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Presidential Election and Orange Revolution Implications for Ukraine's Transition

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Preface

Good Governance and the Need for Consensus Building – A Framework for Democratic Transition

Olaf Hillenbrand*

1. Introduction: Ukraine Beyond the Crossroads

The year 2004 was a decisive, historical year for Ukraine. After 10 years of transition, Ukraine stood at a crossroads between democracy and authoritarianism. The presidential election was seen as the key for the development of democracy. In the beginning, the key actors were not only the two presidential candidates, with quite different views about Ukraine's future, but also the former president, including his administration, whose efforts to influence the election have inherently damaged and endangered democratic development. After the manipulated ballot on Nov. 21, 2004, with the population demonstrating in the streets, a further participant entered the political arena whose courage and persistence finally forced a repeat of the second round of the elections and a democratic change of power.

In Ukraine, this victory for democracy created high expectations. President Viktor Yushchenko represents a departure to the West, a liberal democracy and the renewal of free market structures. After he suffered a poisoning attempt in September 2004, he transformed into a charismatic martyr. As a reformer he already enjoyed a good reputation because of his record as a prime minister. However, in trying to modernize the country, he had also experienced intense resistance from the eastern and southern regions.

Furthermore, the "Orange Revolution" received strong attention beyond Ukraine's borders. Actually, in order to receive attention, support and sympathy in the European neighborhood, its timing and its staging could hardly have been better. The whole of Europe stared with amazement at the situation in Ukraine. During this time, it became particularly clear to the European Union that, after the victory of the democrats, the country needs a European perspective to be able to continue on its way towards democracy and a market economy.

The Decisive Role of Elections

For every democracy, elections are an indispensable constituent element. In Ukraine, authoritarian tendencies were established during recent years. Democratic procedures and institutions were set up; however, words must be matched with deeds in the coming years in

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order to establish an appropriate political culture and accompanying democratic consolidation. On the one hand it was possible that a defective, illiberal democracy similar to Russia's could be consolidated in Ukraine. On the other hand, Ukraine still had the opportunity to advance step-by-step toward a Western-style liberal democracy. In this respect, the presidential election played a decisive role at these crossroads of Ukrainian development:

- As a litmus test, the election process is a very strong indicator that can provide information about the status of any given democracy. Democracy in Ukraine had to assess whether and to what extent the ruling party and related interest groups accepted common rules for the division of political power. Other questions included: How free and fair were the elections? Were there equal opportunities for each candidate? Was there a free flow of public information? Were there attempts at manipulation? Was there already a sustainable political culture?
- In the transition from authoritarian rule to democracy, elections are categorized as an important step toward implementing the rules and procedures of a democratic system, and also as the mechanism for the democratic division of power. In the special situation of defective democracies, free and fair elections are the most probable opportunity to put stagnating reform policy back on track. They force political actors to seek legitimacy, enable a broad discussion on reform perspectives, and allow people and civil society to articulate their demands. In this sense, the deficits of the Ukrainian political system could be best overcome if voters demanded change.
- Viktor Yushchenko and Viktor Yanukovich were two candidates who could be counted within the democratic camp. It has to be emphasized that this election was thus a kind of victory for democracy, because there was—in contrast to other CIS countries—a real democratic alternative. Citizens of Ukraine thus had democratic choices available and had to carefully consider the direction of further reform.

In earlier presidential and parliamentary elections in Ukraine, the character and results of the process indicated and reflected the state of affairs of the political system. The same was true for the run-up to the 2004 campaign, which was as dramatic as a good thriller: President Leonid Kuchma tried in 2000 to extend his powers and was stopped by the Verkhovna Rada (Parliament). In 2003 he tried to extend his second presidential term to 2006, but due to growing criticism he withdrew his proposal. In 2004, Kuchma proposed a new election law and later came up with a constitutional reform package that would have led towards parliamentary democracy. Both were responses to the demands of the opposition and both were also cancelled by parliament. Foreign observers assumed in advance that Ukraine would undergo the “hardest and dirtiest elections in her short history as an independent country.”¹

As a matter of fact, these expectations were fulfilled during the campaign, and after the first ballot.² They hit their peak in the attempt to poison the most important opposition candidate

¹ See: Ralf Wachsmuth, Sebastian Fiebrig: Die Ukraine sechs Monate vor den Präsidentschaftswahlen. Die Reform der ukrainischen Verfassung: eine endlose Geschichte, Kyiv, May 2004, p. 12.

² See: Thomas Urban: Wettkampf mit unfairen Mitteln; Peter Hilkes: Die Opposition lebt gefährlich, both in: *Süddeutsche Zeitung*, Oct. 30, 2004, p. 2; See: Massive Behinderungen bei der Ukraine-Wahl, in: www.spiegel-online.de, download Nov. 1, 2004.

as well as in the manipulation of election results. Yushchenko did indeed win the first ballot, but in the second ballot on Nov. 21, 2004, suddenly the administration candidate pulled ahead, leading by three percent at the polls. Numerous election observers reported massive and systematic irregularities, clearly indicating massive shortcomings in Ukrainian democracy. On the one hand, the second ballot could be seen as a farce and clearly demonstrated that many important political agents were “playing with the rules instead of playing by the rules.”

However, the reaction after this development came to display positive aspects of current civil society in Ukraine. Already in the run-up of the election it had become clear that the power of outgoing President Kuchma was not sufficient to implement his reform ideas against the will of his opponents. As in other young democracies in similar situations, it seemed that the current president was fighting with his back against the wall. Also, in light of its weak legitimacy, the old regime could not resist the well-organized mass protests, against a continuous crumbling of its power structures, and against an emboldened population. Its attempts to manufacture political facts, and later to starve out protests by skillful delaying negotiations and decisions, no longer worked. Fortunately, the old administration abandoned the option to conserve the old structures by force.

In the end, Kuchma’s power was reduced to the option of implementing a compromise with the opposition. It linked both a reform of the election law and a constitutional reform with the early repeat of the second ballot on Dec. 26, 2004. As expected, Yushchenko won this election. Shortly after, he was even able to install radical reformer Yulia Tymoshenko as prime minister with the support of a majority in Parliament. During his first days as president, Yushchenko has acted prudently and outlined his reform agenda. In some respects, Ukraine has changed its face and is already a different country.

Structure of this Paper

The symbolic victory of democracy in Ukraine should not suggest, however, that this is already the end of a long transformation process. Like any transition country, Ukraine has special problems and unique power constellations. However, in a comparative perspective we can see that countries in transition share many characteristics as they proceed from authoritarian to democratic structures. Beyond this background, section two empirically analyzes important factors and key elements along the path to a liberal democracy. In section three, the framework for good governance will be sketched out. In 1997, this concept was introduced by the World Bank and plays a crucial role in the transformation debate. Good governance entails using political authority to achieve the best possible progress in relation to the resources available.

In the context presented, it is important to evaluate actors, structures and processes in order to classify where Ukraine stands today in terms of its potential for democracy. This paper discusses some theoretical and empirical findings in the field of transformation management, which might be relevant for further development in Ukraine. As a conclusion, suggested steps towards a participatory society will be offered. It will be argued that, in addition to economic growth, the strengthening of the democratic consensus in all parts of society will be a decisive factor supporting democratic consolidation in Ukraine.

2. Transformation to Democracy in a Comparative Perspective

When Ukrainian transformation started in the early 1990s, the country had to face three challenges simultaneously: national consolidation, establishing democracy and building a market economy. Political actors saw themselves confronted with a difficult situation. They had to consolidate a fragmented and heterogeneous state. Independence was threatened by the Russian Federation as a dominant neighbor. A rather weak civil society and equally weak democratic traditions along with a very high degree of corruption hindered fast and sustainable political reform. The special interests of economic groups were stronger than their interest in modernizing the country.³

Whereas the initial phase of Ukraine's transformation was marked by the task of maintaining national unity and independence, political actors failed to create an effective and stable institutional framework. Various power struggles led to political and economic instability. "As was somewhat typical for post-Soviet states, conflicts arose between the members of the administration, who styled themselves as backers of reform, and the Parliament, which was seen as an impediment to reform (...). President Kuchma managed to put a stop to these negative trends during his second term of office. Together with Prime Ministers Yushchenko and Kinach, the president was able to establish a reform-oriented government (...). Moderate growth and structural reform halted the economic downturn."⁴

In a worldwide comparative perspective, Ukraine is among the more successful transformation states—compared with other European countries, however, it is among the least successful cases.⁵ But even if the last five years have shown considerable progress on reform politics in Ukraine and the political system have increasingly stabilized, the country still has a long way to go on the road to becoming a consolidated liberal democracy.

The transformation of a political and economic system is one of the most challenging and difficult processes a society can undertake. Inevitably, older, customary structures are changed, resulting in winners and losers compared to the status ex ante. Less fortunate players may struggle against these changes. The resulting dynamics of transformation processes have undermined the control of these processes in many countries, causing complete failure in some. Two decades ago it was still debated as to whether these processes could be controlled at all: "The picture of a successful system transformation contradicts everything that sociology and political science have presented as basic, axiomatic truths regarding possibilities for extensive societal reform."⁶

Many successful transformation processes worldwide have contradicted this skepticism. Nevertheless the negative expectations reflect some truths that must be acknowledged even

³ See Country Report Ukraine, Bertelsmann Transformation Index 2003: www.bertelsmann-transformation-index.de

⁴ *ibid.*

⁵ The Ukrainian Transformation Management is ranked 39 out of 116 countries in the BTI 2003 Ranking and categorized as "Successful Management with weaknesses"; See www.bertelsmann-transformation-index.de.

⁶ Helmut Wiesensthal, (ed.): *Gelegenheit und Entscheidung. Policies und politics erfolgreicher Transformation ssteuerung*, Wiesbaden 2001, p. 21.

today. A multitude of actions encompass the process of transformation. Many of these actions bear considerable social costs. This can jeopardize the acceptance of the general objectives of democracy and a market economy, resulting in a blockade against effective political measures that are essential to achieving these goals. Inadequate resources also aggravate these problems. Political elites in transformation countries also often lack the strategic capabilities necessary to pursue reform, questioning or even contradicting the prevalent political culture. The following chapter discusses some important aspects that are relevant for any transformation strategy.

2.1 Functions of Legitimacy and Democracy

The crucial issue behind the success of reform is not the difference between a democratic and an authoritarian state, but between a weak and a strong one. The most important feature of a strong state is its legitimacy. Generally, a legitimate government needs fewer devices to secure power than a government without legitimization.

There are various sources for legitimacy: (1) economic success, especially the impression that the government is able to continuously improve the wealth of a society and its individuals; (2) justice and individual rights, meaning dependable and accepted norms and laws, and (3) a high degree of consensus on important societal orientation and decisions. Depending on social development, it is therefore wise to take into account the wishes of the people, i.e. the articulate elite, whereby the process of developing an informed opinion puts limitations on a government during the course of the development process. Given a high degree of democratic consensus, elections are an ideal instrument to legitimize political decision-makers.

Particularly in the later stages of transformation, “social engineering” from above against the will of the people becomes more and more problematic. Economists and supporting institutions therefore increasingly are moving away from the idea that well-meaning authoritarian planners can implement economic reform without opposition. Though democratic states must take articulated interests into greater consideration, normally they have greater control problems in the implementation of reform than do authoritarian states. The old theory of the superiority of autocratic regimes cannot, however, generally be confirmed empirically.

Democracy is the political principle of law and order, which unites individual free will and society in the most productive way. All in all, the 117 democratic states today⁷ show a very broad variety of institutions, practices, orientation and success. Of course, some of the most authoritarian countries refer to themselves as a “democracy” (i.e. North Korea). However, there are three minimal requirements that any “real” democracy must fulfil:

1. a basic level of freedom of assembly, freedom of opinion and freedom of the press, as well as universal suffrage and the right to campaign for public office;
2. selection of rulers through free and competitive elections (competition for political mandates), in practice as well as theory, and

⁷ See Freedom House, Freedom in the World 2003, Washington 2004.

3. political power subordinate to law, protection against misuse of power and protection of human rights.

Democratic elections alone are not sufficient for a functioning democracy. While the governmental system can vary and should express the local social arrangements and traditions, each democracy needs a set of checks and balances that actually express both the will of the people and the competition of ideas adequately. These include a government capable of implementing policy that can be controlled by the opposition; stable institutions and an independent judiciary to ensure adherence to the procedures and the rights of all citizens; parties and interest groups that are able to participate in the political process, and consistency of the Constitution and the constitutional order.

What makes liberal democracies in the long run superior to other political systems is their high degree of legitimacy. Because by nature they depend on the will of the majority, checks and balances and the rule of law, functioning democracies are able to provide the people with democratic alternatives. To keep their power, democratic governments are forced to create decisions that are close to the will of the society. In addition, democracies are more flexible in terms of adapting to new challenges. However, if the democratic system fails to produce a degree of stability and wealth, its legitimacy will inevitably decrease.

2.2 Prerequisites for Successful Democracies

After the fall of the Iron Curtain and the end of the communist regimes, the ground seemed to be prepared for democracy and market-based economic systems. Francis Fukuyama even declared this “the end of history.” Time has proven this verdict to be too optimistic. Many democracies, especially in developing countries, have failed after their formal implementation. Worldwide, the phenomenon of illiberal democracy is visible. Bosnia is a classic case of democracy as prelude to ethnic slaughter. In Latin America, it is a common joke that democratic elections are “a magnificent invention that allows the people to choose the persons who will steal, plunder and lie for the next four years—and in fact with full immunity.”⁸ For a democracy to function, obviously a basic inventory of the minimum of political, economic and social prerequisites must be met. Even if there are no absolutely certain guidelines, some factors may be deduced from previous transformations:

- Independent of the type of regime, there can be no significant progress at any stage of a transformation without functioning decision-making structures. For this reason, the guarantee of leadership capability is the logical starting point for every further consideration and a central factor in all stages of systemic change. Hence, if the state fails to achieve stability, then internal and external enemies serve the purpose of power preservation. Consequently, every system needs effective structures guaranteeing the capacity to act and the monopoly of legitimate force.
- Economic success: Even in the initial phase, the transformation depends highly on confidence and success. In Africa, many transitions failed because they could not

⁸ Nicolas Richter: Griff nach der harten Hand, in: *Süddeutsche Zeitung* v. Aug. 18, 2004, p. 2.

deliver the most basic services: security and an adequate food supply. Any government will fail if it is not able to meet these basic needs. However, authoritarian regimes are often pressured to liberalize when they have achieved economic success to some extent. Correlation analyses show that democracies with an average annual per capita income of less than \$1,000 are very precarious. An average annual per capita income between \$1,000 and \$3,000 raises the chances for democratization. Defective democracies have an average annual per capita income of \$3,392.⁹ If a democracy exists in a country with an average annual per capita income of more than \$6,000, the democratic system has become “impregnable” and can be expected to last.¹⁰ In a nutshell, the strong connection between economic prosperity and the success of democracy is clear.

- Without a democratic culture, elections could allow the winners to use state resources to exclude the losers from participation in power and decision-making. In such situations, election results can be the starting point for unrest or even civil war. Benjamin Barber wrote that there can be no democracy without a democratic culture. “Today, we often seem to forget this simple lesson of the priority of culture to politics. We think a multiparty system or an independent judiciary will endow traditionally despotic societies with all the fruits of liberty. We FedEx Albania the Bill of Rights or we e-mail Afghanistan Australian ballots and assume democratization is underway. But culture counts.”¹¹

Different factors can be subsumed in this context: From an empirical perspective, the strength of democratic traditions is very relevant. Societies like those in Russia or Ukraine with a long authoritarian history have more difficulties adapting to democracy than do societies with shorter authoritarian episodes. Another important element is the elite consensus: Democracy must be “the only game in town” (Przeworski) for all relevant actors. This means not only allowing for and holding elections, but allowing elites to implement democratic rule with determination instead of manipulating democratic instruments. Especially during the time of transition, powerful veto actors and authoritarian enclaves such as the military pose a great risk to democracy. The prevalence of democratic orientations and the strength of civil society play a decisive role. “It is generally accepted: The stronger and more autonomous a civil society is, the less likely it is to accept a non-democratic regime. The strengthening of civil society’s energies from the bottom up, within a non-democratic regime, usually accelerates its decline and raises the chances for long-term liberalization and democratization.”¹²

- Also, the effect of the international environment should not be underestimated. It goes without saying that almost no country in the globalized world can succeed in reaching sustainable and substantial transformation without external support. Comparative studies prove that a democratic environment offers decisive incentives for domestic

⁹ See Wolfgang Merkel/Hans-Jürgen Puhle: Von der Diktatur zur Demokratie. Transformationen, Erfolgsbedingungen, Entwicklungspfade, Opladen 1999, p. 26.

¹⁰ See Adam Przeworski et al.: What Makes Democracies Endure?, in: Journal of Democracy 7(1), p. 39-55, p. 43. Also the BTI underlines a clear relation between economic development and the level of democracy, see. Bertelsmann Transformation Index, a.a.O., Chapter 2.

¹¹ Adapting to the Culture of Democracy, in: Sondra Myers (ed.): The Democracy Reader, New York 2002, p. 191 (FedEx is a worldwide operating transportation service).

¹² Merkel and Puhle 1999, p. 84.

processes of democratization, because it allows direct comparisons among different systems and provides a successful model for the implementation of reform. Good examples for this are the transformation processes in Europe. Here the EU has, thanks to its successful democratic and economic practice on the one hand served as a reference point for a “return to Europe,” and has on the other crucially supported such processes through integration and cooperation offers. As a matter of fact, geographical and cultural proximity to democratic Europe was a very important aspect for the success of national democratization processes.

The ideal constellation for democracy can be summed up with the following key concepts: a modern and efficient market economy, a multi-layered society with a strong democratic culture, an autonomous civil society with viable cultural, societal, economic and political elites, as well as minimal social, ethnic and religious divergences. Furthermore, the state should be powerful and independent and be entrenched in a democratic environment.¹³ Of course, these factors only are simply beneficial, rather than exerting a mechanical influence. In Mali, for example, democracy has survived, despite extreme poverty, for more than 10 years.

2.3 Defective and Illiberal Democracies

Failing democracies, however, are not the only possible outcome of transformation processes in countries lacking these prerequisites. “Across the globe, democratically elected regimes, often ones that have been re-elected or reaffirmed through referenda, are routinely ignoring constitutional limits on their power and depriving their citizens of basic rights. This disturbing phenomenon – visible from Peru to Palestinian territories, from Ghana to Venezuela – could be called ‘illiberal democracy.’”¹⁴ Illiberal and defective democracies seem to have overcome authoritarian systems irrevocably, but are poised in an unfinished status that is consolidated and shows some stability.

Russia is a perfect example of this. A coup d’état followed extensive reform that lacked sufficient support. Former Russian President Boris Yeltsin successfully fended off this revolt. However, “what Yeltsin actually did on top of that tank was read decrees, unilateral presidential edicts that would become a hallmark of his eight-year reign (...). The Russian path has, wittingly or not, violated the two key lessons that one can glean from the historical experience of democratization: emphasize genuine economic development and build effective political institutions.”¹⁵

Fifty-two of 116 states analyzed by the Bertelsmann Transformation Index are identified as defective democracies.¹⁶ In the long run, they pose great risks for governance and economic development. It is common in these states that they cannot safeguard political freedom and equality adequately. Instead, these basic rights are impaired in order to allow advantages

¹³ Ibid, p. 101.

¹⁴ Fareed Zakaria: The Future of Freedom. Illiberal Democracy at home and abroad, New York 2003, p. 17.

¹⁵ Zakareea 2003, p. 90., p. 92.

¹⁶ See here and above: Peter Thiery: Globale Trends, Entwicklung und Transformation in der Analyse, in: Bertelsmann Stiftung (ed.): Bertelsmann Transformation Index 2003, Gütersloh 2004.

for powerful groups within the state or society. The strength of these countries is evident considering the progress of political participation, especially free and fair elections. Nonetheless, there are important weaknesses that frequently appear together¹⁷:

- Deficiencies concerning the constitutional reality or the rule of law prevent a sufficient level of horizontal accountability, adequate checks and balances and public control over officeholders in many cases. Usually this is accompanied by abuses of authority and corruption. Presidential systems seem to be especially prone to this problem.
- Another phenomenon is that low levels of civil rights or even unconcealed human rights abuses can be traced to insufficient rule of law. Usually this is combined with governance deficiencies.
- A third typical pattern of defective democracies is the existence of powerful groups that possess rights beyond democratic norms. In many countries the military is one of these groups and claims a special political status. But there are other groups—owners of large estates, the clergy, the mafia—that demand special rights. This can lead to a situation in which elected officeholders have no effective governmental power.

Clearly, further democratizing a defective democracy is a difficult task and certainly not a process that continues on its own. The chances for these democracies are based on advancing political participation, leading to stronger civil societies that can push for reform, thus eliminating these deficits.

2.4 Feasible Paths of Transformation

If democracy is not feasible for or not working in every country at every stage of the transition process, then the importance of adequate transformation strategies grows. Looking retrospectively at advanced development stages, it becomes clear that there are fundamentally different ways of achieving success in development and transformation processes, with cultural and historical factors having the greatest influence on the path taken. For instance, in South Korea and Taiwan, the ongoing economic development has provided modernizing pressures that have been actually able to spread to society and politics. In contrast, in the Central and Eastern European transformation states, there are indications that the social desire for a speedy introduction of political freedom would probably not have facilitated a comparable path without violence. Viewed overall, it becomes clear that very different courses of development can be deemed effective for different societies and levels of development.

This also applies when one delves deeper into the details. Numerous sequential models and recommendations, such as the oft-cited “Washington Consensus,” suffer from the fact that they are relatively rigid. For instance, the capability of young democracies for reform has been questioned. Statistical analyses, however, show that over the last 50 years, democracies have the same probability of achieving development progress as autocracies. Furthermore,

¹⁷ For a detailed analysis of the Ukrainian Situation, see: Timm Beichelt, Rostyslav Pavlenko: Presidential Election and Constitutional Reform, in this volume.

in Eastern Europe in the early 1990s, it was heavily debated as to which would have better results: a gradual economic transformation or shock therapy. However, the success of the transformation in Central and Eastern European states cannot be understood empirically through the strategy carried out in each case, but rather primarily through the conditions in each state at the outset: Whoever had better conditions then is farther along today.

There is, however, an open secret to success: good governance. That is, the pace of transformation is dependent on not only the economic framework, but also very much upon the capacity of the actors themselves to unite on strategies, take binding decisions and follow through on them. This becomes possible if the society has—or can be encouraged to have—a high level of acceptance of reform. This brings us back to the starting conditions: Experiences with democracy and democratic traditions play a decisive role in the transformation.¹⁸

The upshot of this is that the development of strategies cannot simply entail finding a middle-of-the-road solution that does justice to every state. As a rule, the tasks to be mastered are too immense and the resources too limited to allow schematic rather than individual action. Prudent transformation policy must be linked to the specific fortes of states, must correct serious mistakes, and achieve the highest possible level of consensus and support. The best development and transformation strategy is one that, while most effectively implementing and stretching the available resources under consideration of the respective prevailing conditions, also achieves sustainable development targets in balance with various requirements.

2.5 Elections as a Litmus Test for Democracy

The crucial role of elections in democracies has been mentioned above. Within democracies, elections not only secure a smooth transfer of power, but also acts as a significant indicator of the state of the respective democratic order. In transforming societies, elections have yet another function. They are the most important tools forming the process of transformation itself and adapting it to social preferences.

In order to fulfil this function, it is on the one hand important that elections actually enable such decisions. This not only points out the necessity of free and fair elections with equal starting positions for all candidates, but also to a choice in programmatic alternatives. Young democracies, however—and especially presidential democracies—very often have underdeveloped party structures and therefore only alternative personnel can be elected. In the worst case the candidates represent the existing economic, religious, ethnic or regional cleavages in a society. Elections then might reinforce the existing power balances or conflicts.

Relevant research papers repeatedly have pointed to the specific role of founding elections. Their level of inclusiveness, fairness and competitiveness reflects whether the transition functions smoothly or is disruptive. They also show how necessary it is to allow representatives of the old regime into the election campaign,¹⁹ because young democracies need to show that

¹⁸ See Wiesenthal 2001.

¹⁹ See Merkel and Puhle 1999, p. 118.

the outcome of elections is representative and therefore acceptable even to the losers. Finally the election process itself expresses the extent to which the requirement has been met that democratic institutions and processes gain sufficient respect from all agents.²⁰

Democratic elections aim not only to determine a government, but also to represent appropriately all democratic powers. Election laws and electoral systems can be measured by the extent to which they secure this representation. Political parties play a special role here as they represent social trends. The more distinct and stable the parties are, the more programmatic their distinctiveness, and the better they can take on their task of serving public interests as part of the transformation process.

Presidential elections play a special role within presidential or presidential parliamentary systems. Presidential elections are elections for an individual, who then as president enjoys a comparatively high level of power and in most cases has relatively weak ties to existing party structures. The special “winner-takes-all” position of presidential elections presents both opportunities and risks. On the one hand, an elected reformer with a high degree of power and charisma can substantially advance the course of transformation. On the other hand, examples from many countries and regions show that there is no guarantee that candidates who have come to power as reformers fulfil the expectations placed on them.

Blocked decision-making or authoritarian relapses can severely impair the transformation process, especially when the institutional system is poorly constructed and does not allow for sufficient checks and balances, as is often the case in systems where presidential features mix with parliamentary aspects. It is therefore desirable that presidential candidates demonstrate a strong bond to their parties and a clear programmatic profile.

2.6 Conclusion: Consensus-building as a Decisive Factor

The various aspects of transformation into democracy converge in a fairly simple observation: Functioning democracies depend upon a basic democratic consensus. In countries where passivity or outright rejection of the democratic order are widespread, the consolidation of a liberal democracy is no more than an idealistic illusion. Dysfunctional democracies can in fact be a better alternative to the restoration of authoritarianism, chaos and civil war. They can be a temporary stop on the route toward democracy, which offers stability and leaves room for the gradual reorientation of society, since dysfunctional democracies are in danger of relapsing into chronic authoritarianism, they are measured by the results they bring forth in the medium- and long-term.

How can societies with poorly developed democratic values create a workable democratic culture and a high degree of legitimacy? The answer is simple and yet complicated: by reaching a consensus about the essential aspects of political order. Charismatic leaders and concrete visions, such as the goal of joining the EU for Eastern European countries, can contribute to this goal, but building consensus requires much more than that. The key to all processes of democratization has been to increase general prosperity and build efficient political institutions. The goals therefore must be:

²⁰ Ibid. p. 111.

- strengthening of an elite consensus based on the fundamental requirements, democratic values and rules;
- development of organizations mediating between society and government;
- empowerment of civil society, and
- consolidation of fair, i.e. socially acceptable, market-economy structures.

Once these goals are achieved, the political system is gradually able to offer the material goods and chances that the citizens expect. Such a system then automatically receives legitimacy from various sources and with different motivations.²¹ The combination of responsible agents and efficient structures forms the essential element of good governance, which will be analyzed more thoroughly in the following section.

3. The Urge for Good Governance and Goal-oriented Transformation Management

The term “governance” deals with strategic aspects of management by collective actors. “Governance is not only about where to go, but also about who should be involved in deciding, and in what capacity.”²² Good governance is a key factor of every functioning democracy. Democratic systems can only perform successfully and strengthen their legitimacy if they are able to fulfil the expectations addressed to them. What is decisive for politically established democracies can be a question of survival for young democracies. “The Secretary General of the United Nations, Kofi Annan, reflects a growing consensus when he states that ‘good governance is perhaps the single most important factor in eradicating poverty and promoting development.’”²³ On the other hand, “bad governance is being increasingly regarded as one of the root causes of all evil within our societies.”²⁴

Simply speaking, the challenge during the transformation to democracy and a market economy is that weak political reform actors with a significant lack of resources have to cope with extraordinary reform challenges. If they do not succeed, not only is their power base questioned, but also in many cases the whole transformation process is endangered. The following chapter discusses key elements of good governance and then briefly analyzes consequences for policy structures and actors with a view of the situation in Ukraine.

3.1 Elements of Good Governance

Since good governance is the process of making and implementing (or not implementing) decisions, an analysis of governance focuses on the formal and informal actors involved in

²¹ See Merkel and Puhle 1999, pp. 248-249.

²² John Graham, Bruce Amos, Tim Plumptre: Principles for Good Governance in the 21st Century, Institute on Governance, Policy Brief No. 15 – Ottawa, August 2003, p. 2.

²³ John Graham, Bruce Amos, Tim Plumptre: Principles for Good Governance in the 21st Century, Institute on Governance, Policy Brief No. 15 – Ottawa, August 2003, p. 1.

²⁴ What is good governance? UNESCO-Homepage, www.unescap.org, download Aug. 20, 2004.

making and implementing policy choices, as well as the formal and informal structures put in place to reach and implement such decisions.²⁵ Eight related characteristics are relevant to good governance:

- Participation: The principles of participation and ownership are crucial to good governance and require legitimate intermediate institutions or representatives. Freedom of association and expression, as well as an organized civil society are indispensable. Both men and women should be included in participatory processes. Even the most well-intentioned government is unlikely to meet collective needs efficiently if it does not know what many of those needs are.
- Rule of Law: As the opposite of arbitrary decrees, the rule of law guarantees both the equality of citizens and predictability of legal decisions. Good governance requires fair legal frameworks enforced impartially; full protection of human rights, particularly those of minorities; an independent judiciary that can serve as a control mechanism; and an incorruptible police force.
- Transparency: Decisions are made and enforced in a manner that follows specific rules and regulations. Ideally, information is freely available and directly accessible to those affected by such decisions and their enforcement.
- Responsiveness: Institutions and processes should serve all stakeholders within a reasonable time frame.
- Consensus orientation: Decisions shall be consensus-oriented. There is a need for mediation among the different interests in society to reach a broad consensus on what is in the best interest of the whole community and how this can be achieved. It also requires a long-term perspective on what is needed for sustainable human development.
- Equity and inclusiveness: It should be ensured that all members of society feel that they have a stake in the society and do not feel excluded from the mainstream. This requires that all groups have opportunities to maintain or improve their well being.
- Effectiveness and efficiency: Processes and institutions should produce results that meet the needs of society while making the best use possible of resources at their disposal. This characteristic also includes sustainable use of natural resources and protection of the environment.
- Accountability: Governmental institutions as well as the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders. In general, organizations and institutions are accountable to those who will be affected by decisions or actions.

