

## ENEMO

European Network of Election Monitoring Organizations International Observation Mission Ukrainian Presidential Elections 2004	Європейська мережа організацій, що спостерігають за виборами Міжнародна місія спостереження Президентські вибори в Україні - 2004
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### **EUROPEAN NETWORK OF ELECTION MONITORING ORGANIZATIONS (ENEMO) STATEMENT ON 2004 PRESIDENTIAL ELECTIONS IN UKRAINE DECEMBER 26, 2004**

ENEMO is an association of civic organizations from 16 countries of the former Soviet Union and Eastern Europe. These civic organizations are the leading domestic election monitoring groups in their countries, which have in total observed more than 110 national elections and trained more than one hundred thousand election monitors. ENEMO seeks to support democracy in Ukraine, to assess electoral conditions and the political environment and to offer an accurate and impartial report. The mission is evaluating the electoral process against international standards for democratic elections and benchmarks in Ukrainian legislation and the constitution. ENEMO recognizes that ultimately it is the people of Ukraine who will judge the credibility of the electoral process.

Fifty experienced ENEMO monitors have been observing the pre-election environment in all Ukrainian oblasts since October 19, 2004, as well as the first round of voting on October 31. On November 21 and December 26, approximately 1,000 ENEMO monitors observed voting and counting in more than 5,000 polling places and more than 200 territorial election commissions (TECs). Throughout the process, ENEMO observers received extensive assistance and cooperation from all levels of election commissions and the Cabinet of Ministers Interdepartmental Working Group to Facilitate International Observers. The mission appreciates this support and looks forward to future cooperation. ENEMO is cooperating in this mission with Freedom House and the National Democratic Institute for International Affairs.

This report is based on the observations of the long- and short-term monitors both in the lead up to the revote and on December 26. In previous reports ENEMO has described a host of problems surrounding the October and November votes that undermined the conditions necessary for fair political competition and full respect for voters' rights. ENEMO's reports on the Ukrainian election are available at [www.ENEMO.org.ua](http://www.ENEMO.org.ua).

#### **SUMMARY OF FINDINGS AND OBSERVATIONS**

ENEMO recognizes the immeasurable role played by Ukraine's own citizens, who demanded that their elections represent the choice they made at the ballot box. ENEMO

applauds the Ukrainian people for their unprecedented activism in this electoral process. It was the precursor to the conduct of a significantly improved vote and eventually a strengthened electoral system in Ukraine. It is the task of Ukrainian lawmakers and the government to root these trends in electoral law and practices.

Despite the confusion and political upheaval in Ukraine throughout the last month, election-day was conducted in an orderly, peaceful, generally well-organized and essentially free environment. Although ENEMO observers noted concerns about certain procedural issues, the violence, intimidation and large scale manipulations of mobile and absentee voting witnessed on November 21 were generally absent. ENEMO does not believe the violations it observed affected the election outcome. The preliminary results would appear to be a reflection of the will of the people expressed at the ballot box.

The conduct of the election in such a short time frame is a testimony to the diligent work of election commissioners, campaign workers for both candidates, and most of all, the Ukrainian people who demanded government accountability. Of particular note, the Central Election Commission (CEC) drastically increased its transparency by releasing election results for each polling station. This act alone will go a long way toward restoring public confidence in the election process.

ENEMO observers made note of certain continuing procedural issues that should be corrected in future elections. Mobile voting and persistent problems with the voters' lists remain a serious concern. Such irregularities did not appear to affect the electoral results but may have led to the disenfranchisement of a portion of the voting public. Although the situation was significantly improved over the previous two polls, any disenfranchisement of voters is unfortunate. ENEMO also noted continuing, isolated problems related to the use of administrative pressure on state workers and students.

