

Will the 31 March results be faked?

No 11/259, March 18, 2002

As the polling day of March 31 draws closer, there are increasingly many claims by political candidates that the election results might be faked by an outside interference. Fearful of having the election results falsified and the elections «stolen» from them, left-wingers and right-wingers, «hard» and «soft» opposition alike warn the public about such a possibility. The only political forces that do not warn about possible falsification of the election results are pro-presidential parties and blocks, primarily the block «Za Yedynu Ukrainy» which has been consistent in denying any use of the notorious «administrative resource» and other specific tricks.

The warnings that the election results might be faked have been heard for quite a while. In October 2001 Ivan Boki, now number 2 in the Socialist Party's election list, alleged that «new provocations against the leader of Socialists [i.e., Oleksandr Moroz] and his block are ready, <...> falsifications have been prepared, and very interesting provocations with the ballots» (Silski Visti, October 9, 2001). Oleksandr Moroz stated his dissatisfaction with the composition of the regional election commissions. He explained his anxiety by the fact that the regional election commissions were authorized to form local election commissions – the bodies that will be in charge of organizing directly the voting procedures and the vote counting. «It is there, in the local commissions, as the experience of previous elections and the notorious referendum has proved, there are the biggest chances for falsification of the election results» (Silski Visti, January 24, 2002), Moroz argued

Member of the Sobor party Victor Shyshkin MP, who currently runs for parliament in a single-mandate constituency #134 in the Odessa region, spoke about attempts to falsify the election results as a «tradition»: «the mechanisms of falsifications were practiced at the 1998 parliamentary elections and the 1999 presidential elections. The study process is over – today all recipes for falsification are ready. Now they know how to do it, they are more skilful,» (Vysokyi Zamok, October 23, 2001). This view is shared by Communists: for instance, their leader Petro Symonenko claimed that «the power-brokers have already formed a state system of forging elections. It has been tested at the 1999 presidential elections [and] when holding the referendum.» A few days ago a representative of the Communist party Sergiy Dorohuntsov, when meeting President of the OSCE Parliamentary Assembly Adrian Sewerin argued that the government intended to falsify the elections by means of using «votes» of the deceased or missing voters (korrespondent.net, March 12, 2002).

The issue of possible falsification of the election results is frequently discussed by Yulia Tymoshenko. Her most recent statement of that kind was made on March 15, when Yulia

Tymoshenko announced she had «information about preparations for falsification of the elections and even specific falsification schemes». She believed that the so-called «chain system» would be used in many areas (korrespondent.net, March 15, 2002). According to Tymoshenko, «the point of the system is that a voter who comes to a polling station is offered to exchange his/her clean ballot for another one, filled out «correctly», and the cost of this «service» will be about US\$ 10. According to Tymoshenko, young voters in the province are now being taught how to work with the «chain system».

Representatives of Nasha Ukraine are also apprehensive about possible falsification of the election results. Head of the Lviv regional election staff of Nasha Ukraina, Stepan Davymuka maintains that «the level of forgery at the polling stations usually does not exceed 10 percent». He is much more concerned, though, about possibilities to forge the election results with the help of computer software. «I have gathered my old, tested team of skilled computer specialists who used to work with me at the «Microprylad». I believe that we will study the falsifiers' capacities in full. And may even invent our own options of control,» he said (Vysokyi Zamok, #37, February 2002). Victor Yushchenko also stated publicly that he did not rule out a possibility that from 8 to 12 percent of the election results could be falsified.

Recently, Oleksandr Yeliashkevich MP, who organized the parallel vote counting during the 1999 presidential elections, announced that the government and the block «Za Yedynu Ukrainu» had developed a plan to fake the outcome of the parliamentary elections. According to Yeliashkevich, he received a copy of a confidential letter from head of the election campaign staff of the «Za Yedynu Ukrainu», Minister of Agrarian Policy Ivan Kyrylenko to leader of the block, head of the Presidential Administration Volodymyr Lytvyn, outlining the plan for the falsification. The letter allegedly suggested that in order to fake the elections the CEC should limit access for observers on the polling day and create problems in the computer software for voter counting for 2 to 5 hours (korrespondent.net, March 15, 2002).

Meanwhile, the discussions about organizing a parallel vote counting gain momentum. There are almost 33 thousand local polling stations in Ukraine. Meanwhile, major political parties claim they will deploy many thousands of observers. In July 2001 the SDPU(o) announced it was prepared to deploy 70 thousand of observers to ensure the transparency and fairness of the elections. The Public Committee «For Truth!» proposed to mobilize 250 thousand observers (TSN, June 29, 2001). The Socialists announced they were prepared to bring up to 50 thousand international observers from the Social International (Forum, July 10, 2001). Obviously, the matter did not go much beyond the declarations.

