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Observation of the pre-term parliamentary elections in Ukraine (30 September 2007)

Election observation report

Bureau of the Assembly

Rapporteur: Ms Hanne SEVERINSEN, Denmark, Alliance of Liberals and Democrats for Europe

The pre-term parliamentary elections in Ukraine on 30 September 2007 were conducted mostly in line with Council of Europe commitments and standards for democratic elections, and confirm the positive trend with regard to the organisation of elections in Ukraine that started in 2006. However, some of the recent amendments to the legal framework for elections are a step backwards with respect to previous legislation and run counter to Council of Europe standards. The poor quality of the voters' lists negatively affected these elections and is a point of concern.



Contents	Page
1. Introduction	2
2. Political and legal context	4
3. Election administration	5
4. Candidate and voter registration	6
5. Pre-election period and the media	6
6. Election day – Vote count and tabulation	7
7. Conclusions and recommendations	7
Appendix – Press Releases	10

1. Introduction

1. Following an invitation by the President of Ukraine, the Bureau of the Assembly decided, at its meeting on 25 June 2007, to set up an ad hoc committee to observe the pre-term parliamentary elections in Ukraine, scheduled for 30 September 2007, and, at its meeting on 29 June 2007, appointed me as the chairperson and rapporteur of the ad hoc committee.

2. On 4 October 2004, a co-operation agreement was signed between the Parliamentary Assembly and the European Commission for Democracy through Law (Venice Commission). In conformity with Article 15 of the agreement: "When the Bureau of the Assembly decides to observe an election in a country in which electoral legislation was previously examined by the Venice Commission, one of the rapporteurs of the Venice Commission on this issue may be invited to join the Assembly's election observation mission as legal adviser", the Bureau of the Assembly invited an expert from the Venice Commission to join the ad hoc committee as adviser.

3. Based on the proposals by the political groups in the Assembly, the ad hoc committee was composed as follows:

- Socialist Group (SOC)
 - Mr Abdülkadir Ateş, Turkey
 - Ms Meritxell Batet Lamaña, Spain
 - Ms Elvira Cortajarena Iturrioz, Spain
 - Mr Andreas Gross, Switzerland
 - Mr Michael Hagberg, Sweden
 - Mr Tadeusz Iwiński, Poland
 - Mr Maximiano Martins, Portugal
 - Ms Ruth-Gaby Vermot-Mangold, Switzerland
 - Ms Gisela Wurm, Austria
- Group of the European People's Party (EPP/CD)
 - Mr Pedro Agramunt, Spain
 - Mr Jean-Guy Branger, France
 - Mr Andres Herkel, Estonia
 - Ms Danuta Jazłowiecka, Poland
 - Mr Lucio Malan, Italy
 - Ms Marietta de Pourbaix-Lundin, Sweden
 - Mr Vjačeslavs Stepanenko, Latvia
 - Mr Mehmet Tekelioğlu, Turkey
 - Ms Renate Wohlwend, Liechtenstein

- Alliance of Liberals and Democrats for Europe (ALDE)
 - Mr Michael Hancock, United Kingdom
 - Ms Kerstin Lundgren, Sweden
 - Mr Andrea Rigoni, Italy
 - Ms Hanne Severinsen, Denmark
- European Democrat Group (EDG)
 - Mr Mevlüt Çavuşoğlu, Turkey
 - Ms Vera Oskina, Russian Federation
 - Ms Ganira Pashayeva, Azerbaijan
 - Ms Liudmila Pirozhnikova, Russian Federation
- Group of the Unified European Left (UEL)
 - Mr Leo Platvoet, The Netherlands
 - Mr Bjørn Jacobsen, Norway
- Secretariat
 - Mr Vladimir Dronov, Head of Secretariat, Interparliamentary Co-operation and Election Observation Unit
 - Mr Bas Klein, Deputy Head, Interparliamentary Co-operation and Election Observation Unit
 - Mr Serguei Kouznetsov, Venice Commission
 - Ms Daniele Gastl, Assistant, Interparliamentary Co-operation and Election Observation Unit
 - Ms Rosario Pardo De Jaureguizar, Press Officer

4. The ad hoc committee acted as part of the International Election Observation Mission (IEOM), which also included delegations of the OSCE Parliamentary Assembly (OSCE-PA), the European Parliament (EP) and the NATO Parliamentary Assembly (NATO-PA), as well as the Election Observation Mission of the Organization for Co-operation and Security in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

5. The ad hoc committee met in Kyiv from 28 September to 1 October 2007 and held meetings with, *inter alia*, representatives of a cross-section of parties participating in these elections, the Chairman of the Central Election Commission (CEC), the Head of the Election Observation Mission of the OSCE/ODIHR and his staff, representatives of the Council of Europe office and OSCE mission in Ukraine, as well as representatives of civil society and the mass media.