These characteristics should ensure that corruption is minimized, that the views of minorities are taken into account, and that the voices of the most vulnerable in society are heard in

²⁵ See here and above: *ibid.*, p. 2.

decision-making. However, this is an ideal that is difficult to achieve in its totality, even in consolidated democracies. Principles often may conflict. “The devil is in the details.”

At this point it becomes especially clear that there is not only a need for well-organized institutions, but also for committed agents who pursue a goal of self-reliant and sustainable development through which social justice will be realized. On a more practical level, concrete political demands can be deduced from these principles, some of which have already been mentioned above. They are all context-oriented and must relate to particular possibilities and goals of transformation:

- Broadening the elite consensus and support for intermediary institutions: Democracies are doomed to fail in societies with no principal elite consensus for democratic development. Part of this elite consensus is the ability to formulate long-term visions for policy goals and to forge democratic coalitions. Since elite consensus is but a starting point for a workable democracy and is not, in the short term, sufficient for democratic consolidation, the accompanying support from a democratic civilian population is necessary. Programmatically oriented political parties that can express social demands play a particularly important role here.
- Verification of an institutional balance among democratic institutions: Functioning institutions are necessary to implement political programs. These institutions should define responsibilities, offer incentives to build coalitions, appear relatively invulnerable to obstacles and offer sufficient control over power. However, no political system comes into being in a vacuum; it gains stability when it takes up and develops traditional and cultural orientations and experiences. Measures for establishing legitimacy can vary considerably from culture to culture.
- State capability: In its development report of 1997, the World Bank concluded that the tasks of the state must first be brought into line with its abilities.²⁶ States become bogged down when they assume too many areas of responsibility. They should therefore take on fewer tasks and complete these effectively. Countries with less state productivity must concentrate initially on basic tasks that the market cannot offer: making available purely public commodities such as property rights, macroeconomic stability, control of infectious diseases, clean water, roads, and the protection of those in need.
- Establishment of the rule of law and a consistent fight against corruption: Many countries have acceptable democratic constitutions that assert the rule of law, but flouting or arbitrary interpretation of the law restricts the rights of citizens and businesses. This problem is especially significant whenever corruption flourishes. Corruption impedes the equality before the law guaranteed for all. Not only do corrupt governments and administrations impede democracies, but they also restrict the opportunities for generating economic growth through direct investment. In this regard an independent judiciary as well as trustworthy and applied anti-corruption-laws are important indicators of the state of democratic development.
- Promotion of sustainable economic reform: The economy is one of the decisive factors in the development of the state. The ability to structure policy depends on the capacity for

²⁶ See Worldbank: The State in a Changing World, Washington 1997.

economic achievement and development. Whereas growing prosperity may compensate for deficits in other areas, systems with inadequate economic success cannot generally be transformed over the long term. Progress that is achieved is endangered by incessant economic crises. Alongside economic success a bare minimum of justice in allocation is necessary.

- Broadening participation and decentralization: With regard to the legitimacy of systems it is important, especially in societies undergoing transformation, to extend the possibility of participation to all levels. Decisions must be made with the greatest possible input from the grassroots level. Decentralization not only increases the representative nature of governmental decisions, but also improves the transparency and responsibility of political processes.
- The central role of education: At all stages in the development of the state, the educational standard of top elites and the general population represents an important parameter in a state's capacity for change. Education is closely aligned to population growth, is essential for the establishment of civilized societies, and facilitates the establishment of competitiveness. Human capital is not only the most valuable raw material, but also the only one that can be increased almost without limits.
- Using external support: Without external support, most development and transformation processes would have fewer prospects for success. The success of such support, however, greatly depends on the extent to which the engagement of external supporters rests on a foundation of trust, and whether the support is fully embraced and implemented. External support requires the consent—and if possible the participation—of those affected, otherwise supporters waste money and political capital.²⁷ States are well advised to make use of opportunities for cooperation with foreign partners and international organizations in every stage of the development and transformation process.

3.2 The Infrastructure of Good Governance in Ukraine

The intention here is to examine the existing pre-conditions and shortcomings in Ukraine. It will also delve into what current conditions imply for the further development of democracy and good governance in Ukraine.

The democratic change of power has already caused some important modifications in Ukrainian society. Nevertheless, it would be much too early to act from the assumption of a sustainable change only a few days after Yushchenko became president. Changing politics and society is a long process. Symbols as well as the euphoria of victory are important, but they are not a substitute for essential reform. This is the reason why many aspects of the following overview refer to the situation in autumn 2004. It forms the starting point for all reform and illustrates foreseeable challenges and obstacles.

²⁷ See Olaf Hillenbrand: Sieben Thesen zur Außenunterstützung von Transformationsprozessen, C•A•P-working paper, Munich 2000.

This overview is divided into two parts: it examines the most crucial structural systems in place, then the roles of the most important figures in politics.

3.2.1 Structures

Constitution and constitutional reality: The Ukrainian constitution fully complies with democratic norms and it can serve as a basis for an effective organization of power. The eight years of application of the Constitution have exposed vulnerabilities in it that demand legislative regulation. First of all, it needs a more distinct separation of powers among the three branches of government. It also needs a clearer delineation of the distribution of powers and responsibilities between the state (central) government and local authorities at the level of oblast and raion.

Another set of problems is linked to the weak nature of constitutional arrangements in terms of both political responsibility and the interaction between the legislative and executive branches. These problems could be resolved through constitutional reform, namely, through a transition from a presidential-parliamentary form of government to a parliamentary-presidential form. However, the contents of numerous drafts of this reform, and the nature of attempts to implement it have shown that so far this process has been driven by the aspiration of certain forces to retain their dominant position in power rather than to improve the system of government.

A more serious problem has been caused by major inconsistencies between political reality and the norms enshrined in the constitution. In real life, the president is empowered with a broader political authority and the parliament exercises less power than is spelled out in the country's basic law. The role of local government has been deeply curtailed. Citizens cannot fully enjoy the rights and political freedoms guaranteed by the constitution. This has become particularly self-evident during the presidential election campaign.

Decision-making process: According to the Constitution (Article 85), the formulation of fundamentals of foreign and domestic policy is a prerogative of the Verkhovna Rada (parliament). In practical terms, this function is only nominally fulfilled. The president makes most strategic decisions, often in a non-transparent manner. Though not a constitutionally envisaged body, the Presidential Administration enjoys artificially inflated authority in running state affairs. The activity of the highest bodies of power has been devoid of clearly structured mechanisms of oversight and has no culture of complying with officially established priorities, programs and political promises. The same can also be said about election campaign agendas. The situation has deteriorated even more because of frequent cabinet shuffles, changes of chief civil servants in ministries and government departments, and through instability of the parliamentary majority, deputies' factions and deputies' groups in parliament.

In practice, key roles in elaborating state policy are played by shadow actors and backroom schemes. Vested interests in financial and industrial sectors, as well as high officials and the president's personal entourage, exert an enormous influence on official government bodies. All this has stripped the decision-making process of openness and transparency. The process of lobbying has not been regulated by law and has often been pursued in a very uncivilized fashion.

Rule of law: The Ukrainian constitution provides for an independent judicial branch. In practice, however, the independence of the dispensation of justice is impaired. Significant control and pressure over the courts serves the interests of the Presidential Administration. As a consequence, the primacy of the rule of law is called into question when legal procedures or courts are used to protect government interests. Within Ukrainian political practice, the rule of law has not yet been fully established. This lack can be accounted for by specific elements of Ukraine's political culture, as well as by miscalculations made in the course of building the state and in the conduct of reform. The equality of citizens before the law is in doubt. Neither awareness of human rights nor a culture of standing up to protect them have been promoted among the nation's citizens. The involvement of large masses of the population in the shadow economy, their involuntary need to adjust themselves to living under conditions of imperfect laws and high fiscal pressure do not contribute to fostering a law-abiding culture among citizens, or their willingness to live in compliance with the laws. Within government bodies and the bureaucracy at large, the direct orders of authorities play a greater role than effective laws, norms or official authority. A free interpretation and selective application of laws as well as the use of "direct control" have become widespread practices.

The weakness of the judiciary and its lack of independence have created another serious problem. The interference of the president's instruments of power in the courts' activities has become a systemic phenomenon. In fact, the courts are not capable of performing their state and social functions in a proper manner. Moreover, the courts and the whole system of law enforcement and oversight bodies have been widely used for partisan purposes, primarily for exerting pressure on the opposition and independent mass media. The infringement of laws and contempt for the rule of law became particularly widespread during the election campaign. As a consequence, "the weak record of respect for the rule of law erodes Ukraine's ability to uphold civil and political rights as well as freedom of the press."²⁸

Corruption and transparency: According to the Corruption Perception Index, Ukraine has been among the most corrupt countries of the world for several years in a row. This is a reflection of the state of business. In particular, it is a manifestation of the fusion of business with government, in exercising an illegal administrative impact on businesses; in the enormous size of the shadow economy, and in the criminalization of the economy as such. Closely linked to this perception of corruption is the problem of money-laundering, which has led to international sanctions on Ukraine in the past. A key factor has been the corrupt nature of government bodies. The scale of this phenomenon is so huge that all the efforts to combat it have proven futile so far. Regulations covering business activities in Ukraine are excessive, ambiguous and sometimes contradictory, leaving entrepreneurs, business owners and managers at the mercy of government officials and their inconsistent interpretations of these rules. The problem, however, is even deeper than that: Corruption has practically become the norm in life – part of the daily routine. The most corrupt institutions include not only the militia, tax authorities and the customs service, but also the entire systems of higher education and health care. In a sense, corruption has acquired features of a social phenomenon that permeates the whole system and its social fabric. The use of mere administrative measures in an effort to eradicate corruption is likely to fall short of its mark.

²⁸ Freedom House: Country Report Ukraine, p. 438.

Civil liberties: The state of civil liberties in Ukraine does not comply with democratic norms, and trends show deterioration. This has particularly come to the surface in the course of the 2004 election campaign. In particular, the freedom of expression and freedom of assembly are endangered. Over the past few years, the country has already been the focus of international attention in the context of the persecution and killings of journalists. The authorities have failed to react to such crimes properly. Instead, they have demonstrated an explicit lack of interest in promoting independent media. Moreover, the authorities have exerted every effort to exercise more stringent control over the media and to suppress a pluralism of views. In 2001, the “Committee to Protect Journalists” nominated then-President Kuchma as one of the world’s top 10 enemies of the press. In addition, “an elaborate system of censorship, including instructions emanating from the offices of the presidential administration, distorted news and skews coverage of political affairs.”²⁹ Until November 2004, mass broadcast media exhibited a high degree of uniformity and bias in their coverage. This has indeed significantly changed since the Orange Revolution.

The bodies of state power have exercised systemic pressure on representatives of the opposition and on NGOs that are dedicated to the promotion of democracy. Open debate of important issues by society at large has been hindered at both the national level and in specific regions of the country. All elections over the past years have been conducted with significant deviations from universally accepted democratic norms. Also the 2004 election campaign was characterized by mass violations of the right to assembly and by massive persecutions for political convictions. Until December 2004, the authorities were able to ignore violations of civil rights and liberties and, in fact, pretended that such violations did not exist.

3.2.2 Actors

Government and administration: The former president attempted to influence voting rights and the constitution to his own benefit, as discussed above. The organization of political power in Ukraine is characterized by an abnormally high autonomy of the authorities, their independence from society and by domination of the executive over the other branches. Also, judging by the scope of its powers and established practices, the Ukrainian state shows signs of a strong political entity. Notwithstanding these characteristics, it is far from being efficient enough. The system of power has been overlaid with shadow structures, which go hand in hand with official bodies, and exerts a direct influence over the content of state policy. Thus, state structures are aggressively used in pursuance of hidden agendas from the bureaucracy and vested interests of various clans and oligarchs. This system has given birth to phenomena such as the abuse of administrative resources. It is only natural that the bodies of power enjoyed a very low level of trust from citizens, a fact which in itself reduced the leverage for an effective system of government.

There are inherent deficiencies in both central and local government. The principle of elected representation is only partially observed and it has serious flaws. In practice, frequent changes of heads of government and members of the cabinet, as well as changes of regional governors had little to do with their performance in office. Instead, changes were determined by shadow

²⁹ Freedom House: Under Assault. Ukraine’s New Media and the 2004 Presidential Elections, July 2004, p. 1.

schemes and arrangements among the bosses of major groupings that were close to the president and were in a position to influence his actions. Due to violations of democratic norms, elections so far have not had a clear and direct impact on the formation of the bodies of power. Thus, the presidential election of 1999 was characterized by massive interference by the executive authorities in support of the incumbent president.³⁰ Similar violations were committed during the parliamentary elections in 2002.³¹

The results of the 2004 presidential election have been largely reviewed as demonstrating how the authorities were able to exert pressure on the opposition and independent deputies. The artificial formation of a parliamentary majority and its manipulation by the president impeded the establishment of a constructive interaction between the legislature and executive branches. The effective procedure guiding the formation of the Cabinet of Ministers made the government fully dependent on the president since, according to the Constitution, the latter is not the head of the executive, and the law does not envisage the responsibility of the president for the outcome of his government's performance.

In fact, control and monitoring over the executive is non-existent. The rights of the opposition are not ensured by laws and in practice are not respected. The judiciary cannot properly regulate relationships in political and civil areas. Endemic corruption of government bodies makes it necessary to take radical measures.³² However, state safeguards are, to a large degree, intended to protect power as such and some particular individuals at the helm of power, rather than to protect performance in pursuance of the people's interests.

Presidential candidates: Both of the presidential candidates, Viktor Yushchenko and Viktor Yanukovich, were assigned clearly defined profiles during the political debates. The former was presented as pro-Western, a reformer and a representative of the opposition, while the latter was considered Kuchma's preferred candidate. Yushchenko had, indeed, proved himself a reforming force during his term as prime minister. When he spoke during the debates, Yushchenko made progressive comments and vehemently criticised the shortcomings of Ukrainian democracy. He has stated that a truly parliamentary democracy is needed; he criticised censorship of the media, and he supported the idea of a roundtable as a forum for open dialogue among various sectors of society and the government.³³ One must add, however, that due to his lack of power he had to present himself as a candidate for reform to make any headway against rampant public dissatisfaction. Indeed, during the first weeks since his election, President Yushchenko has continued to sharpen his profile as a reformer.

Former Prime Minister Yanukovich is known as a representative of the powerful Donetsk clan, which is synonymous with being more "pro-Eastern" and therefore posed less of a threat

³⁰ OSCE: Office for Democratic Institutions and Human Rights. Ukraine. Presidential elections 31 October and 14 November 1999. Final report. Warsaw, March 7, 2000, p. 33.

³¹ OSCE: Office for Democratic Institutions and Human Rights. Ukraine. Parliamentary elections 31 March 2002. Final report. Warsaw, May 27, 2002, pp. 1-3.

³² See: Joint report on the fulfilment of the Partnership and Cooperation Agreement between Ukraine and the EU. Cooperation between the EU and Ukraine. Analytical quarterly. Delegation of the European Commission to Ukraine. Issue 3, 2003, p. 51-60.

³³ See Wiktor Juschtschenko: Politische Reformen in der Ukraine mit Blick auf die Integration in europäische Strukturen, www.fesukraine.kiev.ua, download Aug. 5, 2004.

to the previous regime. While his stance on constitutional reform was similar to that of the old regime, it would be unfair to merely dismiss him as Kuchma's candidate. A positive aspect of this campaign was, without a doubt, that both candidates, while attempting to entice voters, expressed clearly distinguishable, democratic alternatives. Regrettably, Yanukovych did not accept his defeat on Dec. 26, 2004, even after his appeals were rejected by the Supreme Court. For him as a person, this might perhaps be understandable, after he felt he had been elected as the new president. In terms of the urgently needed democratic consensus of a split Ukrainian society, this is a negative development.

Political parties: A multi-party system has emerged in Ukraine in recent years. However, in reality it does not ensure the effective representation of genuine interests of the bulk of the entrenched electorate. All in all, about 15 parties are, in fact, involved in election campaigns. The growth and development of the party system have been hindered by such factors as a lack of articulate expression of the citizen's interests. Most people simply have neither political skills nor awareness of the need for political engagement. Deep social stratification and public passivity often go hand-in-hand in Ukraine. At the same time, all sorts of differing social values have become quite wide-spread and have been brought to the surface, while diversification of ideas and political views has firmly taken root. Nevertheless, this diversity has little to do with true ideological and political pluralism, which is typically inherent in a democratic society. Such diversification impedes both the emergence of strong nationwide parties and the formation of consensus across a wide spectrum of parties.

A significant part of the political arena has been filled in with artificially created parties whose aim is to protect the interests of various clans and groups of oligarchs, as well as some individual political leaders. For the most part, new parties have been created from the top down, the process of choosing their ideologies becoming an utterly fake business, and their organizational structures and membership are provided by the authorities using government resources and public officials. The introduction of the proportional representation election system may contribute to the creation of a profile of competitive and self-sufficient parties and promote their consolidation. This could be more deliverable if constitutional reforms are carried out and the transition to the parliamentary-presidential form of government takes place.

Interest groups: A characteristic feature of social and political development of Ukraine in recent years has been the formation and strengthening of powerful informal groupings. For most part, they have emerged as a result of self-organization of the remaining elite from the ranks of the former Soviet officialdom and industrialists. The latter have managed to take control over the process of building the state and conducting privatizations. Closely-knit structures incorporating government authorities and vested interests, interlocking with each other, have become quite visible both in the top echelons of power and in the local tiers of the state hierarchy. Such a system of government operates beyond any law, and it has created shadow schemes and arrangements that work to make use of public funds and resources for private profit and to abuse power.

These groups exercise control over the media and aggressively use them for the purposes of manipulating social and political processes. It is only natural that among those social groups, which play a considerable role in Ukrainian society, the citizens cite, first of all, the following: mafia and the underworld – 40.2 percent, businesses and entrepreneurial entities – 27.0 percent, leaders of political parties – 25.9 percent and government officials – 23.6

percent.³⁴ Unofficial interest groups are attempting to control bodies of power and, in fact, are impeding the modernization and transformation of society in Ukraine. One can see signs of privatization of state power.

Civil society: The victory of democracy in the 2004 presidential election is the result of the massive intervention by civil society. Tendencies towards the significant growth of the social and political activity of the citizens was already visible during the parliamentary elections in 2002 and accelerated during the election campaign in 2004. A non-conformist attitude has been gaining ground; the “disobedient” electorate has adopted more specific attitudes in terms of values and ideological and political reference points. This has broadened the basis for public support for democratic forces. Overall, society has been becoming noticeably more capable of withstanding manipulations, pressure and dirty political technologies that involve misleading information and propaganda. A new momentum has been achieved through the self-organization of citizens, the development of youth and student movements and associations of journalists standing for freedom of expression and independent media. On the whole, the election has given a boost to the social and political development of the country, and it has become a major factor for post-communist transformations.

Apart from the Orange Revolution, civil society in Ukraine has developed slowly for a number of objective and subjective reasons. Horizontal social links have been significantly weakened. A political nation as such and the civic self-identification of the Ukrainian people have not been completely formed yet. Only one in four Ukrainians believes he has enough skills to live under the new conditions. The readiness of citizens to demonstrate their social activity and stand up for their rights remains low.³⁵ Until recently the country has only seen some isolated pockets or centers of independent civic activity. They do not represent an all-embracing social force or critical mass, which would be capable of determining social sentiments.

A new quality, European-style model for the formation and functioning of NGOs is slowly beginning to take shape, overcoming the impediments created by the authorities. The survey data collected through public opinion polls regarding the reasons for the slow development of democracy and civil society have produced the following break-down of views: corruption of power and tight control over the media – 33 percent, inertness of Ukrainian society – 24 percent, lack of genuine economic reform – 23 percent, imperfect legislation – 8 percent, state paternalism – 6 percent and linguistic and cultural heterogeneity of the population – 5 percent.³⁶

A considerable number of entities formally pertaining to the “third sector” in reality operates with the direct support and in the interests of particular government bodies, clans and groups

³⁴ See Ukrainian society in 1994-2004: sociological monitoring. The Institute of Sociology under the National Academy of Sciences of Ukraine, “Socis” Gallup poll unit – Centre for social and political studies, “Democratic Initiatives” Foundation. Kyiv 2004, p. 13.

³⁵ See Ukrainian society in 1994-2004: sociological monitoring. The Institute of Sociology under the National Academy of Sciences of Ukraine, “Socis” Gallup poll unit – Centre for social and political studies, “Democratic Initiatives” Foundation. Kyiv 2004, p. 26, 18.

³⁶ See Grassroots. Civil Society in Ukraine: status and prospects for development. “Europe – XXI” Foundation. Kyiv 2003, p. 17.

of oligarchs. These entities widely resort to falsification of civil initiatives and surrogate substitutions, hijacking the functions of independent social institutions and simulating allegedly wide-ranging support for unpopular authorities. Such actions became particularly widespread during the election.

4. Conclusion: Towards a Participatory Society

The 2004 presidential election has changed the situation in Ukraine dramatically. Only a couple of months ago, BTI and Freedom House country reports drew a rather pessimistic picture regarding good governance and the further prospects for transformation in the country. “[The] events of 2003 suggest that Ukraine is on a trajectory away from genuine democracy. While this trajectory is not yet irreversible, the country is close to consolidating a political system that serves the narrow interests of a small, oligarchic group that shares authoritarian political ideas and common economic interests. In each of four areas vital to democratic governance—respect for civil liberties, rule of law, anticorruption and transparency, and accountability and public voice—Ukraine’s commitments and de jure obligations have not been matched by practice.”³⁷ Moreover, “Ukraine is on the verge of losing even the most rudimentary characteristics of democracy and is in danger of becoming an authoritarian political system serving the interests of a small, privileged class.”

On the other hand, Ukraine has succeeded in stopping the economic downturn of the 1990s. It was possible to bring about changes in economic efficiency and the effectiveness of the state. Key areas of the economy were reformed. “Greater success was achieved in improving the conditions for small- and medium-sized enterprises, which already has had a positive effect on their economic activities. Foreign debts were converted and repaid on time. The adoption of some significant reform legislation shows the political elite’s constructive attitude. In some sectors, NGOs are also making an important contribution to transformation management. However, further management success is being hampered by the power of interest groups.”³⁸

It has been seen as a positive sign that many of the shortcomings discussed here have directly related to the way the former regime acted, while the Constitution already offers a good foundation for further development. President Yushchenko has promised voters to accommodate the Constitution and new constitutional reality. The events of November and December 2004 have opened a window to complete the transformation process towards a market-oriented democracy.

In political terms, structural reform and good governance will be crucial for democratic transformation. A much more difficult task will be integrating the interest groups and clans into the formal structures of governance. To improve its resistance to the power of interest groups, the political system must become more transparent and align itself more strongly with democratic and formal processes and the rule of law. Fighting corruption and improving the investment climate are vital for further economic progress. The degree to which Ukraine

³⁷ Freedom House: Ukraine country report, p. 437.

³⁸ Bertelsmann Transformation Index, Country report, chapter 6.

seeks to bring its norms and standards in line with those of its democratic neighbors, and thus strengthening its association with the EU, will play a very important role. Similarly, any prospects the EU offers Ukraine to tighten its bonds with the Union, to enhance possibilities for reform policy, and to stabilize the transformation process, will be very important.

How skillful and consequently Yushchenko is able to act with his significant power will play a key role. Should he view this as a chance to consolidate power for certain groups and hinder the development of opposing forces, then the old, nearly authoritarian structures will remain in place. Should he, on the contrary, decide to pursue a consistent transformation process and strengthen democratic consensus, substantial success will become a reality.

From an institutional perspective, the agreed constitutional reform appears to be crucial. Not later than in spring 2006 the reform of the Constitution will come into force. It will limit the competencies of the president in favour of parliament and government. Those changes to the Constitution could, if conducted in a fair and transparent process, prove to be the appropriate means of strengthening the consensus of the elite regarding the essence of democracy. This ought to appeal to the general population as well. Should the result, in the end, be functional and efficient democratic institutions, this would also strengthen the development of a democratic culture.

Parameters for Further Democratic Development

This section can only attempt to evaluate the situation in Ukraine in the broadest of terms. It has become clear that Ukraine is at present beyond the crossroads between a liberal or an illiberal democracy. But at the same time the coming two years will be an acid test for democracy. For about one year, President Yushchenko will be able to use the extensive executive abilities of the current constitution. In 2006, parliamentary elections will take place. The main tasks at this time are the reconciliation of a split in Ukrainian society, initial successful reform steps and outlining a vision for the future of Ukraine in Europe.

Good governance and furthering a democratic consensus could prove to be the decisive factors, determining whether these attempts will succeed or not. This has implications beyond the country's borders: past support from large institutions such as the IMF and the World Bank focused their efforts on the establishment of good governance and, indeed, make this a pre-condition for future support. Furthermore, the EU strives to support efforts to unify a democratic Europe; these prospects for integration could, in the long term, be crucial to Ukraine. Against this background, it is possible to formulate key parameters as questions. The answers to these questions in the subsequent chapters of this study will evaluate the potential for reform in Ukraine:

- On a constitutional level and in terms of governmental systems, it is important to consider which figures in Ukrainian politics are interested in changing the legal framework for democratic procedures. What are their related reasons and interests? Are proposals viewed differently if they emerge through public debate or are suggested by political leaders? How can the public be mobilized to take interest in implementing democratic norms?
- The 2004 presidential election campaign represented different tendencies and movements that are still significant in the process of transforming Ukraine. From this

perspective, it is fair to inquire who and what influenced the candidates. What were the main divisive issues within the campaign, and who set the related agendas? How and to what extent did the relevant financial and industrial groups influence the election process? Are political parties setting election agendas, or are they first and foremost an instrument of other interests? What interests do the media reflect? By whom and how is the media influenced?

- In terms of content, the key lies in how far and with which instruments the current president offers options for shaping good governance. What were and are his statements concerning the future transition process? What experiences and qualifications does he offer towards the goal of achieving good governance? Does he have sustainable concepts about how to strengthen the rule of law, how to provide a framework for independent media, and how to fight against corruption?
- On an international level, the election results also reflects a decision between the “Russian way of doing things” or “a return to the European fold.” How far was the question of Eastern or Western orientation used by the candidates? Was there an option for a closer Russian, versus European external orientation? Did the candidates reflect European or Russian approaches to shaping the domestic transition process? What influence did Russia and the EU have in terms of setting norms from the outside and the effectiveness of their implementation? And what related interests emerged through the Ukrainian election itself? What are the interests of Russia and the West, and what are the opportunities to shape the Ukrainian transition process?
- Also relevant are additional analyses as to how various political options can be strengthened. What were the dominant divisive issues of the election campaign? Did society support particular values or orientations regarding the future of the transition? Do the candidates reflect the democratic consensus, and what position do they hold regarding the most important conflicts?

Ukraine has, since independence, made much progress on the difficult road towards becoming more democratic. “Stable and sustainable democracies are not given to people by great powers. They are created by people who have the skills and the will to assume responsibility for their own destinies.”³⁹ Since Dec. 26, 2004, Ukraine has supplied evidence for this statement.

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Democratic Consensus Development

Oleksandr Derhachov*

Effective social and political consensus is a product of developed democracies based on the rule of law, established “rules of the game” and political culture and traditions. The countries of Central and Eastern Europe have recently demonstrated wide, stable consensus based on democratic and market reforms that was then followed by full-scale acceptance into the European community. This development model provides both a constructive general trend and a wide variety of means to address the specific problems facing a particular country.

In regard to the current situation in Ukraine, the only realistic approach combines a situational arrangement and compromise between the main political forces. Achieving a stable social consensus depends on perspectives toward democratization, revival of the political elite, significant attitude changes at the grassroots level, and a stronger civil society. Lately, however, the standoff between authoritarian and democratic tendencies has been persistently aggravated. The presidential election and subsequent developments will show whether the situation remains the same, or whether the country will open itself to changes following the example of the new European democracies.

The starting conditions for democratic transition, specific internal and geopolitical impediments, and preconditions for implementation make the Ukrainian case extremely complicated and interesting both within the framework of the post-Soviet region and the new Western independent states. At this point, significant elements of the qualitatively new experience of social and political transformation are emerging; how this experience is perceived could widen and enhance the conceptual foundations for post-communist transition.¹ The specific roadblocks on Ukraine’s road to democracy are a much tougher form of authoritarianism than in any other CEE country, more profound consequences of assimilation [into the USSR] and weaker traditions of state identity. These problems to a great extent determine the nature of the political process, the relationship between separating and consolidating forces, and whether it will be possible to achieve nationwide consensus, self-organization and good governance.

This presidential election became a powerful vehicle for political change long before actual voting began, as it seemed evident that governing by the old rules and retaining existing power structures would be impossible. However, the depth and quality of these changes is a question waiting for an answer. Should the democratic potential accumulated within Ukrainian society be released, the elite will revive dramatically and the issues of correcting development of the national paradigm and deep democratic change will be brought to the agenda.

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¹ See Carl T.L., Schmitter F., “Democratization: Concepts, Postulates, and Hypotheses. Reflections on the Applicability of the Transitological Paradigm When Studying the Post-Communist Transformations,” *Polis. Political Studies* #4 (2004): 6-27.

1. Society and authority on the eve of the presidential election

Ukraine's 13 year period of independent development highlights the acute necessity for democratization. Without democracy, the main goals of independence and particularly national perspective will be lost. The country has yet to free itself from a host of problems inherited from "real socialism." Further, the consequences of assimilation: a lack of inner freedom, servility, a parasitic attitude, mental narrowness and other elements of the "Soviet sub-culture" have not been fully eliminated. In addition, deeply rooted internal crisis-producing elements have emerged, permeating the political, economic, social and humanitarian spheres. Their common origin lies in the convergence of a defective development model, inadequate governance and a discrepancy between the quality of leadership and the nature of the tasks facing the country. Rebounding production and economic revival have not significantly impacted the situation, and indeed highlight other signs of crisis. Moreover, a fundamental truth has become apparent in Ukraine's development: improving the social and economic situation is impossible without drastic changes to the structure of power.

