosion. The cars of an FF candidate in Izmail (Odesa *oblast*) and of an SP candidate in Rivne city were set on fire.

⁷⁴ ODIHR LEOM observers attended and reported on 45 campaign events conducted by 24 contestants. The number of attendees varied from 7 to 1,500.

⁷⁵ For instance, in Chernivtsi city, an SP candidate joined President Zelenskyy at a press conference at the state university building. In Odesa city, the city administration distributed bags with medicine in the colours of the Trust in Deeds party. In Rivne city, an SP candidate's name and the party colours were observed on communal service posters, and an information center of the City Council conducted a survey about satisfaction in the work of the incumbent mayor. In Dnipro city, a TV channel belonging to the city administration ran a programme featuring colours, name, and logo similar to the Proposition party. In Cherkasy city, an SP candidate was invited to a public event organized by the *oblast* administration. In Lozova (Kharkiv *oblast*), the city council webpage posted pictures of a public event with Svitlichna's Bloc – Together names and logos. In Kamianske (Dnipropetrovsk *oblast*), logos of the Bee party were placed on public transport. In Ivanivka and Henichesk (Kherson *oblast*), campaign materials of SP were observed inside a state building. In Khmelnytsky city, the city council placed billboards with achievements of the incumbent mayor in his party's colours.

On 13 October, President Zelenskyy announced that he would ask citizens to answer five questions during an ‘opinion poll’ that would be conducted on election day outside of polling stations. The poll referenced policy initiatives of the presidential administration but was funded by SP; in announcing the poll, the president cited the party’s electoral slogan. Meanwhile, the Minister of Internal Affairs and the Head of the National Police pledged to prevent attempts to disrupt the conduct of the poll. The organization of such a poll was heavily criticized by civil society and political parties and was challenged in the courts as contradicting the Election Code and falling outside the scope of presidential powers (see *Complaints and Appeals*).⁷⁶ Generally, its implementation appeared to create an unfair political advantage on election day and blurred the separation of state and party.⁷⁷

Authorities should ensure a clear separation between the state and political parties and guarantee that public resources are not misused by incumbent candidates or state officials for campaign purposes.

The main national parties as well as strong local parties represented in big urban centers extensively used outdoor advertising to promote their candidates and party brands. Among them, SP, For the Future (FF), European Solidarity (ES), Victory of Palchevskiyi, Proposition, Oppositional Platform for Life (OPFL), and Our Region (OR) were the most visible. A few instances of billboards and posters being damaged or stolen were reported.⁷⁸ In some localities, contestants were obstructed in placing billboards.⁷⁹ Instances of negative campaigning increased closer to election day.⁸⁰ The ODIHR LEOM received many allegations of vote-buying, including distribution of food packages and provision of free-of-charge COVID-19 tests, and observed and verified several cases.⁸¹

⁷⁶ Article 106 of the Constitution contains a closed list of presidential powers that do not provide for the organization of opinion polls. In September, draft law no. 4043 amending the Law on the CEC was lodged in parliament, which would grant authority to the CEC to conduct opinion polls upon the initiative of the Cabinet of Ministers, concurrently with local or national elections, excluding questions pertaining to the status of the temporarily occupied territories and elections therein, and placed the financial aspect of the regulations on the local authorities. The draft law was highly contested and was ultimately not adopted.

⁷⁷ Paragraph 5.4 of the [1990 OSCE Copenhagen Document](#) commits participating States to ensure “a clear separation between the State and political parties; in particular, political parties will not be merged with the State”.

⁷⁸ In Kherson *oblast*, billboards of the Bloc of Volodymyr Saldo, OR, OPFL, Radical Party, and We Live Here were vandalized. In Mariupol, OPFL and Boychenko’s Bloc billboards were vandalized with paint. In Kyiv *oblast*, campaign materials of SP were damaged. In Kyiv city, campaign tents and posters of Fatherland and OR were damaged. In Dnipro city, campaign materials of OPFL and Shariy Party were damaged by the National Corps party. In Sumy, Vinnytsia and Zhytomyr cities, posters of OPFL were vandalized. In Vinnytsia city, posters of the Voice party were stolen. In Khmelnytsky city, two billboards of For Real Deeds were painted over.

⁷⁹ For instance, in Dnipro, Kharkiv, Kryvyi Rih, and Odesa cities several candidates had difficulties purchasing billboard space due to advertising agencies allegedly being under the control of the local city administrations. In Petropavlivska-Borshchahivka (Kyiv *oblast*), several candidates were blocked from placing billboards by the city administration.

⁸⁰ For instance, fake ads targeting SP candidates appeared in Kryvyi Rih. In Zhytomyr city, posters against SP appeared a few days prior to election day. In Rivne city, negative material appeared in newspapers and on television, targeting mayoral candidates. In Kropyvnytskyi city, leaflets were distributed with harsh content against OPFL and SP candidates. In Kramatorsk (Donetsk *oblast*), the presence of negative campaigning was also noted. In Chervonohrad (Lviv *oblast*), three billboards against the incumbent mayor were observed. In Kharkiv *oblast*, a negative poster targeted the Svitlychna Bloc. In Lutsk (Volyn *oblast*), negative campaigning was featured on TV channel 12.

⁸¹ In Khmelnytsky city, FF candidates distributed food bags with campaign leaflets. In Odesa city, representatives of Fatherland donated medical equipment to a regional laboratory. In Dergachi (Donetsk *oblast*), an SP mayoral candidate organized free-of-charge COVID tests for voters. In Kreminna (Luhansk *oblast*), police detained a storage with food packages prepared by a mayoral candidate for distribution to voters. In Poltava city, the mayoral candidate from FF distributed stationary sets in party-branded bags. In Odesa, police detained a PEC chairman for organized vote-buying and confiscated USD 45,000. In Bahmut (Donetsk *oblast*), one political party proposed UAH 300 (around EUR 9) per vote; the case is under police investigation. In Konstantinovka (Donetsk *oblast*), an independent candidate paid dental costs for elderly people. In Mykolaiv city, OR distributed free medicine; police started an investigation. In Chernivtsi *oblast*, a candidate for village council organized vote-buying for UAH 16,000.

As previously recommended, the applicable legislation should be further strengthened to provide for effective, proportionate and dissuasive sanctions for campaign violations, including circumvention of campaign-finance regulations, misuse of administrative resources, and vote-buying. Coherent efforts should be made by law enforcement agencies to promptly investigate such cases and hold perpetrators accountable.

In the course of the first round, many contestants made extensive use of social media and online advertising to reach out to the electorate, by targeting a regional audience through Facebook, YouTube, and Instagram.⁸² Candidate platforms mainly aligned with party lines but also reflected issues related to the constituencies the candidates were running in. Candidates' campaign messages mainly focused on measures related to combatting the COVID-19 pandemic, the fight against corruption, the economy, social assistance, security, and local development, including issues of infrastructure, city management, and regional projects.

Several women candidates featured prominently in the campaign by leading their party lists or contesting mayoral races. However, ODIHR LEOM interlocutors described prevalent patriarchal attitudes and discriminatory stereotypes against female candidates and elected officials.⁸³ Monitored national and regional channels allocated disproportionately less airtime in their primetime news programmes to women candidates relative to the percentage of those registered.⁸⁴ Women's rights organizations described numerous instances of sexist rhetoric during the campaign.

Candidates representing minority communities, including Roma, were nominated by national parties as well as by local parties in areas where minorities are concentrated.⁸⁵ Political parties representing national minorities which live compactly in small communities raised concerns about the recent enlargement of *rayons*, as the new territorial-administrative boundaries may challenge their ability to win seats in councils.⁸⁶ At the same time, the formation of *hromadas* allowed some minority groups to be better represented at this level in the areas of their compact settlement.⁸⁷ While the production and dissemination of campaign materials in minority languages is allowed, the language law does not provide for the production of official voter education materials and electoral materials, including ballots, in languages other than Ukrainian.⁸⁸ While the Election Code entitles only political parties to nominate

⁸² For example, the official party pages of OPFL, ES, Fatherland, Sharia, FF, SP, Freedom and UDAR were highly active on Facebook. In addition, many candidates were active on the platform through their personal profiles and regional party pages. Paid online advertising by many contestants was highly visible, including by ES, FF, OR, Proposition, Sharia, SP, and UDAR, targeting wide audiences, including in Dnipropetrovsk, Kyiv, Lviv, Odesa and Poltava *oblasts*.

⁸³ Paragraph 26 of the [2017 UN Committee on the Elimination of Discrimination Against Women \(CEDAW\) Concluding observations on the eight periodic report](#) raised concern about “the persistence in political discourse, in the media and in society of deep-rooted patriarchal attitudes and discriminatory stereotypes [...] which perpetuate women’s subordination within the family and society and are reflected in, among other things, women’s educational and professional choices, their limited participation in political and public life...”. See also Paragraph 27.

⁸⁴ With the exception of private television *Priamyi*, owned by former President Petro Poroshenko, which allocated 55 per cent of its total coverage of candidates to Maryna Poroshenko.

⁸⁵ For instance, 45 candidates representing the Crimean Tatar minority ran on the ticket of 10 different parties, while 10 candidates representing the Roma community ran on the ticket of 8 parties.

⁸⁶ Such concerns were raised by the Hungarian Party of Ukraine in Zakarpattia *oblast*, and by representatives of the Romanian community in Chernivtsi *oblast*.

⁸⁷ For example, ODIHR LEOM interlocutors noted the ethnic-Hungarian majority population in some territorial communities in Zakarpattia *oblast*, and an ethnic-Romanian majority in some territorial communities in Chernivtsi *oblast*.

⁸⁸ Article 18, part 2 and 3 of the [Law on Ensuring the Functioning of the Ukrainian Language as a State Language](#).

candidates for the majority of council elections, the Law on Political Parties does not provide for the formation of regional parties by imposing excessive registration requirements.⁸⁹

Consideration should be given to amending the language law to allow national minorities to receive official voter education and electoral materials in their respective languages.

To ensure access to the ballot, including the participation of national minorities at all levels of local elections, the law on political parties should be amended to allow the formation of regional political parties.