6. On election day, the ad hoc committee was split into 15 teams which observed the elections in and around Dnipropetrovsk, Kyiv, Lviv, Odessa and Simferopol.

7. In order to draw up an assessment of the electoral campaign, as well as the political climate in the run-up to the elections, the Bureau sent a pre-electoral mission to Ukraine from 4 to 6 September 2007. The cross-party preelectoral delegation consisted of Ms Hanne Severinsen (Denmark, ALDE), chair of the ad hoc committee and head of delegation, Mr Abdülkadir Ateş (Turkey, SOC), Ms Renate Wohlwend (Liechtenstein, EPP/CD), Mr Mevlüt Çavuşoğlu (Turkey, EDG) and Mr Bjørn Jacobsen (Norway, UEL). In Kyiv, the pre-electoral delegation met with, *inter alia*, the Chairperson of the Verkhovna Rada, the prime minister and the deputy ministers of the interior and foreign affairs, the Chairperson of the Central Election Commission, the Chairperson of the Constitutional Court, the presidential administration, a cross-section of political parties running in these elections, representatives of the international community in Ukraine, as well as representatives of the mass media and NGO communities. The statement issued by the pre-electoral delegation at the end of their visit appears in Appendix I.

8. In its statement of preliminary findings and conclusions, delivered the day after the elections, the IEOM unanimously concluded that the pre-term parliamentary elections in Ukraine, on 30 September 2007, "were conducted mostly in line with Council of Europe and OSCE commitments and other international standards for democratic elections, and confirm an open and competitive environment for the conduct of election processes.

However, recent amendments to the legal framework for these elections, adopted as part of a compromise to end the political crisis in Ukraine, impacted negatively on the electoral process". The joint IEOM press release issued the day after these elections appears in Appendix II.

9. The ad hoc committee wishes to thank the Verkhovna Rada, the OSCE/ODIHR Election Observation Mission and the Representative of the Secretary General of the Council of Europe in Kyiv for their co-operation and the support provided to the ad hoc committee.

2. Political and legal context

10. These elections took place in the context of the ongoing constitutional crisis in Ukraine, which, to a large extent, is due to the unclear distribution of constitutional powers as a result of the political agreement reached to solve the conflict during the presidential elections in 2004.

11. The outgoing Verkhovna Rada (parliament) was elected on 26 March 2006. Following months of protracted negotiations, a majority governing coalition was formed between the Party of the Regions, the Socialist Party of Ukraine and the Communist Party of Ukraine. The governing coalition put forward Viktor Yanukovich, the opponent of President Yushchenko during the presidential elections in 2004, as their candidate for prime minister. His candidature was eventually accepted by President Yushchenko. The relation between the president and prime minister was soon characterised by a series of conflicts about their respective constitutional prerogatives.

12. On 2 April 2007, a political crisis erupted when President Yushchenko disbanded parliament and called for early elections, initially for 27 May 2007, after a number of MPs moved from the opposition to the government faction in parliament, which was deemed unconstitutional by the president. The immediate crisis ended on 27 May 2007 when the president, the prime minister and the Speaker of the Verkhovna Rada reached an agreement, *inter alia*, to organise pre-term elections on 30 September 2007 and amend the election legislation.

13. While a political agreement was reached on the holding of pre-term elections, the lawfulness of the decision of the president to dissolve the parliament was questioned by a number of parties and members of the Verkhovna Rada. This had an impact on the election environment.

14. The Verkhovna Rada consists of 450 members who are elected for a five-year term, via a proportional system on the basis of closed party lists in a single national constituency, with a 3% threshold.