ENEMO commends Ukraine's election workers, campaign activists, government officials and citizens for the significant improvement in the conduct of the December 26 poll, as compared to the two that came before it. Observers found many electoral commissioners ignorant of last minute changes to the election law, resulting in confusion over mobile voting and other procedures. ENEMO notes, however, that swift response to questions from the lower level commissions by the CEC averted many problems.

## **RECOMMENDATIONS**

- To consolidate progress made between the second and third votes, ENEMO urges the Ukrainian parliament to adopt an electoral code, taking into consideration major recommendations from observer groups. Particular attention should be paid to the rights of voter list verification, equal representation of candidates on Election Commissions, limiting opportunities for the abuse of administrative resources, and clarifying mobile and absentee voting. This code should cover presidential, parliamentary and local elections.

- All Ukrainian election laws should be amended to comply with the 1990 OSCE Copenhagen Document to provide for full access to all stages of the electoral process for observers from domestic non-governmental organizations.
- The Ukrainian government should undertake a comprehensive, multi-partisan and transparent evaluation of the presidential electoral process. It should include public hearings and culminate in a series of recommendations for changes to electoral law and practice to prevent fraud and the invalidation of election results.
- ENEMO lauds the opening of administrative and criminal proceedings by the Ukrainian authorities against the perpetrators of electoral fraud. It hopes the investigation of these cases will be fair and free from political bias.
- Voter lists should be updated before each election round incorporating changes from previous elections.
- The Central Election Commission should create a permanent body composed of civic organizations with the aim of ensuring a regular dialogue and consultation to ensure the quality of election instructions and rulings.

## **SUMMARY OF OBSERVATIONS**

In general, the electoral process in Ukraine throughout the presidential election cycle was dominated by certain trends. On December 26, ENEMO noted considerable improvements in the vast majority of these trends, although observers expressed concern about some remaining procedural issues.

### *INTIMIDATION OF VOTERS AND OBSERVERS*

In its previous reports, ENEMO noted numerous persistent attempts to intimidate both voters and observers. Several ENEMO observers were physically threatened, observers witnessed the presence of large groups of men “overseeing” the voting throughout the country, and state workers and students noted pressure from their superiors to support the government candidate.

On December 26, the atmosphere was significantly more positive than it was during earlier polls, with less widespread intimidation and considerably more freedom to make an independent choice. It should be noted, however, that several attempts were made to influence voters through either verbal or physical threats. For example:

- In Zakarpatie (TEC 74, PEC 63), PEC members urged ENEMO observers not to observe counting, with one PEC member commenting that it would not be safe for ENEMO observers to remain in the polling station.

- In Sumy (TEC 160, PEC 68), three lecturers of the National Agricultural University were present at the polling station next to the ballot boxes watching how students voted.
- In Luhansk (TEC 109, PEC 57), a group of people stood outside the polling station checking IDs and recording names. When questioned, the individuals suggested that they represented area businesses and local administrations. They explained they needed to record names so they could have a record of which employees in the area voted and which did not.

#### *ORGANIZED BUSING OF VOTERS AND MULTIPLE VOTING*

On November 21, ENEMO observers found a significant use of busing of voters in what appeared to be an attempt to orchestrate repeat voting using mobile and absentee ballots. On December 26, ENEMO noted a drastic reduction in this technique, although a few isolated incidents occurred in some eastern and southern regions of the country. For example:

- In Zaporizhia, ENEMO observers noted buses carrying elderly voters between several polling stations.
- In Odessa (TEC 80, PEC 28), two buses arrived with elderly voters. However, when ENEMO observers were noted by the bus drivers, the passengers did not disembark, and the buses left.
- In Donetsk (TEC 46, PEC 13), a bus brought employees of the Dorindustria factory to the polling station to vote together with their supervisors.

#### *VOTER LIST IRREGULARITIES*

During both the first round and the annulled run-off, ENEMO noted serious problems with voter lists. The lack of proper lists, in particular, resulted in disenfranchisement for large numbers of voters during the first round and contributed to a lack of confidence in the electoral process.