Remarkably, warnings about possible falsifications of the elections unite potential rivals in countering them. A variety of political forces announced their intention to organize parallel vote counting. In mid-February such intention was voiced by the Civic-Political Committee «For Fair Elections». According to leader of the Sobor party Anatoly Matvienko MP, the Committee includes representatives of the Nasha Ukraina, the Yulia Tymoshenko block, «Yednist», the Communist party, the Socialist party and the

«Yabluko». The Committee announced it would provide consolidated observation of voting on the polling day and provide legal assistance in filing complaints of participants of the race who suffered from falsification, as well as ensure the parallel vote counting by means of collecting and analyzing original protocols from polling stations and announcing true election results. Statements about the intention to set up one's own vote counting system have been repeatedly made by Nasha Ukraina. According to its leader Victor Yushchenko, the block «involves a multi-thousand group of observers to organization and running the elections with the task of countering falsification of voting results». The block's press service disseminated a statement claiming that Nasha Ukraina was in process of creating its own system of vote counting at all levels – «from local commissions to the CEC» (korrespondent.net, March 1, 2002). Yulia Tymoshenko announced her block would be counting votes independently too, and 150,000 representatives of her block would take part in the parallel vote counting (Interfax-Ukraina, March 15, 2002).

However, notwithstanding the good intentions, Ukraine knows no successful experience of organizing the parallel vote counting. Therefore, the statements may be regarded rather as the announcement of vigilance, information prompt and attempts to produce an impression of being ready to fight.

During the 1998 campaign, the theme of possible falsification of the election results was also discussed at length. The politicians alleged that the room for falsification was opened by a number of factors, from the use of rough paper ballot boxes to allegations of direct pressure on voters. The general conclusion of the international observer, though, was that irregularity that had occurred had not had determining effect on the voting results. While in general the present allegations are similar to those of 1998, more typical for the current elections is indirect falsification (though the «administrative resource» and bribing voters). The fact that there are massive allegations about falsification of the election results suggests that the new provisions of the election law and other legal mechanisms meant to prevent violations have so far produced very limited result.

For the first time in the history of the Ukrainian elections, the Criminal Code envisages responsibility for illegal actions in the election process. Article 157 stipulates that interference with the execution of the election law by threats, falsification, bribery and so on and seeking to unlawfully influence the national or local election process is subject to punishment with «restriction on freedom» or imprisonment for 2 to 4 years, and if the abuse is committed by a group of persons or a civil servant or a member of an election commission, the sentence is extended to 3 to 5 years. Article 158 of the Criminal Code envisages sanctions against illegal usage of ballot, forgery or deliberately wrong calculation or announcement of the election results: «restriction of freedom» for 3 to 5 years or imprisonment for up to 3 years. The deliberate unlawful violation of the secrecy of voting (Article 159) by a member of the election commission or other official is punishable with a fine of 500 to 1,000 untaxed minimums (an untaxed minimum currently equals UAH 17) or imprisonment for the term from 1 to 3 years, with a ban to occupy some positions or engage in some activities for the term of up to 3 years.

However, as the election law does not contain a clear implementation mechanism, the enforcement of the provisions of the law remains questionable. Moreover, participants of the election race are remarkably passive in advocating their rights and submitting official complaints to the Central Election Commission or to court. It looks like some political forces are more interested in an opportunity to tell the public about violations than actually counter them.

Chairman of the CEC Mykhailo Ryabets speaks rather philosophically about a possibility of outright falsification of the election results. He argues falsification is impossible due to numerous legal provisions, criminal responsibility for violations of the election law, and the presence of numerous election observers. «The election commissions should include representatives of all subjects of the election process, without exception <...> moreover, the law provides for organization of official observation of voting and voter counting by all participants of the election race. I do not understand those who speak about possibility of some sort of falsification under such conditions...» he said (Den, November 29, 2001). According to the election law (Article 57, p.1) any political party or block that takes part in the elections has the right to delegate one candidate, authorized to represent interests of the party (block) in the CEC. Article 60 of the election law specifies rights of official observers from parties and blocks and allows them to stay at the polling stations during voting, to observe actions of members of local election commissions from any distance, to be present when the ballots are received by members of the local election commission for organizing voting outside the polling station and during such voting, to be present (under conditions, specified by the law) at meetings of regional election commissions and during the vote counting procedure. The official observers have the right to appeal to relevant election commissions with demands to eliminate violations of the law. Falsification is further complicated by exact legal provisions for handling ballots in order to prevent their substitution. Moreover, falsification will be made much more difficult in the presence of domestic and international observers. In 1998, the elections were watched by 534 international observers from 26 countries. The 2002 elections will be observed by almost 400 representatives of the OSCE. On March 31, observers at the polling stations will include almost 150 persons from the CIS and the Russian Federation.

However, notwithstanding the massive warnings that the election results may be forged during the voting and the vote counting procedures, it is unlikely to occur massively in the amounts that may substantially influence the election outcome. While multiple violations may occur at the polling stations and during the further transportation of the ballots, the experience of previous election suggests that the official verdict will deny the significance of that influence on the election results. Yet, this campaign has demonstrated that the bulk of violations may only be seen as indirect falsification. The influence on the outcome of the March 31 voting is made today through «indirect falsification» with the help of the «administrative resource», bribing voters, deviating from the equal access to the media principle and manipulation of public opinion.

The first appeal from the OSCE mission that observes the elections, received by the Central Election Commission, referred to the violations of the election law in the media. According to head of the CEC Mykhailo Ryabets, the appeal maintained that «only one

block» dominated the information programs of the state-owned UT-1 channel (korrespondent.net, March 12, 2001). Hence, what really threatens the democratic election process and transparency is the violations that have occurred well in advance of the March 31.