The governing authorities have not been compelled into fundamental change during the period of independence and, therefore act beyond the constraints of political responsibility. The new president in 1994 did not—and could not—have a deep effect on the state and society, as there was no alternative. Likewise, the presidential election in 1999 and parliamentary elections in 1998 and 2002 did not encourage a transfer of power by the will of the voters because the government deliberately interfered in the organization and conduct of elections to achieve its desired result.

The very nature of government presupposed the development of favoritism, red tape and corruption. Power is not simply concentrated in the executive branch, the presidential branch has removed itself from the scope of political responsibility. A presidential administration transformed into a second government has become a basic fact of public administration. Another includes a many-branched shadow authority with key oversight of financial and industrial groupings.

The government has been privatized and has acquired a non-state character; office holders have redirected administrative resources to serve personal and special interests to the detriment of society as a whole. It is clear that the government executed its national functions inefficiently and that its members used both material resources and organizational potential to serve their own needs. The interests of those not allied to the authorities were ignored and as a result, the initiative of millions of citizens and the constructive potential of the new elite—which needs special support during a transition period—was not utilized.

This system of government works to obscure transparency and encumber democratic procedures with onerous technicality, which over time preserves power for those who already have it. The country gained neither good governance nor the chance to apply the mechanisms of competition; the authorities have not only obstructed political reform, but have opposed democratic transformation.

The 2004 presidential election is the most eagerly anticipated election since Ukrainian independence. The public understands that the president is responsible for social and

economic problems and the absolute power of the clans, as well as corruption and the systematic violation of citizens' rights. President Leonid Kuchma's work in office scored very low with the public; in 2002–2004 he rated just 3 to 3.2 points on a ten-point scale.² Moreover, a pessimistic view of the quality of and possibilities for the elite and political forces is widespread across society.

Table 1. Are there any political leaders in Ukraine capable of governing efficiently? (percent)³

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
No	24.7	26.8	30.3	35.1	30.7	32.2	29.8	34.7	33.0	39.9	35.4
Difficult to answer	55.7	61.0	58.4	54.6	53.5	47.3	49.4	46.2	36.1	36.3	36.1
Yes	18.5	11.5	11.3	10.0	15.4	20.1	20.6	18.8	30.5	23.6	28.5
Did not respond	1.1	0.7	0.0	0.3	0.4	0.3	0.2	0.3	0.4	0.2	0.0

Table 2. Are there any political parties and movements in Ukraine that could be trusted with power (percent)⁴

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
No	28.0	30.3	30.2	34.0	26.6	30.4	31.2	33.1	27.5	35.9	31.0
Difficult to answer	56.9	60.6	57.6	54.7	49.5	50.1	51.8	49.3	39.8	40.9	43.4
Yes	13.9	8.7	12.2	11.3	23.4	19.3	16.7	17.4	32.4	23.0	25.6
Did not respond	1.2	0.4	0.0	0.0	0.5	0.1	0.3	0.3	0.3	0.2	0.0

Pessimism is prevalent in Ukrainian society in general, and indifference and disappointment are directly associated with involvement in political life. Ukraine still lacks good electoral practices, and enforcement of political responsibility hasn't been established. The extension of authoritarian tendencies and an anti-democratic governing style highlight the government's lack of concern for reaching consensus with the governed. The rudimentary state of civil society and the low level of social self-organization to a great extent obstruct the crystallization of mass support for those groups interested in and capable of reaching consensus.

Society expresses its criticism of politicians but is unable to clearly formulate its expectations; disappointment with government and to some extent the opposition dominates the public mood. This pessimism is apparent in popular skepticism of the possibility of either fair elections or improvement in Ukraine's situation politically, socially or economically. These attitudes will shape the obligations of the winner, as restoration of public trust in state and political institutions will be one of his most important tasks. However, the election campaign has already revealed the essential character of both candidates in this respect. According to a sociological survey conducted by the Razumkov Center, 23 percent favored the opposition candidate, 7.1 percent the candidate in power, and 6.9 percent preferred independent candidates; 49.6 percent of respondents said the candidate's party affiliation was not important.⁵

² *Ukrainian Society in 1994-2004: Sociological Monitoring* (Kiev: Institute of Sociology of the Academy of Sciences of Ukraine, "Socis" Centre for Social and Political Studies, "Democratic Initiatives" Foundation, 2004), 14.

³ *Ukrainian Society in 1994-2004: Sociological Monitoring* (Kiev: Institute of Sociology of the Academy of Sciences of Ukraine, "Socis" Centre for Social and Political Studies, "Democratic Initiatives" Foundation, 2004), 13.

⁴ *Ibid.* – 14.

⁵ *National Security and Defense* #6, 2004, 44.

On August 23, 2004, in a speech on the anniversary of independence, President Kuchma said, “I see a big problem in the current situation because a powerful, moderate, unifying political force has not emerged strong enough to play the role of peace-maker in both politics and society.” He continued; “Such a force could have been a focus for attraction and would have determined ways to further develop the state. Three main ‘pillars’- human dignity, national unity and civil patriotism - should form the core of this focus and formation of this kind of political force, able to create the nation, is one of the tasks for the future.”

However, president Kuchma formally estranged himself from the election campaign. The Presidential Administration, the government and the entire executive branch worked widely and openly in favor of Prime Minister Viktor Yanukovych, and have blatantly restricted the actions of his opponents. The acute political struggle combined with the widespread use of undemocratic methods is likely to move the political elite and society even further away from mutual understanding and consolidation. These elections were intended to demonstrate the readiness of citizens to assert their right to elect the government and the ability of the opposition—for the first time in Ukraine’s history—to prove its transparency and integrity.

In addition, the substance of the election campaign has lacked quality. The campaign failed to create an environment for serious discussion of the real problems concerning national development. The majority of politicians, experts and journalists tailored their efforts to a campaign transformed into a battle between individuals, not their ideas and strategies.

2. The official goals of the presidential candidates; their real roles and opportunities

Both elections and public politics in Ukraine are remarkable for the fact that the declared position of the majority of leaders does not have much to do with their real priorities and intentions. These discrepancies appear to be the norm and have “appropriate” justifications. The desire to be comprehensible to a large audience assumes a simplification in reasoning, whereas public debate traditionally supposes a specific placement of emphasis. In the case of Ukraine, there is often a discrepancy between public declarations and real actions. This fact reduces the value of candidate platforms and hinders objective assessment.

A light-hearted attitude to public promises, political and government programs, and even laws and the constitution is the result of a lack of political responsibility: Former President Kuchma governed the country without a clear exposition of priorities. At a certain point this vacuum of ideas characterized his policy and style in power: middle-of-the-road decisions; uncertainty; inconsistency, and continuous “adjusting of reforms” negatively impact any evaluation of his achievements and have widened the gap between promises and results.

The following remarks regarding analysis of the intentions and opportunities of the presidential candidates and the political forces behind them concern the tactical peculiarities of political positioning. Comparison of the candidates’ platforms and speeches shows considerable overlap in their goals and priorities in many cases and do not reveal any obvious contradictions in practical terms. The rationale of the struggle for votes leads to a peculiar universality of proposed programs and slogans as well as a non-ideological posturing that allows candidates to improvise on popular topics and speak to prevailing expectations.

The majority of platforms claim to reflect the interests of the maximum number of citizens or “all Ukrainian people.” Thus, social and economic programs encompass a range of goals and ideas—from liberal to socialist—that will theoretically meet the needs of people who differ politically. But in general, these programs are intended to sway voters rather than as real policies to be implemented by the victor. The only informative aspect of the candidates’ programs and political positioning is their attitude toward the current government.

Of the numerous candidates participating in the first round of elections, the majority were formal participants lacking real public support. However, it is worth mentioning four main candidates: Viktor Yushchenko, Viktor Yanukovich, Oleksandr Moroz and Petro Symonenko; and one minor one: Anatoliy Kinakh.

In terms of the search for social and political consensus, it would be appropriate to take into account the position of Anatoliy Kinakh. This candidate received few votes but has a distinct political image and showed a new trend in Ukrainian politics—the aspiration to form a “third” force that could distance itself from the deadlock between those in power and the opposition, and which could promote an original and constructive program. Kinakh has been testing the system of political benchmarks and tactics that will be used by politicians who are not directly involved in the presidential election but are actively preparing for the next parliamentary election. In any case, his message will take an honorary place in the political life of the country during the next stage of its development.

Kinakh, head of the Union for Industrialists and Entrepreneurs, in his election program noted “[the] stratification of society according to property indicators; the polarization of society and the accumulation of a critical conflict mass. The main instrument of social development—state power—is in deep systemic crisis.” He believes Ukraine’s political arena is dominated by radical forces on both the right and left, representatives of different groups and the authority of bureaucrats. Further, political and corporate ambitions overshadow national priorities and the social demands of the people. Kinakh has formulated the following message: “The goal of social and economic reform is establishment of a socially oriented economy, formation of an economy of credibility, and optimism on the basis of social consolidation.”⁶

Specific proposals include suspension of the “state racket,” elimination of the conditions feeding the shadow economy and corruption, and countermeasures to shadow privatization. In regard to good governance, he supports the idea of implementing political reform with the view to establishing accountability of elected officials to their constituents, as well as development and enhancement of the material and financial footing of local governments. These proposals are not original and their author did not pretend to win. But as a neutral candidate, who distanced himself from the power players during the election, Kinakh has set an example for the evolution of centrist parties that do not have distinct political and ideological priorities.

A concrete and substantial contribution to the formation of a national consensus can be expected from Socialist Party leader Oleksandr Moroz. The Socialist Party of Ukraine (SPU) has the potential for a gradual transformation into a modern left-center party, perhaps as an

⁶ Право вибору: Президент України 2004. Інформаційно-довідкове видання. Інститут політики, Представництво Фонду Конрада Аденауера в Україні. Київ, “Геопринт”, 2004. – С. 90.

element of a 2-3 party system. The ideological manifesto of the SPU as well as Moroz's election program includes two very important points: regime change and achieving democratic transformation. Moroz's message is: "[Order] in the state, equal law for everyone, integral and efficient government accountable to all citizens, democratic socialism, and choosing Europe for Ukraine."⁷ This candidate has a stable electorate and high moral reputation.

Yushchenko's team is able to make the most substantial contribution toward the recovery of the political situation. He is not only the product of the "serious" subject matter of his platform but also of his solid reputation and concrete experience in public administration. Further, he enjoys wide public support and good human resource potential. Yushchenko's program covers important areas such as practical democratic reform and changing the current paradigm of power relations. Key elements of his platform include transforming the political elite and dismantling the existing political regime. His program has a separate chapter entitled: "Make authority work for the people and firmly fight corruption."⁸

Yushchenko is the candidate to promote the future consolidation of Ukraine and provide effective opposition to the forces seeking social division in the aggravated political environment surrounding the election. This results from the government's attempts to encourage people to vote for their candidate (Yanukovych) and discredit his main opponent by any and all means. Those in power have attempted to turn the contentious issues that form the subject matter of consensus into unproductive deadlock. In recent months the mass media, which is controlled by the government, have tried to portray Yushchenko as a leader who only represents the interests of the Galicia region, a narrow archaic nationalist, and a puppet of the West. But this activity has not hit the target, since popular support for the government is less than for Yushchenko.

A few weeks before the election, the government-supported candidate Yanukovych amended his program to introduce three new points: granting the Russian language state language status, introducing dual citizenship, and refusing to join NATO.⁹ Yanukovych's initiatives have broken the taboo against challenging the status quo on sensitive issues recognized so far by the main political forces, including President Kuchma. The murky but stable status of the language question and the related issues of education and culture require a cautious approach. The idea of dual citizenship was in fact dragged out of the archives as it was discussed and rejected at the inception of Ukrainian statehood. It is obvious that in this case, the essence of national independence, identity and perspectives for shaping the nation and civilized society have been stirred. Regarding NATO membership, the issue was not on the agenda, and Kuchma set it aside indefinitely in the summer of 2004. Yanukovych raised the issue in his hunt for votes not because of its topicality.

Thus, Yanukovych changed his tactics mid-campaign, with a significant impact on public opinion. At the early stage of his campaign, Yanukovych promoted a plan for nationwide consolidation to achieve economic success, and political and humanitarian changes were considered secondary and untimely. The crisis of the Kuchma regime leaves a limited set of possibilities for his successors. But economic revival and the emergence of additional

⁷ *Ibid.*, 128-129.

⁸ *Ibid.*, 189-190.

⁹ <www.kandydat.com.ua>

resources for redistribution do provide a measure of opportunity. Within the context of the Yanukovych campaign, raising wages and pensions became one of his primary means to attract voters, while his positioning as a guarantor of stability and order became the second element. These arguments have been very attractive for a large segment of the population whose interests have been poorly articulated beyond basic survival.

Yanukovych's lack of attention to the issue of democratic reform shows his non-interest, confirmed by the actions of his campaign team. Hopeful signs from the government (which in their mind is almost impossible to change) of strengthening social policy for a significant part of the population was a positive signal. The increase of government endorsed candidates (given the unpopularity of the government) is mainly connected to Yanukovych's exploitation of paternalism. When it became clear that these tactics were not enough, he aggressively initiated plots to divide Ukrainian society.

Yushchenko's advantage lay in the fact that he personifies a democratic perspective toward Ukraine's development, thus articulating a real alternative to the current regime. The forces in power are attempting to retain power, are using the election to escape the dilemma of previous periods (between democracy and authoritarianism), and are artificially creating a new dilemma. Numerous "technical" presidential candidates working for the government and the media have tried to compare Yushchenko and Yanukovych in a virtual format. Yushchenko was charged with wanting to impose Ukrainianization, reduce cooperation with Russia, and give the country to Western control. He was said to represent the interests of oligarchs and be responsible for social and economic problems. Another example of an attack on Yushchenko was intimidation of the population with warnings of instability, civil unrest and revolution. Yanukovych, was depicted as the polar opposite: closer to Russia, defending national interests against Western intrusion, particular support for the Russian-speaking and pro-Russian population, and maintenance of stability and civil accord.

The cynical distortion of the real picture, the distraction of voters from core issues, and exploitation of the naive and primitive beliefs of some citizens became a distinctive feature of government action in the course of the campaign. The government is not ready to openly discuss the problems facing Ukraine; and therefore some problems are ignored while others are addressed under the current government rubric. The government candidate has a two-part electorate: the minority with a privileged position in the existing economic and political system and a significant portion of the electorate satisfied with the minimum guarantees from the government, and who do not truly expect reform—just as they did not under socialism.

It is also worth mentioning a special category, the "Donetsk electorate." Specific social and political conditions developed in Ukraine's eastern Donetsk region. There, the nationalist and democratic movements were initially weak and the democratic movement was underdeveloped. Workers depend heavily on management, and at the same time there is a close bond between business and government, which has led to the entrenchment of special interests. Developments within civil society and manifestations of free civic life have been repressed. The domination of one oligarchic conglomerate in business and policy restricts the development of pluralism and competition, and possibilities for free choice. Conditions are such that the Donetsk region could become a pillar of Ukrainian clan and bureaucratic authoritarianism. The most aware, active and non-conformist segment of the population has actually been pushed into a civil underground. It is likely that the process of democratization in the region and its integration into nationwide processes will require special means and effort.

Symonenko, another candidate with relatively high poll numbers, is the leader of the Communist Party of Ukraine and promotes the establishment of “real people’s power, a socially oriented state and a fair society.” Despite some losses, he still represents a significant bloc of voters whose position should be taken into account. The self-imposed isolation of the Communists from other opposition movements, its inability to defend democratic values, its orthodox ideology, and the lack of a real program seriously limits its participation in the consolidation process. It should also be noted that Symonenko’s program does not stake out any real constructive position, and that the party leadership does not show any readiness to be involved in the process of democratic consolidation.

3. Problems impeding the development of socio-political consensus

Ukrainian society has a low level of consolidation and serious internal contradictions and inconsistencies that hamper the development of a unified approach to solving a number of key problems blocking national development. To a large degree, this is an inherited problem, but while independence created opportunities to solve some problems, it has seen the emergence of new challenges too. At present, there is an almost universal awareness of the need to establish an environment for the genuine consolidation of a Ukrainian society oriented to pursue national interests and the development of a political nation. At the same time, there are still serious differences in perception over basic principles and the degree of readiness to take practical actions.

The major factors underlying the divisions within Ukrainian society include excessive and, for the most part, artificially created social and economic stratification. The crisis, which has lasted for many years has brought about massive impoverishment and the marginalization and social degradation of a significant portion of the population. Non-transparent privatization and large-scale speculative operations have created a small class of nouveau riche who have no awareness of social responsibility. Differences between income levels in Ukraine far and away exceed the same differences in other European countries. Tension in the relationships between people with disparate income levels has been exacerbated by the fact that the situation has arisen both as a result of the imbalances inherent in the capitalist system but also through government’sanctioned fraud.

Social and economic disintegration has become very visible in the vague, narrow space between the rich and poor. The lack of a civilized environment for business and promoting small-scale entrepreneurship, the weakness of the middle class and artificial impediments to tapping the potential of a significant number of people would not lead us to expect consensus in this area of social relations. This can be proven by very divergent views on the development of private entrepreneurship and private property (particularly, concerning land ownership and the ownership of major industrial enterprises). There is no single prevailing view on the proper role of either the market and state regulation, or which socio-economic development model should be embraced. It is also telling that there appears to be no discernable trend in the distribution of preferences. Thus, according to data collected by the Institute of Sociology under the Academy of Sciences of Ukraine, throughout the period of significant economic growth beginning in 2000, the level of support for socialist development was 22.5 to 27.5 percent, while capitalism garnered only 10.6 to 17.1 percent. It is also worth noting that 16.3

to 23.4 percent of those polled were prepared to support either method “as long as there is peace,” 20.4 to 24.2 percent supported neither of the two models and about 18 percent found it difficult to give a definite answer.¹⁰ Throughout this period the state machinery worked to consolidate these differing attitudes rather than moving beyond the status quo.

Ukrainian society remains divided along linguistic, cultural and religious lines, many of that delineate the character of individual regions. Relations between the Orthodox and Catholic communities are strained with little prospect for improvement as are those between orthodox denominations which give allegiance to patriarchs in either Kyiv or Moscow. The religious schism has its own political and even geopolitical agenda. The status of the Russian language and its role in social life, education and even the organs of state and local government remains undecided.

Ukraine has a complicated, ethnically mixed population. In addition, since independence the region has seen changes in the power and social status of ethnic groups such as Russians. A new and uncontrollable momentum in inter-ethnic relations has become apparent. The impetus behind it has been a perceived need for national revival and consolidation of the indigenous nation that has had an impact on the general attitude towards ethnic minorities and state policies on this issue.

Underlying this problem is the leadership’s inability to find a paradigm to both overcome excessive Russification and promote organic assimilation of ethnic Russians into the culture of an independent Ukraine. At present, however, the ethnic factor has not had an impact on structural political profiling. Political organizations based within ethnic groups or capitalizing on nationalist sentiments have not so far been successful in elections, even at the local level.

Another watershed dividing Ukrainian society stems from outside influences; Ukraine is deeply immersed in the very challenging dynamic of post-communist political transformation. These processes, directly linked to establishing a national identity, strike a deep chord in the perceptions and values of a majority of people. The country has not yet formed an unequivocal narrative of the collapse of the USSR and Ukrainian independence. There is still a discernable impetus toward re-integration, which is also visible in some segments of the political elite.

There are grounds to speak about internal Ukrainian ambivalence in relation to its neighbors, with people ready to support both Ukraine’s integration into the European Union and joining the Union of Russia and Belarus. Between 2000 and 2004 integration of Ukraine into the EU was supported by between 45 and 56 percent with 8 to 15 percent against, while re-integration with Russia and Belarus was supported by 41 to 63 percent with 20 to 37 percent against. At the same time a comparatively small segment of the population prefers not to see these differing aspirations in opposition to each other. Nevertheless, the anti-Russian sentiments of one major group vis-à-vis the anti-Western attitudes of the other have been a prominent

¹⁰ *Ukrainian Society in 1994-2004: Sociological Monitoring* (Kiev: Institute of Sociology of the Academy of Sciences of Ukraine, “Socis” Centre for Social and Political Studies, “Democratic Initiatives” Foundation, 2004), 12.

feature of public life in Ukraine.

Developing a modern national identity has been slowed by persistent myths of a special “Slavic spirit” which contain elements of anti-Western attitudes and isolationist tendencies. The socio-political landscape has also been impacted by the residual Soviet-era ‘sub-culture’: it is important to remember that while it is a retreating culture, it is an artificially renewable reality. Nonetheless, it has had a serious influence on the delineation of political forces and the course of the campaign.

There is also considerable diversity in, or rather, fragmentation of ideological and political preferences within the electorate. The most popular political ideology is the Communist ideology, supported by about 15 percent, Socialist and Social Democratic poll between 10 and 11 percent, and National Democratic received 8 percent. A very large segment (over 45 percent) have no discernable ideological or political views.¹¹ The democratically oriented movement clearly has a weak following. Liberal and conservative values, which are very important to the formation of modern political culture and the development of civil society, have not yet been adequately embraced. On the whole, the ideological and political preferences of voters have not created a strong impetus for joint and united action.

The overall level of national consolidation remains low, and popular awareness of common interests and opportunities is insufficient. The authorities, in their turn, frequently capitalize on religious and socio-cultural differences with a view to discredit the opposition and erect hurdles to their actions. A lot of effort has been expended to create an image of the opposition as non-constructive nationalists when they are in fact genuine democrats and patriots challenging the authorities. A lack of legal provisions to protect civil liberties, and attempts to manipulate the public psyche coupled with the poor performance of state structures, have led to a high level of tension in the relationships between the government and the governed. The election has brought latent problems to the surface and exacerbated them further.

4. Presidential election and prospects for democracy

The overall development of the political situation and the character of the election campaign point to a serious aggravation of the struggle between authoritarian and democratic trends. Until now it has been taken for granted that one of the prizes of the struggle is the right to be considered the champion of democracy in the eyes of the electorate. The government has been relentless in its efforts to limit the influence of the democratic opposition and discredit to it. They have established their own monopoly on the formulation of national interests and how they should be protected and have imposed their own vision of patriotism to match. Attempts have been made to embed a Russian-style social consensus in Ukraine, which is absolutely unacceptable because it is founded on the principle of systematic marginalization of the opposition.¹² In the government’s view, the election was intended to be a starting point for the consolidation of authoritarianism and the liquidation of Ukrainian “specificity,” thus bringing it back to the fold of stable post-Soviet fake democracies.

¹¹ *Ibid.*, 12.

¹² Helman V.Ya. Political opposition in Russia: extinct species? Political Studies. 2004, No.4. - p. 56 - 66.

The ruling elite could not have imagined that the free will of the people might be recognized and there might be a civilized way to cede power. At this stage of the country's development, a deep rift between the vested interests of a small group of individuals who own the majority of national wealth and hold key positions in the power structure, and the interests of the rest of society cannot be bridged in a civilized manner. The most powerful financial and industrial groups, having created themselves through non-transparent privatization and speculative operations, did not wish to submit to the rule of law voluntarily and pursue shared policies. They were dependent on state power to preserve their acquisitions, complete the re-distribution of state property, and gave a new lease of life to non-economic methods of reaping huge-profits. For many, retaining and exercising power was the only sure way to escape judicial scrutiny of the laws they had broken. Dirty business and politics as usual didn't create new reasons to relinquish power; thus, free and fair elections had always been out of the question, even in theory.

In fact, Ukraine has been ruled by a regime, which by its very nature cannot be a law-abiding actor in the process of democratic transfer of power. It has turned the values of democracy, moral norms and the rule of law into profanities. It has defaced the political process to the point that the universally accepted electoral procedures were nothing short of fiction. There was no environment for a civilized, adversarial debate of principles or competition between political actors; it would need to be created from scratch. The current regime exerted such a strong and concerted pressure on the election process that a genuine exercise of the free will of the people was impossible. Under these conditions the opposition forces and society at large have been gaining momentum for a counterattack. A vigorous demonstration of rejection of the government's actions, and a massive response to counter them were probably the main arguments supporting the claim that Ukrainian elections were no longer a lip-service formality.

The election has given a great boost to the development of Ukrainian society and the formation of a modern civic culture. In response to the brutal pressure applied by the authorities, society has been gaining and strengthening its democratic potential. People have been quick to devise ways to neutralize the administrative resources of the government, its deliberate misinformation campaigns and attempts at bribery. The country has taken a large stride toward formation of a political nation, and the standoff between society and the authorities has given Ukraine a new lease on life. A consolidation of democratic forces has taken root, the opposition on the right has joined the Socialist Party of Ukraine and a number of centrist forces represented in Parliament. This is more than a mere agreement among leaders: massive protests against electoral tampering—which were followed by local government bodies in the majority of regions joining them—have become a turning point in the emergence of a new situation. Opposition forces have been enjoying popular support. In their turn, the people themselves set the terms of reference for the actions of the opposition, which has largely enhanced the ability of the opposition to implement its agenda. This process is laying the foundation for re-establishing trust in genuinely patriotic politicians and for constructive interaction between society and the government.

The conflict-laden election process largely determines further development of the political situation, and the new president will need a strong affirmation of legitimacy. Moreover, he will be keen to expand his outreach to grassroots support. He will need that support not just for a few weeks or months, but for a long-term strategic perspective. Thus, reaching some kind of consensus will be a critical political goal in and of itself, though it will be impossible to achieve through providing a strengthening social policy alone.

Economic policy based on paternalism, and replacement of political transformation with a form of stability and order which takes "Ukraine's specificity of historical development" into account may, in theory, become the path to partial modernization of the political system and a temporary alternative to European-style reforms but it would only be window dressing. Partial consolidation implies the passive, half-voluntary consent of a significant number of people and curtailment of rebellious sentiments. Such a project could only serve as a propaganda tool rather than a base for common understanding over a wide spectrum of political forces.

At the same time, Ukraine has the conditions to tackle the problem of reaching a practical consensus. This results, first, from the growing unity within the democratic opposition, which is truly capable of replacing the incumbents and governing the state. Its potential is directly linked to the development of non-conformist attitudes among people who have become experienced enough to spot populism, demagoguery, bribery and pressure. Ukrainian society has proven itself able to rebuff propaganda and brainwashing techniques and make up for the lack of information resulting from restrictions on freedom of expression and the weakness of the independent media.

Massive irregularities during the election campaign and particularly during the second round of voting have further aggravated relations between the rival parties and narrowed the possibility of reaching compromise between them. Nevertheless, this very fact creates an opportunity for the early cleansing of the Ukrainian political elite and rehabilitation of society. Democracy will then become a conscious requirement for ordinary Ukrainian citizens.

The prerequisites for reaching democratic consensus will be ensured by Yushchenko's victory. Based on previous experience, one can suggest that Our Ukraine is not likely to aim for an overwhelming dominance. It has become even more evident that in order to exercise an effective government it is necessary to engage the potential of center and left-center forces. The search for a shared understanding of the overriding goals of the nation and norms of political activity could be pursued on the platform of a joint rejection of authoritarianism.

A wider program of consensus should be linked to the possible evolution and changing role of some portion of the forces which have supported President Kuchma in recent years. The inherent crisis of the current regime and its reduced viability inadvertently made preparation difficult for survival in an environment of transparency, responsibility and rule of law. It is obvious that a major part of the Ukrainian business community, which has no choice at present but to adjust to the realities of a shadow economy and back stage politics, are very interested in embracing civilized business norms. Breaking the alliance of the government with the business community, and relieving the pressure which is currently exerted on civil society structures, will dramatically increase the share of forces in the country in favour of democracy, though the model would not accommodate radical and artificially created political entities which have no significant popular support.

The fierce resistance to democratic transformation by the oligarchic factions and the inconsistent policies of the Communist Party are a serious impediment to formation of a stable parliamentary majority and the effective performance of the Parliament, and it may put the issue of early election to the Verkhovna Rada (Parliament) on the agenda. However, if it can form a government that would win the confidence of the people and would embrace different political forces, it may be sufficient as the first stage of reaching consensus. Better

opportunities for civilized interaction can only be established after a thorough overhaul of the deputies' chamber so it reflects the new political situation.

In order to perform effectively, the governing leadership needs to enjoy the trust of the people. It should not only be in a position to legitimately exercise power, but also pursue policies with the benefit of the direct and active support at the grassroots rather than a shaky compromise reached within the elite. One of the tasks of the democratization process must be ensuring equity in an environment of freedom and a market economy and eliminating destructive inequalities.

The aspiration to reach a national democratic consensus has nothing to do with a "one-size-fits-all" approach, which hamstrings political and cultural pluralism. On the contrary, a cohesive consensus can only be reached through the harmonious interaction of various forces and trends, and by striking a golden balance between all of them. It can only be delivered on the basis of what unites them: foundation of a common national platform for state and individual entities that reflects the specific interests of different groups. So far such a challenging socio-political construction has yet to materialize.

The new experience of fostering relationships between different forces in Ukraine, which are capable of gradually forming a European-style political spectrum, is of special value. The release of a number of political organisations from the control of the vertical hierarchy of presidential power, and their advance towards self-sufficiency as opposed to their earlier mobilization into an artificially concocted majority has already contributed to a more natural development of political processes at the election stage. The main chance for further rehabilitation of the socio-political situation in Ukraine lies in making the free will of the people the foundation for the exercise of state power.

5. Practical tasks of national consolidation after the election

The presidential election in Ukraine has brought about more than a mere change of power. The election itself and the events around it have become a factor of in-depth changes in public perceptions and a dynamic regrouping of political forces. In fact, for the first time the genuine conditions for turning the democratic forces into the main engine of national development have finally materialized. This has been even more critical due to the fact that it has come about as a result of an all-out political struggle, which demanded from its participants a strenuous exertion of their strength and resources. The authorities have attempted to upset a peculiar balance of power, which has been established after the first round of voting, by expanding the scale of election fraud and by pushing through their candidate in utter contempt for decency. What happened after the second round of election went far beyond the framework of election scenarios and beyond a stand-off between the power and the opposition.