In October, the Hungarian Secretary of State Árpád János Potápi visited Zakarpattia *oblast* and campaigned in support of the Hungarian minority party; the visit was criticized by the Ministry of Foreign Affairs of Ukraine and civil society organizations as contrary to the Election Code.⁹⁰ On election day, Hungarian Foreign Minister Péter Szijjártó in a post on his Facebook profile called on the Hungarian minority in Zakarpattia *oblast* to vote for Hungarian Cultural Federation in Transcarpathia candidates in the *oblast* council elections and voiced support for the ethnic Hungarian incumbent mayor of Berehove, prompting an official protest by the Ukrainian government.⁹¹

IX. CAMPAIGN FINANCE

Campaign finance is regulated by the newly adopted Election Code, the Law on Political Parties, and the Law on the Prevention of Corruption, and supplemented by the Code on Administrative Offenses, the Criminal Code, and CEC regulations. Despite an enhanced political finance regulatory framework providing for disaggregated reporting and online publication requirements, several shortcomings persist that allow for circumvention of these regulations and do not ensure accurate reporting, timely disclosure, meaningful oversight, or accountability for irregularities. Notably, the period before candidates' registration is inadequately regulated.

All campaign transactions should be made by bank transfer, through dedicated bank accounts to be opened for the electoral funds once a contestant is registered.⁹² Political parties and candidates cited procedural obstacles by banks that delayed the opening of accounts, leaving earlier campaign incomes and expenditures unreported or preventing them from promptly launching their campaign.⁹³ The law provides for donations to be deposited in person rather than be wire-transferred into the electoral funds, and interlocutors cited this as a cumbersome procedure for donations.⁹⁴ Banks are required to inform TECs on the opening of electoral fund accounts; according to several TECs, this was not done in a timely or consistent manner, which deterred oversight.

⁸⁹ Article 10 of the [Law on Political Parties](#) requires 10,000 signatures representing two thirds of Ukraine's regions. Paragraph 80 of the 2011 ODIHR and Venice Commission Joint Guidelines on Political Party Regulation states that "[p]rovisions regarding the limitation of political parties that represent a geographic area should generally be removed from relevant legislation", as "[s]uch Such provisions may also have discriminatory effects against small parties and parties representing national minorities".

⁹⁰ See the [20 October statement of the Ministry of Foreign Affairs](#). The Election Code prohibits the involvement of foreign state officials in the election campaign.

⁹¹ See [Szijjártó's Facebook post](#).

⁹² Pursuant to Article 213 of the Election Code, contestants are entitled to establish an electoral fund to finance their campaign. In case their campaign does not entail expenses, contestants submit a statement to the respective TEC.

⁹³ Although the Election Code requires bank accounts to be available to contestants on a regular basis, and allows banks to charge fees for such services, banking institutions applied different procedures for the opening of the accounts. The CEC addressed a letter to the National Bank of Ukraine on 5 October on this issue.

⁹⁴ Articles 8 and 215.4 of the Election Code. By contrast, donations to political parties can be made by wire transfer.

Donations from individuals are limited to ten minimum monthly salaries, while donations from anonymous sources, foreign donors or legal entities are prohibited. There is no limit on the use of the nominating party's or candidate's own funds; various ODIHR LEOM interlocutors pointed out that this allows for donation schemes and circumvention of the bans and limits on donations which, while not expressly prohibited by law, does not provide transparency.⁹⁵ Although campaigning by charitable organizations is technically prohibited by law, ODIHR LEOM interlocutors pointed to the use for campaign purposes of charity funds and NGOs affiliated with candidates.⁹⁶ Campaign finance regulations are not applicable to third parties, leaving such expenditures unregulated and unreported.⁹⁷ In addition, the absence of campaign expenditure ceilings provides no safeguards against excessive spending and is at odds with international good practice. The ODIHR LEOM observed significant disparity in the expenditures of contestants. ODIHR and the Council of Europe's Venice Commission have previously recommended the consideration of spending limits in Ukrainian elections.⁹⁸

To contribute to a more level playing field, measures could be adopted to prevent excessive campaign funding; such measures could include introducing expenditure ceilings and limits to the use of funds originating from parties and candidates.

According to many ODIHR LEOM interlocutors and civil society organizations, some contestants started campaigning before their registration and the start of the official campaign period, spending significant sums on outdoor advertising and social networks.⁹⁹ The alleged widespread use of undeclared funds for political advertisement prior to candidates' registration and the lack of regulation over such advertising by prospective candidates, along with the postponement of submission of political parties' quarterly financial reports due to the COVID-19 pandemic, raised concerns about unreported incomes and expenditures and further reduced transparency.¹⁰⁰ The law prescribes for printed campaign materials to include imprints with information on the issuer, printer and circulation figures; however, many campaign materials were lacking such information, which prevented traceability of these expenditures.¹⁰¹

⁹⁵ The annual donation limit to political parties is UAH 2,000,000 (roughly EUR 60,000) for individuals. Unlike in the case of electoral funds, legal entities may donate to political parties up to UAH 4,000,000 (roughly EUR 120,000).

⁹⁶ ODIHR LEOM interlocutors reported such cases from Khmelnytsky *oblast*, Rivne *oblast*, and the city of Lutsk (Volyn *oblast*).

⁹⁷ Article 6 of [Recommendation Rec\(2003\)4 of the Committee of Ministers of the Council of Europe "On common rules against corruption in the funding of political parties and electoral campaigns"](#) states that "rules concerning donations to political parties should also apply, as appropriate, to all entities which are related directly or indirectly to a political party or are otherwise under the control of a political party".

⁹⁸ See paragraphs 195 and 196 of the [2010 ODIHR and Venice Commission Guidelines on Political Party Regulation](#). See also Article 9 of the [2003 Council of Europe Recommendation Rec \(2003\)4 of the Committee of Ministers on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns](#).

⁹⁹ See Citizen Network OPORA's "[Features of political advertising in Facebook for the local elections in 2020](#)" (5 September–20 October).

¹⁰⁰ The deadline for submission of political parties' regular quarterly financial reports has been postponed until the fortieth day after the end of adapted quarantine due to COVID-19. Until election day, all parliamentary parties (except SP) submitted financial reports for the first quarter of 2020, and only one (Voice) did so for the second quarter.

¹⁰¹ Article 53 of the Election Code provides that printed campaign material must bear information about the identities of the issuer and printer, and circulation data. However, political advertising outside of the official campaign period is not regulated and does not need to include any identifying information. The ODIHR LEOM observed such cases during the campaign period in Dnipro city (Dnipropetrovsk *oblast*), Kherson city (Kherson *oblast*), Kramatorsk (Donetsk *oblast*), Khmelnytsky city (Khmelnytsky *oblast*), and Lviv *oblast*. From 1 October until mid-November, the National Police of Ukraine received over 400 reports of such irregularities (under Article 212.13 of the Code of Administrative Offenses).

The law should be amended to ensure that all campaign-related incomes and expenditures, including those incurred by associations affiliated with contestants, are included in the financial reports of the electoral funds, even if incurred before the official campaign period.

The Election Code establishes campaign finance reporting obligations and provides for publication of interim and final campaign finance reports.¹⁰² As prescribed by the law, the CEC in consultation with the National Agency for Prevention of Corruption (NAPC) developed a reporting template for contestants.¹⁰³ In a positive development, the CEC approved for this template a separate classification code for expenditure on political campaigning on the Internet. The respective TECs were responsible for receiving, analyzing, and publishing contestants' campaign finance reports. The awareness and preparedness to perform this duty varied significantly among TECs contacted by the ODIHR LEOM, and TECs generally did not possess the necessary capacity or expertise.¹⁰⁴ Several TECs did not publish interim campaign finance reports within the legally prescribed timeframe, and several political parties' local organizations also failed to do so, further reducing transparency.¹⁰⁵ ODIHR LEOM interlocutors and several candidates reported that candidates' campaigns were mostly financed from candidates' or political party's own resources.

Given the workload of the TECs on election preparations and tabulation, the analysis of the interim financial reports in most cases appeared to be a formality, which, coupled with the absence of centralized review, did not provide for meaningful oversight. TECs were neither able nor required to detect unreported incomes and expenditures.¹⁰⁶ Few violations in contestants' reports were identified by TECs and reported to law enforcement bodies.¹⁰⁷ Due to limited capacity and resources, including a lack of regional offices, the NAPC despite broader legal authority limited its scope of oversight activities, such as by coordinating with the CEC on the financial report template and providing clarifications on possible conflicts of interest of officials who were also candidates.¹⁰⁸ The NAPC is competent to draft administrative protocols in case of violations reported by TECs upon analysis of campaign finance reports, but until mid-November it had received few such reports.¹⁰⁹ Due to the large number of candidates and the high volume of campaign finance reports the agency could only monitor

¹⁰² Interim and final reports are submitted five days prior to and seven days after election day, respectively.

¹⁰³ Annexes [CEC Resolution No.324](#) of 1 October as amended by [CEC Resolution No.442](#) of 3 November.

¹⁰⁴ Several TECs contacted by the ODIHR LEOM were not prepared to perform this duty, while others had designated staff for this task.

¹⁰⁵ The ODIHR LEOM is aware of at least 30 TECs at the *rayon* level and 40 TECs at the city level that did not publish interim reports, while out of 66 TECs contacted on *oblast*, *rayon* and city levels, 54 published final reports on time. Paragraph 194 of the [Guidelines on Political Party Regulation](#) states that “[t]ransparency in party and campaign finance, as noted above, is important to protect the rights of voters and to prevent corruption. Transparency is also important because the public has the right to be informed. Voters must have relevant information as to the financial support given to political parties in order to hold parties accountable”; see also paragraph 200.

¹⁰⁶ TECs and banking institutions perform only selective control over receipt, accounting and use of resources of an electoral fund.

¹⁰⁷ Violations of Articles 212.15 and 212.21 of the Code of Administrative Offences are reported to the NAPC while violations involving criminal liability are reported to the National Police.

¹⁰⁸ Pursuant to Article 226 of the Election Code, Article 45 of the Law on Prevention of Corruption, and an NAPC statement of 26 August, the NAPC is also responsible for verifying declarations of elected candidates within the special checks performed before appointment. The person elected to the relevant position shall submit such a declaration within 15 days from the date of taking the position, unless a declaration for the previous year has already been submitted.

¹⁰⁹ Unlike for parliamentary elections, in local elections the Election Code does not provide for a timeframe for the analysis of reports by TECs. Until mid-November, the NAPC had received ten notifications from TECs regarding violations under Article 212.21 of the Code of Administrative Offenses, on late submission or non-submission of financial reports. Seven out of the ten were returned to the respective TECs for clarifications and provision of additional evidence. Failure to submit an interim and/or final financial report on the receipt and use of election funds entails a fine ranging from UAH 5,100 to UAH 6,800 (roughly EUR 152 to EUR 203).

the timely submission and accuracy of the information provided in reports through the respective TECs, further limiting oversight.

