

CRS Report for Congress

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Ukraine's Presidential Elections and U.S. Policy

Steven Woehrel
Specialist in European Affairs
Foreign Affairs, Defense, and Trade Division

Summary

This report discusses Ukraine's presidential elections, held on October 31 and November 21, 2004. The report discusses the election's importance in Ukraine's political transition, the conduct of the elections, and the political crisis that emerged after the elections. It also addresses U.S. policy on the elections, and congressional action. This report will be updated as needed. Congress has adopted legislation on the Ukrainian elections. S.Con.Res.106 and H.Con.Res. 415 call on Ukraine to end violations of democratic standards and hold free and fair elections. S.Res. 473 also raises these issues and calls on the President to consider sanctions against Ukrainian leaders if they improperly influence the outcome of the election. For more background on Ukraine, see CRS Report RL30984, *Ukraine's Future and U.S. Policy Interests*.

Ukraine's Political Transition

Ukraine may be at a key period in its transition that could shape its geopolitical orientation for years to come, in part due to presidential elections held on October 31 and November 21, 2004. Ukraine could move closer to integration in Euro-Atlantic institutions, real democracy and the rule of law, and a genuine free market economy, or it could move toward a Russian sphere of influence, with a "managed democracy" and an oligarchic economy.

Ukraine's current political scene is dominated by President Leonid Kuchma and the oligarchic "clans" (regionally-based groups of powerful politicians and businessmen) that have supported him. Kuchma was elected President in 1994, and re-elected in 1999. He cannot run for a third term under the Ukrainian constitution. His rule has been characterized by fitful economic reform (albeit with rapid economic growth in recent years), widespread corruption, and a deteriorating human rights record. The oligarchs chose Prime Minister Viktor Yanukovych, a representative of the powerful Donetsk clan in eastern Ukraine, as their candidate to succeed Kuchma as President. The chief opposition candidate, former Prime Minister Viktor Yushchenko, is a pro-reform and pro-Western figure known for his personal integrity. The current regime reportedly fears that

Yushchenko could move to clean up corruption if elected, which could expose Kuchma and other current leaders to criminal prosecution. The oligarchs could also lose property received through privatizations of dubious legality, some occurring in the weeks and months leading up to the vote.

President Putin and other Russian leaders have made many statements in support of Yanukovych, and Russian political consultants associated with the Kremlin are advising Yanukovych's campaign. President Putin visited Ukraine before each of the two rounds of the vote and praised the achievements of Yanukovych's government. For their part, Yanukovych and other Ukrainian government leaders have called for closer ties with Moscow and downplayed the prospects for NATO membership and Euro-Atlantic integration for the foreseeable future. Yanukovych supporters also used anti-American themes in their campaign.

In September 2004, Yushchenko accused the authorities of trying to poison him. On September 6, Yushchenko fell seriously ill, shortly after attending a dinner with the chief of the Ukrainian security services. After his condition worsened, he was rushed to a medical clinic in Austria. Doctors were unable to determine the cause of the illness. Yushchenko soon resumed campaigning, but his health remained fragile.

Election Results

On November 10, after a substantial delay, the Ukrainian Central Election Commission announced the final results of the first round of the election. According to the CEC, Yushchenko won 39.87% of the vote, while Yanukovych won 39.32%. Socialist Party leader Oleksandr Moroz won 5.81%, and Communist Party leader Petro Symonenko received 4.97% of the vote. The remaining 20 candidates split the remaining vote. According to Ukrainian law, since no candidate received 50% of the vote, the top two finishers, Yanukovych and Yushchenko, moved on to a November 21 runoff election. The distribution of the first round vote broke down sharply along regional lines, with the more nationally-oriented western and central Ukraine supporting Yushchenko and the more Russified eastern and southern Ukraine supporting Yanukovych. For example, Yanukovych won 86.94% in his home region of Donetsk, while Yushchenko received only 2.94%. In the Lviv region in western Ukraine, Yushchenko won 87.25%, while Yanukovych won 5.81%. Turnout for the first round was an impressive 74.95%.