The blatant election fraud provoked a powerful surge of civil disobedience, which was dubbed the Orange Revolution. It has become more than a form of expressing support to the opposition. The revolution has marked a new quality of the Ukrainian society, i.e. its capacity to take a strong stand in defence of its rights rather than just expressing its vote of no-confidence or vote of censure. The public has become an independent stakeholder in the political struggle. Not only did the revolution make the old power get off track but it has also

imposed new and much more challenging tasks on those who took over the helm of power. It has changed the conditions for exercise of power.

Within the framework of “compulsory program” during the election campaign, the main candidates kicked off a race of taking pledges, mainly in the area of social well-being. Yushenko’s attempts to focus, first and foremost, on the issues of democracy and market reforms fell short of expected results. Many voters remained indifferent. Brute actions of the people in power, which had a direct impact on hundreds of thousands of Ukrainians and leaked out to the public, happened to be the best catalyst for change of attitude. Struggle against election fraud and for the cause of fairness and justice brought forward to the national agenda the question of civil rights and liberties and dramatically raised the level of demands regarding the democratic renewal of socio-political life of the country. The fabric of civil society, which until then had been developing very slowly and not always consistently, demonstrated its self-sufficiency and outlined the framework for the state to evolve further.

The election and the Orange Revolution have become the turning points in the development of Ukraine’s political system. The rise of the opposition leader to power has stimulated the reorganization of power and a significant re-formatting of the role and the prospects for the main political actors. However, the true format of these changes no longer exclusively depends on the new relationship between the forces but on public interests, which this time have been articulated better than ever before. It is quite evident that from now on the new power and the new opposition will have to go beyond a mere competition against each other as self-sufficient elitist groups but, first and foremost, they will have to engage in competition to win the support of citizens.

It is the implications of the Orange Revolution that have brought about the progressive change in minds of people’s deputies in the Parliament, the change of behavioral patterns of law-enforcement authorities and the ability of courts of law to shake off external pressures and act in accordance with the law. The media have seen a marked improvement in their working environment and many regions have put an end to the attempts of public officials to abuse their positions of power for electoral gains. Even before the formation of the new authorities the country had already seen the establishment of a civilized political culture.

It is only natural that Yushenko has become a symbol of the revolution. But he has also become its debtor. While earlier, as the leader of the opposition and a contender for power, he was the main initiator of democratic transformations and could freely decide on the scope and speed of such transformations, now the question arises to what extent the new president, his team and his political allies are capable of acting under the scrutiny of public control and in compliance with the people’s expectations. Anyway, having won wide-ranging public support, the former oppositionist has no choice but to assume an extra responsibility and not to forget about the risk of losing such support.

It is obvious that the period preceeding the parliamentary elections in 2006 will become a trying one for all parties and blocks contending to win seats in the Parliament and it will require from them the achievement of high standards of transparency and responsibility. The relationships between the political parties and their electorate have been subjected to quality changes. In recent times this has led to self-exposure of phoney parties and their leaders. The Social Democratic Party of Ukraine (united), “Labour Ukraine” and People’s

Democratic Party have entered a deep crisis. Despite the qualified success of Yanukovych as a candidate his Party of Ukraine's Regions has also been confronted with serious problems. The reason for that is not so much blunders in politics, but the growing disparity between the very nature of such organizations and the new civil awareness of the majority of citizens. Artificially created parties representing vested interests may turn out to be totally unsuitable for opposition activities.

In fact, over the last few months of 2004, Ukraine had seen the disappearance of a free and cheap market of electoral support where the parties of oligarchs and bureaucracy used to buy the necessary votes wholesale through the manipulative use of financial and media resources at the disposal of the administrative machinery. For the time being this market has shrunk to include only the Donbass region and the Sevastopol area but there is likely to be a dramatic "price hike" there too.

A conscientious decision of the new authorities to act with maximum transparency and to demonstrate, by the very first steps made, their fundamental differences from Kuchma's team has an enormous value for restoring trust in state institutions. If complemented by a better performance in the socio-economic area, this policy will have a positive impact both on supporters and opponents of the Orange Revolution. This will create the basic pre-conditions for achieving an overall national consensus.

Problems of a different nature but, nonetheless, just as challenging, have emerged due to a very special dramatic character and very specific forms of struggle in the aftermath of the election. First of all, they are related to the implications of the tactics applied by Yanukovych and those people who placed their stakes on him. The threat of defeat pushed the old regime towards capitalizing on some endemic weaknesses of the Ukrainian society inherited from Soviet times. The deepening of internal divisions within the country is a direct implication of the actions undertaken by the old authorities. However, it would be an over-simplification to reduce it all to PR-technologies. In order to understand the specifics of the present-day stage of the country's development, it is critical to make a proper assessment of the processes that are under way in society at large. A significant number of opponents of the Orange Revolution only voted for Yanukovych because the latter was perceived as a better exponent of their special interests. This was promoted not only by the media and propaganda techniques, but also by irresponsible policies of the old regime going out of its way in its attempts to set off the regions and Russian speaking citizens against Ukrainian speakers.

Among those showing contempt for the Orange Revolution were quite a few people who felt uncomfortable for the simple reason that they were either slow or did not really dare to respond to what was happening. Against the background of cultural and moral upsurge of the revolutionary movement are those people who used to stay beyond politics and showed indifference to the issues of social development, or possessed a peculiar civil plasticity enabling them to adapt to whatever realities of life, they were, in the first place, psychologically vulnerable. It should also be admitted that practically anywhere outside Kyiv there are considerable regional differences in the environment for showing political views and some deficit of tolerance. The revolution has become a determinative for de-Kuchmanization of the country, its moral cleansing and mental emancipation. This process has gained a sweeping momentum and should contribute to the recovery of the situation in the south and the east of the country.

“The struggle of civilizations” has become a wide-spread buzz-word in Ukraine for giving interpretation of events in the context of the recent election. It is the Soviet versus modern European civilization as such. The exponents of the Soviet civilization are characterized by paternalism and state-dependence, detachment from their ethnic roots, Western xenophobia, irrational Russophilia and some other inherent features of the old sub-culture preserved in Ukraine. To a lesser or larger degree, what we have here is the lack of readiness to perceive oneself as a citizen of the independent Ukraine and link one’s lot to it. This is the electorate which was shared over the recent years between Kuchma followers and the orthodox Left. This time these voters supported Yanukovych, the successor of the latter, who made ample use of Communist slogans and did not spare the state budget money to bribe the electorate.

The new Ukraine has a following of a different nature: more dynamic, more stirring and patriotically-minded. It is these citizens that stood up for the defense of democracy and their rights. Speaking in Strasbourg on January 25, 2005 Yuschenko had all the reasons to say that “the Orange Revolution in Ukraine had materialized, to a large degree, for the simple reason that European values of freedom and democracy have become stronger in the consciousness of my people”.

The participants of the revolution have demonstrated their absolute superiority over Yanukovych supporters from the point of view of their organizational skills, moral values and ingenuity. This notwithstanding, the disunity of the country does not become less painful or dangerous, for that matter. Moreover, the high emotional charge of the stand-off and the long wait for an outcome have seriously hampered the recovery of mutual understanding, let alone trust, and the threat of consolidating the situation “one country – two electorates” has been accentuated. Nothing of this kind was observed in 1999 when Kuchma snatched the victory in the election from the Communist candidate by playing hardly fair game and playing it very unconvincingly. The “Soviet-style civilization” was still dominant then. In the same way, in order to give a valid interpretation of the situation in the post-election Ukraine now, making references to the examples of established democracies, regrettably, would not help. In those countries a minimal but a decisive advantage of one election candidate over the other would not lead to the split of the nation since the national consensus on fundamental issues is already there and cannot be challenged.

The problem of the country’s consolidation has come into a very sharp focus as a result of the already completed stage of political struggle. It can serve a fabric for the new stage of this struggle. Consider: Even if the results of the repeat voting in the second round of election were adjusted for residual falsification element and if references were made to the exit-polls alone, one would still have to draw a conclusion that nearly 40% of Ukrainians have either failed to grasp the ideas of the Orange Revolution or have refused to accept it. Many of them have shown themselves as resolute opponents of this revolution.

The elections of 2004 have shown the actual shrinkage of dominant influence of regressive political forces: the orthodox Left and the oligarchs. In 1999 they controlled as much as 80% of the electorate and shared between them the functions of exercising power and those of the main opposition; they had no other contenders then. At present their sphere of influence has shrunk by half and is likely to diminish rapidly in the foreseeable future. In the parliamentary elections of 2006 it will be very hard for them to win the hearts and minds of the voters who have supported Yuschenko and/or those that have given their votes to Yanukovych. In the autumn of 2004 the objective of forming a national consensus was still considered primarily

from the perspective of relationships between the elitist groups and as a way of reaching an agreement on the strategy of the authorities. It has become obvious now that it is also the public that has won a special role to be played in reaching such a consensus.

The events around the election have made it possible to carry out a survey of internal weaknesses of the country and possible factors for its disintegration, the country's genuine priorities and roles played by separate political forces and business groups, as well as by political elite and some specific political leaders. Also, there was a spontaneous and dramatic acceleration of internal processes and emergence of agenda issues that would require much time in order to be resolved providing that stability has been preserved. The rise of separatism in a number of eastern and southern regions of the country has unveiled the risks of turning the existing differences between the regions into an instrument of manipulation of public perceptions and a tool for extending a political struggle outside the scope of fundamentals of statehood and going beyond common national interests. The victors of the revolution are now confronted not only with the task of living up to the expectations of their supporters and delivering on all the promises made, but also with the task of neutralizing the factors that may provoke the country's disintegration and the task of addressing the lack of trust in so many people of the country. One of the important objectives of democratic forces has been the neutralization of actions pursued by the oligarchic opposition, which are aimed at marginalizing part of the electorate and irrationalizing public debates on the society's topical issues.

The situation "one nation – two electorates" is unacceptable due to the fact that it does not stem from a genuinely free and conscious choice of the people or from the objective readiness for making such a choice. Personal likes or dislikes for the two candidates, which have distinguished the presidential election in Ukraine, could not hide a real dilemma: democracy or authoritarianism. While the consequences of campaigning efforts could be overcome relatively quickly, the internal lack of readiness in many citizens for modernizing the country in accordance with the Western European model makes it already a problem of the country's historical vision and its competitiveness.

Specific prerequisites for reaching a national democratic consensus have already become established at this new stage of the country's development. The main prerequisite is improvement of the relationships between the public and the government and the attainment of more sincerity and openness in search of solutions when addressing crucial issues of the nation's development. The agenda of the new authorities has envisaged promotion of solidarity, decentralization and encouragement of initiatives. In more systemic terms, it implies prompt implementation of European ways and standards in social, legal, economic and humanitarian areas. This in itself accentuates the prospects for attaining a more harmonized relationship between different layers of the population and between different regions.

For the first time in its history Ukraine has formulated an outline of a long-term national strategy and its clear-cut goals, which can cement the society and serve as a guide line and a framework for interaction between the public and the authorities. The implementation of the government's agenda will make it possible very soon to create some crucial factors for consolidation, which were previously non-existent, such as the unified and homogeneous legal space and common rules for conducting business. The revolution and the very fact of departure of the old authorities have already brought about the liberation of private business and returned its natural socio-political functions to the private capital. The separation of

business and power, dismantling of the system of clans and groups of oligarchs as well as the establishment of civilized and transparent partnership that the authorities have already put forward vis-à-vis national business - all this should become an important factor for stabilization and create positive incentives.

The new government has been formed on the basis of a broad coalition and has included both socialists and representatives of the new center forces. The promulgated agenda of the new authorities cannot provoke any serious criticism that would stand to reason. For some time to come it will be of little value for any patriotically-minded political force to pursue an aggressive and tough stance in opposition. As the voting on the candidature of the prime minister and on the agenda of the government has shown, it is only the Communists who are ready to play the role of the opposition to the very end. Having declared its intention to be in opposition to some actions of the authorities, the Social Democrats are quickly losing their supporters. Contrary to the statements of their formal leader Yanukovych, the Party of the Regions has expressed its own readiness to jump aboard the bandwagon. The ranks of opponents of the democratic development of the country have thinned and their activity has declined. All this gives a good chance for the new authorities to act. But only practical and sweeping successes of the new power can ensure the strategic prospects for arriving at a wide-ranging democratic consensus in Ukraine.

The Presidential Election and Constitutional Reform

Timm Beichelt, Rostyslav Pavlenko*

1. Introduction

Ukraine, similar to other European CIS states, even after the Orange Revolution of December 2004, belongs to a „gray zone“ between democracy and authoritarianism.¹ Neither regime type is fully consolidated. On the one hand, the abuse of power and corruption are widespread, the power system is centralized, checks and balances are often ineffective, human rights are sometimes infringed, the media are biased and – obviously to be seen in the recent presidential election – the will of the people in elections is not respected by all parts of the political elite. On the other hand, the constitutional framework is officially based on the principle of checks and balances, the political system is pluralistic, the opposition is quite active and achieves considerable successes during elections, some media provide independent information, civil society is viable and actively developing (Haran/Pavlenko 2004) and, even though after a long and worrisome struggle in November and December 2004, a change in power is possible even with regard to the highest office in the country, the presidency.

These latter features speak against classifying the system as an outright autocracy. Unfair as the first rounds of the presidential election were, as determined by OSCE observers, the campaign even at that stage remained competitive and the outcome of the election resulted in a change in power. At the time of completion of this article, it must remain open if this change will in the mid-term be accepted by all major players.² The citizens proved ready to protect their rights, from checking their names on voter lists to protesting electoral forgery. This demonstrates the potential demand for democracy in society, the existence of the basis on which democratic values can develop.

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² The time covered by this text ends on Jan. 31, 2005. Although the mass protests of the „Orange Revolution“ have forced the incumbents to agree to repeat the second round of the elections under improved legislation and tight international supervision, and reform-oriented candidate Viktor Yushchenko was elected president, the political conflict is still ongoing. One indicator is that the losing side (former Prime Minister Viktor Yanukovych) refused to recognize its defeat. Moreover, the compromise between the incumbents and the opposition itself implied changing the Constitution – shifting control over the executive from the President to the Premier. The changes are to take effect in late 2005, before the parliamentary elections. Only after the latter take place, it will be clear what political force gets the parliamentary majority, form the government, and will finally determine the course of the country’s transition. Therefore, the text should be read as an analysis centered on the elections, not around the general developments afterwards.

In short, the Ukrainian legal and political system bears the seeds of both democracy and authoritarianism. The presidential election of 2004 can be seen as an important milestone, which marks the choice that the Ukrainian establishment and society had to make between these alternatives. At first glance, with the inauguration of the President Viktor Yushchenko on Jan. 23, 2005, the „democratic camp“ won the power struggle. However, as the examples of the Federal Republic of Yugoslavia and Georgia show, the winning of a presidential contest by „democratic forces“ does not automatically mean an immediate and/or thorough transformation to full fledged liberal democracy.

Therefore, the frame of reference used for the Ukrainian regime is neither that of a consolidated democracy (Dahl 1989) nor that of an autocracy (Linz 1989), but the more recently developed concept of a „defective democracy“ (Merkel et al. 2003). In the text, the constitutional and legal framework of Ukraine will be tested for the ability to provide important safeguards against abuse of power and unfair play. The Ukrainian constitutional system will be looked at in the light of a specific characteristic, the concentration of considerable power in the hands of the president. We formulate the hypothesis that it is this feature which adds decisively to „the winner takes all“ mood within all political camps. Given the unpopularity of the authorities within Ukrainian society, the incumbents in the 2004 campaign had to wage an uphill battle. Unlike in most other CIS countries, their main task was not to further consolidate their power, but to safeguard against the risk of losing all of it. In our view, this led to an unprecedented and tense campaign, which former President Kuchma called „the dirtiest ever“ even when the worst parts had not yet become a reality.³ Needless to say, the 10-day delay in announcing the results of the first round of elections, as well as the failure to follow up on accusations of fraud after the second round, were also major indicators of a dirty election – though it is not completely clear if that was exactly the point to which Kuchma was referring.

Already, long before the elections themselves, one of the possible ways to overcome the instability of the system in Ukraine was seen in reformulating the Constitution and establishing another type of government. All political forces (including those behind the newly elected president) declared the intent to reform the system into a parliamentary one. The first necessary step was made as a part of an elite compromise – the Constitution was amended. Yet, the amendments will only come into force after some time. The mode for fulfilment of reform – the appearance or absence of a broad consensus among the main political forces, the free or forced support from parliamentary factions, the time and manner for enacting the adopted constitutional amendments – will be the next milestone showing Ukraine’s development into a democracy. Once the elections of 2004 are over, the next step on the way to democratic transformation will already be in sight.

The aim of the given text is not to establish a full scenario for the further democratic development in Ukraine. Rather, we want to show that the implementation of the planned constitutional reform would allow the Ukrainian political system to rid itself of one of its strongest impediments to consolidation: the strong position of the president, which turns every presidential election into a gamble for all political power in Ukraine. On the basis of the defective democracy model, we want to show that constitutional reform should

³ Kuchma bude praciuvaty vid dzvinka do dzvinka, Ukrainska Pravda, Sept. 24, 2004: www2.pravda.com.ua/archive/2004/september/22/news/19.shtml

strengthen horizontal checks and balances in the system, which would lead to a distribution of power among several institutions instead of only one. Consequently, the next presidential election would lose some of its significance for the political fate of Ukraine as a whole, and the incentives of various political actors to push the results in their direction could be considerably diminished.

2. Theoretic approach: defective democracy

In the early 1990s, Samuel Huntington saw two consecutive changes in a state's leadership as sufficient criterion for the establishment of democracy (Huntington, 1991). That mark proved to be all too simple. However, in general, transition-theory scholars at the time were convinced that the striving for democratization had been accomplished once elections and control of the government could be accomplished.

This hypothesis held some value in the case of most Central European states, where formerly oppositional forces won the first elections after the breakdown of the *ancien régime* and where thorough restructuring had begun right with the first post-socialist government in office. In Ukraine, Russia and other CIS states, however, it soon became clear that even the best scenario would not lead to full-scale democracy; they drifted into a „gray zone“ between democracy and autocracy (Bendel/Croissant/Rüb, 2001). These countries did not have some of the crucial advantages in democracy building at their disposal: a) the area has not known democracy since previous historic periods (Offe 1998); b) the problems in the economic sphere were so big that they threatened the legitimacy of any elected leader; c) bureaucrats and members of the old elite were keen to enrich themselves rather than their countries (Hellman, 1998) and, moreover, as there were no immediate parliamentary elections, the old elite and bureaucracy dominated the decision-making (large-scale elite change did not occur); d) institutional choices were made in favor of centralized presidential republics, which concentrated power in the hands of the head of states and his ruling clique, thus creating a substitute for the Communist party committees in decision-making, rather than introducing checks and balances (Shugart, 1993), and e) external pressure from the European Union or other international organizations was rather weak as EU membership was not a short-term prospect for Ukraine anyway. From that line of transition theory, it is hardly surprising that most analyses do not view Ukraine as a clear democracy today (Karatnycky, 2004).

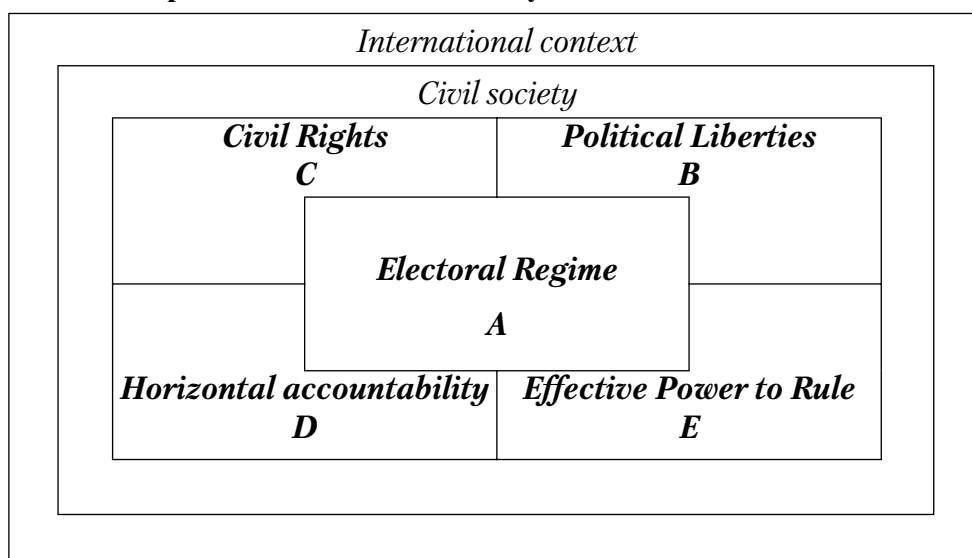
The theoretical debates did not only address the issue of the necessary prerequisites of democracy, though. Another development was the conceptualization of democracy as something that went much beyond free and fair elections. Of course, scholars had long before argued that the limited model of reference did not meet the complexity of democracy. Democracy exists in a variety of models (Held 1996; Schmidt 2000); elections are nothing but a necessary condition. Still, it took some time before this knowledge was included into the mainstream of transition studies. One major breakthrough occurred with a book by Juan Linz and Alfred Stepan written in 1996 (Linz/Stepan 1996), where the authors argued that without a stable territorial surrounding and a democracy-sympathetic bureaucracy, any democracy is bound to face serious problems. In the German scientific community, it was Wolfgang Merkel who used an even more stringent formula when insisting on the „state of law“ or the „constitutional state“ (Rechtsstaat) as the primary aspect of a new democracy that is truly functioning (Merkel 1999a; Merkel 1999b).

The main tool of Merkel and some colleagues for identifying the differences between full and minimal democracies is the concept of „embedded democracy“; it will be employed throughout this text. In a strategy similar to that of Robert Dahl (Dahl 1989) in relating ideas of democracy to its existing institutions, Merkel identified three dimensions of democracy:

1. the vertical dimension of power legitimation and power control;
2. the (horizontal) dimension of the liberal constitutional state, and
3. the dimension of agenda control.

From there, he developed five partial regimes of democracy, all of which need to function in order to identify a country as a liberal democracy (see figure 1): (a) the electoral regime and (b) the public space belong to the vertical dimension; (c) political rights and (d) horizontal checks and balances belong to the horizontal dimension, and (e) the actual transfer of power to those elected constitutes the dimension of the agenda control. The concept is called embedded democracy because the five partial regimes are interrelated. In order for a democracy to function, all partial regimes need to function simultaneously. If one or several partial regimes do not function, Merkel talks of a „defective democracy.“

Figure 1: The concept of embedded democracy



Source: Merkel (2004: 29 with some modifications)

When taking another look at figure 1, two additional spheres surrounding the political regime can be elaborated.⁴ One consists of the international context, the other of civil society. The logic behind the introduction of these two spheres is as follows.

- a) The five partial regimes indeed refer to the *political* regime, which means that the interaction of politics and society are not discussed. However, the way a political regime functions depends to a large extent on the political culture of society. For

⁴ Merkel et al. (2003).

example, it took about 20 years until the West German population developed a more or less democratic political culture, whereas in the first years after the formal introduction of democracy the commitment to democracy was not very intense (Conradt 1980). Therefore, the spheres of political liberty (partial regime B) and horizontal accountability (partial regime D) were arguably underdeveloped and defective in the first years of West German democracy. Only when the West Germans constituted a „civic culture“ (Almond/Verba 1963), were the partial regimes able to function adequately. Therefore, the sphere of civil society surrounds the partial regimes; democracy is „embedded.“

- b) Society and the political regime are only able to develop into a democracy if and when the preconditions for the existence of the state itself are clear. Utilizing transitology slang, Merkel calls this precondition „stateness.“ For the case of Ukraine, it may be clearer to talk of the international context instead (again, see figure 1). In addition to the aspects of stateness, the very foundations of a state may be in danger if external powers undertake efforts to pull that state into one or any other direction. Therefore, the international context is a further sphere which needs to be taken into consideration when judging the functioning of democracy.

The task of the next sections is to use this model with the Ukrainian case in order to discuss different aspects: a) the status of democracy in today's Ukraine with a special view of the presidential election from the year 2004, b) the role of institutions, and of institution-building in particular, in the democratization process of Ukraine, and c) the possible influence of external actors on the democratization process.

3. Elements of Defective Democracy in Ukraine

3.1 The background⁵

When looking at the state of democracy in Ukraine, a look back to the Soviet Union is in order. Liberalization started with Mikhail Gorbachev's *perestroika* (reform) and *glasnost* (openness). The reasons for their conceptualization and implementation in the late 1980s were manifold. Besides the economic crisis of the Soviet system and the sclerotic symptoms of the political regime, the growing independence of sub-national regions played an important role in accelerating the decline of the Soviet Union (Carrère d'Encausse 1978). Whereas the Soviet system had been able to manage interethnic conflict rather well, the political elites of the fifteen Soviet republics pushed for independence from the center in Moscow soon after Gorbachev announced his plans for restructuring almost all layers of the USSR.

Consequently, initiatives for liberalization of the USSR came to a large extent from the republics, where local party leaders tried to liberate the republic leaderships from Moscow-based rule. A landmark in this process was the election to the Congress of People's Deputies, which took place in March 1989. In many republics, oppositional forces not only ran against

⁵ Some parts of this subchapter go back to Beichelt (2004).

the autocratic elements of the USSR, but also against Russian hegemony within the state. In several republics, a considerable number of party officials were unexpectedly rejected on these grounds (White/Rose/McAllister 1997). The next steps were elections for parliaments on the level of the republics. The astonishing defeats of the Communist Party in Lithuania and, to a lesser extent, in the two other Baltic republics, were undoubtedly seen as the first steps in the direction of democracy. In the other European USSR republics, as well as in the Caucasus, the high competition of these elections bore strong elements of liberalization. In contrast to this, there was much less competition in Central Asia, which at that time had already led to well-founded assumptions about the differing paths of transition within the USSR (Löhr/Kohler 1991).

During the 1990s, four different sub-regions evolved in the territory of the former Soviet Union:

- The Baltic States, which had regained independence after the August 1991 revolt, quickly took steps towards integration into Western European structures. The liberalization and democratization of the political regime were followed by the process of consolidation.
- In Central Asia, the conditions for forming political identities as foundations for national states were scarce from the very beginning of liberalization. The borders of the republics in the 1920s had only partly been drawn according to existing ethnic, linguistic, or cultural borders (Götz/Halbach 1996). Because of the absence of alternative legitimate institutions, traditional leaders from the formerly Communist clans were strongly favored in (re)gaining power.
- In the Caucasus, clannish structures succeeded as well. In contrast to Central Asia, nationalism became a major element of clan organization in the post-Soviet period. The regimes of this sub-region today combine nationalist and sultanist elements.
- The four European countries of the CIS – Belarus, Moldova, Russia and Ukraine – were seen for a long time as special cases of the Central European transition to democracy and liberal market economy. Whereas Belarus needs to be classified as an autocracy, the other three countries including Ukraine belong to the “gray zone” mentioned above.

Within these regimes, elements of democracy and autocracy vary to a considerable extent. Azerbaijan, Belarus, Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan can clearly be rated as autocratic regimes. Although both parliamentary and presidential elections exist in all of these countries, the „electoral regime,“ with its elements of inclusiveness, fair competition and effectiveness of the vote, does not function in democratic terms. This judgment is shared by Freedom House, which lists none of the states as one of the world’s 121 electoral democracies in 2003 (see table 1).⁶

⁶ See <<http://www.freedomhouse.org/research/freeworld/2003/democracies.pdf>>, November 20, 2003.

Table 1: Democracy and Autocracy in CIS States

		1992-1996	1997-2002	Freedom House Rating	Regime Type
Central Asia	<i>Kazakhstan</i>	5.3	5.5	Not Free	Autocratic Regime
	<i>Kyrgyz Republic</i>	3.1	5.0	Not Free	Autocratic Regime
	<i>Tajikistan</i>	6.8	6.0	Not Free	Autocratic Regime
	<i>Turkmenistan</i>	6.6	7.0	Not Free	Autocratic Regime
	<i>Uzbekistan</i>	6.7	6.5	Not Free	Autocratic Regime
Caucasus	<i>Armenia</i>	3.8	4.1	Partly Free	Defective Democracy
	<i>Azerbaijan</i>	5.7	6.0	Not Free	Autocratic Regime
	<i>Georgia</i>	4.6	3.7	Partly Free	Defective Democracy
European CIS	<i>Belarus</i>	4.6	6.0	Not Free	Autocratic Regime
	<i>Moldova</i>	4.3	3.1	Partly Free	Defective Democracy
	<i>Russia</i>	3.5	4.4	Partly Free	Defective Democracy
	<i>Ukraine</i>	3.5	3.8	Partly Free	Defective Democracy

Source: Freedom House, <http://www.freedomhouse.org/research/freeworld/FHSCORES.xls> (November 20, 2003).

When relating these findings to the conceptual outline of „embedded democracy,“ it becomes clear that, in the CIS in general, democracy is endangered at its very heart, the electoral regime. In the cases of the CIS, political participation, civic liberties and effective government – all elements used to differentiate between different types of defective democracy – have to be analyzed, and indeed with the caveat in mind that the competitive foundation of democracy may be seriously damaged. This also leads us to the conclusion that in comparison to the neighboring CIS states, democratization in Ukraine is rather advanced. This is even truer after the presidential election of 2004: Of all CIS countries, only Georgia and Moldova have seen successful power changes within a partly free regime after 1991. Indeed, other countries like Belarus and Russia have experienced rollbacks into the direction of authoritarian rule whenever an incumbent political camp was in danger of losing an election. Ukraine has rolled back, however, with regard to the neighboring countries to the west where the conditions for democratization and democracy have been much higher.

2.2 The Ukrainian case

Figure 1 presents a model of democracy embedded into a) the international context and b) civil society. With regard to the international context, Ukrainian stateness is endangered by the lack of a single national identity – Ukrainians in the east of the country by and large feel attached to Russian culture, whereas Ukrainians in the West have much stronger feelings of a separate Ukrainian identity (Kuzio/Wilson 1994, Ryabchuk 2003). These competing identities do not simply lead to a competition of final visions of Ukrainian foreign and security policy; Ukraine's foreign policy is influenced by two powers with competing visions of Ukraine's position in Europe – Russia on the one side and Western institutions (NATO/EU) on the other.