To improve transparency, enhance oversight and strengthen the accountability of campaign financing, an independent oversight authority with regional representation should be mandated to monitor compliance with campaign finance regulations and should be sufficiently empowered and resourced to fulfill this task.

Although the NAPC's competences for these elections were not affected by a much-contested Constitutional Court decision of 27 October (see *Post-election Developments*), it significantly complicated the process of verifying information in the regular financial reports of political parties as it deprived the NAPC of powers to address inquiries to legal entities and individuals on political parties' income and expenditures and blocked open access to the Unified State Register of e-Declarations.¹¹⁰ Following an order of the Cabinet of Ministers to reinstate the full scale of activities of anti-corruption bodies, access to the e-register was temporarily restored on 29 October. Soon after the Court's decision, a draft law including an anti-corruption strategy was approved in the first reading by a vast majority in the parliament, seemingly to partly restore public trust in the anti-corruption system.¹¹¹

X. MEDIA

A. MEDIA ENVIRONMENT

The media landscape is diverse but characterized by a high concentration of politically vested ownership at both national and regional levels.¹¹² Social networks are the predominant source of news for citizens, followed closely by television and news websites, while regional media have a smaller audience than in previous years.¹¹³ As a result, national and especially regional TV channels have become more economically dependent on their owners, who often use the media outlets they own to promote their political interests. The regional and local media landscape is particularly polarized.

The Ukrainian Public Broadcasting Company (*UA:PBC*) includes *UA:Pershyi*, *Kultura*, 24 TV regional channels and four radio channels. The *UA:PBC* Coordination Center for Broadcasting of National Minorities has been operating since November 2019 to ensure the information rights of national minority communities on all platforms of *UA:PBC*. While most ODIHR LEOM interlocutors praised the political impartiality of the public broadcaster, it continues to be underfunded, which undermined its ability to perform its public-service role effectively.¹¹⁴

¹¹⁰ The adoption of the new Law on Prevention of Corruption created the obligation for officials and politicians to submit e-declarations to the NAPC and provided the conditions for the agency to post them on a single web portal. The CCU decision amongst other declared unconstitutional several provisions of the Law on Prevention of Corruption and abolished liability introduced by Article 366 of the Criminal Code, for submitting knowingly false information. Since May 2020, the NAPC has established 97 such cases which, if not yet ruled on by the date of the CCU decision, shall be closed.

¹¹¹ On 5 November, 320 MPs voted in favor of [Draft law No. 4135 "On the Principles of State Anti-Corruption Policy for 2020-2024"](#) at the first reading, while the deputies supported completion of the process within a short timeframe.

¹¹² The ownership of several media outlets in the largest regional cities changed shortly before the start of the election campaign.

¹¹³ See the [2020 USAID – Internews Media Consumption Survey](#).

¹¹⁴ See the [2019 Council of Europe Expert Report](#) on the System of *UA:PBC* Financing and OSCE Representative on Freedom of the Media (RFoM) [statement from 31 March 2020](#) calling on the government to not cut the budget for the public broadcaster. Although the draft budget for 2021 provides for full funding of the public broadcaster, many ODIHR LEOM interlocutors doubted that the budget will be passed unchanged and believe that the *UA:PBC* budget will most probably be severely reduced again.

As previously recommended, parliament should provide the public broadcaster with the legally prescribed funding and thus grant it financial viability. Special attention should be paid to the financial sustainability and legal status of the regional branches of the public broadcaster.

Although journalists have some specific legal protections, there have been instances of violence against journalists in recent years, and impunity remains an issue in practice.¹¹⁵ On 17 September, the General Prosecutor's Office established an inter-agency working group to coordinate investigation of criminal offences committed against journalists. However, several ODIHR LEOM interlocutors expressed the opinion that to be more productive and effective such bodies should also include media representatives and journalists. In a positive development, on 4 November the *Verkhovna Rada* adopted amendments to the Criminal Code which enhanced the liability for criminal offences against journalists. Several other amendments to the Administrative and Criminal Codes which would expand journalists' guarantees to carry out their professional activities, ensure their right to access public information, and reinforce protections on freedom of speech, were under review in the parliament starting from October.

As previously recommended, the competent authorities should take all necessary measures to ensure the safety of journalists and promptly and efficiently deal with cases of impunity of criminal and administrative offences against journalists, especially those who investigate and report on corruption and other sensitive matters. All infringements on the freedom of the media should be duly investigated and addressed, and the law should be applied in a consistent and effective manner.

B. LEGAL FRAMEWORK FOR THE MEDIA

The Constitution guarantees the freedom of expression and prohibits censorship, with specific laws providing for general media freedom, as well as conditions for equitable and unbiased coverage of electoral contestants. The conduct of the media during an election campaign is regulated by the Election Code, which requires both state and private media to offer unbiased and balanced coverage of electoral contestants but does not contain quantitative airtime requirements for coverage of contestants or for paid political advertisement. The new Election Code abolished previous provisions on free airtime for all elections and requires all political advertising to be paid from contestants' electoral funds.¹¹⁶ Paid advertising published in broadcast, but not print, media must be clearly marked with the identity of the sponsoring party or candidate. The ODIHR LEOM observed that this requirement was frequently ignored, especially in regional media. Several ODIHR LEOM interlocutors noted that the extensive use of online advertisement by political parties and candidates circumvented campaign finance requirements, as online political advertisement is not yet regulated. The Election Code requires media outlets to publish price lists for political advertising in advance of the campaign period, but not all broadcasters did so. Several interlocutors complained to the ODIHR LEOM that media outlets establish prices for airtime on an arbitrary and unclear basis, and that paid airtime was generally overpriced, negatively affecting the ability of some candidates to address the voters through the media.¹¹⁷

¹¹⁵ On 11 June 2019, the [RFoM condemned the attack](#) on cameraman Vadim Makaryuk in Kharkiv. On 20 June 2019, the OSCE [RFoM issued a statement condemning](#) the fatal attack of the journalist and vlogger Vadim Komarov in Cherkasy and called on the Ukrainian authorities to investigate the incident.

¹¹⁶ Article 55.5 of the Election Code also provides that upon the written inquiry of the CEC, a TEC, or the NTRBC, media outlets shall inform them on the allocation of airtime for election campaigning and, if required, provide copies of the respective contracts, payment documents and audio or video recordings of such programmes.

¹¹⁷ Paragraph 8.8 of [PACE Resolution 2254\(2019\)](#) recommends authorities to ensure that "where political parties and candidates have the right to purchase advertising space for election purposes, equal treatment in terms of conditions and rates charged".

The electoral and media legislation should specifically provide for financial reporting on political advertisement in social networks and online media. To this end, political campaign should be defined by law as to also include campaigning in social networks.

The National Television and Radio Broadcasting Council (NTRBC) is the regulatory body for broadcast media which is tasked to oversee broadcasters' compliance with the legal framework, including during an election period, and has the power to impose fines in case of breaches of the law.¹¹⁸ The new Election Code failed to expand the enforcement tools of the NTRBC and provide the regulator with effective sanctioning powers to perform its mandate in a timely manner during an election period, despite previous ODIHR recommendations. During the official election campaign, the NTRBC registered a number of violations by national and regional media outlets, and issued 32 unscheduled inspections and filed 48 administrative protocols to courts, against national and regional outlets during the election period.¹¹⁹

The government initiated a new Law on Media in November 2019 with the stated aim to ensure the freedoms of expression and thought, the right to impart information, the protection of national interests and of media users' rights, the stimulation of a competitive media environment, and media independence.¹²⁰ However, the draft law was criticized by media experts and practitioners for allowing for the possibility by NTRBC to excessively implement its powers, given the political dependence of the council's members on those who appointed them. An amended version of the media law, from July 2020, remains under revision by various parliamentary committees.¹²¹

The sanctioning tools of the NTRBC for violations of media-related provisions during election campaigns should be further expanded and reinforced by the law. The NTRBC should react to violations in a timely manner to ensure that broadcast media comply with existing legislation. The mechanism for appointment to the NTRBC should include additional professional criteria, such as a competition or assessment, to support its political independence.

¹¹⁸ The NTRBC consists of eight members appointed for five-year terms, renewable once; parliament and the president appoint four members each. Paragraph 8.11 of [PACE Resolution 2254\(2019\)](#) recommends states "to enhance the operational capacities of media regulators which must be independent of the political and economic powers," including by ensuring "that the composition of these bodies is politically neutral and based on media expertise and competence".

¹¹⁹ For example, national media *Espresso*, *Inter*, *NewsOne* and *ZIK*, as well as regional media *Simon*, *V*, *TTV*, *Chernivetskyi Promen*, *TRK TVA*, *TK Kyiv*, *VTV Plus*, *Z Radio 106.1 FM*, *Z* and *Misto TB*. *Espresso*, *Simon*, *TRK TVA*, *TK Kyiv*, *V* and *ZIK* did not comply with the requirements for presentation of sociological surveys; *Inter*, *Z* and *ZIK* were allegedly campaigning in a hidden form for OPFL; a *NewsOne* TV presenter was allegedly campaigning during his programme; *TTV* allegedly portrayed a candidate in a negative light; *Chernivetskyi Promen*, *TRK TVA* and *Misto TB* allegedly demonstrated imbalance in their media coverage by devoting several programmes to one mayoral candidate. *Z Radio 106.1 FM* was allegedly agitating for a mayoral candidate in Zhytomyr. *VTV Plus* allegedly broadcast political advertisement for FF, Civic Movement – People's Control and Volodymyr Saldo's Bloc without properly separating it from the rest of its programme. On 12 November, *Inter*, *ZIK*, *VTV Plus* and *Z Radio 106.1 FM* received administrative protocols submitted to courts. In addition, national channels *Z ZIK*, *112 Ukraina*, *NewsOne*, and *NASH*, as well as regional *V* (Sumy), *Z* (Zaporizhzhia), and *Ternopil 1* allegedly broadcast political campaign materials in a hidden form (so-called 'jeansa') and also aired campaign materials on election day. On 13 November, *Z ZIK*, *112 Ukraina* and *Inter* allegedly campaigned in a hidden form for OPFL.