On December 26, ENEMO observed improvement in the handling both of the voter lists themselves, as well as complaints from voters who may have been left off of the list. The success of electoral commissions at all levels in preparing, checking and distributing these lists in the limited time before the December 26 revote should be commended.

ENEMO observers noted several cases of voters being excluded from lists, of double names on lists or of voters arriving at polling stations to find that someone else had voted in their name, as described below. These cases appeared to be isolated, however. For example:

- In Kherson (TEC 185, PEC 51), 335 students of the Maritime Academy arrived to discover that a bureaucratic error had resulted in their names being excluded from the voter list.
- In Vinnitsia, (TEC 11, PEC 665), there were no prepared lists of voters. The PEC made up the lists as voters arrived.
- In Crimea, a PEC chairwoman came to vote only to find that somebody had already voted on behalf of her, her husband and children.

### *BALLOT SHORTAGES*

On December 26, in five oblasts, ENEMO observers reported that polling stations received fewer ballots than required by law. According to Ukrainian law, each polling place should be supplied with a ‘reserve’ of extra ballots equaling one percent of the number of voters on their lists. In fact, many polling places had 30 to 150 ballots *fewer* than the number of voters on the list. ENEMO observers reported ballots shortages in all regions of Ukraine. Of most concern, however, was that several PECs in Crimea began to run out of ballots by 6:00 PM. More specifically, TEC 225, PEC 16 received only 1088 ballots for 1316 registered voters. In the same TEC, PEC 40 received only 1030 ballots for approximately 1400 voters. By early evening ballots had run out at both stations.

### *USE OF VIOLENCE/ DISRUPTION OF VOTING*

During the November 21 poll, ENEMO reported significant problems with violent acts against supporters of the opposition candidate, journalists and observers. The mission is encouraged to note that the repeat run-off election on December 26 was not marred by such incidents or disruptions. On the contrary, the December 26 re-vote was carried out in peaceful manner, as ENEMO observers reported only one case of violence in Donetsk (TEC 46, PEC 31), where an observer representing Yushchenko was beaten. The assailant was arrested by the police.

### *MOBILE VOTING*

During the previous rounds of the presidential election, widespread violations occurred with mobile voting. The percentage of citizens that opted to use this method of voting was unusually high, frequently accounting for 10-20 percent of the votes cast in a precinct. The process itself often lacked transparency.

On December 8, the Verkhovna Rada adopted amendments to the presidential election law, limiting the right of mobile voting to citizens with severe disabilities. The Constitutional Court on December 25 partially overturned these provisions, allowing most handicapped voters to request mobile voting.

On December 26, these changes, although intended to limit fraud, were the cause of much confusion. Both voters and election commissions seemed clearly overwhelmed with the new procedures. As a result, the number of mobile voters appeared to be somewhat lower than during the November 21 vote.

However, ENEMO observers noticed numerous irregularities with mobile voter documentation. Written requests were often typed or produced on a computer (rather than handwritten as required by law) or incomplete and missing signatures. Some requests were made on standard application forms or appeared to be filled out by the same person, putting their authenticity in question. Some requests were phoned into commissions. In particular:

- In Donetsk, PEC 31 of TEC 46 produced 80 applications for mobile voting, which all seemed to feature the same person's handwriting.
- In Kyiv Oblast, at PEC 56 (TEC 92), no provisions for mobile voting appeared to have been made. Mobile boxes were missing, and the PEC members were unaware of the Constitutional Court's decision.
- In Zakarpatie, at PEC 115 (TEC 71), 55 applications for mobile voting were done in the same handwriting. ENEMO observers were told by the Commission that all these citizens had sustained hand injuries.
- In Poltava, at PEC 179 (TEC 150), 348 voters opted to vote at home. The requests lacked voters' signatures.
- At PEC 93 in Luhansk (TEC 111), the 104 voters that applied for mobile voting were not crossed out of the regular voter list. During election day, 40 of them appeared at the polling station and voted.