In the case of Russia, it is not always clear if Ukraine's break from the Soviet Union is completely accepted by the elites in Moscow. On the other hand, the very heart of NATO and the EU consists of their delegation of sovereignty and therefore also of a weakening of the state. Therefore, in the Ukrainian case the external dimension clearly matters (Dergachev 2002/03, also see the texts of Iris Kempe and Iryna Solonenko in this volume). Regarding

civil society, it is usually argued that the 70 years of communist rule and the lack of a pre-communist democratic experience contribute negatively to participation and other aspects of democratic life.

The dissolution of the URSS was actively pursued from within Ukraine. Together with Boris Yeltsin, Leonid Kravchuk, who had been responsible for ideology in the Central Committee of the Communist Party of Ukraine, was one of the most important persons involved in the processes in late 1991. In the elections to the National Supreme Rada in March 1990, the Communist Party had still won about three fourths of the mandates. However, among the persons elected on the Communist list, there were about 130 reformers. In addition to these reformers, the national movement in the form of the Popular Movement for the Independence of Ukraine (Rukh) played a role. The movement was stronger than in Belarus or Russia, but at the same time did not have the same amount of power as similar movements did in Georgia or in the Baltic States.

The task of keeping the different groups together was achieved by Kravchuk and his program to preserve regime continuity despite the goal of independence from the USSR. He was elected president on the same day the Ukrainian population voted for independence with an overwhelming majority of about 90 percent and ruled within a semi-presidential system (Ott 1999: 15-18). The president in that system was proclaimed the head of the government, but he could appoint and dismiss the prime minister only with the consent of the parliament. Such permission was also required for the appointing of the most important ministers (of defense, of foreign affairs, of finances, etc.)

After Leonid Kuchma became president in 1995, he attempted to change the balance of power in his favor. The struggle between the president and parliament in Ukraine in the first years of sovereignty gave birth to a system of mixed components. In 1995 the speaker of the parliament (Oleksandr Moroz, Socialist Party of Ukraine), under the threat of a vote of confidence in the government, was bound to sign the Constitutional Accord. The Accord prescribed the establishment of a presidential republic (the president unilaterally appointed and dismissed the cabinet and local governors) and was to be in force until the new Constitution was adopted.

In 1996, the new Constitution was agreed upon. The presidential administration successfully used the ideological discrepancies between the right-wing political oppositional movement, Rukh and the Communist Party of Ukraine for a constitution which lent huge powers to the president. The Constitution was adopted, like the Constitutional Accord, under the threat of impeachment of the parliament by vote of no-confidence. In an overview, the Constitution contains the following elements:

- The president appoints the prime minister after he is endorsed by the Parliament, but can dismiss him at will. It makes the prime minister dependent on the president and makes all the premier's competencies (appointing and dismissing of ministers, forming the structure of the state executive power bodies) de facto dictated by the president.
- Thus, de facto it is the president who forms the government, defines its structure and personal makeup. Ministers and heads of other departments, especially enforcement and inspection (such as tax administration), are subordinated, first of all, to the president.

- The government is dismissed with the election of a new president, not a new parliament.
- The president appoints heads of regional and district state administrations (local representatives of the executive, de facto sub-structures of the presidential administration), which supervise the adherence to law on their territory and in fact assume functions of territorial self-governing. They prepare and execute a budget of the territory.
- The president abolishes government acts by his own decision.
- At the same time the president can dismiss the parliament only in an (almost unlikely) situation when a plenary session cannot be started in 30 days. Before 2000, there existed a criterion to determine whether to start the session: two thirds of the deputies had to register. After the left presidium of the Verkhovna Rada changed and the first non-left majority was composed in February 2000, the deputies abolished this rule.
- The president also has the right of legislative initiative and of veto that can be only overcome by a 2/3 of majority vote in parliament.

Along with the new Constitution, the president in 1996 received extraordinary powers to conduct economic policies for three years. Altogether, the powers of the Ukrainian president were high from an international perspective (Beichelt 2001: 123-176).

On the other hand, President Kuchma was not able to dominate the system with his policies. Like his predecessor, he was confronted with a fragmented parliament, which at the same time was united in its hostility towards the president. Factions in the parliament have been classified by different categories. Western observers tend to name the existing groups after party families known from Western Europe and name the following groupings: Communists and Socialists, Leftist Centrists and Social Democrats, Centrists, Rightist Centrists, and Nationalists (Lindner 1998b). Domestic analysts, however, tend to classify the party system by power blocs, e.g. the rifts between traditional leftists, centrist-pragmatists (usually found around incumbent presidents), and liberal reformists. The labels vary, but in general there is a tendency not to adopt Western categories (e.g. Dergachev 2002). One possibility for drawing the rifts according to these lines for the current parliament is presented in table 2. No matter how factions are named, the volatility was extremely high during the first years of the system. Additionally, their parliamentary election of 1994 had shown that the legitimacy of the system was very weak. Electoral participation was so low that even nine months after the election, 45 seats remained vacant.

Obviously, one major reason for the immobility of the system is institutional. The regime is not well prepared for dealing with situations of cohabitation. The key reason for this impasse, however, needs to be seen in the political and ethnic separation of the country. Whereas the eastern side of the country and the Crimean peninsula are mostly inhabited by Russians or Russian-speaking Ukrainians, the western parts of the state are culturally Ukrainian. Both groups exhibit strong socio-cultural ruptures regarding the Communist past, the value of the nation, and other questions of identity. Therefore, nation-building is one of the most crucial themes in Ukraine (Kuzio 1998; Wolchik/Zviglyanich 2000).

Table 2: Factions of Ukrainian Parliament, October 2004

Faction/Group	Votes	Representation
Coalition “People’s Power”: „Our Ukraine“ Bloc Yu.Tymoshenko Bloc	100 19	Pro-Yushchenko center-right parties and deputies.
Ideological Left: Communists	59	Orthodox part of ex-Communist party of Ukrainian SSR.
Social-Democratic Left: Socialists	20	Party of pragmatic ex-Communists
Pro-Kuchma factions: „Regions of Ukraine“ Social Democratic Party (united) „Labor Ukraine“ „Union“ People’s Democratic Party+Party of Industrialists and Entrepreneurs „United Ukraine“ „Democratic initiatives“	64 40 30 18 16 16 14	Donetsk businessmen and ex-officials (close to premier Viktor Yanukovych). Ex-officials and businessmen (close to Kuchma’s Administration head, oligarch Viktor Medvedchuk). Businessmen (close to Kuchma’s son-in-law, oligarch Viktor Pinchuk). Ex-officials and businessmen (close to oligarchs V. Khmelnytsky and Viktor Pinchuk). Ex-officials (close to ex-premier Viktor Pustovoitenko) + businessmen (former „red directors“ close to ex-premier Anatoly Kinakh). Majoritarian deputies, close to oligarch B.Hubsky. Mostly Kharkiv deputies, close to Kuchma and oligarch Olea Yaroslavsky. Pro-Kuchma’s majority coordinator Stepan Havrysh belongs to this group.
Independent/Not aligned: Independent „Center“ People’s Agrarian Party	18 16 20	Businessmen or ex-officials from different regions. Ex-officials, businessmen from rural regions (close to speaker Volodymyr Lytvyn).

Source: Site of the Ukrainian Parliament (http://gska2.rada.gov.ua:7777/pls/radac_gs09/fr_list).

When analyzing political development in accordance with the model of embedded democracy, defects have to be identified in every partial regime.

Partial Regime A – Electoral Regime: The electoral regime has been endangered, on the one hand, by President Kuchma’s agenda of keeping Communists and related post-Soviet forces at bay and, on the other, by different financial-economic clans from different regions of the country. The presidential election of 1999 followed the 1996 Russian example and consequently drew negative commentary from election observers. Parliamentary elections have not been as seriously marred, but were still far being from recognized as „free and fair.“⁷ As for the 2004 presidential elections they did not meet (...) a considerable number of standards for democratic elections,“ as the OSCE election observation declared.⁸

The defects of the electoral regime are rather clear, but the element of stability needs to be taken to mind as well. When potential turning points near in the form of presidential elections, it is not only the person in power – the president – that has to fear a loss of influence. Rather, given the strong vertical structure of the governmental system, it is the whole regime that is in

⁷ See the according report on <<http://www.osce.org>>.

⁸ See http://www.osce.org/documents/odihr/2004/11/3811_en.pdf.

danger. Expectations become uncertain, political and economic investments may prove to be misdirected. Where so much is at stake, democratic norms surrounding the electoral process are not internalized to the extent that incumbents are forced to adhere to the imperative of free and fair competition.

Partial Regimes B and C – Political and Civil Rights: The openness of the public sphere is rather limited by political and economic coercion directed against independent newspapers and most major TV stations had been signed onto a pro-Kuchma line before the elections. Violent deaths of journalists have been linked to their anti-establishment coverage. Therefore, the freedom of information is limited. Politicians from various opposition camps have fallen victim to fatal attacks as well. On the other side, the limitations of the public space are not complete. Channel 5 is a nation-wide oppositional channel which positions itself as a „channel of honest news,“ yet is supported by Petro Poroshenko, Viktor Yushchenko’s ally in parliament. There exist independent and opposition printed press outlets (on freedom of the media in Ukraine, see Haran/Pavlenko 2004).

There have been no effective limits on the freedom of access to Internet information sources. Yet, some attempts have been made. In 1998-1999, the government tried to establish a law, which would limit the number of providers for Ukrainian Internet sites; the motion failed.⁹ In October 2004, the clients of three government-based Internet providers were banned from opening a site hosting jokes about premier Yanukovych (yet, this ban was later overridden). One of the sites close to the opposition, obkom.net.ua, underwent an attack on its server (yet, it quickly reestablished itself at a different provider).¹⁰ In conclusion, while the right of obtaining „enlightened information“ (Dahl 1989) is not systematically disregarded, state actors have not been very active to enhance these rights.

Further, activists from civil society have been arrested when voicing their opposition on security matters. The constitutional state is limited due to corruption and lack of neutrality. In short, the regimes bear elements of illiberalism, although probably to a lesser extent than in Russia. Altogether, it can be argued that political rights are not systematically violated. However, reports on inefficiency on the part of the state administration and the judiciary frequently lead to problematic situations. Former deputy Prime Minister Yulia Tymoshenko has been arrested previously on questionable grounds, and the Prosecutor-general harassed one of the judges who had later ordered her release.¹¹

Partial Regime D – Horizontal accountability: Horizontal checks and balances are weak as well. After the Constitution, the president nominates not only does the government and subordinates some of the most important ministries (e.g. defense, foreign affairs) himself, but also, he appoints the heads of the regional and local administrations. Still, during the first year of the existence of the new basic law, president Kuchma violated the Constitution no less than 200 times (Lindner 1998a: 21). This has to do with the paradoxical situation that the president

⁹ Business, no. 18 (277), 11 May 1998.

¹⁰ See: Chyvokunia Viktor Site anekdotov pro Yanukovycha zablockovanyj. Avtor situ... vdyachnyj Yanukovychu za reklamu, Ukrainska Pravda, <<http://www.pravda.com.ua/archive/2004/october/12/5.shtml>>; Ot „Obkoma“: u nashogo providera s minuty na minutu zaberut nash server, <<http://w1.obkom.net.ua/news/2004-10-29/1211.shtml>>.

¹¹ The information of this paragraph is from <<http://www.freedomhouse.org/research/freeworld/2003/countryratings/>>, 25 November 2003.

on the one hand enjoys (too) much power when being able to appoint figures, but on the other hand does not have the capacity to actually decree his decisions. Decisions need to be made by parliament, and Ukraine so far has been characterized by parliaments which, because of political fragmentation and polarization, refrained from exerting their potential influence.

The weakness of the system of checks and balances at least partly needs to be explained with the strategy of President Kuchma to use formal and informal leverages for influencing the establishment. He managed to create a system of power suitable for him which did exactly go along with the constitutional structure. Within the „party of power,“ different clans (political-economic or, rather, business-administrative groups) competed within the economic, political and public sphere. Kuchma used the divisions between those groups in a *divide et impera* game, in which the main players were kept close enough to remain interested in the game (not willing to quit, to change the rules or the „arbiter“) – and simultaneously far enough not to outweigh seriously other players (and be able to question the need for an arbiter).

After being reelected in 1999 in a vote election that was criticized by many as being unfair, Kuchma's administration tried to change the Constitution with the aim of broadening its influence on the parliament. On the base of the old (1991) and imperfect law he held a referendum „on the peoples' initiative“ (Ukrainian and foreign observers reported numerous violations). In the referendum, more than 80% of citizens (as the Presidential Administration claims) „supported“ the necessity of formation of „permanently acting majority“ in Parliament, the right of the president to dismiss parliament if it lacks a majority, the constriction of deputy immunity, and the introduction of a bicameral parliament.

The idea of forming “permanently acting majority,” of course, came on the background of the traditional weaknesses of Ukrainian parliamentarism: a weak party system and the peculiarities of electoral legislation (225 deputies are elected by general all national party list with a 4% threshold and another 225 in majority districts where it is very easy to employ “administrative resources” or subordination). Given the differences in strength of the big power blocs throughout the country, that was one of the reasons why none of the political forces has been able to get a majority of votes on its own or in union with like-minded allies in parliamentary elections. Therefore, the idea of the Presidential Administration was to artificially create such a majority from outside, and to keep it under control by the threat of dismissal of parliament if the majority crumbled.¹²

However, the Constitutional Court prohibited new changes from being introduced the Constitution directly by referendum. It obligated the authors of this action to follow due parliamentary procedure of changing the constitution (support of changes by the simple majority – then the verdict of the Constitutional Court that changes do not limit human rights and they were introduced without violations of procedure – finally, support of the changes during the next session by a 2/3 majority of deputies).¹³

¹² This logic has been widespread in the pro-Kuchma camp since about 1999 (see Kordoun/Pavlenko 2000). As the 2004 elections approached, the orientation on the artificial creation and extra-parliamentary control of the majority became increasingly visible. The officials of the Kuchma camp used to refer to members of parliament as „button pressers“ for bills and programs developed by the administration (see Pogorelova 2004).

¹³ For more on this case, see a Freedom House report: <<http://www.freedomhouse.org/research/nitransit/2001/index.htm>>.

As a result, the referendum changes were supported only by the pro-presidential majority, and the implementation of the referendum results failed. The idea to change the Constitution re-appeared two years later – and the political context demanded that the direction of those changes be the opposite: the narrowing of the president's competencies. The proposals of this initiative will be discussed below.

In more general terms, these events show that the usefulness of horizontal checks and balances in young democracies can be interpreted in two ways. On the one hand, the absence of balancing elements in a system may well lead to the semi-autocratic behavior of the president. On the other hand, checks and balances in political terms may easily lead to impasse-situations, which is hardly desirable during the transition process.

Short summary: On the basis of several interrelated problems, Ukrainian democracy bears defects in several of its partial regimes. The problems consist of a constitution which offers too many powers to the president. If the incumbent abuses these powers, the almost automatic result is the development of a strong power vertical that cannot be controlled by any other institution. Ironically, however, the presidential system developed because of the weaknesses of the only institution to check the president before 1996: parliament. The ideological and territorial rifts between different parliamentary groups have been so strong that no stable parliamentary majority was within the first decade after Ukrainian independence. For regional and economic forces, it was therefore much more promising to organize themselves outside of parliament and therefore to a certain extent beneath the institutional system altogether.

This underlying situation explains the most decisive defects in partial regimes. A (electoral regime) and D (horizontal accountability). The electoral regime is endangered not least because the presidential elections are by far the most important turning point of the political system. So much is at stake that both incumbents and the opposition do not bring up the power to break with deeply imprinted Soviet electoral practices. The same mechanism endangers horizontal accountability. Presidents in Ukraine have so far needed to fight a hostile parliament and at the same time faced a regionally and economically segmented pluralism not fully represented in the political institutions of the regime. Therefore the president and his entourage have had to rely almost exclusively on elections to exert power.

These weaknesses are, of course, partly rooted in the former Soviet regime. The way accession to power is institutionalized in CIS countries has resembled Soviet practices until now. As long as post-socialist or liberal opposition forces do not get close to acquiring majorities at the polls, elite recruitment is bureaucratic and protectionist. Actors with a regional or a sectional power base become included on executive terms, be it into the presidential apparatus or into governments. Typically, parliament is only very partly the place where competing interests are dealt with. This has effects on elite formation, because actors are potentially able to run for high offices only when they have gone through the executive, not the legislative, apparatus. Therefore, it is not parliamentary competition but loyalty to the president which includes or excludes potential rivals from the political scene. At the same time, systematically cutting down the power resources for groups not belonging to the recruitment networks of the executives has been a condition for safeguarding the vertical power structure.

Altogether, it is hardly surprising that only a small minority of 20 percent of the population of Ukraine is at least partially content with the state of democracy in their country (White 2000: 276). Moreover, in 2004 about 56% of Ukrainian citizens thought that events in Ukraine

were developing in the wrong direction; none of the official bodies (president, parliament, government, parties, etc., had scored more than 5 out of 10–point approval rating).¹⁴ As social costs were inflicted in times that were supposed to be „the building of democracy“ in public culture, both the notion and idea of democracy have become associated with a decline in living conditions and ineffective power struggles. Whenever the strictly vertical regime structure was loosened, the existing frictions in society were reflected in deadlocks in the political sphere, especially in parliament. This makes it rather improbable that the defective democracy of Ukraine will return to more liberal and less subordinative government practices in the short term. Arguably, even the more „democratic“ President Viktor Yushchenko will have to struggle with the structures of the system. As our analysis implies, a simple change of faces in the country’s most important political seat is only one of many things which have to change in order to put Ukraine on a straighter road to non-defective democracy.

4. The presidential election of 2004: electoral conduct and results

Both the electoral campaign and the determination of the results of the 2004 presidential election proved to be heavily defective. During and after the electoral campaign, numerous violations of democratic norms have been reported. Mainly, these can be derived from the information of the election observation mission led by OSCE/ODIHR which had already listed the following problems after the first round:

- interference by the state administration in favor of Prime Minister Viktor Yanukovich;
- bias by the state media in favor of the candidate Yanukovich;
- disruption or obstruction of opposition campaign events by state authorities;
- inadequacies in the Central Election Commission’s handling of citizens’ complaints; and,
- mass problems with voter lists (information about inaccuracies in the voter lists came from 40% of districts).¹⁵ According to estimates by the Committee of Voters of Ukraine (CVU), problems of voter lists disallowed up to 10% of voters from exercising their right to vote.¹⁶

After the first round of elections, Bruce George, MP, President of the OSCE Parliamentary Assembly and Special Coordinator for the short-term observers noted that, „with a heavy

¹⁴ See: Pavlenko, Rostyslav, *Pered vyboramy 2004: liudy i vlada vse shche po rizni boky*, <<http://www.pravda.com.ua/archive/2004/may/25/1.shtml>>.

¹⁵ See the reports for both rounds of the presidential elections at the OSCE site: <<http://www.osce.org/odihr>>. See also the Committee of Voters of Ukraine reports on: <<http://www.cvu.org.ua>>. Data on monitoring of Ukrainian media during the campaign can be found on the Civic Coalition “New Choice 2004” site: <<http://www.monitor.org.ua/?do=45&id=5755&ln=en>>.

¹⁶ See Committee of Voters of Ukraine report: <<http://www.cvu.org.ua/>>.

heart, we have to conclude that this election did not meet a considerable number of OSCE, Council of Europe, and other European standards for democratic elections (...). Consequently, this election process constitutes a step backward from the 2002 elections.”¹⁷

The observers did see as encouraging, however, the very high level of participation by the electorate and civil society in the election process. At the same time, the Head of the CIS Executive Committee, Executive Secretary of the CIS Vladimir Rushailo, who headed the CIS observers mission, claimed that the elections were free and fair, marked only by „minor, technical drawbacks.”¹⁸ Observers from the CIS provided very similar comments concerning the elections in Belarus, Kazakhstan, Azerbaijan and other countries, where the OSCE condemned those elections as not free and unfair.¹⁹ Ukrainian State television and the TV channel *Inter*, which is close to Kuchma’s Administration head Viktor Medvedchuk, during the election day of 31.10.2004 extensively cited CIS observers, who said that the elections were running smoothly and without violations – except in Western Ukraine, where there were „numerous” violations (voting in place of relatives that had left to work abroad, groups of 2-3 people entering the voting booths, etc.). Also, an independent publicist website „Ukrainska Pravda” published an allegedly intercepted *temnyk* (media guidelines) from Kuchma’s Administration head Medvedchuk, which described exactly such behavior (in order to apply for nullification of the elections in the West of the country) – along with undermining the value of exit polls, whose results were expected to demonstrate Yushchenko’s victory.²⁰

Still during voting in the first round, it is also noteworthy that the Central Election Commission (CEC) started announcing the results of elections from prisons and the Donbass constituencies, where Yanukovych had a clear advantage. Yet, as the number of processed ballots exceeded 60%, it became clear that Yushchenko was ahead of Yanukovych. Then the CEC (on the afternoon of November 1) ceased calculating the results, having processed 97,67% of the ballots and calculated virtually all votes given in support of Yanukovych. It did not calculate further ballots until November 10. In the meantime, both Yanukovych and Yushchenko filed protests to the CEC and to the courts, citing violations and demanding the re-calculation of results in the Western/Central and Eastern/Donbass constituencies, respectively.²¹

Finally, after 10 days of counting the ballots and processing the candidates’ appeals, the CEC announced that Viktor Yushchenko had won the first round, receiving 11,125,395 votes (39.87% of total votes cast); Viktor Yanukovych came second, receiving 10,969,579 votes (39.32%).²² The candidates accused each other of violations and declared their intent to win in the run-off.

¹⁷ See the statements of observers from key international monitoring organizations at the Institute of Mass Information site: <<http://eng.imi.org.ua/?id=read&n=1373&yy=2004>>.

¹⁸ Nabliudateli SNG: vybory na Ukraine proshli po zakonu: <<http://www.ukraine.ru/news/231493.html>>; Rushailo dal vysokuju ocenku usloviyam dla raboty nabliudatelej <<http://www.temnik.com.ua/news/4186795b69ed1/>>.

¹⁹ Lukashenko meshajut prazdnovat „elegantnuju pobedu“, Polit.ru, 19 October 2004: <<http://www.polit.ru/event/2004/10/19/lukapraz.html>>; Nabliudateli SNG: vybory v Chechnie proshli bez narushenij, Nezavisimaya gazeta, 30 August 2004: <<http://news.ng.ru/2004/08/30/1093859047.html>>.

²⁰ See: Temnik Medvedchuka na vybory <<http://www.pravda.com.ua/archive/2004/october/31/3.shtml>>.

²¹ See respective official campaign sites: www.razom.org.ua (Yushchenko), www.ya2004.com.ua (Yanukovych).

²² See the Central Election Commission site: <<http://www.cvk.gov.ua/wp0011>>.

Table 2. Results of the presidential elections in Ukraine, 2004.

Name	First Round, 31.10.2004		Second Round, 24.11.2004		Repetition of second round, 26.12.2004	
	%	Votes received	%	Votes received	%	Votes received
Yushchenko V.	39.87	11,125,395	46.61	14,222,289	51.99	15,115,712
Yanukovych V.	39.32	10,969,579	49.46	15,093,691	44.20	12,848,528
Moroz O.	5.81	1,621,154				
Symonenko P.	4.97	1,388,045				

Source: Central Electoral Commission; <http://www.cvk.gov.ua/wp0011e>.

After the results were announced, the agitation campaign unfolded again. According to many observers, the final stage was even more „dirty“ than the campaign before the first round: marked by abuse of power, intimidation of voters by the authorities, monopoly by the authorities of news on the main channels (and their attempt to defame Yushchenko, portraying him as a „radical“ and even „fascist“²³), involving social institutions (such as the Moscow Patriarchy Orthodox Church) agitating in favor of the incumbent prime minister, Yanukovych.²⁴

The comments on election day were even tougher than on the first tour. As already mentioned, according to OSCE Special Coordinator George, the second round did not match Ukraine’s obligations on free elections before the OSCE, the Council of Europe and “European standards of democratic elections.” Similar statements were issued by EU and NATO representatives as well as by the US state department.²⁵ On the contrary, just like after the first round, Russian observers called the elections „free and fair“, and Russian President Vladimir Putin congratulated Prime Minister Yanukovych for his victory when the CEC, after having calculated 99% of the ballots, showed Yanukovych’s victory by 3%.²⁶ However, a day later Putin withdrew his congratulations, saying that he meant „the winner of the exit polls,“ not the elections (interestingly, both of the two exit polls that were completed on election day showed a victory of Yushchenko, not Yanukovych).²⁷

According to international observers and CVU, the second tour of elections was distorted by mass violations. The main types of violations were:

- manipulation of absentee voting (people voting several times);
- manipulation of mobile ballot boxes, which allowed voting outside polling stations (for instance, in Mykolaiv oblast 35% of the votes were cast outside polling stations);
- falsification of participation in the vote (in Donetsk oblast, for example, the CEC reported that by the time the polling stations were closed, 78% of voters had taken part

²³ Vijnia proty Yushchenka. Plan rozmishchennya „chornukhy“, Ukrainska Pravda, 19 November, 2004: <<http://www3.pravda.com.ua/archive/?41119-1-new>>.

²⁴ Sobolev, Yehor, People that won’t go away, Mirror Weekly, 20-26 November, 2004: <<http://www.mirror-weekly.com/ie/show/522/48443/>>.

²⁵ Vybory ne vidpovidajut mizhnarodnym standartam – OBSE, Ukrainska Pravda, 22 November, 2004: <<http://www-all.pravda.com.ua/archive/2004/november/22/news/35.shtml>>.

²⁶ See the Central Election Commission site: <<http://www.cvk.gov.ua/wp001>>.

²⁷ Putin robyt krok nazad? Ukrainska pravda, 23 November, 2004: <<http://www3.pravda.com.ua/archive/2004/november/23/news/40.shtml>>.

in the elections. Yet, four hours after the stations were closed, this figure had changed to 96%. As a result, in some constituencies in Donetsk and Luhansk the alleged number of voters reached 102-105%);

- expulsion of opposition commission members and observers from polling stations and infringement of journalists' rights on the stations; and,
- attacks of criminals on polling stations and attempts to spoil ballot boxes and the ballots.²⁸

As a result, according to CVU experts, the falsifications distorted about 2.8 million votes, especially in Donetsk, Luhansk, Zaporizhya and Mykolaiv oblasts.²⁹ Yet, despite these facts, the CEC calculated the results – and, in the course of calculating, increased the participation rate in Donetsk oblast (see above).

Somewhat unexpectedly to many Western and domestic observers, the population took action. In Kyiv and other major cities (first – Western, then Central and Eastern Ukraine) massive rallies with 50,000 – 150,000 people in support of Yushchenko gathered. They were opposed in turn by 1,000 – 30,000 supporters rallying for Yanukovych. The supporters of Yanukovych quickly disbanded, whereas rallies in support of Yushchenko increased in size.³⁰ Within a week, the number of protesters in Kyiv had reached one million, supported by several hundred thousands in other cities throughout Ukraine.³¹ Meanwhile, local and regional councils in some areas of Ukraine started to recognize Yushchenko as president, condemning the “falsified” results of the CEC vote count.³²

Yushchenko's team appealed to the Supreme Court, citing massive violations. The Court ruled (on December 3, 2004) to nullify the results of the second round, due to numerous violations and ordered a re-vote „within three weeks,“ the election day was set for December 26, the last and most likely possible day. The parliament was to amend the law on elections in accordance to the Court decision; the materials concerning electoral violations were transferred to law enforcement agencies for criminal investigation.³³

Simultaneously, the opposition made political moves to ensure support within the decision-making elite. On November 27, the parliament declared the election results invalid by a majority of votes. Many deputies of the former pro-Kuchma majority supported the act. In turn, Yanukovych called for back-up in his home region. On November 28, a gathering of

²⁸ For details on these and other violations, see the Committee of Voters of Ukraine site: <http://www.cvu.org.ua/?menu=fp&po=doc&lang=eng&date_end=&date_beg=&id=691>.

²⁹ KVV vyklyche Medvedchuka i Yanukovycha na dopyt pro falsyfikacii u 2,8 miliony golosiv, *Ukrainska pravda*, 23 November, 2004: <<http://www3.pravda.com.ua/archive/2004/november/23/news/29.shtml>>.

³⁰ Regiony za Yushchenka, *Ukrainska pravda*, 23 November 2004: <<http://www3.pravda.com.ua/archive/2004/november/23/regiony.shtml>>.

³¹ For the day-to-day chronicle of mass protests in Ukraine, called „Orange Revolution“, see: Crisis Timetable: A History of a Ukrainian Revolution, *The Kyiv Post*, 9 December 2004, P.6 (see <www.kyivpost.com>), or (in Ukrainian): <<http://www.pravda.com.ua/archive/2004/december/9/2.shtml>>.

³² Interfax News Agency Newslite: <<http://www.interfax.kiev.ua/secure/go.cgi?1,0>>.

³³ The text of the Supreme Court decision see here: <<http://www2.pravda.com.ua/archive/2004/december/3/5.shtml>>. For brief content, see, for example: *The Guardian*, 4 December 2004: <<http://www.guardian.co.uk/ukraine/story/0,15569,1366414,00.html>>.

local councilors in Severodonetsk (Luhansk oblast) demanded an „autonomy“ of Eastern and Southern oblasts of Ukraine. Some heads of local administrations, local politicians (such as the governor of Kharkiv oblast, E. Kushnariov) made claims undermining the integrity of the country. Yanukovich was present there and promised to act as instructed by the participants.³⁴

The opposition called for no-confidence in the government, accusing it of electoral fraud. On December 1 this decision passed, again marking the appearance of a „new majority“ – a group of 230-250 deputies who were ready to support Yushchenko on crucial issues.

