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Ukraine at the Crossroads: the Presidential Elections 2004

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1. Introduction

There are a number of reasons why these elections are crucial both for Ukraine and for EU-Ukraine relations.

First, the forthcoming presidential elections represent perhaps the greatest challenge for Ukrainian democracy so far. This is because they are taking place in the context of an ongoing deterioration of democratic standards in Ukraine. The results of these presidential elections are crucial in that there is reason to suppose that the victory of one of the main candidates, Viktor Yushchenko would lead to a reversal of this deterioration while the victory of the other, Viktor Yanukhovich, may result in its further intensification. In other words, the conduct and result of these elections will provide a strong indicator as to the extent to which Ukraine is likely to adhere to the values of democracy, the rule of law and support for human rights in the forthcoming years.

Secondly, the divergent political visions of Ukraine's future adopted by the two main contenders have significant and profound implications both for Ukraine as a nation-state and its relationship with the EU: Mr Yanukovich is standing on a platform of continuity, including the prevailing style of governance; Mr Yushchenko stands for change and an intensification of Ukraine's efforts to integrate with the EU. Most importantly, these divergent platforms imply that the pace of domestic reforms will depend on which candidate wins.

Thirdly, the very fact that there exists a real choice for electors between two credible contenders, is a rarity in member states of the CIS, countries in which the propensity for incumbents to prolong their presidency or to designate a successor, is wide-spread. In contrast to elections in some of the CIS states in which the victor is known well in advance, it still remains to be seen who will be the eventual winner of the Ukrainian presidential elections. This is because firstly, the opposition forces in Ukraine remain strong, and, secondly, because there is real competition for power between the forces which represent the authorities and the opposition. This is untypical for countries of the CIS. And it is because of this 'unusual' phenomenon, that these elections, despite the known violations, have the potential for becoming an exemplar for other states in the region. In this key regard, the Ukrainian elections offer the EU the opportunity to promote European values in Ukraine as means of extending its influence throughout the CIS region.

2. The Pre-electoral Situation in Ukraine

The presidential election campaign started in Ukraine on July 4, 2004 in accord with the newly adopted electoral law. The actual date of the elections is October 31. If no candidate achieves the 50% threshold necessary for success in the first round, a second round is scheduled for November 21.

A total of 23 candidates is currently registered as official contenders for presidency, almost the double the number of the previous presidential elections in 1999. However, among 23 candidates, only 4 are credible contenders (1) Viktor Yushchenko, former prime minister and leader of the biggest opposition faction in the parliament „Our Ukraine”; 2) Viktor Yanukovich, the current primer minister; 3) Oleksandr Moroz, the leader of the Socialist party of Ukraine and 4) Petro Symonenko, the leader of the Communist party of Ukraine. These four effectively represent the whole political spectrum in Ukraine (the party of power [Yanukovych], right-centrist democratic opposition [Yushchenko], left-centrist opposition [Moroz], radical leftists [Symonenko]).

Of the four, just two have a realistic chance of winning: Mr Yushchenko (with an opinion poll rating of 33% as of late September) and Mr Yanukovych (with an opinion poll rating of 27%). The remaining 19 candidates represent small, often marginal political groups and parties; indeed, some of them established themselves as political figures only at the start of the campaign for reasons which will be discussed below.

A victory for Mr Yushchenko or Mr Yanukhovych in the first round is highly improbable, as neither candidate is likely to gain more than 50 per cent of the votes. Thus, a second round is virtually guaranteed.

In legislative terms, the electoral legislation in place for the current elections is an improvement on that in previous elections in a number of key regards. Firstly, all polling commissions at the local and regional levels were formed according to submissions made by registered candidates. Secondly, it is illegal for local and governmental authorities to interfere in the formation of electoral commissions. Thirdly, the new law prohibits the Central Electoral Commission or local court from cancelling the registration of the candidates (this right is reserved for the Supreme Court). Finally, the law guarantees contenders equal access to prime time public TV channels.

At the same time, the new law still suffers from some deficiencies. Above all, it lacks provisions which would allow NGO domestic representatives to send observers to polling

stations. As things stand, only the candidates, the media and international organisations are allowed to do so.