#### *OBSERVER ACCESS*

During the November 21 run-off, ENEMO observers experienced frequent denials of access to polling stations. In some instances, these violations appeared to be committed with a willful disregard of the law, while at other times; they appeared to stem from ignorance of the electoral code.

On December 26, this problem improved almost entirely, with only isolated problems in eastern regions of the country. For example:

- At PEC 33 (TEC 114) in Luhansk, ENEMO observers were made to leave the PEC on the grounds that their accreditation cards were issued under the Central Election Commission's previous Chairman Kyvalov and carried his signature.

- At PECs 17 (TEC 48) and 41 (TEC 50) in Donetsk, ENEMO observers were denied access. Commission staff incorrectly based their decision on the need for some special documentation for these particular PECs.

### *INTERFERENCE BY STATE AND LOCAL ADMINISTRATIONS*

In both the first round and the annulled run-off election, ENEMO observers documented a gross misuse of state officials' positions in support of one candidate. This misuse was present both in the two prior campaign periods and on the election days.

During the December 26 revote, ENEMO observers noted significant improvement concerning this issue, with the majority of pressure from administrative officials having disappeared. It should be noted that misuse of administrative positions continued in certain regions of the country. Even in these regions the cases were far fewer than in the previous two rounds.

### *POLLING STATION PROCEDURAL VIOLATIONS*

In the first two rounds, ENEMO observers reported numerous polling station procedural violations, ranging from minor to severe. In some instances, these violations appeared to be committed with a willful disregard of the law, while others appeared to stem from ignorance of the electoral code.

During the December 26 revote, procedural violations in polling stations were in general minor but witnessed throughout most regions of the country. These violations included campaigning in polling places, improperly completed or missing protocols, voters voting without proper identification, and commission members not working.

## **OVERVIEW OF INTER-ELECTION PERIOD**

ENEMO long-term observers continued to monitor in all oblasts from November 21 through December 25. In all regions they documented the unprecedented surge in political activism that energized Ukraine and brought hundreds of thousands of citizens onto the streets in peaceful protests. As these protests continued, however, ENEMO noted worrying instances of repercussions against journalists, students and others for their political activism. Two representative examples:

- The rector of the Kharkiv Transport Institute evicted all students from the dormitory that were seen to have supported Yushchenko.
- In Odessa, journalists from the newspapers "Komsomolskaya Pravda," "Den," "Yug," and "Okna" had their accreditations to cover city activities revoked. An administration official reportedly said that this was "because of their love of orange."

Also, although the great majority of protests were peaceful, a few turned violent. For example;

- Five thousand people amassed in Chernihiv at the City Hall on November 26. They demanded that the city council make a decision supporting Yushchenko. By the order of a deputy head of the local police four canisters of tear gas were thrown into the crowd. Six people were taken to the hospital by ambulance.
- On November 29, in Luhansk, about 200 young people wearing stickers saying “za Yanukovicha” (for Yanukovich) assaulted several people who were holding a rally to support Yushchenko. During the melee, the local OSCE coordinator and his assistant were assaulted. .

When campaigning resumed following the adoption of amendments to the election law on December 8, ENEMO observers reported markedly fewer problems than earlier in the fall. In particular, access to media for both candidates generally became more balanced. Both ENEMO’s observers and other groups focusing on media monitoring reported far more evenhanded coverage and fewer instances of pressure on media outlets.

Some other widespread abuses in the fall campaign, such as pressure on students and workers, stopped completely in western Ukraine, but were observed in southern and eastern Ukraine. ENEMO continued to find regional and/or local administrations attempting to use their positions to promote one candidate, although to a lesser extent than previously Yushchenko. Both candidates also continued to suffer from the spread of so-called “Black PR;” leaflets and other materials usually printed anonymously with the apparent sole goal of slandering their opponent.