International observers from the OSCE criticized the first round of the election, saying that it fell short of international democratic practices in several respects. The observers noted problems in the campaign including heavy media bias, use of government resources on behalf of Yanukovych, and government interference with opposition campaign events. Observers noted significant problems on election day, including a large number of names missing from voting rolls and the last-minute barring of some members of local electoral commissions from their posts. Pointing to exit polls and a parallel vote count conducted by the opposition, the Yushchenko campaign charged that widespread government fraud and intimidation of voters and local election officials denied Yushchenko a large lead over Yanukovych, perhaps even outright victory in the first round. Despite these concerns, Yushchenko said that he was prepared to go forward with the second round of voting on November 21.

On November 24, the Ukrainian Central Election Commission announced that Yanukovych had won the second round with 49.46% of the vote, with Yushchenko receiving 46.61%. Turnout for the election was 80.85%. Yushchenko's supporters charged that massive fraud had been committed. They pointed to exit polls that showed a victory for Yushchenko by a comfortable margin, as well as highly improbable turnout figures in Yanukovych strongholds, including 96.65% in the Donetsk region. The second round results showed the same regional split as the first round, with Yushchenko winning overwhelmingly in western and central Ukraine and Yanukovych winning by massive margins in eastern and southern Ukraine.¹

Election observers from the Organization for Security and Cooperation in Europe again said that the conduct of the runoff was not consistent with democratic standards. Fraudulent practices noted by international observers included abuse of absentee ballots, expulsion of opposition representatives from electoral commissions, violence against media representatives, inaccurate voter lists, and official pressure on students and government and private sector workers to vote for Yanukovych.²

Ukraine's Political Crisis

On November 22, after preliminary results favoring Yanukovych were published, Yushchenko claimed victory in the election, and his supporters warned that they would launch court challenges, massive, non-violent street protests and other forms of civil disobedience to overturn the fraudulent result. On November 23, Yushchenko, in a symbolic move, took the oath of office of the President of Ukraine in the parliament chamber, while as many as 200,000 Yushchenko supporters demonstrated outside the building. Tens of thousands attended protests in other Ukrainian cities, mainly in western Ukraine. The government of the capital, Kiev, as well as the cities of Lviv, Ivano-Frankivsk, Vynntsia, and Ternopil in western Ukraine announced that they would recognize only Yushchenko as President.

On November 25, the Ukrainian Supreme Court blocked official publication of the election result, the last step required before the winning candidate can be inaugurated, pending its consideration of Yushchenko's fraud charges. On November 27, the Ukrainian parliament approved a resolution calling the election invalid and passed a vote of no confidence in the Central Election Commission. Although neither of these votes is binding on the government, they denote that the pro-regime majority in the parliament is fragmenting and represent a severe blow against the regime's prestige. On December 1, the parliament took a further step by adopting a motion of no-confidence in the Yanukovych government. Kuchma must decide whether to keep Yanukovych as the head of a caretaker government or appoint someone else.

Another indication of the erosion of the regime's support after the second round vote has been the refusal of journalists at pro-government broadcast stations to continue to follow regime guidelines on coverage. They have provided more balanced coverage of

¹ For the official results of the elections, see the website of the Ukrainian Central Election Commission, [<http://ic2-www.cvk.gov.ua/wp0011e>].

² For the texts of the OSCE observation mission reports on the Ukrainian elections, see the OSCE website, [http://www.osce.org/odihr/elections/field_activities/?election=2004ukraine].

opposition leaders and the massive opposition demonstrations in Kiev. The opposition has kept the pressure up on the regime by holding massive rallies in Kiev, in which hundreds of thousands of people have participated, and by peacefully blockading the parliament and government offices.