But the key problem lies not in the legislation but in its implementation. Independent observers and the Committee of Voters of Ukraine, a leading NGO, have monitored the campaign and have noted the following violations:

- **Governmental interference in the election process and evidence of ‘administrative pressure’.** Governmental bodies have taken an active part in the campaign, despite it being strictly prohibited by law. Officials of central and regional authorities openly work for the ‘official’ candidate, Mr Yanukovych. A noteworthy feature has been the direct use of law enforcement bodies against the opposition press and citizens involved in the campaign.
- **Discrimination in the media.** On the basis of ongoing monitoring it is clear that central national-wide TV channels are blatantly biased in favour of the ‘official’ candidate in a variety of ways. According to the monitoring data, Mr Yanukovych receives more TV coverage than all of the other candidates do collectively. In addition, the coverage of his activities as Prime Minister is overwhelmingly positive, in contrast to that of Mr Yushchenko, which receives almost exclusively critical coverage.
- **The ‘technical candidates’ problem.** Among the 23 contenders there are at least 15 who have not actually conducted a campaign in pursuit of the presidency. Instead, it appears that they have merely offered technical support for the ‘big’ candidates. For example, these pseudo-candidates have been able to influence the composition of polling commissions at different levels. As observers suggest that 12-13 of these technical candidates work for Mr Yanukovych, in practice, he would appear to control a significant number of commissions.

In addition, it is also anticipated that specific strategies to influence the outcome of the elections will be employed by the supporters of the ‘official’ candidate on election day itself.

- **Lists of the voters.** There is still no nation-wide register of voters which means that the system is open to a wide range of abuse. For example, in all previous elections there was evidence of the dead ‘voting’, double voting, and people deliberately omitted from the list.
- **Polling commissions’ capabilities.** Sometime commission members are not properly trained for their work. Some commission professionals have refused to take part in the elections through fear. There is also a possibility that some commission members may not turn up at polling stations on the day of vote,

which may mean that in certain constituencies the results may be declared invalid. Western Ukraine is especially vulnerable in this regard, as it is where the opposition candidate, Mr Yushchenko is most likely to gain an absolute majority.

- **Voting abroad.** 3-5 million Ukrainians work abroad. There is no mechanism in place either for the observation of the voting process or for ballot counting. This is likely to be a particularly pronounced issue in Russia, a country which has expressed a clear preference for the 'official' candidate. In the absence of a legitimate list of voters, technically, there is nothing to prevent huge numbers of votes being added surreptitiously with no means of verifying their validity.

3. The Implications of a Yanukovich or Yushchenko Presidency

3.1. Prospects for Domestic Reforms

A Yushchenko victory

A Yushchenko victory certainly carries the promise of change owing to his track record as reformist established during his short tenure as prime minister in 2000.

At one level, because of the power of the presidency in Ukraine, which carries considerable constitutional weight, the prospect for reform under Mr Yushchenko is very bright. Indeed, it is precisely because of the fact that the presidency is such a powerful institution, and so fearful are they of a Yushchenko victory, that pro-Kuchma forces have tried (and failed) to push through last minute constitutional change to limit the powers of future presidents.

But even a pro-reform president like Mr Yushchenko will face formidable challenges in introducing political and economic reforms. At the very outset he will be faced with the impediments presented by well-entrenched vested interests (including those within his own team), bureaucratic inertia and widespread corruption. He will also need to become much more decisive in his management style and will be required to co-operate with some of the oligarchs to prevent the formation of an overwhelmingly powerful bloc against him. At the same time he will need the support of allies outside Ukraine to help implement reforms. In particular, he will look to the EU to support him.

A Yanukovich victory

Mr Yanukovich, the candidate favoured by Mr Kuchma and many oligarchs, is to a certain extent seen by them as a 'lesser evil' than Mr Yushchenko, who they see as a direct threat to their interests. Mr Yanukovich is 'one of their own', notwithstanding the fact that his

allegiance remains in doubt. This is because he seems to primarily be a representative of the Donbas region, a major industrial centre in Eastern Ukraine, rather than a propagator of pan-Ukrainian business interests.