¹²⁰ See the [March 2020 review of the previous version of the draft law](#) by the OSCE Representative on Freedom of the Media (RFoM) and the [OSCE RFoM statement of 2 March 2020](#).

¹²¹ See the [draft law from July 2020](#) (in Ukrainian).

C. ODIHR LEOM MEDIA MONITORING

[Click Here to Read Media Monitoring Results](#)



ODIHR LEOM media monitoring prior to the first round of elections showed that of the ten monitored national and regional channels,¹²² only public *UA:Persnyi* provided mostly neutral and equal coverage of political contestants.¹²³ The remaining national private and regional channels allocated a substantial amount of positive coverage to political forces associated or directly affiliated with the channels' owners. Thus, apart from the president, government, and local government, in their primetime political coverage: *I+I* predominantly featured positive coverage of FF, which is affiliated with Ihor Kolomoiskyi (17 per cent of news programmes, whereas coverage of other parties ranged from 1 to 7 per cent); *NewsOne* – OPFL affiliated with Viktor Medvedchuk (49 per cent in predominantly positive tone); *Ukraina 24* allocated 12 per cent in a mostly neutral tone to SP and 11 per cent, mostly positive in tone, to the Radical Party, which is supported by Rinat Akhmetov, and only between 1 and 4 per cent to other parties; *Priamyi* allocated most of its airtime to ES, which is led by former President Petro Poroshenko (57 per cent in predominantly positive tone).

The primetime political news of monitored regional channels also featured imbalanced coverage of parties: *Dnipro 34* allocated 51 per cent to SP and 20 per cent to Proposition, most of which was positive or neutral in tone, while coverage of other parties ranged from 2 to 8 per cent; *Simon* (Kharkiv) covered predominantly OPFL (16 per cent with mostly positive tone), while SP received 14 per cent of political coverage which was mostly neutral or negative in tone; *NTA* (Lviv) allocated more time that was positive in tone to ES and the Freedom party (25 and 10 per cent, respectively) than to other parties, and its 12 per cent of coverage of the Self-Reliance party of incumbent Mayor Andriy Sadovyi was mostly negative. *Reporter* (Odesa) allocated 81 per cent, in a predominantly positive tone, to the Ukrainian Maritime Party of mayoral candidate Serhii Kivalov (combined coverage of all other contestants totaled only 16 per cent), and *Uzhhorod 21* devoted a plurality of its political news coverage (37 per cent in a predominantly positive tone) to FF, while coverage of other parties ranged from 1 to 9 per cent. After the first round, *Antena TV* (Cherkasy) devoted 69 per cent of its relevant coverage to FF, mostly positive in tone, while coverage of other parties ranged from 1 to 10 per cent. *Rivne-1* allocated 16 per cent to FF, in a mostly positive tone, and 17 per cent, in a mostly negative tone, to ES.

Regional channels also lacked balance in the amount and tone of coverage of mayoral candidates in the respective cities. Specifically, in their coverage of mayoral contestants during primetime news programmes, *Simon* allocated 34 per cent, mostly neutral in tone, to incumbent Mayor Hennadiy Kernes and 15 per cent, in a predominately positive tone, to candidate Oleh Abramychev; *NTA* allocated 65 per cent to candidate Oleh Syniutka, mostly positive in tone, and only 14 per cent to incumbent Mayor Sadovyi, which was mostly negative; *Dnipro 34* allocated 70 per cent to candidate Serhii Ryzhenko and 17 per cent to mayor Borys Filatov, in both cases mostly positive in tone; *Reporter* allocated 91 per cent to candidate Serhii Kivalov, which was mostly positive; *Uzhhorod 21* allocated 96 per cent, in a predominantly positive tone, to a single mayoral candidate, incumbent mayor Bohdan Andriyiv.

¹²² The ODIHR LEOM followed primetime news coverage (17:00 to midnight) on public TV channel *UA:Persnyi* and four private channels *I+I*, *NewsOne*, *Ukraina 24* and *Priamyi* at the national level, and regional TV channels *Dnipro 34*, *Simon* (Kharkiv), *NTA* (Lviv), *Reporter* (Odesa) and *Uzhhorod 21*. In addition, political talk shows broadcast during primetime were assessed on a qualitative basis. After the first-round election day, *Simon* (Kharkiv) was substituted with *Rivne-1* and *Antena TV* (Cherkasy). The ODIHR LEOM also followed relevant content in online media and social networks.

¹²³ Namely, candidates running for mayor in the main regional centers received between 2 and 11 per cent of coverage, in a predominately neutral tone for every candidate, whereas various political parties participating in the elections received from 1 to 6 per cent of coverage, mostly neutral in tone, with the exception of the ruling SP, which obtained 24 per cent in mostly neutral and negative tone.

Contrary to the Election Code, a large number of unmarked promotional materials (known as ‘jeansa’), intended to resemble unsponsored news programming, was present during prime time on the majority of monitored regional and national private TV channels. This practice distorted the presentation of political platforms to voters. ODIHR LEOM interlocutors noted that it is common practice for media to publish political content in exchange for payment and in many cases represents the only opportunity for regional media to earn income.

XI. COMPLAINTS AND APPEALS

While dispute resolution mechanisms are in place, the current system lacks efficient safeguards against conflicts of interests, political influence and corruption. Its effectiveness was further undermined by an overall lack of transparency and inconsistent implementation of the law.¹²⁴ Lack of timely progress in the investigation of election-related offences decreased trust in the performance of law enforcement.

Depending on the nature of the alleged violation, standing to file complaints is granted to candidates, parties, accredited observers and voters, but is subject to further limitations. At odds with international good practice, voters may only file complaints related to their personal voting rights.¹²⁵ Observers’ rights to complain to courts are limited to certain categories of disputes.¹²⁶

The competence of TECs to resolve complaints is based on the hierarchical principle. The CEC reviews complaints solely against inactions of lower-level election commissions. Although the Election Code determines matters within exclusive judicial jurisdiction, including actions and decisions of the CEC and TECs,¹²⁷ the concurrent jurisdiction of courts and election commissions for all other complaints allows applicants’ discretion, contrary to international good practice and a long-standing ODIHR recommendation.¹²⁸

Consideration should be given to extending the rights of voters in contesting electoral irregularities, including the possibility to challenge election results. To simplify and ensure a coherent dispute resolution process, concurrent jurisdiction should be eliminated.

Overall, TECs did not ensure effective legal remedy, due to insufficient training, ongoing replacement of members, politicized decision-making, and failure to abide by judicial decisions. The CEC’s dispute-

¹²⁴ Paragraph 5.10 of the [1990 OSCE Copenhagen Document](#) provides that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”. See also Article 2.1 of the [ICCPR](#), Section II.3.3 of the [2002 Code of Good Practice](#), and paragraph 18.2 of the [1991 OSCE Moscow Document](#).

¹²⁵ Paragraph 99 of the Explanatory Report of the [2002 Code of Good Practice](#) recommends that “[s]tanding in such appeals must be granted as widely as possible. It must be open to every elector in the constituency and to every candidate standing for election there to lodge an appeal. A reasonable quorum may, however, be imposed for appeals by voters on the results of elections”.

¹²⁶ Under the Code of Administrative Judicial Procedures, observers in their functional capacity are only entitled to challenge actions of election commissions (Article 273).

¹²⁷ Matters within judicial jurisdiction include complaints against decisions, actions or inactions of the CEC or its members, TECs, candidates and their proxies, election-related activities or decisions of parties, public associations and their officials or proxies, of observers or NGOs, of local self-government bodies, institutions, enterprises and their officials, and of media and their owners.

¹²⁸ Election commissions shall terminate consideration of identical complaints upon notification from the court. Section II.3.3.97 of the [2002 Code of Good Practice](#) states that “the appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body”.

resolution and supervisory roles were limited in local elections.¹²⁹ Several TECs were dissolved by the CEC for failing to abide by judicial decisions or legal requirements. However, such decisions on dismissals were at times contradictory as to the scope and nature of violations leading to dissolution, and its timeframe.¹³⁰

Consideration could be given to adopting detailed procedural guidelines for complaints processed by election commissions, creating templates for such complaints, and establishing a publicly accessible complaints register.

Jurisdiction on election-related disputes belongs to local general courts (functioning as administrative courts), district administrative courts and administrative courts of appeal. The Sixth Administrative Court of Appeal examines complaints against the CEC, and the Supreme Court reviews the appeals.¹³¹ Outside the electoral process, the first-instance review of CEC decisions belongs to the District Administrative Court in Kyiv (DACK).¹³² The DACK reviewed and dismissed, for formal deficiencies, complaints against the CEC's resolutions on first-time elections in newly formed *hromadas* and on not holding local elections in some areas of Donetsk and Luhansk *oblasts*. The DACK and the Supreme Court rejected all complaints challenging the legality of the president's 'opinion poll'.

Overall, dispute resolution was characterized by a lack of consistency in judicial approaches to the interpretation and application of the law.¹³³ Furthermore, the mechanism as currently implemented proved vulnerable to politically motivated misuse, particularly regarding challenges of counting and tabulation that hampered determination of the election results.¹³⁴ The Election Code stipulates

¹²⁹ Of 433 complaints received by the CEC throughout the election process, only 37 were reviewed in sessions, and most of these were rejected as falling outside the CEC's competence. The CEC on its own initiative investigated allegations made in 106 of the dismissed complaints.

¹³⁰ For example, TECs in Dnipropetrovsk, Ivano-Frankivsk, Kyiv, Kherson, Kirovohrad, Odesa, Sumy and Zaporizhzhia *oblasts* were dismissed for failing to abide by judicial decisions and due to multiple or isolated instances of violations of the law, pertaining, *inter alia*, to candidate registration, production of election related materials, complaints resolution, and failure to establish election results. The Suvorovsky *rayon* TEC in Odesa city was requested by the CEC to comply with judicial decisions without its dissolution.

¹³¹ Besides some 40 complaints against CEC decisions, the Sixth Administrative Court of Appeal reviewed 72 decisions by district administrative courts in Chernihiv, Cherkasy and Kyiv *oblasts* and Kyiv city, 44 of which were upheld.

¹³² The DACK reviews complaints against decisions of various state agencies located in Kyiv, but the CEC unsuccessfully challenged with the Supreme Court the court's jurisdiction to review its decisions. In 2019, a number of DACK judges were accused of corruption and abuse of power, and in July 2020 new charges were brought by the National Anti-Corruption Bureau, while a public petition forwarded to the president to dismiss the court was unsuccessful. The ODIHR LEOM was informed of cases of intimidation of journalists, activists and experts who initiated the petition.