15. Ukraine does not have a unified election code. These elections were governed by the Constitution of Ukraine, the Law on the Election of People's Deputies, the Law on Political Parties, the Law on the Central Election Commission, as well as provisions in a number of other laws including the Code on Administrative Procedures and the Criminal Code. The corpus of laws that govern elections are overly, and unnecessarily, complex and detailed, and, also as a result of the absence of a unified election code, at times contradictory. A long-standing recommendation from the Assembly and the Venice Commission of the Council of Europe is therefore that the Ukrainian authorities elaborate and adopt a unified, and simplified, election code.

16. The Law on the Election of People's Deputies was amended on 1 June 2007 as part of the political compromise to hold pre-term elections. While some of these amendments address previous recommendations from the Assembly and the Venice Commission, a number of them are a step backwards in comparison to previous legislation and raise serious concerns, which should be addressed before next elections take place.

17. The newly adopted amendments stipulate that people who cross the border after 31 July 2007, and who do not return by 26 September 2007, will be removed from the voters' lists. This amendment unduly restricts the right to vote and runs counter to Council of Europe standards. Moreover, its application is discriminatory, as citizens who left Ukraine before 1 August are not removed from the voters' list, or people who crossed the borders with the Russian Federation and Belarus, because they are not registered as having left the country since they do not need a passport, only internal identity papers, to cross the borders with these countries. In addition, these provisions raise concerns with regard to the privacy of the voters.

18. The provisions to remove citizens who travelled abroad from the voters' list were challenged before the Constitutional Court by the President of Ukraine. Regrettably, the Constitutional Court did not reach a verdict before the elections took place.

19. The latest amendments to the law removed the possibility for absentee voting for extraordinary elections. While absentee voting had proved to be a vehicle for electoral fraud during some earlier elections, its complete removal could disenfranchise a significant group of citizens who cannot be present on election day in the locality where they are registered to vote. The ad hoc committee welcomes the special provisions adopted in this respect to avoid the disenfranchisement of polling station commission members who serve at a polling station other than where they are originally registered to vote. It should be noted that the safeguards for absentee voting implemented for the 2006 parliamentary elections, and which remain valid for ordinary elections, largely addressed the vulnerability of the absentee voting arrangements to electoral fraud.

20. The amendments also removed the legal restrictions and requirements for an application to vote at home, stipulating that “the form of such application and its requirements shall be determined by the Central Election Commission”. This was interpreted by the Central Election Commission (CEC) as meaning that there were no legal grounds for any restrictions on home voting. While welcoming any measure that would facilitate citizens to use their right to vote, the total absence of any restrictions on home voting could be problematic in the context of Ukraine, where home voting was used as a mechanism for electoral fraud during the 2004 presidential elections. It was only after two court orders, and at a very late stage, on 18 and 20 September, that the CEC adopted the required guidelines for home voting. Overall, these regulations addressed vulnerability of the home voting arrangements to electoral fraud.

21. A new legal provision requires a minimum 50% turnout for extraordinary elections to be valid. While not problematic in the context of these elections, the minimum 50% turnout could tempt parties into attempting to derail the election process through election boycotts and could become a concern for future extraordinary elections if voter interest and confidence in the election process were to decrease. Moreover, it should be noted that similar requirements in other countries have often led to cycles of failed elections.

22. The ordinary and administrative courts made a genuine effort to adjudicate election-related complaints in a transparent and timely manner. A significant number of complaints not only sought to redress election violations, but also to provide clarifications on issues not expressly addressed by the election legislation. In contrast, it is to be regretted that the Constitutional Court of Ukraine was either unable or unwilling to fulfil its duties and decide on election-related complaints that were brought before it in a timely fashion.

3. Election administration

23. The parliamentary elections were administered by a three-tier election administration consisting of the Central Election Commission (CEC), 225 district election commissions (DECs) and 33 974 precinct election commissions (PECs). A special district, comprising of 115 PECs and administered jointly by the CEC and Ministry of Foreign Affairs, was formed for out-of-country voting.

24. The CEC is a permanent body consisting of 15 members, appointed by parliament for a seven-year term. Following the political agreement of 27 May 2007, the CEC is now fully composed of party representatives present at the constitution of the outgoing parliament, with eight members nominated by the governing factions, and seven by the opposition factions in parliament. In addition, the agreement stipulated that the Chairperson of the CEC would be elected from the opposition quota and the secretary from the governing quota.