In line with Mr Kuchma's chosen strategy of arbiter between various interests groups, Mr Yanukovich is likely to maintain the uneasy peace between the various regional elites. However, his perceived allegiance to the Donbas leaves other regional groupings distrustful of him (but even more distrustful of Mr Yushchenko). Should his 'balancing act' fail, it would be unsurprising if he were to resort to harsher, unconstitutional methods to suppress potential political and business opponents.

Society

In electoral terms Ukraine is split along regional lines which is likely to be reflected in the voting patterns for the two main candidates. (This is not to imply that these political divisions could be transformed into a separatist movement). This is because, firstly, there is simply no one single fault line dividing the country. Secondly, the Ukrainian public is politically apathetic and difficult to mobilise, despite the fact that a significant proportion believes that things are not developing favourably in the country. Thirdly, regional diversity – visible in diverse political preferences and geopolitical outlook – will continue to prevent the emergence of a consensus on decisions regarding pivotal policy choices facing the country. Crucially, this militates against a rapid implementation of the reform process.

3.2. Ukraine's Foreign Policy Following the Elections

Despite some wavering, under President Kuchma, Ukraine has tried to lock itself into a pro-European orientation by declaring EU membership as a long-term strategic objective. In 2002, the ambition to seek NATO membership was also announced. Yet in line with its multi-vectored policy, Ukraine has sought to maintain its 'special' ties with Russia.

Neither of the current front-runners in the electoral campaign is expected to radically change the country's geopolitical orientation that is, pro-Europeanism allied to cooperation with Russia. Nevertheless, the nuances of the policies of each of the candidates expose significant differences. A Yushchenko victory would ensure improved relations with the European Union and an end to Ukraine's (and more particularly, President Kuchma's) effective isolation from the West. In contrast, Mr Yanukovich has already implied that stronger ties with Russia are on the cards as is an abandonment of Ukraine's ambition for membership of the EU in the short term.

Ukraine and Russia

While neither candidate is anti-Russian, Russia favours a Yanukovich presidency because it sees him as the best protector of its interests in Ukraine. However, it is likely that Mr Yanukovich may be a less dependable ally than expected. This is because the business groups he is affiliated with, in particular the metallurgic industry, have international ambitions. In addition, the importance of the Russian market has declined since the mid-1990s and after the 2004 EU enlargement, the Union is now the biggest market for Ukrainian goods (although Russia remains the biggest source of Ukrainian imports). Undoubtedly, there are business sectors interested in better access to the Russian market. These forces are behind Ukraine's participation in the Common Economic Space with Russia, Belarus and Kazakhstan. But Ukraine, even under Mr Yanukovich is likely to oppose Russian ambitions to entangle Ukraine in a CIS-based alternative to the EU.

At the least, Mr Yanukovich is likely to maintain the political and economic *status quo* regarding Russia. He is also likely to continue a 'pragmatic' policy characterised by non-transparent, *ad hoc* decision-making often driven by particular interests of sections of the ruling elites and is unlikely to improve democratic standards in Ukraine or introduce greater transparency into the economic decision-making. This will suit Russia's plans for Ukraine insofar as such a presidency will alienate Mr Yanukovich from the West.

Mr Yushchenko has made great efforts to change his image of being anti-Russian both in Ukraine and in Russia, though without much success. He is careful to avoid an openly anti-Russian policy not only because of Ukraine's dependency on energy resources, but also because of the undesirability of alienating the pro-Russian constituency in Eastern and Southern Ukraine. His will, however, apply sound economic logic to relations with Russia.

Ukraine's 'European Choice' and the EU

Up till now, Ukraine has lacked the determination or will to embark on painful domestic reforms, despite the fact European integration is seen as desirable by the population at large. However, Mr Yanukovich and Mr Yushchenko differ in their European objectives meaning that the opportunities for the EU to promote reforms in Ukraine will depend on which of the two candidates prevails.