¹³³ Throughout the country, the implementation of the gender quotas in candidate lists, the management of financial deposits, and electoral district delineation lacked consistency and led to multiple allegations of discrimination by parties and candidates. For example, complaints against candidate registration rejections for payment of deposits by a central party organization were granted by district administrative courts in Kyiv and Zakarpattia, while they were rejected by the Ternopil district administrative court. Inconsistent approaches to the registration of candidate lists that did not comply with gender quotas were noted in decisions by the Cherkasy, Kherson, Khmelnytsky, Kyiv, Odesa, Rivne, Ternopil, and Zaporizhzhia administrative courts. In Karolino-Bugaz (Odesa *oblast*), the registration of some 900 voters was approved by the court of first instance but invalidated on appeal, although the appeal decision could not be implemented due to late adoption. All but one judgment of first instance on invalidation of results in Karolino-Bugaz were overturned on appeal. In Brovary (Kyiv *oblast*), repeat elections were requested by two judgments.

¹³⁴ The courts reviewed over 2,000 election-related complaints, some 1,050 of which concerned election results, their invalidation, requests of recounts and challenges of recounts conducted. Such cases were reported in numerous locations around the country, and some of them delayed the announcement of results, e.g. in Chernivtsi, Dnipropetrovsk, Donetsk, Kherson, Kyiv, Lviv and Ternopil *oblasts*. Several election commissions, including the Vasilkiv TEC (Kyiv *oblast*), Marhanets city TEC (Dnipropetrovsk *oblast*) and Kherson *oblast* TEC, were dismissed by the CEC for violations during the count. The Kherson *oblast* TEC was dismissed for failing to take over the competences of two lower-level TECs in finalizing the count.

quantitative thresholds for violations that trigger a PEC's decision to invalidate results, which appear arbitrary in the absence of correlation to their effect on the results, whereas the provisions on protocol corrections and recounts ordered by TECs lack clarity, allow an excessive degree of discretion, and lack safeguards against abuse.¹³⁵

Legal provisions governing the invalidation of election results and recounts should be reviewed, to prevent arbitrary application and to ensure integrity and legal certainty.

Strict formal admissibility requirements for complaints to courts and election commissions and the respective implementation practice further limited effective legal redress, as many complaints were left without consideration, contrary to the international good practice.¹³⁶ Complaints submitted online are not reviewed by election commissions, while the courts require encrypted electronic signatures, otherwise denying admissibility for complaints submitted electronically. Court fees remain high, although they can now be paid at any stage of proceedings.

As previously recommended, measures should be undertaken to ensure consistency in electoral dispute resolution by the courts; uniform interpretation of the law should be ensured, while overly restrictive admissibility requirements should be reviewed and revised.

Expedited deadlines for electoral disputes resolution were mostly adhered to by election commissions and courts. The three-day term for examination of pre-election day complaints may be reduced to several hours for complaints submitted close to the deadline, which is unduly short. The judiciary assessed the five-day deadline for submitting complaints to courts as excessive. Some deadlines are not aligned with the electoral process, which resulted in cases pending review after the corresponding stages of the electoral process had been finalized, which undermined effective remedy.¹³⁷

The criminal and administrative offence frameworks were improved with newly introduced categories of offences, including on the secrecy of voting and preclusion of voting rights, and increased proportionality of sanctions. Criminal sanctions were introduced for forgery of election documentation by election commission members, for bribery to induce candidature, and for vote-buying by candidates. Criminal responsibility for destruction of ballots by voters was substituted with administrative liability, while sanctions were strengthened. However, the improvements in the legal framework failed to produce a dissuasive effect, and unclear formulations obstructed qualification of offenses, hindering implementation. Due to the protracted consideration of a draft Code of Administrative Procedures, crucial aspects of administrative process remain unregulated.

¹³⁵ Article 252 of the Election Code allows a 5 per cent threshold for voting by unauthorized persons and for multiple voting, impossibility to determine the content of up to 5 per cent of ballots in case of ballot box destruction, and up to 10 per cent of 'acceptable' amount of ballot stuffing. Article 254 provides that TECs may decide on different options of introducing corrections into PEC protocols, but the law provides no clear guidance for particular choices. Recounts are allowed upon complaints, with no criteria for their assessment. The [2002 Code of Good Practice](#) states that "[t]he appeal body must have authority to annul elections where irregularities may have affected the outcome". In its judgment *Riza and Others v. Bulgaria* ([applications nos. 48555/10 and 48377/10](#)), the European Court of Human Rights reiterated that "the decision-making process on ineligibility or contestation of election results is accompanied by criteria framed to prevent arbitrary decisions. In particular, such a finding must be reached by a body which can provide a minimum of guarantees of its impartiality. Similarly, the discretion enjoyed by the body concerned must not be exorbitantly wide; it must be circumscribed, with sufficient precision, by the provisions of domestic law" (see paragraph 143).

¹³⁶ Paragraph II.3.3.b. of the [Code of Good Practice](#) states that for the efficiency of the appeal system in electoral dispute, the procedure must be devoid of formalism.

¹³⁷ For example, complaints and appeals regarding formation of electoral districts, candidate registration and design of ballots.

From the beginning of the election process to the tenth day after the first-round election day, which is the end of the reporting period established for the police by the Election Code, the police received 15,790 reports on election-related violations, based on which 1,021 criminal and 2,336 administrative cases were initiated.¹³⁸ Some 173 criminal cases concerning alleged vote-buying and bribery of candidates (out of 738 reported violations) and 105 on falsification of election materials (of 375 reported allegations) were initiated by the police, while some 180 cases concerned preclusion of voting rights, including 11 cases related to impersonation of candidates by persons attempting to run under similar or identical names.¹³⁹ Most of these cases remained under investigation after the elections, while some 20 criminal cases were forwarded to the courts.

Cases of alleged offences should be examined promptly, thoroughly and effectively by the competent authorities, and offenders should be held accountable in a timely manner. As prescribed by law, the competent law enforcement bodies should take immediate action to stop a violation.

XII. CITIZEN AND INTERNATIONAL OBSERVERS

The Election Code provides for citizen and international election observation and grants observers access to TECs and PECs as well as the right to receive copies of results protocols. The Election Code bans citizens or nominees of a country recognized by the Ukrainian parliament as an aggressor or occupying state from acting as official observers, which is at odds with paragraph 8 of the 1990 OSCE Copenhagen Document.¹⁴⁰ The CEC accredited 312 international observers nominated by nine organizations and six foreign states.¹⁴¹

Civil society organizations (CSOs) whose statute includes election observation could request permission from the CEC to deploy observers. Out of 122 applicants, the CEC registered 116 organizations, 85 with a national observation mandate and 31 with a regional one.¹⁴² These registered organizations could request the accreditation of individual observers at TECs for the respective territorial district. Among the registered CSOs were recognized organizations such as OPORA or the Committee of Voters of Ukraine whose observers were present throughout the country and who

¹³⁸ Most violations were reported in Dnipropetrovsk, Donetsk, Kyiv and Odesa *oblasts* and the city of Kyiv. Some 7,974 reported cases concerned violations of campaign rules and the production and distribution of campaign materials, while 471 were about voter register maintenance (87 were reported as subject to criminal investigations).

¹³⁹ Such cases concerned both registration of ‘clone’ candidates or the failure to register them. Fourteen individuals were [indicted](#), two of which concerned the mayoral elections in Uman city (Cherkasy *oblast*). One candidate was detained for suspected bribery of a ‘clone’ candidate. In the absence of an effective preventive measure against deliberate impersonation the use of such impersonation does not prevent registration and does not lead to deregistration.

¹⁴⁰ According to paragraph 8 of the [1990 OSCE Copenhagen Document](#) “the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other [OSCE] participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings”.

¹⁴¹ Besides the ODIHR LEOM, international observers were nominated by the European Network of Election Monitoring Organizations (ENEMO), National Democratic Institute for International Affairs (NDI), International Human Rights Community (IHRC), Committee for Open Democracy (COD), Ukrainian Congress Committee of America (UCCA), Ukrainian World Congress (UWC), Coordination Resource Center (CRC), International Foundation for Better Governance (IFBG), as well as the Czech Republic, Germany, Hungary, Kazakhstan, the Slovak Republic, and Spain.

¹⁴² The applications of six organizations were refused due to lack of election observation activities in their statutes or late submission of documents. None of them appealed the decision.

published their findings on a regular basis.¹⁴³ At the same time, at least 100 of the 116 registered

organizations appeared to be linked to political parties or candidates.¹⁴⁴ This practice can negatively impact the perception of impartiality of citizen observers and their role in the electoral process and is contrary to principles of nonpartisan citizen election observation.¹⁴⁵ Observer accreditations remained valid for the second rounds of mayoral elections, but no new observer accreditations could be requested.¹⁴⁶

Political parties and candidates should respect a clear separation of partisan and non-partisan election observation. The CEC should consider introducing a mechanism to prevent the misuse of citizen observation by political actors.

Political parties and candidates were also able to nominate proxies and observers to TECs and PECs. In the limited number of polling stations visited on election day, the ODIHR LEOM registered the presence of observers from 50 political parties and candidates. Out of these, the five political parties represented in parliament as well as UDAR and Victory of Palchevskiyi were observed to have a nationwide presence. Observers from 20 parties were present only in specific regions of the country, for example, Our Region in the south and the east, or Voice, People's Movement of Ukraine, Freedom, Ukrainian Galician Party, Strength and Honor, and Self-Reliance in the west. The remaining 23 parties and candidates focused on specific places in the country.¹⁴⁷

XIII. ELECTION DAY

In line with ODIHR's methodology for limited election observation missions, the ODIHR LEOM did not observe election-day proceedings in a systematic or comprehensive manner, but mission members visited a limited number of polling stations in the city of Kyiv and 21 of the 24 *oblasts*. In the polling stations visited by the ODIHR LEOM, the voting process was generally calm, well-organized and transparent. Prescribed voting procedures were mostly followed, and ODIHR LEOM observers reported only isolated problems. The secrecy of the vote was, at times, compromised due to ballots not being folded properly and the use of transparent ballot boxes, particularly those used for voters suspected of contact with or infection of COVID-19, which contained small numbers of ballots cast.