25. The composition of the DECs and PECs are equally governed by the amendments to the election law that stipulate that election commissions be fully composed of representatives of the parties present at the constitution of the outgoing parliament. DECs are composed of 18 members divided equally between opposition and governing factions, and the leadership functions in the commissions are shared between them. PECs are composed of 9 to 23 members with the leadership functions proportionally distributed over the parliamentary parties.

26. On most administrative issues, the CEC generally worked in an efficient manner during the election period. However, the politicised nature of the CEC was apparent when deciding on important issues, when CEC members often voted along party lines, which hampered the work of the CEC and delayed important decisions, such as the adoption of the guidelines for home voting.

27. The DECs and the PECs administered these elections in an open and transparent manner. Some of the parties had problems filling their share of the posts on the PECs, especially outside the regions where they have traditionally strong support. This problem was eventually resolved by nominating members from other regions to these posts. However, this delayed the constitution of some polling stations, which meant that these commissions were not able to carry out preparations in a timely manner, especially with regard to the voters' lists.

4. Candidate and voter registration

28. For these elections, the CEC registered a total of 20 parties and party blocs in a generally inclusive and transparent process, resulting in a wide and diverse choice for voters on election day. The CEC, split according to party lines, initially decided not to register the Bloc of Yulia Tymoshenko, and decided to register PORA as a separate election contestant. Both decisions were appealed to the Kyiv District Administrative Court, which has jurisdiction over CEC decisions. In both cases, the court overturned the CEC decisions and ordered the CEC to register the Bloc Yulia Tymoshenko and strike PORA off the ballot.

29. The Law on the State Register of Voters of Ukraine, which establishes a centralised computerised voter register, was adopted in February 2007, but will only come into force on 1 October 2007. The compilation of the voters' lists for these elections was therefore regulated by the amendments to election legislation that were part of the political agreement of 27 May 2007.

30. The voters' lists for these elections were compiled by 679 working groups established at the level of the administrative districts. The working groups compiled the voters' lists on the basis of the electronic lists used for the 2006 elections, the paper copies of the 2006 voters' lists (with the corrections made on election day in 2006) and information provided by some 10 state agencies.

31. The accurate compilation of the voters' lists was undermined by technical problems, such as incompatibility between the software used to compile the lists in 2006 and 2007, as well as a lack of clear division of responsibility between the state institutions. In addition, as a result of the recent amendments, the working groups sent the voters' lists directly to the DEC's, instead of first to the CEC as had previously been the case. As a result, no nationwide control mechanism existed to check for multiple entries on the lists compiled by the working groups. When the voters' lists were published for public scrutiny, their poor quality became apparent, and, in a number of cases, the DEC's had to return the voters' list to the working groups to be corrected. Consequently, the quality of the voters' lists became an issue during the electoral campaign. Voters were generally not aware that the changes to the electoral legislation had abolished the possibility to be added to the voters' lists in the last seventy-two hours before the elections as well as on election day itself. A significant number of voters, sometimes complete residential blocs, were reported to be missing from the voter's lists, while other voters appeared multiple times. In addition a considerable number of deceased people continued to be registered on the voters' lists.

32. In accordance with the new provisions in the electoral legislation, the State Border Guard Service sent to the DEC's a list of 570 914 citizens who had left the country after 31 July and who had not returned by 26 September, in order for them to be removed from the voters' lists. Most of the *oblasts* with the highest percentages of voters to be removed from the lists were situated in the west of the country, which seemed to confirm the discriminatory nature of these provisions. The handling of the lists sent by the State Border Guard Service by the DEC's was inconsistent over the country, partly as a result of the political controversy regarding these lists. Many DEC's did not receive any list at all or were instructed not to use them, while others were instructed to strike the names from the voters' lists.

5. Pre-election period and the media

33. The electoral campaign was active and competitive, allowing the voters to make an informed choice on election day. Only very few, isolated, campaign-related incidents were recorded. Most parties felt that the shortened campaign period for these extraordinary elections did not prevent them from transmitting their message to the voters.

34. An issue of concern was the involvement of state officials in the election campaigns of both opposition and governing parties, at times in contravention of the law. The president appeared as main figurehead in OU-PSD advertising, while many government ministers campaigned without taking leave. This led to allegations of a return of the abuse of administrative resources which had stained elections in the past. However, state resources appear to have been misused by officials in the election campaign in only very few cases, but existing rules on campaigning by state officials may need further clarification.