It is unclear whether Ukrainian internal security forces or the army would obey possible orders to use violence against protesters. A statement by the Ukrainian prosecutor general, the interior ministry and the security services on November 22 warned that they would put an end to any “lawlessness” by the opposition “quickly and firmly.” The leading posts in Ukraine’s internal security services are deemed by analysts to be held by supporters of an oligarchic group led by Ukrainian Presidential Administration chief Viktor Medvedchuk. However, the large numbers of people that Yushchenko has managed to turn out into the streets could make any efforts at repression risky. Moreover, it appears that Yushchenko and his supporters have made inroads in persuading rank-and-file police not to obey orders to use violence against protesters. The Defense Minister and the head of the Ukrainian security service have said that they will not issue orders to use violence against protesters.

Perhaps fearful of the regime’s loss of control of the situation in Kiev, on November 29 officials from 17 regional governments in southern and eastern Ukraine met in Yanukovych’s eastern Ukraine power base and adopted a resolution warning that their regions would seek autonomy within Ukraine if Yushchenko becomes President. Moscow mayor Yuri Luzhkov attended the meeting and delivered a speech praising the group and harshly denouncing Yushchenko. The regional legislature in Donetsk, Yanukovych’s home region, announced that it would hold a referendum on December 9 on autonomy for the region.

In addition to the activity in the courts and streets, President Kuchma and both candidates have met with EU and Russian mediators to negotiate a peaceful settlement to the crisis. Yushchenko has expressed his willingness to participate in a repeat election on December 19, but only if changes are made to the election laws and the persons administering the elections to prevent the kinds of fraud that occurred in the previous vote.

U.S. Policy

The United States has warned Ukrainian leaders that Ukraine’s prospects for Euro-Atlantic integration will be strongly influenced by whether Ukraine holds free and fair presidential elections. U.S. officials say the United States could work with either major candidate, if he is elected fairly. In a October 14 press statement, State Department spokesman Richard Boucher said that the United States was “deeply disappointed that the campaign to date has fallen short of international standards,” He warned that the “we would need to reexamine our relationship with those who are engaged in election fraud and manipulation.” On November 1, State Department spokesman Adam Ereli said that the United States agreed with the assessment of the OSCE observers that the conduct of the first round of the vote fell short of democratic standards, noting particularly flawed voter lists and arbitrary expulsion of electoral commissioners shortly before the vote.

Senator Richard Lugar, chairman of the Senate Foreign Relations Committee, monitored the November 21 runoff at the request of President Bush. He said after the

vote that “it is now apparent that there was a concerted and forceful program of election day fraud and abuse enacted with the leadership or cooperation of the authorities.” Senator Lugar said that he had carried a letter from President Bush to President Kuchma that warned that a “tarnished election” will cause the United States to “review” its relations with Ukraine. Senator Lugar stressed that Kuchma “has the responsibility and the opportunity for producing even at this point an outcome which is fair and responsible.”³

President Bush and Administration officials issued sharp criticisms of the conduct of the second round of the elections. On November 24, Secretary of State Colin Powell said that the United States could not accept the election results as “legitimate” due to the “extensive and credible reports of fraud in the election.” Powell called for a “full review of the conduct of the election and the tallying of election results.” On November 26, President Bush said that the validity of Ukraine’s elections was “in doubt” and warned that the “international community is watching very carefully” how the Ukrainian government responds to “allegations of vote fraud.” On November 29, Secretary Powell stressed in discussions with Kuchma and Russian Foreign Minister Sergey Lavrov U.S. support for a peaceful solution to the crisis that respects Ukraine’s territorial integrity. Other U.S. officials expressed strong U.S. opposition to any separatist initiatives in Ukraine.

U.S. officials have said that Ukraine’s troop deployment to Iraq, while appreciated, will not cause the United States to overlook Ukraine’s democratic shortcomings. However, some observers are concerned that Ukrainian leaders may still be hoping that the United States will ignore election irregularities, if Ukraine continues its troop deployment in Iraq. Recent public opinion polls have found that a majority of Ukrainians are opposed to the troop deployment in Iraq. Yushchenko pledged to withdraw the troops, if elected. Yanukovych has supported the deployment, but has raised the possibility that a continued deployment could be conditioned on such factors as whether Ukraine receives more reconstruction contracts in Iraq. It is unclear whether Ukraine’s leaders value the perhaps distant prospect of Euro-Atlantic integration over their immediate political survival. Some critics argue that the threat of sanctions against the Ukrainian leaders is the only possible way to influence them.