¹⁴³ Other CSOs that undertook different monitoring activities were Association of Influence, Chesno, Electronic Democracy, Group of Influence, Human Rights, Public Action Initiative, and Tsyfra.

¹⁴⁴ For example, the CSO "UDAR of Vitaly Klitschko" is headed by the campaign manager of the political party UDAR who was also elected to the Kyiv city council for UDAR. "Triumvirate" and "League of Voters" are both headed by a former Party of Regions MP who was also elected to the Kharkiv *oblast* council for SP. The head of "Solidary Youth" was elected to the Kyiv city council for ES. The CSOs "Young Fatherland" and "Women of the Fatherland" are the youth wing and the female wing of the political party Fatherland. The head of "Mykolaiv The United Family" was a candidate for Mykolaiv city mayor for OPFL. Representatives of the CSO "Vadim Boychenko's Bloc" stated to the ODIHR LEOM that they used the CSO to fund candidate observers to avoid campaign expenses reporting.

¹⁴⁵ Paragraph 8 of the [Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations](#) states that "No one should be allowed to be a non-partisan citizen election observer or monitor unless she or he is free from any political, economic or other conflicts of interest that would hinder that person from conducting her or his election observation and monitoring activities in a non-discriminatory, impartial, accurate and timely manner".

¹⁴⁶ The law is unclear whether new observers and proxies can be accredited specifically for the second round, and the CEC did not issue any new accreditations.

¹⁴⁷ For example, Kernes' Bloc Successful Kharkiv (Kharkiv *oblast*), Vadym Boychenko's Bloc (Mariupol city), Eduard Hurvits' Bloc (Odesa city), and Andriy Baloha's Team (Zakarpattia *oblast*).

Practical measures could be implemented in polling stations to strengthen the secrecy of the vote, such as introducing and enforcing mandatory folding of ballot papers.

Party and candidate observers were present in almost all polling stations visited, while civil-society observers were noted less frequently. People working for President Zelenskyy's 'opinion poll' had a visible presence outside the majority of polling stations visited; their presence was in most cases passive, but in some cases, they approached voters prior to voting.

Mitigating measures against COVID-19 were generally in place, and personal protective equipment (PPE) was available in most polling stations visited. However, social distancing was not always respected outside or inside voting premises, and some PPE such as face masks was often used incorrectly.

Although the Ministry of Communities and Territorial Development on 9 October approved new criteria for the accessibility of polling stations for voters with reduced mobility, the exterior structure and interior layout of many polling stations visited could not be autonomously accessed by persons with physical disabilities.¹⁴⁸ Additionally, in some polling stations the booths designed for persons with reduced mobility were allocated for use by voters suspected of having COVID-19, potentially endangering the health of the former.

Additional measures should be taken to further facilitate the autonomous access and participation of voters with disabilities. In doing so, the principles of universal design and reasonable accommodation should be followed wherever possible.

Voter turnout, as announced by the CEC on election night, was 36.88 per cent. Since the CEC's 'Vybory' system could not be deployed in lower commissions for these elections, the CEC relied on turnout data from TECs as collected by RMBs, and was unable to release turnout figures during the day.

The limited number of counts observed were generally assessed as orderly and transparent but often lengthy; procedures were generally followed, although some inconsistencies were noted, such as required steps not always being performed in the prescribed order.¹⁴⁹ There were several cases of party observers participating in the vote count.¹⁵⁰

Consideration could be given to simplifying closing, counting and reconciliation procedures. Computer-facilitated protocol preparation could be introduced, thereby reducing the number of protocols returned for minor clerical mistakes. The CEC should ensure timely publication of preliminary polling station-level election results, in line with international standards. Consideration could be given to adapting and using the CEC's 'Vybory' information-analytical system for local elections.

On election day, the police registered 5,006 election-related violations, and initiated 324 administrative and 159 criminal proceedings.¹⁵¹ Cases concerned violations of the campaign silence and the secrecy of the vote, vote-buying, violations of the rules for maintaining voter lists, and destruction of election

¹⁴⁸ The criteria provided for free parking spaces, ramps or lifting devices, and for roads leading to buildings and premises of polling stations to be equipped with means of orientation and information support.

¹⁴⁹ In some PECs in Kyiv city and Kherson *oblast*, the reconciliation of the number of voters who received ballots with the number of voters' signatures in the voter lists was lengthy.

¹⁵⁰ As observed in Kyiv city and Kherson and Odesa *oblasts*.

¹⁵¹ See [statement](#) by the Ministry of Interior.

documents. The CEC publicly announced that the reported violations did not significantly affect the results.

The performance of TECs visited during the tabulation process varied. While the process was orderly during the initial stages, overcrowding and queues developed in most observed TECs, occasionally leading to tension.¹⁵² The simultaneous arrival of several PECs and the practice of TECs receiving PEC documents consecutively contributed to delays. Some TEC premises visited during tabulation were limited in space, and in some cases the data entry room was not large enough to allow for meaningful observation.

Practical aspects of the tabulation process could be rearranged, so as to facilitate the receipt and processing of election materials on election night and allow for the simultaneous processing of several PECs, while at the same time ensuring the transparency of the process. Alternatively, the law could be changed to allow for a phased receipt of PEC protocols to avoid queues at TECs, while at the same time safeguarding protocols and related documents prior to delivery.

Some TECs displayed their results data entry at their premises in real time, using projectors and online streams.¹⁵³ Around 1,200 out of 1,642 TECs used the “TEC Electronic Cabinet” software for the calculation of election results. However, in a significant number of cases this software faced technical challenges which caused delays in the tabulation. A number of TECs reported that the system crashed repeatedly during tabulation, thereby preventing TECs from inputting results. The CEC explained to the ODIHR LEOM that it did not have enough time to develop more sophisticated software nor the possibility to test the new system on a larger scale.

Although the law requires TECs to work without interruption until the election results are established, in some cases the tabulation process was further delayed by breaks.¹⁵⁴ On a number of occasions, TECs returned protocols to PECs to correct obvious technical or arithmetic mistakes in the protocols. In line with the law, in cases where corrections could not be made without recount, TECs ordered and conducted recounts at TEC premises with the participation of the respective PEC members.

XIV. SECOND ROUNDS AND POST-ELECTION DEVELOPMENTS

A. POLITICAL AND LEGAL DEVELOPMENTS

The post-election period was marked by the adoption on 27 October of a Constitutional Court (CC) decision on the unconstitutionality of a number of provisions in the Law on the Prevention of Corruption and an article of the Criminal Code criminalizing wrongful reporting of income and assets.¹⁵⁵ The CC held that the anti-corruption mechanism, and in particular a wide scope of competencies of the NAPC, contradicted the principle of independence of the judiciary, and therefore were unconstitutional. The decision was adopted without compliance with procedural safeguards, and several judges voted on the

¹⁵² Tension was observed in some locations including in the cities of Kyiv, Lviv, Dnipro, Konotop (Sumy *oblast*), and Marhanets (Dnipropetrovsk *oblast*) The ODIHR LEOM noted a reinforced police presence outside several TECs while tabulation was ongoing inside the TEC premises.

¹⁵³ The Solomyansky *rayon* TEC of Kyiv city streamed the tabulation session on YouTube.

¹⁵⁴ Breaks during the tabulation process were observed by the ODIHR LEOM in Vinnytsia city TEC (Vinnytsia *oblast*), Zhytomyr *oblast* TEC, Lutsk city TEC (Volyn *oblast*), Berdyansk city TEC (Zaporizhzhia *oblast*) and some TECs in Chernivtsi *oblast*.

¹⁵⁵ Constitutional Court decision no. 13-p/2020.

decision amid corruption-related proceedings pending against them.¹⁵⁶ The CC decision effectively stalled the anti-corruption mechanism and resulted in the closing of the electronic assets declaration registry, and endangered the procedure of entry into office of the newly elected candidates, which involves a special check including verification of declarations carried out by the NAPC.¹⁵⁷

The decision triggered massive protests against the CC and its alleged attempt to withdraw the members of the judiciary from corruption-related oversight. In response to the crisis, the president submitted a draft law On Restoring the Public Confidence in the Constitutional Court¹⁵⁸ that foresaw the dismissal of the CC and reinstatement of the anti-corruption framework by invalidating the CC's decision.¹⁵⁹ Many stakeholders, including from among the international community, raised concerns over what they considered attempts of the CC to dismantle the anti-corruption system and called on the president and parliament to restore it.

An alternative bill no. 4303 submitted by the Speaker of Parliament proposed that, in the absence of direct constitutional prohibition, a new law with provisions identical to those terminated by the contested decision should be adopted to remain in effect until the government proposes a new draft law that would reflect the CC's requirements. Draft bill no. 4303 gained wide support within parliament at the submission stage, but its reading was stalled by the submission of some 18 alternative bills. The crisis undermined legal and political stability of the country while the results for the first round of the elections were being established, and further hampered effective guarantees of the division of powers, at odds with the national law and international democratic standards.¹⁶⁰

B. ANNOUNCEMENT OF ELECTION RESULTS

Although the majority of TECs established the results of the elections by the legal deadline of 6 November, some continued to work on establishing the results beyond the deadline. By 11 November, the results of council elections in two *oblasts*, two *rayons*, five cities, two settlements as well as the results for some mayoral elections had not yet been established. The National Security and Defense Council of Ukraine urged the CEC to promptly publish the results, citing increased social tension related to insufficient public information about the official election results. The CEC informed the ODIHR LEOM that the delays were caused partly by numerous court challenges against the election results and the recount of votes at some PECs. Moreover, the large number of PECs in *oblasts* such as Lviv (2,127 PECs), Dnipropetrovsk (1,761), Kharkiv (1,675), Khmelnytskyi (1,532) and Odesa (1,438) presented a

¹⁵⁶ The scope of the decision did not correlate to the substance of the petition submitted by 47 MPs. The Court urgently decided to opt for written procedure immediately prior to the session where the judgment was adopted.

¹⁵⁷ The Cabinet of Ministers issued an urgent temporary decision to relaunch several disabled systems, including on publication of assets declaration. The State Investigatory Bureau announced initiation of criminal persecution of the President of the Constitutional Court, including for suspected treason and corruption. Several political parties accused the members of the Court of criminal offences.

¹⁵⁸ The Venice Commission and GRECO [criticized the bill in a letter](#) of 31 October 2020, as did the International Commission of Jurists [on its website](#).