35. The positive media environment noted in 2006 continued during these elections. The broadcast and print media provided a broad and largely unbiased coverage of the election campaign. Most news coverage focused on the campaigns of the larger parliamentary parties. The state-owned media provided all electoral contestants with free advertising space and time in accordance with the law. Only a few, mostly the larger, parties implemented a large-scale paid advertising campaign strategy. Regrettably, negative campaigning in paid advertising was widespread.

36. A matter of concern was the issue of hidden advertising, where media, in contravention of the law, accepted payments from political parties in exchange for positive news coverage without this being marked clearly as paid campaign advertising. This phenomenon could undermine public confidence in the media.

37. Despite the overall positive media climate, some concerns remain, including a lack of transparency of media ownership, as well as the absence of a public broadcaster and independent media regulatory body.

6. Election day – Vote count and tabulation

38. Voting was calm and, overall, conducted in an efficient and open manner, continuing the trend that started with the parliamentary elections in 2006. Only a few problems were observed, mostly related to family voting and disrespect for the principle of the secrecy of the vote.

39. The main problems observed during election day were related to the bad quality of the voters' lists. In a significant number of cases, people were observed being turned away because their names were not on the voters' lists. This happened more frequently in the west of the country, especially in urban centres. Unlike during previous elections, voters could not be added to the voters' lists on election day by a court order. In addition, a large number of multiple entries for the same persons were noted on the voters' lists. A number of polling station chairpersons considered the quality of the voters' lists to be worse than during the 2006 elections.

40. The problems of the legal provisions providing for the removal from the voters' lists of persons who had travelled abroad were evident on election day. In a significant number of cases, people showed up in the polling stations to find out that their name had been removed from the voters' lists on the basis of the information provided by the State Border Guard Service. The manner in which these cases were handled by the PECs was inconsistent. Often these people were allowed to vote if they showed up in the polling stations, even though this was in contravention of the law.

41. The vote count and vote tabulation were positively assessed by international observers in the majority of cases, with only minor problems, mostly of a technical nature, recorded. The presence of non-authorised persons during the vote count and tabulation, at times interfering in the process, was noted in a number of PECs and DEC. While the vote count and tabulation was generally conducted in an organised and efficient manner, some DEC (in Donetsk, Lugansk, the Crimea and Odessa) experienced considerable and unexplainable delays in processing the PEC protocols, which is of concern as it gave rise to allegations of foul play and could undermine public confidence in the fairness of the tabulation process.

42. According to the preliminary results announced by the CEC, the Party of Regions won 34.37% of the votes (175 seats), Bloc Yulia Tymoshenko 30.71% of the votes (156 seats), Our Ukraine – People's Self-Defence Bloc 14.15% of the votes (72 seats), the Communist Party of Ukraine 5.39% of the votes (27 seats) and the Lytvyn Bloc 3.96% of the votes (20 seats). All other parties, including the Socialist Party of Ukraine of outgoing Rada Speaker Oleksandr Moroz, failed to win enough votes to overcome the 3% threshold to enter parliament.

7. Conclusions and recommendations

43. The pre-term parliamentary elections in Ukraine on 30 September 2007 were conducted mostly in line with Council of Europe commitments and standards for democratic elections, and confirm the positive trend with regard to the organisation of elections in Ukraine that started in 2006. However, some of the recent amendments to the legal framework for elections are a step backwards in relation to previous legislation and run counter to Council of Europe standards. The poor quality of the voters' lists negatively affected these elections and is a point of concern.

44. The poor quality of the voters' lists was partly the consequence of the amendments to the legal framework that resulted from the political agreement on 27 May 2007. The Law on the State Register of Voters of Ukraine came into force on 1 October 2007, the day after the elections. The centralised and computerised register of voters, linked to the civil registry, which is foreseen in this law, will to a large extent address the problems encountered with the voters' list during these elections, if implemented fully and in a timely manner. The ad hoc committee therefore strongly recommends to the Ukrainian authorities not to delay the implementation of this law and start immediately with the compilation of the central voters' register, in order for it to be finalised and tested before the next elections take place.

45. The new provisions in the law that allow citizens who travel abroad in the period before the elections to be removed from the voters lists unduly limit the right to vote and are in contradiction with Council of Europe standards. In addition, these provisions are discriminatory in their implementation and raise concerns with regard to lack of transparency and invasion of the privacy of the voters. These provisions should therefore be removed from the law.