The US, the EU, and a good number of other countries also called the November 21 run-off unjust, refusing to recognize Yanukovich's victory. Putin, who did recognize it, appeared the minority, and felt the consequences already by November 25, when EU leaders firmly disagreed with him and even cut short a meeting in The Hague.³⁵ Moreover, the Europeans offered mediation in the negotiations between Yushchenko, Yanukovich and Kuchma. OSCE Secretary General Jan Kubis, the Secretary-General of the Council of the EU and EU High Representative for Common Foreign and Security Policy (CFSP) Javier Solana, the President of Poland Alexander Kwaśniewski, the President of Lithuania Valdas Adamkus, and the Speaker of the lower house of the Russian parliament Boris Gryzlov arrived in Ukraine to broker talks and persuade the parties in the necessity of compromise: to refrain from use of force, to agree to the proposed run-off, and to reach an agreement on a possible post-election settlement. The talks finally resulted to compromise of December 8 (see below).³⁶

Taken together, developments on four levels hindered the Kuchma and Yanukovich camps from their intention to install a successor through mass violations and electoral fraud: a) mass protests, b) the readiness of some political elites to support Yushchenko, c) the position of the Supreme Court, and d) the reaction of the international community.

In this context, the political reform again came to public attention and was included into the final compromise.³⁷ During the political conflict in December 2004, reactions to the proposed institutional compromise were mixed. Serhiy Tibipko, the former chief campaign manager of Yanukovich, told the 1+1 TV channel, that „if the reform would have been passed before, the elections would not have been as desperate as they were.“³⁸ However, other experts suggested that even the reform would not decrease the role and symbolic value of the presidency.³⁹ It needs to be stated that the main source of conflict in late 2004 did not lie in the constitutional arrangement to be established in the future, but in the mass law violations that distorted the official results of the elections. Parliament made an attempt to make the most obvious violations more difficult by passing (on November 18, 2004) an amendment to the law on

³⁴ *The Financial Times*, 29 November 2004: <<http://www.inosmi.ru/translation/215102.html>>; *The Washington Times*, 29 November 2004: <<http://www.washtimes.com/world/20041129-010521-7405r.htm>>.

³⁵ *Liberation*, 26 November 2004: <<http://www.inopressa.ru/liberation/2004/11/26/11:01:00/poutine>>.

³⁶ See debriefing of these events in: Revolution Ends in Classic Political Compromise, *The Kyiv Post*, 9 December 2004, P.1,6: <www.kyivpost.com>.

³⁷ The content of the reform will be presented in the next section (see below).

³⁸ 1+1 Channel Election Maraphon, 22 November 2004.

³⁹ Fesenko, Volodymyr, Moldavskiy variant, *Ukrainska pravda*, 1 September 2003: <<http://www3.pravda.com.ua/archive/?3091-1-new>>.

presidential elections, prohibiting absentee voting and voting outside polling stations.⁴⁰ Yet, President Kuchma refused to sign this bill.⁴¹

The combination of all these factors led to a very complicated situation. On the one hand, Yushchenko was supported by millions of protesters, ready to bring down the incumbents that had tried to manipulate their choice. On the other hand, unlike Mikhail Saakashvili in Georgia, Yushchenko did not enjoy the support of an overwhelming majority throughout the country. The east and southern regions did support Yanukovych, giving him 60-80 percent of votes in these regions.⁴² Thus, to prevent an escalation of conflict, Yushchenko needed a legitimizing act. Such an act was proposed by the Supreme Court – the re-running of the run-off.

To avoid the threat of repetition of mass falsifications, the opposition demanded again to amend the law on presidential elections: to limit absentee voting and voting outside of polling stations, and to introduce a new principle for forming local and regional election commissions so that the commissions were composed of equal numbers of both candidates' representatives.⁴³ Also, CEC head Serhiy Kivalov had to be replaced, as the opposition blamed him of the electoral fraud that occurred under his jurisdiction. For all these changes, the active involvement of acting President Kuchma was needed, and it was most likely that he would veto them again if his interests were not secured. Possessing this leverage, the incumbents put forward a demand to pass the Constitution reform bill (#4180) as a precondition of changing the electoral law and replacing the CEC leadership. Both sides demanded that their proposals were voted first.

A breakthrough was reached during the EU-brokered talks. In the first days of December 2004, Yushchenko agreed to support the changes to the Constitution, yet demanded to postpone their enactment, not to allow Kuchma and his entourage to install a prime minister loyal to them and thus outflank Yushchenko's expected victory in the repeat run-off.⁴⁴

After fierce debates concerning the content of the legal changes, the procedure and order of voting (6-8 December), a compromise version was elaborated and supported by the overwhelming majority of 402 (of 450) of parliamentarians.⁴⁵ The compromise implied a package amendment to

⁴⁰ See the Parliament of Ukraine site: <<http://gska2.rada.gov.ua:7777/pls/zweb/webproc34?id=&pf3511=19395&pf35401=59155>>.

⁴¹ Kuchma „postavyv khrest“ na nadiyakh opozycji, *Ukrainska pravda*, 19 November, 2004: <<http://www3.pravda.com.ua/archive/?41119-13-77>>.

⁴² As the re-voting of 26 December (held, according to the OSCE observers, in a much more free and fair mode) demonstrated, during the annulled run-off main violations distorted the votes in Central Ukraine and the participation records in the East. Thus, Yushchenko won due to the fact that his supporters were not harassed, there were no more multiple absentee votings in Central Ukraine, and the participation in the East was not artificially inflated. See the respective data from 21 November and 26 December votings on the Central Election Commission site: <www.cvk.gov.ua>.

⁴³ Site of the Ukrainian Parliament, 8 December 2004 vote: <www.rada.gov.ua>.

⁴⁴ Konstitucionnaya reforma kak usloviye sdachi vlasti, *Obozrevatel*, 6 December 2004: <http://obo-zrevatel.com/news_files/169203>.

⁴⁵ Poimenne golosuvannya pro pryjnyattya v paketi proektiv zakoniv №4180, №3207-1, №6372-d: Site of the Ukrainian Parliament, 8 December 2004 vote: <www.rada.gov.ua>.

- a) the law on elections (bill 6372-d),
- b) amendments to the Constitution transferring executive power to the prime minister (bill 4180), and
- c) amendments to the Constitution allowing more institutional and budget competencies for local and regional self-government (bill 3207-1).

Bill 6372-d was to be valid only for the repeated run-off on December 26, and bill 4180 will be enacted either on September 1, 2005, or January 1, 2006 – depending on the time when bill 3207-1 will pass final reading (it was supposed that in the package it passed only first reading). The bills are viewed in detail further in the next section as well.

According to the international observers of OSCE/ODIHR and the Council of Europe, voting on December 26, 2004, took place in a more free and fair mode than the first round (31 October) and especially the run-off (21 November). The violations noted by the observers did not seriously affect the results. Least, this position was shared by Western observers. Observers from the CIS countries gave contradicting comments: Russian State Duma First Vice-Speaker Sliska called the elections „more transparent and lawful,“ yet CIS Executive Secretary Rushailo called them „illegitimate.“⁴⁶ However, the CEC calculated the results and announced them on January 10, 2005. Viktor Yushchenko has won (51.99% of the votes), and Viktor Yanukovich – lost (44.2%) (see table 2 above).

In the weeks after the results were announced of, Yanukovich refused to recognize his defeat. Although he resigned from the post of the prime minister on December 31, 2004, he filed protests to both the CEC and the Supreme Court, thereby copying the moves of his opponent after the second round. He claimed that due to amendments in legislation „millions of handicapped people were deprived of the right to vote,“⁴⁷ and that there were „massive, numerous violations, recorded and documented.“⁴⁸ Yet, these appeals were rejected by the CEC and by the Constitutional Court as not holding sufficient proof of violations that might have disturbed the will of the voters.⁴⁹

⁴⁶ UNIAN News Agency, 27 December 2004: <www.unian.net>.

⁴⁷ However, he did not formulate, how many handicapped people there were, naming different numbers in different interviews (2-3 million); CEC representatives said that generally about 2-3% ask to vote outside the polling stations due to inability to come to the polls – and voting of 26 December showed the same statistics: Palij, Oleksandr, Skilky invalidiv treba Yanukovychu? Ukrainska pravda, 4 January 2005: <<http://www2.pravda.com.ua/archive/2005/january/4/2.shtml>>.

⁴⁸ According to a CEC expert, cited by the 1+1 TV channel, documents filed by Yanukovich's team in many instances consisted of Internet printouts and newspaper articles: TSN News on 1+1 Channel, 10 January 2005, 19.30.

⁴⁹ Oberstes Gericht weist Janukowitschs Klage ab, Frankfurter Allgemeine Zeitung, 07 Januar 2005: <<http://www.faz.net/s/RubDDBDABB9457A437BAA85A49C26FB23A0/Doc~E814B64BB358A47BEB5F193A0BEFCECB~ATpl~Ecommon~Scontent.html>>.

5. Institutional reform: competing visions of the constitutional structure

The analysis of section 3 implies that the reported violations in the presidential elections of 2004 should not simply be interpreted as a result of the bad will of one or another actor in the political game. Certainly, some of the violations resemble political practices which Viktor Yanukovych has used in his home Donbass region while being a governor there. When an expert group of the Friedrich-Ebert-Foundation visited Donetsk in October 2004, the campaign seemed to be biased in favor of the then incumbent prime minister and the former head of the regional administration. By using so-called administrative resources, all opponents seemed to have been barred from open competition, and posters of Yanukovych were present in almost every shop window on the city's main street. Generally, this kind of campaigning seems to be rooted in political practices which generally characterize the politics of that region.⁵⁰ Seen from that end, it seems plausible to accuse Yanukovych of using practices which are not in line with the requirements of the OSCE. And, of course, a voter turnout of more than 96% in the Donetsk region and more than 100% in some towns and villages does not raise confidence in the honesty of the vote count.

On the other side, we cannot be sure that any other incumbent high official would not have used the administrative resources of the system. In fact, the analysis of section 3 implies that the rigidity of the presidential system makes it necessary for any person or bloc in power to use the resources offered by the vertical system. As long as neither parliamentary majorities nor a civil society exists to contribute stability to the system, all exercise of executive power depends on the presidential apparatus. Our hypothesis is that the extensive concentration of power is a major source of political instability, and that institutional reforms could overcome this weakness of the Ukrainian political system. In order to illustrate the range of politically possible reforms, we will therefore present the contents of the former debates around constitutional reform in the rest of this chapter before making some recommendations in the concluding section.

The initiation of constitutional reform

For a long time, there have been debates on constitutional reform in Ukraine. Former President Kuchma was always arguing against the broadening of parliamentary competencies. In summer of 2002, he claimed that such steps would be “premature” (Kordoun/ Pavlenko 2002). Yet, in August 2002, he came out with the initiative of „political reform“, which precisely prescribed an essential broadening of the competencies of the parliament and the government created by it – at the expense of the president's competencies. Thus, he actually repeated the opposition's claims, yet used them as his own, with the timing that would allow him to enjoy the full control over the executive, and only his successor to face the consequences of the reform.

The majority of experts name Medvedchuk, the head of presidential administration and the leader of the Social-Democratic Party of Ukraine (united) – SDPU(u), – as the author of the

⁵⁰ On the peculiarities of Donbass politics, see the independent site „Ostrov“ („Island“): <<http://www.ostro.org/>>. Also, some reports can be found at the „Telekritika“ monitoring site: <<http://www.telekritika.Kyiv.ua/comments/?id=18519>>.

proposed reform (see Gritsenko 2004). The reason for its development is the fact that both the SDPU(u) and the so-called „Kuchma clan“ (the group from Dnipropetrovsk which is represented, in particular, by Kuchma’s son-in-law, businessman-oligarch Viktor Pinchuk) had none of their own candidates in the upcoming elections. Predictably, the most probable winners of the elections – Viktor Yushchenko and Viktor Yanukovych were not suitable for Kuchma’s closest entourage. Both of them were suspected by Kuchma’s entourage of looking to redistribute already privatized property in their favor.⁵¹

Yushchenko and his closest entourage were perceived by the incumbent elites as an alien threat. They were suspected of the desire to redistribute property assets and power in their favor at the expense of the current establishment.⁵² Also, being the prime minister in 2000-2001, Yushchenko implemented a few reforms in the energy and agrarian sectors and outlawed barter, which made economic policies more transparent and less prone to the influence of private interests.⁵³ In turn, Yanukovych was also suspected by his competitors of wanting to „seize for Donetsk elites“ the most profitable branches of industry (metallurgy, energy, transport, pipelines, etc.).⁵⁴ As playing by the rules did not bear many advantages to Kuchma’s entourage, his entourage started changing them (Gritsenko 2004).

The decision of the Constitutional Court of 30.12.2003 which permitted a third term for president Kuchma⁵⁵ may be rather viewed as a demonstration of unity of state power branches and strength of state power inside the country, for the sake of the demoralization of the political opposition, demonstrating that the courts are also on the incumbents’ side. The characteristics of the first planned constitutional reform were:

- the president was to be elected during nation-wide elections;
- presidential, parliamentary and local elections were to be held in the same year;
- parliament was to develop a bicameral structure; and
- although a „permanent parliamentary majority“ was to be created through a reformed electoral system, the president still unilaterally appointed the „enforcement“ ministers.

The observers thought that this project was a part of Kuchma’s plan to prolong his tenure according to the “new” constitution – at least for two years and meanwhile to find a person

Site „Ukrainska pravda“ has published a series of materials on the peculiarities of Yanukovych’s way to power and Donbass attitude to power: Boiko, Volodymyr, Kurs kryminalnogo premiertoznavstva <www2.pravda.com.ua/archive/2004/may/11/4.shtml>.

⁵¹ D. Vydrin: „Ya vystupav proty nynishnioji imidzhevoji strategii Yanukovycha“, Glavred.info, 11 October 2004: <<http://www.glavred.info/ukr/?art=120941522>>.

⁵² Yushchenko i Yanukovych: Borotba za lavrovyj vinok liberala, Temnik, 15 October 2004: <<http://www.temnik.com.ua/ukr/criticism/struggle/>>.

⁵³ See the Freedom House „Nations in Transit“ report for 2000: <<http://www.freedomhouse.org/research/nitransit/2001/index.htm>>.

⁵⁴ Rosijslyj plener ukrainskogo vyborchogo reliefu, Glavred.info, 4 October 2004: <<http://www.glavred.info/ukr/?art=120356213>>.

⁵⁵ See the Constitutional Court of Ukraine site: <<http://www.ccu.gov.ua/pls/wccu/P000?lang=0>>.

controlled enough to be a „successor,“ and let his popularity raise. The idea of constitutional reform was submitted to a „nation wide discussion,“ held in March-May of 2003. The „discussion“ was staged as an organized campaign of „mass support,“ artificially created and heralded. The official site of the president (www.president.gov.ua) developed a special section, where each region reported how many thousands of citizens supported the reform bill.

Yet the “discussion” did not find much interest with citizens. According to an opinion poll conducted by the All-Ukrainian Sociology Service at the beginning of 2004, when political reform was getting maximum attention from the media, after the “nation-wide discussion” only 6% of respondents marked it as a significant problem; it appeared 20th on the problem list for an average Ukrainian.⁵⁶ Thus, reform was seen by the population as a totally intra-elite project. The people had a consolidated choice only about one provision of the reform project: 89% stood for the election of president by all of the voters, and not parliament alone.⁵⁷

Meanwhile, the opposition prepared a counter-proposal: an alternative draft (the so-called “Moroz draft”)⁵⁸ and obtained support for it from the specially-created parliamentary commission. As a result, the president pulled out of the process by recalling his project from the Constitutional Court in August 2003 because of his „dissatisfaction“ with the fact that both projects – the presidential and alternative one – were passed to the Constitutional Court by the same procedure, with the signature of Parliament speaker Lytvyn instead of voting for the president’s project and ignoring the alternative one.⁵⁹

After that initiative failed, the Presidential Administration changed tactics. In August 2003, V. Medvedchuk conducted separate negotiations with Moroz and the leader of the Communists, Petro Symonenko. As a result there appeared a draft registered at the Verkhovna Rada (the parliament) as #4105.⁶⁰ The project suggested the election of the president by parliament (the latter got a prolongation of its authorities from 4 to 5 years) starting from 2006, and it further prescribed a constriction of presidential power beginning from 2004.

In September 2003, members of the pro-presidential majority introduced another bill (#4180),⁶¹ identical to #4105 except that it called for holding the election of the president by parliament in 2004. At the same time, some members of parliament majority proclaimed

⁵⁶ Politychna reforma turbuje ukrainciv u ostanniu chergu: <<http://stb.ua/vikna/19-00/?1.9.2004>>.

⁵⁷ 89% ukrainciv vvazhajut, shcho Prezydent maje obyratysya vsenarodnym golosuvannyam – opytuvannya, UNIAN News Agency, 17 October 2003: <www.unian.net/ukr/news/news-45635.html>.

⁵⁸ It prescribed that the President offers to form the cabinet of ministers first from the party or block that got the most votes during the elections, then to the second by the number of votes won, and then to a coalition which united the majority of the deputies; if even after that the cabinet of ministers could be formed, the Parliament would be dismissed. The project also established direct elections for the heads of the district and regional state administrations.

⁵⁹ For more details of the process, see: Mostovaya, Yulia, Closed cycle of power generation, in: Mirror Weekly, no. 35 (460), 13-19 September 2003 year: <<http://www.mirror-weekly.com/nn/show/460/41914/>>, and Rakhmanin, Serhii, Legislative intrigue, in: Mirror Weekly, no. 32 (507), 14-20 August 2004: <<http://www.mirror-weekly.com/nn/show/507/47472/>>.

⁶⁰ Available on the official site of the Ukrainian Parliament: <http://gska2.rada.gov.ua:7777/pls/zweb/webproc4_1?id=&pf3511=15751>.

⁶¹ Available on the official site of the Ukrainian Parliament: <http://gska2.rada.gov.ua:7777/pls/zweb/webproc4_1?id=&pf3511=15881>.

Kuchma the only candidate for president. Analysts were seriously considering scenarios that Kuchma would run for a third term (or try to occupy the post of the prime minister) after parliament had endorsed the reform bill, or remain president due to the fact that parliament would be unable to gather enough votes to elect anyone instead of him.⁶²

A strange alliance: the Left backing the incumbents' proposal.

In this context, the position of the Left is very interesting.⁶³ The Main forces in this sector of the Ukrainian body politic are united in two parties: the more Soviet-orthodox Communist party and the more liberal, social democracy-leaning Socialist party (a member of the Socialist International). They both use strong anti-incumbent rhetoric, yet they both vigorously supported the reform bills put forward at the incumbents' initiative.

The Communist Party of Ukraine (CPU) was for a long time a convenient sparring partner for the authorities: its rhetoric and theses from the Communist past only have a narrow popularity among the people, enough to ensure that the Communist leadership is elected to the parliament, yet by far not enough to fear them as a real political opponent. Instead, they help incumbents to marginalize other opposition parties, claiming that there is "the only real opposition – the Communists; others are simply fighting for power."⁶⁴

This situation is convenient also for the Communists – they have access to mass media, they are not suffering from administrative pressure, their businesspersons (especially those who are on the electoral lists of Communists) are not pressed by the controlling authorities. Yet, the electoral support for CPU is falling. During the elections of 2002, they failed in all majority districts (except in five) and for the first time did not get first place on the proportional list. Thus, the CPU has 60 deputies in the present Rada instead of 112 as in the previous.⁶⁵ Additionally, with less than 5% support, Communist leader Symonenko only reached fourth place in the first round of the 2004 presidential election, losing the traditional electorate to the Socialists of Moroz and to incumbent Prime Minister Yanukovich.

In an attempt to preserve its significance, the CPU relies on the implementation of the purely proportional electoral system and the transfer of the decision-making center to parliament, where its votes are still an important force. The CPU wanted to reach these aims in cooperation with the incumbents, that is Kuchma and Yanukovich. They considered the right opposition (Our Ukraine and Block of Yulia Tymoshenko (BYT)) as opponents (the CPU program calls for "removal of nationalist and bourgeois forces from power"⁶⁶). Moreover, it was Our Ukraine which became the main rival for the Communists on the proportional list, because the „Yushchenko phenomenon“ (the success of reforms) showed that not just Communists could appeal for social causes. That is why the strategic course of the CPU lay

⁶² Pogorelova, Iryna, *Oдно neostorozhnoe dvizhenie – i ty otets "Kuchmy-3"*: <<http://www2.pravda.com.ua/ru/archive/2004/february/4/1.shtml>>.

⁶³ For information on the left parties in Ukraine and their development see: *Ukrainski livi: mizh leninizmom i social-demokratijeju* / Za red. O.Harania, O.Maiborody, Kyiv: KM Academia, 2000.

⁶⁴ See, for instance: *Strakh i nadezhdy Ukrainy pered 16 sentyabrya* <<http://pravda.ru/main/2002/09/05/46679.html>>; *Oppoziciya posle vyborov: legche ne budet* <<http://www.ua-pravda.com/opozposvib.shtml>>.

⁶⁵ See the official site of Ukrainian Parliament: <www.rada.gov.ua/depkor>.

⁶⁶ See www.kpu.Kyiv.ua.

in the implementation of a proportional system with a high threshold, increasing the role of parliament in the political system and the discrediting Our Ukraine and BYT.

In contrast to the CPU, the Socialists (SPU) positioned themselves as a “real” opposition force. Moroz continuously declared the adherence to the idea of transforming Ukraine into a parliamentary republic. Moreover the SPU, like the CPU, is interested in an increase of the role of parliament in the political system; in this case the role of the SPU fraction is also increasing.⁶⁷ Thus, Moroz took a “strategic” position. He was absent in Kyiv on December 23-24, 2003, when Our Ukraine, BYT and SPU were blocking the Rada tribune. They claimed to be doing this to ensure that the deputies would have enough time to get acquainted with the new version of the constitutional amendments prepared by the special commission of the parliament. The parliamentary majority together with the CPU then voted by raising hands (violating constitutional regulations about the means for changing the Constitution) to adopt draft # 4105 and directing it toward the Constitutional Court to await its verdict on whether the draft violates human rights. In the new year, Moroz entered into negotiations with Medvedchuk and agreed about the support of the reform by the Socialists – provided that the provisions about the election of president by the parliament and reelection of judges by parliament every 10 years (instead of a life tenure) were withdrawn from the document. Medvedchuk agreed and the deal was realized on February 3, 2004, when the parliamentary majority together with the CPU and the SPU gathered 304 votes to amend draft 4105 – the same one that had already been accepted for consideration by the Constitutional Court).⁶⁸

At the same time it is possible that Moroz was using the support of the “political reform” as a means to press Yushchenko for a more favorable attitude and better bonuses in the pre-electoral and especially the post-election period (when Yushchenko, if elected, would have to count each vote in parliament in order to create a government and be able to pursue his policies with a parliamentary majority). After the first round of the presidential elections, Moroz signed a political accord with Yushchenko, in which he agreed to support Yushchenko in the second round (and urged his voters to do so) – in exchange for (a) a removal of Ukrainian forces from Iraq, (b) the extension of a moratorium on selling arable land until 2007, and (c) supporting the amendments to the constitution before January 1, 2005, in order to enact them in 2006.⁶⁹ These conditions were accepted by Yushchenko: all of these points were outlined in „draft decrees,“ which he used as a campaign tool.⁷⁰ However, Moroz claimed that *his* faction can vote for the reform bill whenever it sees a possibility to collect the necessary 300 votes – with or without Our Ukraine.⁷¹ After the first round of elections, the attention of politicians and the public shifted from the reform proposals to recognition or non-recognition of the election results.

⁶⁷ For Moroz’s own explanations of these issues, see: Sobolev, Yehor, Alexander Moroz: „I may be dreaming, but this is just what Ukraine needs“, in: Mirror Weekly, no. 32 (457), 23-29 August 2003: <<http://www.mirror-weekly.com/nn/show/457/41404/>>.

⁶⁸ Pogorelova, Iryna, Odyn neoberezhnij rukh – i ty bat’ko „Kuchmy-3“, Ukrainska pravda, 4 February 2004: <<http://www.pravda.com.ua/archive/?4024-1-new>>.

⁶⁹ See the text of the accord on the sites of both politicians: <www.yushchenko.com.ua> and <www.moroz.com.ua>.

⁷⁰ Yushchenko has signed a dozen of documents, marked as „his first decrees as President“; they touch upon main social, political, anti-corruption, constitutional issues and are to serve as a counterbalance of Yanukovych’s extensive social promises and actions (e.g., increase of pensions with special „dotation“, rise of wages on the eve of the elections etc.): <www.yushchenko.com.ua>.

⁷¹ Interview of O.Moroz to the 5th channel, 9.11.2004: <www.5tv.com.ua>.

The supporting legislation

During the implementation process of the political reform there appeared a situation when many experts pointed to the *legal* conditions for the voting on February 3 (in 2004) to be null and void. The Constitutional Court on 17.10.2002 prohibited amending the Constitution during extraordinary sessions⁷²; that session was held with some procedure violations and, after all, it is hardly possible to „amend an amendment“ already sent to the Constitutional Court. However, the Constitutional Court practically recognized these practices, having declared that bill #4105 did not violate the constitutional premises. However, in the *political* sense, the pro-Kuchma factions, CPU and SPU seemed to be ready to adopt the new changes – their joint manpower at the time exceeded the 300 votes needed for the completion of constitutional amendments.

One of the key questions that might have brought the “amendment” alliance apart was the law on proportional representation for parliamentary elections. The CPU and SPU demanded from Kuchma the adoption; and subscription to such a law as an initial condition for its farther support of the reform. At the same time, deputies from the parliamentary majority were against this variant. They insisted on either adoption of a lower passable limit (to 1%, which would let smaller parties come to parliament), or to the majoritarian system (this was laid down in the so-called “Havrysh draft,” which prescribed that candidates are nominated in districts by political parties and compete by the rules of a majoritarian electoral system).⁷³

As a compromise, on March 25, 2004 the parliament adopted the proportional representation law with a threshold of 3%. The new law will take effect in 2005 – to be used in the 2006 elections. Also, the parliament adopted on (April 6 2004) a new law on local elections, which prescribes a proportional system to be used for elections of regional (*oblast*) and district (*raion*) councils, and a single member district system for village or town councils. These laws were not an easy choice for the „majoritarian“ half of the parliament, but they were forced into compliance by Kuchma’s administration. This, however, backfired on the day when the final vote on the reform took place. The resentment of this part of parliament became one of the factors that ensured the reform’s failure.⁷⁴ On the day of the vote April 8, only 294 instead of the necessary 300 deputies voted for the proposal. The attempts to stage additional voting failed; according to the Constitution, if a bill to change the Constitution is rejected, parliament can return to it only after a year.

In between, the new law on presidential elections was adopted on March 18, 2004. It was drafted by members of Our Ukraine, yet during the debates it was amended by the majority members. As a result, the law (used in the 2004 election) provides for some improvements as compared to the previous one; for instance, a more precise regulation of campaign and the use of media as well as the impossibility of removing a candidate from the campaigning; more precise procedures for voting, calculation of the results and election observation. Yet, the law also has serious drawbacks, for example: domestic civic organizations cannot register as

⁷² See the site of the Constitutional Court of Ukraine: <<http://www.ccu.gov.ua/pls/wccu/P000?lang=0>>.

⁷³ See the official site of Ukrainian Parliament: <http://gska2.rada.gov.ua:7777/pls/zweb/webproc4_1?id=&pf3511=12614>.

⁷⁴ Politreforma provalylasya [Political reform has failed], Ukrainska pravda, <<http://www.pravda.com.ua/archive/?4048-2-new>>.

official observers; the procedure for protesting violations of electoral law is quite complicated, and the law prescribes the procedure to announce elections null only at a constituency level (if 10% of ballots are spoiled), not on a nation-wide level (this theoretically may lead to a situation in which elections are announced null in the constituencies where the opposition is winning).

These compromises made on another field, however, did not save the amendment proposal. The goals of its authors were quite clear – to shift the center of decision-making from the president to the Parliament. A move to a more balanced system in itself, this initiative was to be implemented before the elections, still under Kuchma – and it was feared that Kuchma would use his power over the present parliament to become prime minister (or control this figure).⁷⁵

The content of the amendments to the constitution

The analysis of the content of the reform proposal suggests that it was written to make the prime minister a powerful figure indeed. The changes outlined below were put forward in both bill #4105 and a „reserve“ bill #4180 (see above). After the voting on February 3, 2004 (which was to put the reform proposal into accord with the Constitutional Court recommendations and the Venice Commission comments. See also the text by Iris Kempe in this volume), the system of relations between president, parliament and government was to operate as follows:

- The government steps down before a new parliament, not a new president. During the month after the opening of the first session of parliament (or collapse of the previous coalition) parliament has to create a majority coalition (from the fractions which have together 226 or more votes). If the coalition is not created within one month, the president has the right to dissolve the parliament.
- The coalition proposes to the president the candidate of prime minister. The president submits this candidate for the approval of parliament within 15 days after he receives it. This procedure leaves many open questions – for example, whether the president can disagree with the proposal of the coalition; what to do if parliament does not support the candidate from the coalition after some time, etc. In any case, if the parliament fails to form a government within a month after the introduction of the candidate by the president, the latter has the right to dissolve parliament.
- Ministers are appointed and dismissed by parliament after they are proposed by the prime minister.
- The president proposes to parliament candidates for defense and foreign affairs ministers, and a head of the State Security Service (SBU).
- Parliament, but not the president, accepts the retirement of the cabinet of ministers.

⁷⁵ Gritsenko, Anatoliy, So, is it prolongation after all? In: Mirror Weekly, no.7 (481), 14-20 February 2004: <<http://www.mirror-weekly.com/nn/show/481/45585/>>.

- The tenure of parliament is prolonged from 4 to 5 years (but the present parliament will be reelected in 2006).
- A deputy can lose his mandate and be expelled from parliament if he leaves a fraction or block, on whose list he was elected - or “according to the decision of the leadership” of tATe fraction or block.
- The government, not the president, appoints the heads of regional and district state administrations.
- The government also defines the structure of the central bodies of executive power on the proposal of the prime minister; in the same way it appoints and dismisses the chiefs of the executive power bodies that do not belong to the Cabinet of Ministers (including the State Tax Administration).
- Members of the government can at the same time retain membership in parliament.
- The president retains a veto power which can only be overridden by a 2/3-majority vote in parliament.
- The president is elected by the people for a 5-year term.