Mr Yanukovich appears to want to distance himself from the EU, at least in the short-term. By changing the emphasis from membership of the European Union to 'short-term practical co-operation agreement', he appears to be seeking to release himself from the

economic and political commitments that come with membership aspirations. The move can also be seen as pre-emptive. By reducing Ukraine's aspirations for EU membership, Mr Yanukovich wants to simultaneously reduce the leverage of the EU in the event of his coming to power: any criticisms the EU might have about his potential 'victory' can be more easily portrayed as interference in Ukraine's domestic affairs.

Instead, Mr Yanukovich, is seeking to prioritise the economic aspects of co-operation with the EU, over goals such as membership. He will thus downplay any criticisms of breaches of democratic standards and challenge any threats to the political and economic *status quo* in Ukraine. However, should any authoritarian tendencies come to the fore during his presidency, opposition groups will look up to the European institutions to defend democratic standards. Mr Yanukovich will continue to promote Ukraine's accession to the WTO, as the lack of membership is now constraining Ukraine's fast growing economy.

It remains to be seen what stance Mr Yanukovich will adopt regarding NATO. He will find it difficult to bring to a halt the military reform process instigated by the (former) Minister of Defence, Yevhen Marchuk. But he is unlikely to be as apparently supportive as Mr Kuchma used to be (in June 2004, he appeared to renege on his commitment to support Ukraine's membership of NATO, probably in response to pressure from Russia.) As with the EU, the quality of Ukraine-NATO relations will be a corollary of the prevailing democratic standards in Ukraine.

Mr Yushchenko will seek closer ties with the EU both to increase the attractiveness of the European choice and to generate support for domestic reforms. At present, the focus on the economic and technocratic aspects of co-operation does not elicit much enthusiasm for EU policy prescriptions in Ukraine. The appeal of the economic incentives of the ENP may increase as the reform process gains momentum, though only to business sectors with an interest in the EU market. Mr Yushchenko will need to transform the European choice into a political as well as an economic project if it is to become a key driver for reform.

This is not an easy task. At present, the preparation of the EU Action Plan for Ukraine is virtually unknown outside a narrow group of politicians and experts in Ukraine. Unless it is popularised it will remain a technocratic document limiting its usefulness in domestic debates and policy making.

Mr Yushchenko will support a more prominent role for the EU in Ukraine. To do so, he will need to engage Ukraine's political class and citizens, primarily by convincing the

electorate that Ukraine is 'wanted in Europe' and mitigate a strong sense of exclusion prevailing in Ukraine. To achieve this, he will insist on a European perspective for Ukraine.

4. Recommendations

- Prior to the elections, the EU should inform (officially and/or unofficially) the Ukrainian authorities that it will publish an extensive evaluation of the elections and that the results of the evaluation will be decisive for future political and economic EU-Ukraine relations.
- The period between the two rounds of elections (three weeks) will be crucial as the campaign will boil down to a battle between two candidates: Mr Yanukovich and Mr Yushchenko. With so much at stake for the forces which Mr Yanukovich represents, the limits to which he/they are prepared to go in pursuit of victory remains unknown. Therefore, the EU (European Parliament) should be acutely sensitive to any violations, irrespective at which stage they occur, and be ready to act immediately and directly.
- The EU should prepare an extensive assessment of the presidential elections following the second round. The report should be ready no later than December 2004.
- Even though negotiations have been completed at the expert level, the EU should not sign the Action Plan between the EU and Ukraine prior to the second round of presidential elections. The Action Plan should be signed by the new president.
- In the event of a Yushchenko victory the EU should establish a special donors' meeting, similar to the action taken in support for Georgia, to promote Ukrainian reforms. Preparations for this meeting should be underway even before presidential elections take place.
- In the event of a Yanukovich victory the EU will need to wait to determine the extent to which a further deterioration in democratic standards is a real danger. In the event of a deterioration in democratic values, the EU will need to reappraise its interaction with Ukraine. This should not mean the isolation of Ukraine. Rather it should mean increased support for the pro-reform constituency in Ukraine, by targeting business, bureaucracy, youth, and the third sector.