46. The ad hoc committee welcomes the guidelines adopted by the CEC, albeit at a very late stage, to regulate voting at home. In order to ensure their consistent implementation, and to avoid the confusion witnessed during the pre-electoral period in this respect, the ad hoc committee would recommend that they are written into the law.

47. The abolition of absentee voting for extraordinary elections disenfranchises a significant number of people who cannot be at the place where they are registered to vote on election day. The provisions for absentee voting as implemented during the 2006 parliamentary elections, and which remain valid for ordinary elections, largely addressed the vulnerabilities of the absentee voting arrangements to electoral fraud. The ad hoc committee therefore recommends that absentee voting be reintroduced for extraordinary elections, with the same safe-guards as for ordinary elections.

48. While not generating a problem at these elections, the 50% minimum turnout requirement for extraordinary elections to be valid, potentially allows for election boycotts and cycles of failed elections. The ad hoc committee would therefore recommend to the newly elected Verkhovna Rada to reconsider this requirement.

49. Ukraine does not have a unified election code. The corpus of laws that govern elections are overly, and unnecessarily, complex and detailed, and at times contradictory. The ad hoc committee therefore reiterates the long-standing recommendation of the Assembly, as well as of the Venice Commission of the Council of Europe, that the Verkhovna Rada adopt a single unified election code.

50. The ad hoc committee was heartened by the commitment of the many individual election commission members who worked hard to organise successfully these elections in a very short time frame. The ad hoc committee welcomes that the CEC worked in general in an open and transparent manner, but regrets that it split along party lines for several important decisions, which delayed their implementation. The ad hoc committee calls upon all parties to instruct their members on the CEC, for future elections, not to undermine the overall democratic conduct of elections for limited party self-interest.

51. The ad hoc committee is deeply concerned by the politicisation of the Constitutional Court as evidenced by its unwillingness, or inability, to decide on important election-related complaints in a timely fashion. This gives extra weight to the recommendations of the Assembly for the reform of the judiciary with a view to ensuring its complete independence from political and other interests.

52. The continuing intertwinement at all levels of political and business interests in Ukraine is of concern, as it clearly hampers the democratic development of the country. In this respect the ad hoc committee welcomes the political will expressed by the political parties that are elected into the new parliament to end the complete immunity from criminal prosecution for members of the Verkhovna Rada. It should be noted that the lack of investigation in alleged political corruption is not only a result of the immunity provisions, but also of the long-standing problems with the court system which have been subject to several Assembly recommendations. Furthermore, proper provisions regarding financial disclosure and transparency of campaign finances for candidates and parties competing in the elections should be adopted.

53. It is clear from these elections that a reform of the electoral legislation should also include a reform of the election system itself. The election system should allow for better regional representation and more influence of the voters over who will represent them in parliament than is possible under the current closed list system with one nationwide constituency. Your rapporteur would therefore recommend a proportional multi-constituency system on the basis of open party lists as the system that would best serve the needs of the Ukrainian people.

54. The ad hoc committee in this respect strongly advises against introducing the principle of the recall of people's representatives by political parties, the so-called "imperative mandate", as suggested by some political actors in the context of the latest political crisis in Ukraine. The ad hoc committee reiterates the position of the Assembly, as well as the Venice Commission of the Council of Europe, that the imperative mandate is unacceptable in a democratic state, and runs counter to Council of Europe standards.

55. The forthcoming elections are only a step towards an eventual resolution of the current constitutional crisis in Ukraine and do not, in themselves, constitute a solution thereof. Only a grand political compromise, involving all political forces, on the future constitutional arrangements for Ukraine, based on the principle of separation of powers, will offer an avenue for overcoming the current situation. The newly elected parliament should involve all political forces in Ukraine in coming to such a broad agreement on a new constitution. Only after parliament has agreed on the text of the new constitution could this be subject to a consultative referendum.

56. The Assembly stands ready to assist Ukraine with these important constitutional and electoral reforms.

Appendix – Press Releases

Ukraine parliamentary elections: free and fair conduct of elections is crucial for the country's democratic credibility¹

Ukraine's elections open and competitive but amendments to law of some concern, international observers say²

1. This document is available on the Council of Europe Internet site at the following address: <https://wcd.coe.int>.
2. Idem.