According to the reform, the main powers of the president would be shifted to the prime minister. The president would retain mainly the right of legislative initiative and the right to summon the Council of National Security and Defense (it consists of the chief ministers), but these decisions must be signed by the prime minister to take effect. Also, the president can stop decrees of the Cabinet of Ministers, yet this decision must be endorsed by the Constitutional Court. Consequently, with this model Ukraine would develop into a parliamentary system with a comparatively strong prime minister.

However, as already mentioned, in April 2004 this scenario still failed a few steps short of realization due to the wide discrepancy of interests in the pro-reform coalition and due to the unpredictability of President Kuchma, who was suspected of using the reform for his own purposes. Further reasons that brought failure include:

- resentment of the MPs elected in single member districts, who were forced to support a purely proportional electoral system (in order to receive support from the Left). Some of them missed the final voting, thus protesting against the pressure on their interests;
- protest of the centrist factions against the methods used by the Kuchma administration (which included pressure on business and blackmail for those that intended not to vote or who hesitated to support the measure);
- low interest of the „Regions of Ukraine“ (Donetsk) faction, which was more interested in preservation of the presidential competencies for their representative Yanukovych and thus did not ensure presence and voting discipline;
- refusal of, speaker Lytvyn to violate the rules of procedure in parliament and stage additional votes (eventually Lytvyn head the People’s Agrarian Party, together with its

faction left the pro-Kuchma majority; such a move is associated by the observers with a personal conflict between Lytvyn and President Administration head Medvedchuk).

Still, the pro-Kuchma majority had at its disposal a „backdoor scenario.“ Bill #4180, which was a verbatim copy of #4105 (except that it provided for electing the president by parliament already in 2004), still existed. This bill was amended (to resemble #4105 even more) and voted on June 23, 2004 in the first reading (276 votes). The plan then was to pass it by 300 votes in the fall. In early September, however, the pro-Kuchma majority had collapsed. First, the faction of the People's Agrarian party announced that it would leave the majority. The next day the Kharkiv-based group „Democratic Initiatives“ also left the majority.⁷⁶ This made it impossible to gather 300 votes in support of reform before the presidential elections, and no second vote was scheduled.

Given this lack of certainty about the determination of the top candidates to decentralize the decision-making system, the pro-Kuchma factions attempted to complete the reform between the two rounds of the elections. Yet, due to the breakup of the majority in parliament, the difference of interests among the parliamentary factions and general skepticism of the elites towards the reform project, these attempts failed.⁷⁷ The bill surfaced only as a part of the compromise between the opposition and the incumbents during the Orange Revolution.

The further road of reform

As described above, constitutional reform became a powerful bargaining chip and was adopted even before the re-election took place. The text, however, underwent one crucial change: the president retained the right to appoint (and dismiss) the heads of regional (oblast) and district (raion) state administrations, on the advice of the prime minister. This will undoubtedly make life easier for President Yushchenko in his reform attempts, yet it creates complications for future „cohabitations,“ should a president and a cabinet represent different political forces. It is, thus, possible, that the Constitution will undergo further changes within the next few years.

Another crucial moment about the adoption of the reform as a part of a compromise is the timing of its enactment. It is conditioned by the adoption of another amendment package – bill 3207-1. The latter introduces a new constitutional entity – a community (*hromada*): an association of dwellers of a municipality or village (or several villages). Communities elect their heads. „Common interests“ of the communities are implemented through raion and oblast councils and their executive bodies. The councils adopt respective budgets and control their implementation. The competencies of state and community bodies are to be separated by law.⁷⁸

⁷⁶ Protesting against the plans to transfer 43% of stocks of an oil company „Ukratnafta“ to the state-owned company Ukrnafta. When Kuchma ordered to stop the deal, the faction returned to the majority – but the latter still does not have necessary 226 votes.

⁷⁷ See, for instance: Leonid Kravchuk: „I Am Against Amending The Constitution Between The First And Second Rounds Of The Presidential Elections“ in: Mirror weekly, no. 36 (511), 11-17 September 2002: <<http://www.mirror-weekly.com>>.

⁷⁸ Interestingly, the bill 3207-1 also provides for a different mechanism of creation of the cabinet (similarly to Greece or Bulgaria, a party or block which received the most mandates is given a chance to nominate the prime minister). Yet, as bill 4180 has been adopted before, 3207-1 may be adopted only in parts which do not contradict 4180.

If this bill is adopted (by 300 votes in parliament out of 450, starting from the 2005 spring session) before autumn 2005, the amendments to the Constitution under bill # 4180 will take effect from September 1, 2005. If this is not the case – then from January 1, 2006. The cabinet, appointed by the president in early 2005, is to work until the parliament elected in 2006 (on party lists) meets for the first session.

This effectively gives the new president 8-12 months to enjoy ultimate power over the executive. In addition to the tasks of economic and political reforms that the new power faces, this time will be used by all political forces for the preparation of another decisive event – the parliamentary elections on March 27, 2006. The forces that win the elections will form the cabinet and gain the main leverage to control the executive.

6. After the elections is before the elections: the aftereffects of constitutional reform

After being inaugurated, Yushchenko will face several big problems: the need to reconcile the country, to put forward economic reform, to combat corruption and the shadow economy, to fulfill EU membership-oriented program and preserve friendly terms with Russia. However, as Ukrainian society has experienced a successful uprising, the due demand for democracy in society might create an atmosphere necessary for change.⁷⁹ The newly elected president inherited not only the problems of pre-election Ukraine, but also the conflicts of the post-election period: the need to ensure his legitimacy in all of Ukraine, the need to find a way not to alienate the losing side and the need to embody a new constitutional model in a way that would prevent such conflicts in the future.

Altogether, a new window of opportunity for the constitutional shape of Ukraine has opened since the presidential elections. One of the main concerns in the debates during 2003 and 2004 was the possibility of the incumbent President Kuchma coming back for a third term once the constitutional amendments had been passed. Of course, it is hard to say if this scenario was realistic or not. Looking at the case of Lukashenka's Belarus, Kuchma would not have been the first president in the CIS to do so.

Both the attempt to install a successor „administratively“ and to implement the reform under Kuchma's control failed. Yet, our argument is that the compromise reached by Ukrainian elites might really open a way for a more balanced system of power. The idea of installing a parliamentary system as developed by bills #4105 and/or #4180 offers a solution to various problems of Ukrainian politics. The most important problem so far has been that all power resources were concentrated in the hands of one person, who in turn did not depend on institutionalized support. The overview in chapter 2 has shown that in the CIS, the concentration of power on the one hand bears the strong danger of developing a defective democracy or taking an even further step back to authoritarianism. The need to deprive the Ukrainian presidency of its exceptional powers over the executive is acknowledged by most scholars and political forces (see Pavlenko 2002).

⁷⁹ This is the Economist's view, see: Ukraine's Presidential Election: an Orange Victory, *The Economist*, 1 January 2005, P.19-20.

The debate centers on the actual mechanism of relationships between president, parliament and cabinet as well as the timing and the conditions for implementing the reform. These are the main elements of the model for embedded democracy lined out in section 2. Some scholars in Ukraine argued that bill #4180 satisfies the necessary requirements: it puts enough powers over the cabinet into parliament's hands, yet retains „control competencies“ in the hands of the president. Moreover, as the role of the president is traditionally strong in CIS countries (he is culturally viewed as the head of state, the „guarantor“ of the Constitution, of the status quo, staying „above“ politics), it is possible to predict that he will remain a central figure in the power balance even without exclusive control over the executive (Fesenko 2004).

Other scholars, however, point to the numerous drawbacks of the bill: it introduces further uncertainty into the mechanism of selecting and managing the executive, which might create instability of the cabinet; it is unclear how the president and the cabinet divide competences over security and international issues; and the Prosecutor's Office received its Soviet-time competences of general overview back, which might be used for political goals.⁸⁰

In any case, the regime of horizontal checks and balances would be considerably strengthened by changes according to bill #4180. Whether optimists (like Fesenko) or pessimists (like Koliushko) are right, will be already determined within the first year of Yushchenko's presidency. This is by far the most serious institutional challenge the new government will face.

The installation of a parliamentary system needs several preconditions for successful functioning and retaining its democratic nature: free political parties and free mass media. Given the political practices of recent years, independent courts to uphold the institutional order are a condition as well. These conditions may be created simultaneously with the establishment of the new constitutional model. In fact, a more competitive, „horizontally rich“ model, which compels the main political forces to create a coalition (i.e., to reach a compromise), might be better soil for cultivating democratic procedures and traditions (as opposed to autocratic rule and power abuse in the presidential model).

In any case, a parliament organized around factions elected through party lists should become more representative. In consequence, the main political groups will have strong incentives to be more inclusive of different issues and regional groups. The need to also run for local councils by party lists pushes the main forces to create – or make alliances with the existing – networks of civil institutions, which would be influential on the local level and will thus provide support for the respective parties and blocks. However, the formation of structured coalitions or oppositional groups is not sure at the moment. A look at the results of the presidential elections implies that the country is deeply divided. Still, up to now there are no structured power blocs behind the two candidates. Rather, both Yushchenko and Yanukovich were supported by incoherent groups which were held together mainly by geographical affiliations. It remains to be seen if political competition will be more centered around social conflicts which are able to be transformed into political programs. In a way, then, our optimism concerning the constitutional reforms depends on additional changes outside of

⁸⁰ Koliushko, Ihor, and Tymoshyk, Viktor, Have you read the bill 4180? A critical assessment of Ukrainian political reform, *Ukrainska pravda*, 19 December 2004: <<http://www2.pravda.com.ua/en/archive/2004/december/15/1.shtml>>.

the constitutional sphere. Electoral reform will only contribute to a better structured political system if politics become rooted in society to a higher extent.

Also, it needs to be stated that the parliamentary model in itself does little to separate „money and politics,“ as the main financial and industrial groups will continue to stand behind the main parties and blocks. Yet, it does help to diversify the risks of lobbyist influence on policy-making and make the very lobbying process more competitive and transparent. Under the presidential model, the obvious primary target for lobbying is exclusive: only the president and his administration matter. Under a parliamentary system with a strong prime minister, those lobbying on the government will compete not only with similar proposals from other groups, but also with party interests, the parliamentary agenda and other matters, which will increase in value for the decision-makers.

However, one important (and interrelated) aspect should be taken into consideration in order to ensure implementation of the reform. First, the reform, and the constitutional model which it will bring, should be accepted by all key political actors. Otherwise the legitimacy of the rules of the game will be undermined again, further destabilizing the situation and endangering the fledgling democracy, bringing another conflict into the system. The Constitution of 1996, which appeared as a result of a compromise, enjoys high legitimacy. A constitution installed by force and against strong disagreement in parliament will not. Thus, to have the reform widely accepted, one should take into account the interests of all main political forces, and this is exactly one of the main challenges for the new president after such a contested election.

From backward perspective, it even seems advantageous that the decision for constitutional reform came in a situation of high political uncertainty. A decision in spring or summer of 2004 would have had the danger of extending the status quo of an incumbent president. During 2005 early 2006, the new government will have to prove its merits and gather support for its party lists on parliamentary elections – in order to retain power. Likewise, members of the old elite like Yanukovych or Medvedchuk with their supporting groups will prepare for parliamentary the elections.

With potent financial and media leverage and entrenched positions in local bureaucracy, these „clans“ will undoubtedly have advantages in these elections. If the new government fails in its reform efforts, or if it engages in internal feuds, a return of the *ancient regime* is not impossible. Then Kuchma's entourage might not only lobby for notable positions in the executive (otherwise any coalition in parliament may fail to form a government), but also to undermine the newly elected president's legitimacy by accusing him of inefficient policies – concealing that he is almost deprived of powers.

President Yushchenko enters his term at a new stage of development in the Ukrainian political system. Since 1999, the main source of friction does not occur between the old and the new regime (Communists against all the rest) any more. Therefore, the new president does not need to fulfill Kuchma's function to unite all-to-different groups against a Communist backlash. Instead, the main conflict runs around the Kuchma status quo, which is one of bureaucratization, verticalization and the protection of several financial-industrial groups in the country – versus the change of the establishment and the introduction of the „pendulum“ between the main centrist forces: those having been united around Yushchenko and Yanukovych respectively during the electoral phase (see text by Oleksandr Sushko and Oles Lisnichuk in this volume).

It will be difficult for the new government to win a parliamentary majority – but this difficulty might be the necessary condition for the consolidation of the like-minded parties and development of a Ukrainian party system from „polarized pluralism“ (in the terms of Sartori 1976) to a more effective and accountable stage. The immediate risk of a return of the former incumbents might keep the civil society awakened by the Orange Revolution vigilant and ready to control government, whoever occupies its positions.⁸¹ Conflicts between presidents and prime ministers from different political camps were successfully internalized into the institutional systems in France, Poland, Croatia, Portugal, Ireland and several other countries as well. The proposed constitutional reform is the main tool to turn political conflicts from outright power battles into embedded struggles for rational political solutions to societal problems.

Comprehensive summary

The present constitutional setup of the Ukrainian state was created as a compromise between president and parliament, yet the constitution leaves the mechanism of relationships within the „president-parliament-government“ triangle vague. In the absence of adequate pressure from the opposition, the constitutional model was shaped by the internal struggle within the incumbent camp, and the decision-making system appeared as president-centered, secluded, non-transparent and unresponsive.

It provoked conflicts between government and parliament, thus lowering the effectiveness of the system. The weak party system (aggravated by limited chances for parties to play the leading role in elections), abused media (often used as a propaganda machine), and underdeveloped civic institutions sector (with low possibilities to effectively advocate the interests before the authorities) made the authorities less prone to public scrutiny. Thus, the objective to decentralize decision-making and thus to strengthen horizontal accountability in order to make the government more dependent on parliament, not on the president, seems wise. All major political forces have declared their intent to pursue such reforms and even agreed in legally binding acts. Yet, the perspective of implementation of these declarations appeared only when over-centralization of power was seen by the main political players as a threat to the status-quo.

The realization of the various scenarios concerning constitutional reform depends on backroom agreements; the main factors are the immediate interests of the key players rather than strategic thinking or conscious tailoring of the most effective system. However, this might be the way of „natural decentralization“ of Ukrainian decision-making, which would come out of necessity and mutual mistrust of the main political forces rather than from a benevolent act of the country's leadership. After the elections, the winners are compelled by legislation already adopted to fulfill the reform; implementing it in practice might become the only way to reach reconciliation with other forces.

⁸¹ Some signs of this are already seen: on January 5, 2005, some dozen protesters rallied in Kyiv against the alleged participation of Mykola Azarov, Kuchma's loyal vice-prime minister, in a new government. After the protesters, both Azarov and members of Yushchenko's team openly denied perspectives of his involvement in the new cabinet: Novaya vlast vyderzhala svoj pervyj urok? Obozrevatel, Jan. 5, 2005: http://obozrevatel.com/news_files/175282.

In the vocabulary of the model of defective democracy, the proposed constitutional reform mainly aims at the partial regime of horizontal accountability. The other partial regimes of democracy, and in Ukraine particularly the electoral regime, are seen in their inter-linkages with the system of power distribution. It has been argued that the defects of the electoral regime as well as the civil rights and political liberties regimes at least partially go back to the „rigidity“ of the presidential system (Linz 1994). Therefore, constitutional reform will arguably stretch out into the other partial regimes. However, the defects in civil rights and political liberties depend on other factors as well. For example, a much stronger commitment of political leaders to guarantee civil rights and political liberties than shown in the recent presidential elections seems crucial. Without constitutional reform, however, the prospects of a different style of government in Europe's second biggest state would have been even dimmer. In order to overcome the defects of democracy, both the Constitution and political leaders are in need of change.

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The Election Campaign and Ukraine's Political Evolution

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Key points:

- The 2004 presidential campaign in Ukraine became a means to explore a “window of opportunity” in the country’s political development. The alternatives posed by the political leaders demonstrate the deep and complex relations between the political system’s level of structural development on the one hand and the variety of proposals thrown into the ring over the course of the campaign on the other.
- The conventional models offered to Ukrainian society by the main presidential contenders are described in the framework of this paper by such terms as “democratic reforms” and “status quo.” From the very beginning each of those alternatives had its range of chances; nevertheless the first one had won because the determinants of democratic changes appeared to be stronger – the opposition had managed to awaken the creative notions of the society. And the society, for its part, demonstrated the ability to consolidate and to act rationally for the sake of the public good.
- Among the factors that had been determining systematic influence on the candidates, during the period preceding the campaign, the leading one is the “close circle,” represented by the candidates’ personal clientele. However, the wider subjects for conducting the influence that shifted onto the foreground became the main trend of the campaign itself. As a result, in the final stage of the campaign, the so-called “Orange Revolution” it was the civil society with its institutions that became the key subject defining the behavior of the political leaders as well as, particularly, the result of voting on the Dec. 26, 2004.
- The positions of the contenders as subjects of Ukrainian politics had been directly influenced by various rival resources: electoral, political, administrative, regional, organizational, HR, programmatic, technological, informational and personal. Still the crucial role for defining the winner was performed by the organized part of the civil society – the social-political and new resource for Ukraine, which fully embraced the position of the democratic opposition headed by Viktor Yushchenko and ensured his victory.

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The structural characteristics of the Ukrainian political space are the main determinants of political competition which developed in recent years and which reached its culmination during the election campaign in 2004.

These structural characteristics include the following:

1. High degree of merging power and business. Political struggle means first and foremost non-public competition for the access to the strategic resources of the country and society.
2. Domination of political-economic groups (PEGs) as the main subjects of the political process. PEGs have become fundamental elements of the process, whereas the majority of parties, blocs, parliamentary factions and other participants in public political activity in Ukraine derive from and depend on them.
3. Weakness and/or corruption of the institutions that should provide the rule of law: the judiciary, the Prosecutor General's Office and the Interior Ministry. These institutions are highly dependent on the PEGs that control executive power.
4. Excessive power of the central government, over-centralization and weakness of instruments for regional and local self-governance. The 'vertical of executive power' exercises a dominant role over all other centers of political influence.
5. Weak development of independent mass media and non-governmental organizations (NGOs). The most available influential mass media are owned by interested PEGs, which are using them to present a distorted picture of political reality. NGOs are not strong enough to establish effective communication between the government and society, or to influence the government.

At the same time, until 2004, the consolidation of the political system has not yet been completed, though a window of opportunity exists between the "pure" authoritarian/post-Soviet system and a pluralist model tending toward democracy and a European type of society.

During 2002-2004, political competition was clearly radicalized and transformed into virtual political war. The rivalry for the power has been often considered a zero-sum game by the subjects of the process, aimed at eliminating the competitor from the political stage. This factor had caused radical methods of struggle and ubiquitous use of illegal methods of competition, including violence.

The political pathologies that emerged during the campaign and became the subject of interest and concern for the international community appeared to be conspicuous features of the specific social and political system formed in Ukraine during the presidency of Leonid Kuchma.

The main features that distinguish the political system in pre-election Ukraine 2004 from existing systems in Russia and most other CIS countries are first the existence of a strong and popular opposition force that is able to fight for power, and second the increase of society's critical attitude towards its government. Despite the growth of shadow governance, public

competition in Ukraine has not disappeared, and has not become just a part of 'behind the door' processes.

Two main presidential contenders—Viktor Yushchenko and Viktor Yanukovych—were treated in some cases as bearers of totally opposite paradigms for Ukraine's development. In other cases, however, they were described as representatives of one and the same project with minor differences. The latter was the view of the opponents of both. We subscribe to the first evaluation; therefore, practically, Yushchenko and Yanukovych were representing two alternatives that came into existence in the framework of Ukrainian windows of opportunity at the time of Kuchma, in a country whose place in Europe and in the world has been uncertain.

Candidates' close circle as a source of influence

The election campaign demonstrated essential modifications of structure, functions and contents within the political capital of the political leaders together with the competitive resources for political struggle. The common leitmotif for those changes turned out to be recognition of the necessity to expand a base of support in reaching the political success.

Most evidently this pattern could be seen in the shift in roles for such dependencies like the client-patron, the role of influence groups in providing political leadership and the urgency of those or other competitive recourses during the election campaign and during the grave crisis that resulted when the results of the Nov. 21 elections were violated. Those changes are still difficult to estimate, particularly in terms of their penetration and irreversibility. Nevertheless, in essence, the evolution in this direction is capable of modifying subjects that were traditional for Ukrainian politics and its role and place in the political system. It is also possible for the evolution to contribute to the thorough reformatting of the country's political processes.

It is considered traditional that the main priority of any Ukrainian political leader, including the presidential contenders, is the presence of so-called command, i.e. certain surroundings oriented toward support and interaction in order to reach political and other aims. It was the "team" and it still is treated as a key pillar for the leader in the struggle for power, in the case of electoral success, it gains power. The long-lasting process of appointing the new Cabinet of Ministers, defining its structure and staff issues was actually considered by many observers due to the lack of an integral team that might be offered by the eventual election winner, Viktor Yushchenko.

In general, we may speak about the fairly high mythological character of the "team," which is shown on the level of people's consciousness and thoughts, and also on the level of electoral needs. Such need for a 'team' in fact reveals the inadequacy of the formal political structure to address the real processes in Ukrainian politics. Through "team" the problem with organized leadership support is solved, as there are few political organizations in Ukraine. In fact, the candidate's "team" is treated as the support of his acquaintances from the elite and realizes his ambitions through power.

The ideology of the team approach primarily is built with the help of the domination of

technocratic foundations. This perpetuates the widespread cliché within Ukrainian politics of “a team of professionals,” i.e. the “know-how men,” administrative officials, financiers, lawyers, etc. They are at first sight not clearly supporters of any political reality. These are the individuals who in case of the candidate’s victory will be appointed to leading government posts. For the opposition candidate who wants to take power, the “command” is analogous to a shadow government.

Taking this into consideration, the candidate’s “command” and the leaders of the forces supporting him do not necessarily coincide. However, taking into account its real characteristics, this “command” corresponds more to the notion of a “close circle” than to that of a political coalition. Such formations consist of a candidate’s personal clientele. It includes personal links, personal relations and interdependence that are the binding material of different “commands.” Among the non-technical presidential contenders, this mainly refers to Communist Party leader Petro Symonenko; other politicians such as Natalia Vitrenko, Mykhailo Brodsky and Dmytro Korchynsky also belonged to the group of clients. Others, having some electoral prospects, such as Socialist Party leader Oleksandr Moroz, former Prime Minister Anatoliy Kinakh and Kyiv Mayor Oleksandr Omelchenko, together with leaders Yushchenko and former Prime Minister Viktor Yanukovich, significantly relied, first of all, on their “close circle.” This circle influences the candidates’ main decisions, strategies and solutions to tactical problems. The “close circle” is both the means of influence from outside and the primary instrument of action on it. It is also the reservoir of the different influences from the outside on the candidate’s sphere of support of the candidate. In this respect the most valuable capital for the representatives of a team is access to the leader.

Being important members of a candidate’s network, representatives of the “close circle” of the candidate are very often the patrons of lower-level formations. Thus built around leaders and candidates are the client-patron systems that tend to be profound structures, which go down to the micro-political level.

Close attention to the ‘team’ may be explained by the excessive value of corporate group interests in the system of political representatives, in decision-making and in political processes in general. These groups represent the alliances formed by elites with common economic interests, which are being addressed through their presence in the political process and access to administrative power. These, referred to as political and economic groups, are defined by Ukrainian political experts as alliances of business structures that:

- overcame the obstacle of fundamental capital accumulation and formed the mechanisms for their development strategically;
- make investments in politics on a regular basis, insuring their representatives in political structures and the mass media, as well as in the legislative, executive and judicial branches, and
- try to make their own production part of the base of the country’s economic strategy and lobby for its support at the national level.¹

¹ Political and economical evaluation of Ukrainian economy www.niurr.gov.ua/ru/ukr_rus/bulletin_3/polit_econom_izmerenie.htm

The key characteristics of this type of group are their tendency to monopoly and their expansion into different spheres of public interest. The development of these political and economic formations follows a scenario that is different from the formation of pluralism in society and politics. With the approach of the presidential elections and the struggle for power, these PEGs started more and more clearly demonstrating their vertical integration. Political expert D. Vydrin states with a touch of irony the key elements of these groups. “The corporation in its full set includes an ‘economic body’ represented by its earning, producing or middleman complex; mass media, formally working for country but in reality spreading corporate ideology, verbalizing corporate thinking and emitting corporate mentality; and the political ‘roof,’ different instruments of political mediation and political protection of personal interests. These include parties, factions and people delegated to politics. Finally, the group includes a popular football club and other sports entities that perform the role of creators of corporate pride and appreciation.”²

Immediately after the parliamentary elections in 2002, the main political and economic groups appeared on the political stage. In Kyiv this was the Social Democratic Party of Ukraine (united); in Dnipropetrovsk, Labor Ukraine (Trudova Ukraina), and in Donetsk the Party of Ukraine’s Regions (Partiya Rehioniv). Later, the Kharkiv group joined the list; however, these groups gradually started dividing into smaller units.

Besides the powerful PEG on the general national level there are larger business formations, but with a rather lesser caliber than the leading PEGs. The part of the latter has more openly or completely discreetly cooperated both with the authorities and opposition.

Evolution of the model of public political competition (1999–2004)

One of the main factors influencing the leaders of the 2004 election campaign was the evolution of the model of public political competition implemented during the second term of former President Leonid Kuchma.

The scenario of political competition realized in the election of 2004 is the result of considerable differentiation of the social electoral map of Ukraine over the past five years.

From 1999 until this year, politics were driven by the following scheme: communists against different types of non-communist organizations. The latter included ideological “national democrats” as well as “centrist-pragmatists,” represented by PEGs and devoid of definite political programs. The reformist coalition that appeared thus included practically all non-communist politicians. Its main social carrier was the eager support of Europe-oriented citizens who did not wish to embrace the “communist past” again.

² Vydrin, Dmitriy “Peremeny, moy drug, peremeny...” – *Zerkalo Nedeli* www.zerkalo-nedeli.com/nn/show/486/45954/

Candidates' main resources

A group of factors can be identified as resources of electoral and political competition. These factors had a direct impact on the positions of candidates as actors in Ukrainian politics.

Resources that were at the candidates' disposal could be characterized by sufficiently high heterogeneity. Among the main types of resources that are utilized by the main participants in the presidential election to provide the expected results are the following:

- *Electoral* (social, regional, age, linguistic, socio-cultural and professional groups that support the candidate or on whose support he is oriented);
- *Political* (political forces – parties, movements and non-formal groups that support their candidate, their place and meaning in the political process and in the society);
- *Politico-administrative* (presence and characteristics of the candidates' positions in the administrative machine);
- *Regional* (candidate relations with the regional administrative, humanitarian and economic elite)
- *Organizational and human resources* (structures that are responsible for the campaign and human resources potential of the election headquarters);
- *Program* (main program postulates their mobilization potential and candidate participation in pre-election discussions and political discourse);
- *Technological* (intellectual supply of a competitive pre-election struggle, characterized by the participation of political consultants in the formation of candidates' election strategies);
- *Informational* (mass media that support candidates, on which they are oriented during their election campaign; possibilities for candidates to present their electoral programs and positions in the information environment and to take part in pre-election discussions); and
- *Personal* (qualities of leadership and political behavior of candidates; main politico-psychological characteristics of candidates).

Each candidate had a different proportion of, correlation with and interdependence on the resources listed above. It cannot be said that only candidates with all of the resources listed above may realize their potential and win elections. Moreover there was no candidate, even among obvious leaders, who did not have tangible “blank spots” in his campaign list.

Impetuous “democratization” of the resources necessary for a real competitive political struggle became an important achievement of the election campaign in 2004. It appeared that for the candidates and, first of all, for the opposition candidate to succeed, democratization

was important not simply for financial, organizational and other, mainly elite level, resources. The campaign returned the resource of active social support to high-level Ukrainian politics. In particular, this resource became the main support for candidate Yushchenko, which allowed him to have the opportunity to actually win the elections after the rough campaign, when all possible methods were used against him. Especially this resource gave him the possibility to dispute the fraud during the campaign and organize a revolutionary wave of public protest after the second round of the election on Nov. 21, 2004, was abused by the authorities.

It is typical that Yanukovych's perception of the importance of the resource of public support made him actively appeal to similar support after the aggravation of the struggle in the period after the elections. He brought groups of supporters from eastern regions of Ukraine to Kyiv. In this case, however, social support is more like decoration on the main group of resources of the pro-governmental candidate.

Let us examine the resource potential of the main candidates, whose electoral prospects allow them and their political backers to enter into the future Parliament. To these candidates belong the leaders of the electoral races—Yushchenko and Yanukovych—and the leaders of the leftist parliamentary parties —Symonenko and Moroz. Here also can be included Vitrenko and Kinakh, for whom the 2004 election was a chance to get back into the top echelon of Ukrainian politics.

VIKTOR YANUKOVYCH'S PROJECT

Yanukovych's resources

Since the moment when forces loyal to former President Kuchma suggested then Prime Minister Yanukovych as a presidential candidate, the latter's electoral rating began to rise strongly. One month prior to the beginning of the campaign, Yanukovych gained a firm second position that allowed his name to remain among the potential winners during the second round of voting scheduled for Nov. 21, 2004. As a result, 40 percent of the electorate and a majority of voters in the nine highly populated regions in the country's east and south, as well as the city of Sevastopol, supported Yanukovych during the first round of voting. This helped him to compete with opposition leader Yushchenko in the second round. Similar figures are attributed to Yanukovych from the second vote. In the second round, sociologists point out that the opposition leader preserved and even increased the gap between him and the candidate promoted by the authorities. Irrespective of this fact, these figures gave Yanukovych enough grounds to stay in the fight to the end and secure 44.2 percent support during the repeat run-off vote on Dec. 26, 2004.

The electoral image of Yanukovych was not very creative. This image was developed in compliance with the initial reason: Yanukovych was involved in the fight for the presidency as it exists to benefit the active president and the most influential political and business group associated with the president. Yanukovych was presented to the voters as "anti-Yushchenko," or not as "anti-Yushchenko," but rather "not worse than Yushchenko and even better;" not a nationalist, not an extreme, U.S.- and Western-capital supported politician, but on the contrary as a pragmatic leader who sets specific goals and achieves specific results.