¹⁵⁹ The Constitution recognizes the Constitutional Court's decisions as final and binding, and establishes wide guarantees of judicial independence, including on functional basis. In line with the Constitution, the dismissal of the Constitutional Court judges is decided by the 2/3 majority of its constitutional composition (Article 149¹). However, Article 375 of the Criminal Code retains sanctions for unlawful judgments and decisions, although there are several draft laws that would abolish this provision. In his public statements, the president promised to dismiss parliament in case the bill is not supported.

¹⁶⁰ See *inter alia* paragraph 19 of the [1990 OSCE Copenhagen Document](#), the [UN Basic Principles on the Independence of the Judiciary](#), the Council of Europe CCEJ [Opinion no. 1 on Independence of Judges](#), the Venice Commission [Systematic Overview of European Standards on the Independence of the Judiciary](#), the [CCPR General Comment No. 13](#): Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law.

challenge for some TECs in terms of timely delivery and processing of results protocols.¹⁶¹ Additionally, PECs were required to deliver the result protocols to multiple TECs at various levels.

In response to delays in establishing results, the CEC terminated the powers of and re-established the Kherson *oblast* TEC, Vasytkiv city TEC (Kyiv *oblast*), and Marhanets city TEC (Dnipropetrovsk *oblast*). It also replaced some members of the Chernivtsi city TEC for failure to establish the results of the elections in particular communities and dispatched members of its secretariat to assist the TEC.¹⁶² The CEC noted that the Marhanets City TEC committed systematic violations of the law during the receipt and review of PEC documents and the recount of votes from individual PECs. The CEC appealed to the National Police to verify the commission's findings and, if necessary, take measures in accordance with the law. Following a Supreme Court decision, the CEC obliged the Karolino-Bugaz TEC to schedule new council and mayoral elections.

The 25 October elections resulted in the election of 1,393 mayors of cities, settlements and villages of whom 234 are women (16.8 per cent), and of 42,505 members of *oblast*, *rayon*, city, city *rayon*, settlement and village councils.¹⁶³ Of the elected councilors, the ruling SP holds 15.05 per cent, Fatherland – 10.63 per cent, OPFL – 9.91 per cent, FF – 9.58 per cent, ES – 9.27 per cent, OR – 4.48, per cent, Freedom – 2.15 per cent, and Ukrainian Strategy of Hroysman – 1.60 per cent. Self-nominated candidates accounted for 15.58 per cent of elected councilors. The representation of women in the councils of cities with more than 75,000 voters increased from 18.1 to 30.54 per cent, and in regional councils from 15 to 27.24 per cent. No women participated in second-round mayoral elections.

C. PREPARATIONS FOR SECOND-ROUND MAYORAL ELECTIONS

Decisions to hold a second round of elections are adopted by the respective TEC in case the two leading candidates for mayor or councilor (in constituencies below 10,000 voters) won an equal number of votes, or if no mayoral candidate in cities with more than 75,000 voters won over 50 per cent of the votes cast. Second rounds should be held on a Sunday within three weeks from the relevant decision. Most rules for the conduct of the first round remain applicable. However, specific regulations on the second round contain some ambiguous provisions, and in some instances the general regulation and special norms applicable to second rounds are not harmonized.¹⁶⁴ The contestants are determined simultaneously with the decision to hold the second round; however, candidates can withdraw after the relevant preparations have started and until five days prior to the second-round election day, potentially leading to the annulment of the repeat elections late in the process.

The second-round mayoral elections were administered by the respective city TECs and PECs. By law, the second-round elections were to be administered by the PECs established for the first round. Several ODIHR LEOM interlocutors raised concern about the possible lack of interest by PEC members as not all nominating political parties were participating in the respective run-offs. The CEC continued to replace TEC members during the preparation for the second-round. By 30 November, in total, the CEC

¹⁶¹ For comparison, some *oblasts* comprised a smaller number of PECs, e.g., Chernivtsi (563), Kherson (765), Zakarpattia (809), Mikolayiv (928), Rivne (1,001), or Ivano-Frankivsk (1,028).

¹⁶² For instance, the Fifth Administrative Court of Appeal ruled that the inaction of the Kherson *oblast* TEC led to the failure to establish election results in the villages of Bekhterska and Kakhovka. The CEC ordered the Kherson *oblast* TEC to implement the relevant ruling of the Court of Appeal immediately after its new composition was formed.

¹⁶³ See the [official results](#), as published by the CEC on its website.

¹⁶⁴ For example, the determination of the length of the election campaign remains within the discretion of the respective TECs, which does not ensure a due level of predictability for effective campaign planning for contestants and does not establish equal conditions for candidates running in different constituencies. The deadlines for compilation of voter lists for the second round are not aligned with the deadlines for possible dispute procedures and administrative procedures (e.g., distribution of invitations to voters).

had terminated the powers of 5,507 TEC members.¹⁶⁵ The CEC approved additional funds from the state budget to local budgets for the preparation and conduct of second rounds, in particular for the preparation of voter lists and voter invitations by the SRV. The CEC also prepared an educational video on second-round elections for PEC members.

Candidates who advanced to the second round of mayoral elections could resume their official campaigns on the day after the decision of the respective TEC establishing the date for the second round was announced; they were obliged to end campaign activities one day prior to the second-round election day. The late announcement of the official first-round election results shortened the campaign period in some localities. Second rounds of mayoral elections were called for 15 November in 6 cities, 22 November in 11 cities, and 29 November in 1 city.¹⁶⁶

The ODIHR LEOM only observed initial stages of the second-round mayoral campaigns. Contrary to the law, early campaigning by Proposition, Rivne Together and We Live Here candidates were observed in Mykolaiv, Rivne and Kherson cities. The campaign environment during the initial stages was generally calm, with few cases of negative campaigning observed.¹⁶⁷ During this period, the ODIHR LEOM received several allegations of vote-buying and misuse of administrative resources. In some cities, parties formed local coalitions and alliances to support certain candidates.¹⁶⁸

XV. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in Ukraine and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with prior ODIHR recommendations, which remain to be addressed.¹⁶⁹ ODIHR stands ready to assist the authorities of Ukraine to further improve the electoral process and to address the recommendations contained in this and previous reports.

¹⁶⁵ Of these, 386 were TEC chairpersons, 321 deputy chairpersons, 384 secretaries, and 4,416 members.

¹⁶⁶ According to the CEC, second round mayoral elections took place on 15 November in Kamyanyts-Podilsky (Khmelnitsky *oblast*), Kherson, Kramatorsk, Lutsk, Odesa, and Sumy; on 22 November in Dnipro, Nikopol (Dnipropetrovsk *oblast*), Sloviansk (Donetsk *oblast*), Uzhgorod, Berdyansk (Zaporizhzhia *oblast*), Lviv, Drohobych (Lviv *oblast*), Mykolaiv, Poltava, Rivne and Cherkasy; and on 29 November in Chernivtsi. The second round of the mayoral election in Kryvyi Rih (Dnipropetrovsk *oblast*) was rescheduled from 22 November to 6 December after incumbent Mayor Yuriy Vilkul withdrew from the second round.

¹⁶⁷ For instance, in Rivne city, negative campaign materials against an ES candidate were observed. In Kryvyi Rih, negative campaigning was observed from both SP and Ukrainian Perspective candidates. In Odesa city, negative campaigning targeting both the Trust in Deeds and the OPFL candidates were noted.

¹⁶⁸ For instance, in Cherkasy city, SP and ES supported the Voice candidate. In Dnipro, ES supported the incumbent mayor from Proposition. In Lviv city, Civic Position and Freedom endorsed the ES candidate. In Rivne, the ES candidate was supported by Voice party.

¹⁶⁹ According to paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of prior recommendations is assessed by ODIHR as follows: No recommendations from the final report on the 2015 local elections are fully or mostly implemented. Recommendations 1, 2, 4, 7, 9, 13, 18, 24 and 25 from the final report on the 2015 local elections are partly implemented. No recommendations from the final report on the 2019 presidential election are fully or mostly implemented. Recommendations 1, 5, 7, 10, 11, 14, 17, 18, 19, 21 and 23 from the final report on the 2019 presidential election are partly implemented. Recommendation 18 from the final report on the 2019 early parliamentary elections is fully implemented. Recommendation 2 from the final report on the 2019 early parliamentary elections is mostly implemented. Recommendations 1, 9, 12, 13, 16, 25, 26 and 28 from the final report on the 2019 early parliamentary elections are partly implemented. See also the ODIHR [Electoral Recommendations Database](#).

A. PRIORITY RECOMMENDATIONS

1. The reform of the electoral legal framework should be continued in an open and inclusive manner to address outstanding ODIHR recommendations. Consideration should be given to reviewing the Election Code to eliminate regulatory fragmentation and to address remaining gaps, errors, and conflicting and ambiguous formulations. To ensure legal certainty and stability of the law, the reform process should be completed well in advance of the next elections.
2. Professional selection criteria and compulsory training and certification for commission members could be introduced. Additional mechanisms for recruitment of commission members could also be considered, such as introducing a national register and higher remuneration. To ensure independent and impartial performance of the election administration, law-enforcement bodies should investigate allegations of payments from candidates and parties to commissioners.
3. In order to ensure stability and safeguard the independence of the election administration, deadlines, as well as provisions on clear and restrictive grounds, should be introduced for the replacement of TEC and PEC members.
4. Authorities should ensure a clear separation between the state and political parties and guarantee that public resources are not misused by incumbent candidates or state officials for campaign purposes.
5. As previously recommended, the applicable legislation should be further strengthened to provide for effective, proportionate and dissuasive sanctions for campaign violations, including circumvention of campaign-finance regulations, misuse of administrative resources, and vote-buying. Coherent efforts should be made by law enforcement agencies to promptly investigate such cases and hold perpetrators accountable.
6. To improve transparency, enhance oversight and strengthen the accountability of campaign financing, an independent authority with regional representation should be mandated to monitor compliance with campaign finance regulations and should be sufficiently empowered and resourced to fulfill this task.
7. The CEC should consider extending the deadlines for address change requests and increasing voter education activities related to this procedure.
8. Consideration should be given to enforcing the gender quota for candidate lists at all stages of the electoral process, including during nomination and registration.
9. The sanctioning tools of the NTRBC for violations of media-related provisions during election campaigns should be further expanded and reinforced by the law. The NTRBC should react to violations in a timely manner to ensure that broadcast media comply with existing legislation. The mechanism for appointment to the NTRBC should include additional professional criteria, such as a competition or assessment, to support its political independence.
10. As previously recommended, the competent authorities should take all necessary measures to ensure the safety of journalists and promptly and efficiently deal with cases of impunity of criminal and administrative offences against journalists, especially those who investigate and report on corruption and other sensitive matters. All infringements on the freedom of the media

should be duly investigated and addressed, and the law should be applied in a consistent and effective manner.