Another issue is what actions to take if Ukrainian authorities attempt to implement the fraudulent election results. The United States and its allies could move to isolate the regime, in order to promote regime change or to convince the regime to change its policies, such as it has done in the case of Belarus. The United States has so far declined to pursue this approach with Russia and other CIS countries, perhaps for strategic reasons, even though their records on democracy and human rights are judged by many observers to be poorer than Ukraine’s. It could be argued that sanctions against the leadership could have an impact on Ukraine’s support for the United States on Iraq.

In addition, Kuchma and Yanukovych have made concessions to Russia in recent months in order to secure Moscow’s support in the elections. It could be argued that isolating the regime might drive the Ukrainian leadership to an even closer relationship with Russia and further away from Euro-Atlantic integration. In contrast to Western

³ Text of statement from Sen. Lugar’s website, [<http://lugar.senate.gov>].

concerns about the election, Russian President Putin quickly congratulated Yanukovych on his alleged victory in what Putin called a fair election. Russian officials have condemned Western charges of electoral fraud as unsubstantiated and motivated by a desire to increase Western influence in Ukraine at Moscow's expense. Some observers assert that Luzhkov's support for separatism in eastern Ukraine could be a sign that Russia is willing to go so far as to threaten to destabilize Ukraine in order to retain its influence there. Another issue is whether increasing tensions between Western countries and Russia on Ukraine could have a negative impact on U.S.-Russian relations in general, including in such key areas as the global war on terror.

Some experts say that one positive aspect of the Ukrainian election is the emergence of a broad, pro-democratic, civil society in Ukraine that appears willing to stand up to corrupt and self-serving leaders. They call on the United States and other Western countries to increase support for these forces, no matter what the outcome of the electoral crisis.

Congressional Action

Congress has considered legislation on the Ukrainian elections. On July 22, 2004, the Senate passed S. Con. Res. 106 by unanimous consent. The resolution, introduced by Senator Ben Nighthorse Campbell, notes the violations against OSCE standards for free and fair elections that have taken place during past elections and during the present Ukrainian election campaign. The resolution pledges Congress's support for Ukraine's establishment of a democracy, free market and a place in the Western community of democracies. H.Con.Res. 415, introduced by Representative Henry Hyde, was passed by the House on October 4. It is identical to S.Con.Res. 106, except that it adds two clauses that "strongly encourage" the President to fully employ U.S. government resources to ensure a free and fair election and to stress to the Ukrainian government that the conduct of the elections will be "a central factor in determining the future relationship between the two countries."

Representative Dana Rohrabacher introduced H.R. 5102 on September 15, 2004. The bill details the failures of the Ukrainian government to uphold democratic standards in the past and during the present campaign, and calls on it to ensure that a free and fair election takes place. However, it also includes provisions for sanctions on Ukrainian leaders and the Ukrainian government if the President does not certify that Ukraine has implemented free and fair elections, and stopped harassment of the opposition, independent media and other groups. The President would have the authority to waive the sanctions if he certifies that it is in the "national security interest of the United States" to do so. The bill would require a report from the President on the personal assets of the Ukrainian leadership and on whether Ukraine has supplied weapons or weapons-related technologies to regimes supporting terrorism. Representative Rohrabacher introduced a modified version of the bill on October 7 as H.R. 5247. A companion Senate bill, S. 2957, was introduced by Senator Jon Kyl on October 8.

On November 18, the Senate passed S.Res. 473 by unanimous consent. As in the case of H.Con.Res. 415, it warns Ukrainian leaders against conducting a fraudulent election. However, it goes further than H.Con.Res. 415 in that it "strongly encourages" the Administration to impose sanctions, including visa bans, against those encouraging or participating in fraud.