11. As previously recommended, measures should be undertaken to ensure consistency in electoral dispute resolution by the courts; uniform interpretation of the law should be ensured, while overly restrictive admissibility requirements should be reviewed and revised.
12. Legal provisions governing the invalidation of election results and recounts should be reviewed, to prevent arbitrary application and to ensure integrity and legal certainty.

B. Other Recommendations

Legal Framework and Electoral System

13. Consideration should be given to reviewing legal restrictions on fundamental rights and freedoms, including of opinion and expression, and relevant implementation practice, to ensure that any such restrictions are proportionate, have the character of exception, are precisely formulated and are imposed only when necessary.
14. In line with OSCE commitments, consideration should be given to enabling independent candidates to run in elections, including those conducted under a proportional representation system.
15. To ensure public trust in the election process and compliance of electoral district delineation with international good practice, consideration should be given to empowering an alternative, independent and impartial body with the task of electoral district formation.
16. In line with international commitments and good practice, provisions entitling political parties to initiate the recall of elected councilors should be removed.

Election Administration

17. Authorities should ensure timely, adequate and effective allocation of funds in order to cover the costs associated with the organization of elections.

Voter Registration

18. In line with international obligations, all restrictions on electoral rights on the basis of intellectual or psychosocial disability should be removed.
19. With a view to ensure universal suffrage, increased efforts should be made to facilitate access to personal identity documents for Roma.
20. RMBs and PECs should forward suspected cases of abuse of voter registration procedures to law enforcement bodies who should ensure proper and timely investigation.
21. The CEC should guarantee a responsible treatment of disability data of voters. The procedure that allows voters to request the removal of the special disability note from the SVR should be simplified.

Candidate Registration

22. Effective notification mechanisms could be introduced so that prospective candidates are informed by the election administration of mistakes or omissions in their nomination documents, enabling them to correct such mistakes.
23. Consideration could be given to further reducing the deposit on candidacy, with a view to promoting the participation of all eligible candidates.

Campaign Environment

24. The law should set a uniform date for the start of the official campaign period, for all contestants and for each round of elections, in order to ensure the equality of opportunities for contestants and uniform application of the law. Political activities prior to the official campaign period should not be prohibited and should be regulated.
25. Consideration should be given to amending the language law to allow national minorities to receive official voter education and electoral materials in their respective languages.
26. To ensure access to the ballot, including the participation of national minorities at all levels of local elections, the law on political parties should be amended to allow the formation of regional political parties.

Campaign Finance

27. To contribute to a more level playing field, measures could be adopted to prevent excessive campaign funding; such measures could include introducing expenditure ceilings and limits to the use of funds originating from parties and candidates.
28. The law should be amended to ensure that all campaign-related incomes and expenditures, including those incurred by associations affiliated with contestants, are included in the financial reports of the electoral funds, even if incurred before the official campaign period.

Media

29. As previously recommended, parliament should provide the public broadcaster with the legally prescribed funding and thus grant it financial viability. Special attention should be paid to the financial sustainability and legal status of the regional branches of the public broadcaster.
30. The electoral and media legislation should specifically provide for financial reporting on political advertisement in social networks and online media. To this end, political campaign should be defined by law as to also include campaigning in social networks.

Complaints and Appeals

31. Consideration should be given to extending the rights of voters in contesting electoral irregularities, including the possibility to challenge election results. To simplify and ensure a coherent dispute resolution process, concurrent jurisdiction should be eliminated.

32. Cases of alleged offences should be examined promptly, thoroughly and effectively by the competent authorities, and offenders should be held accountable in a timely manner. As prescribed by law, the competent law enforcement bodies should take immediate action to stop a violation.
33. Consideration could be given to adopting detailed procedural guidelines for complaints processed by election-administration bodies, creating templates for such complaints, and establishing a publicly accessible complaints register.

Citizen and International Observers

34. Political parties and candidates should respect a clear separation of partisan and non-partisan election observation. The CEC should consider introducing a mechanism to prevent the misuse of citizen observation by political actors.

Election Day

35. Practical measures could be implemented in polling stations to strengthen the secrecy of the vote, such as introducing and enforcing mandatory folding of ballot papers.
36. Consideration could be given to simplifying closing, counting and reconciliation procedures. Computer-facilitated protocol preparation could be introduced, thereby reducing the number of protocols returned for minor clerical mistakes. The CEC should ensure timely publication of preliminary polling station-level election results, in line with international standards. Consideration could be given to adapting and using the CEC's 'Vybory' information-analytical system for local elections
37. Additional measures should be taken to further facilitate the autonomous access and participation of voters with disabilities. In doing so, the principles of universal design and reasonable accommodation should be followed wherever possible.
38. Practical aspects of the tabulation process could be rearranged, so as to facilitate the receipt and processing of election materials on election night and allow for the simultaneous processing of several PECs, while at the same time ensuring the transparency of the process. Alternatively, the law could be changed to allow for a phased receipt of PEC protocols to avoid queues at TECs, while at the same time safeguarding protocols and related documents prior to delivery.

ANNEX I – ELECTION RESULTS¹⁷⁰

No.	Nominating Subject	Number of Elected Councilors	Number of Elected Mayors
1	Self-nomination	6,623	661
2	Political party “SERVANT OF THE PEOPLE”	6,393	226
3	Political party All-Ukrainian Association “Batkivshchyna”	4,461	53
4	Political party “OPPOSITION PLATFORM – FOR LIFE”	4,207	53
5	Political party “FOR THE FUTURE”	4,072	92
6	Political party “EUROPEAN SOLIDARITY”	3,906	41
7	Political party “OUR REGION”	1,899	44
8	Political party All-Ukrainian Union “Freedom”	891	18
9	Political party “UKRAINIAN STRATEGY Of HROYSMAN”	680	28
10	Political party “Radical Party of Oleh Lyashko”	582	2
11	Political party “PROPOSITION”	574	18
12	Political party “Power and Honor”	570	3
13	Political party “DOVIRA”	458	23
14	Political party “NATIVE HOME”	441	19
15	Political party “KERNES BLOC – SUCCESSFUL KHARKIV!”	433	11
16	Political party “NATIVE TRANSCARPATHIA”	354	9
17	Political party All-Ukrainian Association “CHERKASHCHANY”	343	8
18	Political party “VOICE”	335	0
19	Political party “BLOC SVETLICHNA - TOGETHER!”	320	12
20	Political party “Agrarian Party of Ukraine”	313	2
21	Other	4,636	71

¹⁷⁰ Source: CEC Website ([council election results](#) and [mayoral election results](#)).

ANNEX II: LIST OF ODIHR LEOM OBSERVERS

Core Team

Ingibjorg	Solrun Gisladottir	Head of Mission	Iceland
Rashad	Shirinov		Azerbaijan
Elena	Kovalyova		Belarus
Davor	Corluka		Bosnia and Herzegovina
Lela	Tsaava		Georgia
Stefan	Krause		Germany
Eirini	Skouzou		Greece
Tibor	Nemes		Hungary
Carlo	Pappalardo Fischer		Italy
Dimash	Alzhanov		Kazakhstan
Nadine	Haas		Luxembourg
Tomasz	Jancyz		Poland
Veronica	Laputska		Poland
Roman	Railean		Romania
Jelena	Stefanovic		Serbia
Kyle	Bowers		United States

Long-term Observers

Klaus	Kapper		Austria
Alexander	Daschko		Canada
Chen Ou	Yang		Canada
Henri	Nzedom		Canada
Juan	Barranco Abrego		Canada
Elizabeth	Kingston		Canada
Anne	Sochan		Canada
Agnes	Doka		Canada
Paul	Lyzaniwski		Canada
P. Tyrus	Cameron		Canada
Germain	Amoni		Canada
Dawran Mukamil Safi			Canada
Gulnara	Medeubekova		Canada
Martina	Sefrova		Czech Republic
Petr	Netuka		Czech Republic
Patrik	Taufar		Czech Republic
Poul	Lauritsen		Denmark
Kirsten	Mogensen		Denmark
Hannu	Elfvengren		Finland
Pekka	Viherväs		Finland
Rodolphe	Oberle		France
Benoit	Paré		France
Sylvain	Ollier		France
Khatchig	Soukiassian		France
Sylvie	Blanchier		France
Nadia	Yakhlaf-Lallemand		France
Camille	Forite		France

Marie Luise	Von Halem	Germany
Eckart	Rohde	Germany
Michael	Wiersing	Germany
Hildegard	Rogler-Mochel	Germany
Christian	Keilbach	Germany
Jochen Michael	Rinck	Germany
Robert	Neumeier	Germany
Susanne	Neymeyer	Germany
Daniela Ida	Bottigelli	Italy
Alessandro	Gori	Italy
Turid	Polfus	Norway
Kine	Rusten	Norway
Hans Christen	Knævelsrud	Norway
Trond	Husby	Norway
Arkadiusz	Semeniuk	Poland
Aleksander	Warwarski	Poland
Zbigniew	Cierpinski	Poland
Jakub	Herold	Poland
Lars	Tollemark	Sweden
Maud	Johansson	Sweden
Astrid	Nunez	Sweden
Christine	Beguelin Sargenti	Switzerland
Daniele	D'Esposito	Switzerland
Nirmala	Gopal	United Kingdom
Roger	Bryant	United Kingdom
Stella	Hellier	United Kingdom
Martin	Brooks	United Kingdom
Ben	Jones	United Kingdom
Akinola	Akinsanya	United Kingdom
Julian	Nundy	United Kingdom
Sandra	Gale	United Kingdom
Andrew	Offenbacher	United States of America
James	Berk	United States of America
Eda	Matchak	United States of America
Degee	Wilhelm	United States of America
Mary	Bluestocking	United States of America
Raleigh	Quesenberry	United States of America
Julie	Peer	United States of America
Mitchell	Polman	United States of America

ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas, including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance and non-discrimination**, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).