The results Yanukovych got were the summary of considerable efforts applied by a wide segment of the ruling elite. The Prime Minister was nominated as a candidate from the power coalition and publicly backed as a successor to the current president. While this decision was somehow furnished externally—at the moment his candidature was being approved by pro-presidential forces a personal rating of the government leader was much higher compared with other potential nominees—reinforcement of Yanukovych as a candidate from elites interested in prolonging the status quo caused controversy in this environment. It took a lot of intensive negotiations before practically all potential candidates associated with the existing power agreed to abandon their ambitions and get involved one way or the other in the Yanukovych campaign. There was one exception: Kinakh, leader of Ukraine's Party of Industrialists and Entrepreneurs, and leader of the Ukrainian Industrialists and Entrepreneurs Union. Kuchma started his victorious presidential race from this position 10 years ago.

Notwithstanding the fact that candidate Yanukovych was positioned as a single candidate from the authorities, the political environment for his support was extremely heterogeneous and unevenly interested in a victory for their nominee.

The most important circumstance that influenced the presidential election and the Prime Minister's campaign in particular was the fact that actors with the most influential and creative capabilities—President Kuchma and the head of the presidential administration—were left outside. In essence for these two persons and the forces they represented, a potential presidency of Yanukovych or Yushchenko was not the best scenario. Hope for the political reform as a mechanism to prolong the regime in power had not been justified. They were forced to approve the nomination of Yanukovych as a successor.

Considerable uncertainty about the scenario and the outcome of the campaign forced some elite groups that formally supported the former Donetsk governor to demonstrate a certain degree of reservation. Yanukovych could definitely rely only on representatives of Donetsk politics and businesses. That was clearly demonstrated by these allies immediately after the Nov. 21, 2004, repeat ballot, in particular after Yanukovych's chances for the Presidency began to fall swiftly.

Nonetheless, the figure cited above encompasses an enormous amount for Ukraine, of USD\$1 billion or more, that was involved in the Yanukovych campaign. It is understood that the quoted sum many times exceeds the official ceiling of the pre-election fund. But groups that supported the authorities' candidate had enough room for maneuver including gaining the objectives mentioned above. Indirect schemes for financing of candidate Yanukovych, such as an increase of the minimum living standard and pension payments were the kinds of "tricks" involved.

In general, under endorsement from the current president, Yanukovych managed to mobilize all necessary funds for his campaign.

A set of possibilities created by Yanukovych occupying the highest government position and the fact that he represents the authorities were the second substantial pillar of the Yanukovych campaign. In the post-Soviet political discussion, this set of possibilities is called "administrative resources." The main mobilizing events and programs to support Yanukovych's campaign were implemented with administrative resources. Use of administrative resources is considered to increase the total result of voting by 3 to 5

percent. But Yanukovych's promoters had gone much further in involving not only "passive administrative resources." Obvious falsification of people's expression of will, which took place on the Nov. 21, 2004, allowed the authorities to distort the real figures by nearly 10-12 percent (as the re-vote of Dec. 26, 2004, later proved).

A massive media campaign to support the candidate became, as expected, one more pillar of support for the authorities' candidate. All national TV channels and a majority of private radio and TV channels were actively involved in Yanukovych's election advertising, depicting his activity as leader of the government. All this happened against a background of total obstruction for opposition politics, and enormous difficulties for the opposition candidate to access the mass media.

Team of Yanukovych: Main Outline

An analysis of the personal clientele of presidential contender Yanukovych substantially supports his image as the single government-supported candidate. Moreover, consideration of this phenomenon leads to a conclusion about dependence and, maybe, subordination of the close circle of the Prime Minister to other influential actors in Ukrainian politics. A government-supported candidate clearly was entering schemes of client-patron dependence in a status that more correspond to a client. This is a vision of the noticeably asymmetric partnership between Yanukovych and Kuchma, and also between Yanukovych and Rinat Akhmetov.

Notwithstanding the end of his presidential term, Kuchma had left for himself opportunities to affect the behavior and career of Yanukovych, relying on a number of the political and economical formations focused on him. Yanukovych owes Kuchma for being named prime minister, for his nomination as the single pro-presidential candidate, and for his being given time to act as prime minister in the pre-election period. After Parliament adopted the second government program of Yanukovych, only Kuchma had the power to dissolve the Cabinet of Ministers. There are reasons to think that the correlation between Kuchma and Yanukovych is built not merely on political expediency or bureaucratic logic and traditions: Yanukovych as a high-level political figure had become a creature of Kuchma and had been used by the former president together with his associates as an object for a manipulative scenario in order to preserve power for Kuchma.

During the revolutionary events of November-December 2004, Yanukovych freed himself to from the dependent status of his interactions with Kuchma, emphasizing spontaneous public initiatives.

If the patron-client connections with the president had characterized the final period of Yanukovych's political career, then mutual connections with the representative of large capitalist Rinat Akhmetov go back to the period of Yanukovych's emergence as the official candidate from the Donbass elite. Over a period of seven years, personal connections between the oligarchs and Akhmetov had determined the political growth of the first, and the economic growth of the second. This allowed the president of the Shakhtar Donetsk football club at the time of the 2004 elections to be the "host" of the Donbass, he the richest Ukrainian and the main oligarch in the country. Influence on the regional authority that was personified by

Prime Minister and pro-presidential candidate Yanukovych became one of the main bases for the large-scale accumulation of property and finances that was accomplished by the political and economical holding called System Capital Management (SCM).

Meanwhile, despite the solid financial and organizational dependency of Yanukovych on the rich oligarch's support, his objective transformation into a public figure has assisted him in equalizing that status during the campaign. The real political capital of Yanukovych allowed him to count on a parity partner's relationship with the owner of SCM.

Nevertheless, during the period of his work in Kyiv (autumn 2002–autumn 2004), Yanukovych could not modernize his own group of support. In general, the Prime Minister's close environment consisted of people who were working with him in the Donetsk region: I. Skubyshev, N. Demyanko, E. Prutnik, A. Gurbych, A. Klyuyev, V. Rybak, V. Lyovochkin and some others.

A new phenomenon that entered the sphere of support and interest for Yanukovych while he was prime minister was the staff of a newly created political organization, the Party of Regions and the parliamentary faction based on it. The rash influx to the rows of the party organization was not in favor of symmetrical growth of its political authority. The Party of Regions, particularly after Yanukovych became its head, was regarded as the next installment of the so-called “party of power.” It foresaw the following consequences, such as becoming a phenomenon of the political divisions in parliament as well as segments of his political circle and society focused on it.

These were the main elements of the Yanukovych team, on which he could first of all rely on. There was also a wider group of elites that were oriented around the Prime Minister during the election campaign, which was going to raise its politico-administrative status after Yanukovych's expected victory. A similar scenario happened when former President Kuchma was first elected in 1994.

ViKtor Yanukovych and the Failed ‘Status Quo’ Scenario

The loss of its social base among the bearers of European and patriotic values forced the government to reach for the support of those who, in 1999, constituted the social base in the attempt of the orthodox Left to return.

The failure of the government bloc, For a United Ukraine (Za Yedynu Ukrainu), which took only 11.9 percent of the vote in 2002,³ **proved that the position of the government between the pro-European reformers and the left opposition in the so-called “centrist” space was not tenable because of the absence of non-ideological “pragmatists.”**

Since summer 2002, with the advent of Viktor Medvedchuk as head of the Presidential Administration, it became evident that the government had lost the support of reform-oriented segments of society once and for all.

³ Web site of Central Electoral Commission of Ukraine. www.cvk.gov.ua

The sudden loss of government legitimacy led to the implementation of radical means to concentrate the forces that helped maintain the status quo. This is the way that the “status quo” scenario appeared, represented by a non-democratic government that had lost the support of the population. This paradigm is based on keeping the government distant from society and supporting the structures and institutions that are not controlled by society. These are first of all the “vertical of the executive power,” which is hypertrophied and independent of the voters’ will. These chains of government power are the elements of “administrative resources” that provide illegal supremacy of the state over its society.

The instruments of the “status quo” scenario in Ukraine were not only so-called administrative resources, but also the exploitation of ideological and value matrixes in the Soviet style.

For his appointment on Nov. 21, 2002, 234 MPs voted to nominate Yanukovych as Prime Minister of Ukraine, more than the 226 votes necessary for a majority.⁴ The vote signified the beginning of a new government project aiming at maintaining the status quo by pushing communists and socialists out of the sphere of political competition.

The leftist electorate was considered to be the possible social base, the way of returning government legitimacy. To reach this aim it was necessary to create a type of government that would meet the expectations of voters who were nostalgic for the old USSR. Furthermore, this type corresponded to the values of the very government that experienced discomfort at European democratic standards “imposed from abroad.”

During 2003–2004 nearly all individuals with whom European prospects for Ukraine were associated were excluded from executive power. These included: Minister of Foreign Affairs Zlenko, Energy Supply Minister Yermilov, Economics and European Integration Minister Khoroshkovsky, Deputy Prime Minister Haiduk, Ukrtransoil President Todichuk, and Defense Minister Marchuk.

The ruling circle became more and more homogeneous and Euro-enthusiasm gave way to Euro-skepticism, followed by an openly anti-Western program.

State propaganda implemented the almost-forgotten Soviet cliché that declared the West to be the enemy, whereas Russia was considered a “fraternal nation.” The phobias of nationalism and extremism began to be exploited. Public opinion was influenced by the ideas of civil war, violence between criminal clans, and an “American threat.” The official presidential candidate publicly denied integration into NATO as a goal and declared the main external political priorities to be Russia together with the three other CIS countries.⁵

This line of attack could not but influence the communists’ electorate, and it started to diminish. In the Parliamentary elections in 2002, the Communist Party of Ukraine (CPU) took around 20 percent of the vote; however, only 4.9% voted for CPU boss Symonenko in the presidential elections in 2004.⁶ The larger part of this disoriented electorate started to

⁴ Web site of the Verkhovna Rada of Ukraine. www.rada.gov.ua/press/sk14/ses1/21-11-2002.htm

⁵ Euroatlantic Ukraine. www.ea-ua.info/main.php?parts_id=6&news_id=78&news_show_type=1&

⁶ Web site of the Central Electoral Commission of Ukraine. www.cvk.gov.ua

support the government, signifying the start of social legitimacy, but with a different social base.

Yanukovych, nominated as the government's candidate for the Presidency, fully met the system's requirements. As the representative of the administrative elite of Donbass, which arose in 1990s Ukraine, Yanukovych was a typical leader from a region where the consolidation of a non-competitive and non-democratic regime, based on the merger of big business with state power, took place earlier than in other regions.

During the parliamentary elections in 2002, the Donetsk region was the one where the major violations of the voting rights were observed.⁷ Donetsk region at that time was the only region where the bloc United Ukraine took the largest share of votes, with 36 percent, and the government bloc candidates also won the elections in all other regional polling districts areas.

In the Donbass region from 1998 to 2000, under the guidance of Yanukovych, a closed circle industrial system was created with an independent energy supply and its own external links, rules and unofficial laws. The independent press practically disappeared from the local media market. Since 2000, special tax concessions made the Donetsk region the leading one in GDP growth, having increased its budget surplus by a factor of one and a half times within a year. The same trend was observed during the years that followed.⁸

Appointing Yanukovych as prime minister and nominating him as the pro-Presidential candidate clearly illustrates the peculiarities of Ukrainian staff selection. It includes the following criteria: personal loyalty to the superior leader, ability to rig the results by any means possible, and having a troubled past, which puts the individual "on the hook" to the system.

Yanukovych as a political figure possesses a series of traits adequate to the aims and tasks of the system, which was entering a crisis of legitimacy.

First, Yanukovych's past was troubled enough, beginning with two prison sentences in his youth and ending with highly suspicious capital accumulation in the Donetsk region - a process that took place during his term as Donetsk governor.

Second, Yanukovych was interested (even more than Kuchma) in maintaining the existing relationship between the government, business and society. He knows only those methods of governing that he applied in Donetsk region and has little knowledge of or communication with elites in Ukraine and abroad.

Third, Yanukovych has shown that he could be easily manipulated by a range of messages from political PR experts, which foisted behavioral tactics on him during the campaign. As a result, Yanukovych appeared to be in an extremely awkward situation, which in any case guaranteed the doubtful legitimacy of the results of the elections.

⁷ Ukrainskyi Regionalnyi Visnyk www.urr.org.ua/data/articlesview/?id=f2b19992d232fa84224f5ef3b4ac1210&pubdate=2002-04-01

⁸ Web site "Secret materials of Russia." www.informacia.ru/facts/yanukovich5.htm.

Fourth, under certain circumstances, Yanukovych intended to outdo Kuchma in violation of democratic and legal standards if the situation required it. This was consequently implemented during the Orange Revolution – demand for a “force scenario” to solve the “Maidan problem.”

Yanukovych was the contender of that part of the elite which had created the existing situation in Ukraine, and any kind of change was treated as a threat to its vital interests.

Power inheritance was considered as a process of internal elites compromising around the actual heir while the general public was offered a conception of “stability” as the “highest public value.” The mentioned scenario was rejected by a convincing majority of the society.

However, a further situation of the electoral division in the west, center and north of the country on one side, and in the east and south on the other should not be taken too seriously. All the elections in Ukraine display regional discrepancies within the political foci. The special tension as well as the impression of the regional rivalry during the Orange Revolution was provoked by manipulative, special technologies used by the Yanukovych camp.

Taking into account the evident loyalty expressed by the south/eastern elites after the new government’s formation, the tension will drop off. There are enough reasons to doubt the presumable division of Ukraine or any increased distance between the regions that voted for Yanukovych and the rest of Ukraine. To all appearances, the new power will manage to provide all necessary public legitimacy nationwide.

The chances for Yanukovych himself to remain among the leading politicians in Ukraine are seriously doubtful. The Party of Regions headed by Yanukovych is not attempting to shift to the opposition sector as was loudly expressed by some of the influential representatives of the Regions of Ukraine parliamentary faction, such as Volodymyr Rybak and Volodymyr Boyko. What’s more, the majority within the faction supported Yulia Tymoshenko for the position of prime minister by 46 votes out of 56.

Some of Yanukovych’s personal features embodying the nomenclature-administrative system will simply not allow him to develop the character required for running a whole-scale opposition campaign. It is probable that he will continue to head the list of the Party of Regions in the 2006 parliamentary elections, but his will be only one party from a range of forces aiming to obtain votes in the south/eastern regions of Ukraine.

Failure of the “power succession” scenario was the result of wide, unprecedented massive public demonstrations, and it proves the limitation of resources and certain tools for conducting a “status quo” policy in Ukraine. It opens a new range of possibilities regarding real democratic, social and market transformations.

VIKTOR YUSHCHENKO'S PROJECT

Yushchenko's resources

The main opposition candidate claimed to represent the interests of, and was supported by, the country's protest electorate. Yushchenko was supported by more than half of Ukrainian voters. He became an election winner in 16 regions of Ukraine (out of 24 plus the Autonomous Republic of Crimea) and in the capital, Kyiv.

Yushchenko and his allies appealed not only to protesting spirits, but also tried to receive the support of wider groups of the electorate, reminding them about the achievements of the government under Yushchenko during the years 2000–2001. Among them the main ones are the beginning of the mass clearing of the country's liabilities to citizens and the beginning of economic growth.

The structure of Yushchenko's electorate, as well as of the other major candidates, can hardly be clearly verified according to the index of professional affiliation, cultural, ethnical and other social identities and is the most clearly represented in regional projections. In general, there is a noticeable promiscuity of people who had voted for the Our Ukraine leader. Abstracting from the regional identities, the following image of a Yushchenko voter can be modeled. First of all, this is a person with higher education, who relates to the authority of Kuchma and the results of mass privatization, and who considers the independence of Ukraine one of the top political values. Typically, a Yushchenko voter lives in the capital, lives in the regional centers of central and western Ukraine, or in the small towns and villages of these regions.

The unique characteristic of Yushchenko's electorate is stable support of its candidate by its core over a couple of years. The Orange Revolution displayed that Yushchenko's main footing is upon small and medium businesses, self-employed and employees of self-employed entrepreneurs that are presently forming a newly appeared middle class in Ukraine.

Political support of the candidacy of the future winner was primarily provided by two opposition coalitions that gained significant success during the parliamentary elections in 2002. These are two "nominal" blocs of political parties, Yushchenko's Our Ukraine bloc and the eponymous Yulia Tymoshenko Bloc. Formally, the electoral union of these two blocs was spelled out in an election coalition, "People's Power." In addition to the parties that belong to these unions, Yushchenko's candidacy was supported by Yabloko party (leader, presidential candidate Mykhailo Brodskiy) and the Christian Liberal Union (leader, presidential candidate Leonid Chernovetskiy). Later, there was the SPU of Moroz that also succeeded in the parliamentary elections of 2002, and the Party of Industrialists and Entrepreneurs of Ukraine of Kinakh, which has been represented in the Parliament as a part of the bloc loyal to the authorities.

The group of independents or deputies elected in majority constituencies, instituted in the form of the Razom parliamentary group, is not a party, but claims leading roles.

At the same time, Yushchenko was not officially nominated for election by any of the mentioned political forces, but nominated himself as a candidate of the people, in contrast

to the pro-government candidate. Utilization of this image sets a demarcation between the nation and the authorities, and the leader of Our Ukraine focuses attention on the fundamental conflict between them.

At the time of the presidential campaign, antagonism significantly increased among certain collective members of this formation. The main reason for intensification of antagonisms at this critical moment was consolidation inside the bloc, connected with the perspectives of forming a united party on the basis of the existing coalition. Somehow, in the organization of the campaign a clear party principle was present. Key party formations of the “People’s Power” coalition were responsible for the control of the campaign supplying support for Yushchenko in the regions of the country. The People’s Movement of Ukraine (Narodnyi Rukh Ukrainy), the Ukrainian People’s Party (Ukrainska Narodna Party), the Reforms and Order Party (Reformy i Poryadok), Solidarity (Solidarnist) from the Our Ukraine bloc and Motherland Party (Batkivshchyna) and Sobor from the Yulia Tymoshenko Bloc were appointed to certain regional districts. It had already been the post-election period (early 2005) when Yushchenko announced the formation of a new ‘Our Ukraine’ party. This caused considerable disputes among those political forces that supported him throughout the election on whether or not such a step would be reasonable. Most of the political elites of the Our Ukraine bloc risk being dissolved in the new structure as well as fear the creation of a party following the experience of other “parties of power” that existed numerous during the previous regime.

Serious problems from the point of view of support of more competitiveness for Yushchenko as the main rival consisted in his financial support. The problem had two dimensions: quantitative and technical. The first concerned the ability to accumulate as much as possible in the campaign’s electoral fund. The second concerned legislative restrictions on financing the campaigns of presidential candidates, and also maximum rationalization and efficient utilization. At the same time, taking into account the realities of the campaign and the high probability of rivals’ utilization of shady schemes of massive financial support, it became very important to have the possibility to use adequate technologies.

Having done an expert evaluation of the economic potential of Yushchenko’s campaign, the Ukrainian business digest *Business* came to the conclusion that \$250-\$350 million could be mobilized to support the candidate. This sum is not considered to be commensurate with the financial abilities of his main rival.

The representatives of Our Ukraine’s business wing were considered to be the main financial donors of Yushchenko’s campaign. David Zhvanya, who represents one of the largest business formations among Our Ukraine, the Brinkford group, which was the official treasurer of the campaign. This group possesses property and conducts business in the fields of energy, ship-building, insurance and finance.

The second important economic frame for the Yushchenko campaign was the Ukrprominvest group, which is connected to Petro Poroshenko, a member of the Our Ukraine parliamentary faction, and leader of the Solidarnist party (post-election – Secretary of the National Defense and Security Council). During the last few years this group was one of the most powerful domestic financial industrial groups, though the participation of its founder in the opposition essentially affected its positions. This group is a leader in the confectionery market in the country, consisting of a number of Ukrainian and even Russian confectionery enterprises and

sugar refineries. The group also possesses stable positions in mechanical engineering, ship-building and banking.

Also among his financial support was the economic potential of the structures close to some deputies. Chiefly, this means some members of the Reforms and Order Party, UPP and the Orlan concern that has relations to MP Yevhen Chervonenko.

During the time of the rallies on Maidan Nezalezhnosti (Independence Square), Yushchenko's official headquarters was seriously affected by a shortage of funds. Then via the coordination of opposition supporters, essential financial and material resources were accumulated that allowed the tent city on Khreshchatyk to remain in place, as well as provide for the minimum needs of the hundreds of thousands of those who arrived to participate in the Orange Revolution.

The media resources of the Yushchenko campaign were incommensurably less than those of the Yanukovych campaign. Such newspapers as *Ukraina Moloda*, *Vechirniy Kyiv*, *Bez Cenzury* and *Postup* were aimed at promoting the "people's candidate." TV and radio media biases were more obvious. Niko FM Radio, the regional channel Ishtar and interregional Channel 5 were loyal to Yushchenko, becoming a megaphone for the opposition especially during the open phase of the campaign, presenting relatively unbiased broadcasting that was free of centralized control.

Except for the mass media listed, Yushchenko's positions were usually supported by popular media such as the newspaper *Zerkalo Nedeli*, and Internet sources such as *Ukrainska Pravda* (Ukrainian Truth), *Glavred*, *Obozrevatel* and *Gromadske* (Public) Radio.

Possessing such a minor media-potential compared to that of Yanukovych, Yushchenko had to address his supporters directly by means of rallies before many thousands throughout the country's regions. The rallies became an important form of uncensored communication between the "orange" candidate and the people. At the time of the campaign, predominantly during the crisis after the repeat run-off vote on Nov. 21, 2004, an entire system of communication was developed between the "people's candidate" and the people themselves. Not only had traditional channels been implemented at the time, but also an exceptional role was played by the color orange, which became the symbol for supporters of Yushchenko. Folksy means also played an important role – jokes and rumors were immediately sent via the Internet to the broader public in the country. Also, Yushchenko's supporters came up with the novel idea of conducting art-communication – delivering certain messages via music, pictures, comic videos and cartoons.

Team of Yushchenko: Main Outline

The frame of the Yushchenko team was also formed during his tenure as head of the Ukrainian government. Three years in opposition to the state seriously changed its makeup, structure and the role of the patron. In 2002, Yushchenko's personal clientele could be identified on the assumption of its "nominal" quota while composing the electoral list of the Our Ukraine bloc. At the same time, this partial list consequently appeared to have only the least connection to the parliamentary fate of Yushchenko's Our Ukraine bloc.

It should be acknowledged that at the time of the elections, notwithstanding the existence of personal interdependency, Yushchenko had a more highly political formalized approach to the presidency. Yushchenko's coalition of political support included both the public solidarity of official party structures and political leaders, and their high personal correlation with the Our Ukraine leader.

The launch of the campaign allowed Yushchenko to extend his team by engaging significant political figures. The People's Power union between the Our Ukraine and Yulia Tymoshenko blocs can be fully interpreted as, first of all, as a union of the leaders of both political forces. Tymoshenko and her clientele joined the Yushchenko team, where she was a conspicuous member during the period when this main opposition candidate sat as prime minister. Of course, Oleksandr Zinchenko, who recently was a member of the group most opposed to the leader of the Our Ukraine forces – the SDPU(u) - also took a prominent place in the Yushchenko team. Just after the first round of elections, supporters of Yushchenko were joined by a number of other political leaders expecting team work with the opposition candidate.

The presidential prospects for Yushchenko in general were more significant for the prospects of the representatives of his team than those of the members of the other candidates' teams, including that of Yanukovych. In other words, the level of risk at stake in the success of their patron is strikingly higher than for their competitors. In the period of the campaign, Yushchenko's companions have borne significant economic, financial and political burdens that to a certain extent were viewed as an investment in the situation that will arise if their leader wins. Expenses and losses that occurred during this struggle for authority can be seen in this model of behavior as markers for compensation rights after achieving the final result. This model considers political, administrative and economical dividends that can be achieved due to proximity to the new authority. This particular aspect seriously worries economic and politico-administrative elements that support the pro-governmental candidate as a guarantor of the status quo in the main sectors of political and economic life.

At the same time, it should be recognized that the peculiar type of connection with the leader, as well as a wide palette of groups competing for influence with him, allowed observers to make an assumption that the pre-election investment would not lead to post-electoral reimbursement. Upon coming to power, Yushchenko in fact demonstrated that he doesn't consider himself to be obliged to satisfy the interests of his clientele, but to take a chance to fundamentally change the staff, form and functions of his team.

After the situation in the political confrontation had turned in Yushchenko's favor, he was simultaneously joined by new allies, those that had been supporting his main contender not so long ago. First of those were representatives of the so-called "center forces" of the Ukrainian parliament. Representatives of businesses entering parliament with the purpose of lobbying their corporate, primarily private interests were taught by the previous regime to focus on supporting the power regardless of the personalities heading it. Therefore such declarations of support together with certain steps directed towards supporting the presumable winner of the run for the presidency became rather numerous in Ukrainian politics at that time, even before the Dec. 26, 2004, repeat run-off. And it became a general tendency after a legitimate re-run of the elections. Dynamically, parliamentary factions supporting the former prime minister, such as the Party of Regions, PDP (People's Democratic Party) – Labor Ukraine, SDPU(u) and Democratic Initiatives, began to fall apart. After leaving the above-mentioned structures, these MPs were either coming up with new unions or joining existing ones that were in fact

loyal to Yushchenko, or even declaring non-factional status. Noteworthy here is that the rotation has not extended to both the factions by which People's Power was created. Mainly, such factions were focused on Parliament Speaker Volodymyr Lytvyn – leader, People's Agrarian Party of Ukraine (PAPU), later renamed the People's Party of Ukraine (PPU) and "Center." Although Lytvyn's PAPU has formally supported Yanukovich, its leader however essentially improved the party's political profile by his peacemaking role in the so-called "Mariyinski process" – multilateral negotiations with the participation of foreign mediators. By focusing on Lytvyn, some MPs assisted the opposition in adopting a political decision expressing non-confidence in the Central Election Committee, recognized the results from the Nov. 21, 2004, ballot as invalid, and dismissed Yanukovich's government.

A number of businessmen-MPs that came into light during the Kuchma era still regard the Speaker as "the former president's man," who still follows those traditions. Today Lytvyn and his followers can not be considered ready to join Yushchenko's team. More likely, the PPU leader will create a new influential center faction. In line with the popular image of the "third force," such a center would be autonomous and not in confrontation with the new authorities.

Viktor Yushchenko and the Reformist Opposition—'Democratic Reformism' Scenario

It was the centrist-reformist alliance of 1999–2001 that provided a leading role to Yushchenko. He was a new leader, the former head of the National Bank of Ukraine who had not dealt with public policy until this time. In December 1999, Kuchma nominated Yushchenko for the post of prime minister. On Dec. 22, 1999, the candidacy of Yushchenko was supported in the Verkhovna Rada: 296 MPs voted for him, more than the 226⁹ votes required for a simple majority.

Within a short while, Yushchenko's combination of personal charisma and effective governance made him the most popular politician in the country, a title he has retained.

However, at a certain stage the coalition cracked because Yushchenko's reform policy did not coincide with the interests of particular PEGs. In summer 2000 the Rada adopted a new law, proposed by Yushchenko's cabinet, regulating the activities of energy supply enterprises. (It included a ban on barter and promissory note transactions in the Ukrainian energy supply system and deprived the owners of regional energy enterprises of excessive profits). In July 2000, the enterprises distributing energy supplies in the country yielded six times more revenues to the budget than in April. This allowed the government to pay all its arrears to pensioners, students and workers in state-owned enterprises. To sum up, Ukrainian economic growth in 2000 reached 6 percent¹⁰. **As a result Yushchenko became even more popular, provoking the president's jealousy.**

⁹ Website of the Supreme Council of Ukraine http://www.rada.gov.ua/zakon/sk13/BUL144/58_1.htm

¹⁰ Web site of National Statistics Committee of Ukraine. www.ukrstat.gov.ua

Reforms that were carried out by Yushchenko's government drew harsh criticism from the part of large business involved in speculations on the energy market. The reforms particularly concerned the group SDPU(u), headed by Viktor Medvedchuk, the vice-speaker of the Supreme Council at that time, as well as the group headed by Ihor Bakai.

In 2001, MPs initiated a procedure for impeaching the government headed by Yushchenko. Formally, the initiators were the Communists, although the inspirers of the process appeared to be the SDPU(u). According to political expert Mykola Tomenko, this was the first time that Ukraine faced a sharp conflict between oligarch and non-oligarch politicians.¹¹

The crucial moment for Yushchenko's government was when President Kuchma and his associates were inclined to believe that the "tapes scandal"—taped conversations made in the President's office linked Kuchma to the murder of journalist Georgy Gongadze, a crisis that was reaching its culmination at that time—was organized by the United States to bring Yushchenko to power.

In July 2001 Yushchenko created Our Ukraine (Nasha Ukraina) bloc, joined by two Rukhs, PRP, KUN, the Solidarity party of Poroshenko and a series of other parties.¹²

Yushchenko's bloc won 23.57 percent of the votes in the 2002 parliamentary elections, the largest share of any party, but not enough to form a majority in parliament. As a result of administrative pressure, some Our Ukraine MPs joined the pro-government side after the elections. Currently the Our Ukraine faction of 101 MPs (originally 117) out of 450 remains the largest single bloc in parliament.¹³ After Yushchenko's presidency takes effect, this faction will become the definite center attracting a situational majority to consolidate around itself. The party consists of former opposition and former Kuchma supporters that have now turned to the new power.

The experience of Our Ukraine marked the end of the political competition paradigm, as well as the appearance of an opposition for the first time in 10 years of independence, consisting of the right wing, which managed to win the majority of votes and ensure victory in the presidential elections for its leader.

The social base of the new opposition came from groups in the population who had recently been Kuchma supporters. A series of scandals testifying to the low moral and professional level of the president and his associates contributed to declines in the president's legitimacy in the eyes of a public focused on European values.

Over the period of 1999–2004 the executive branch, headed by the president, lost the majority of its social base whose mobilization accounted for Kuchma's victory in 1999.

By autumn 2004 an absolute majority of social segments that backed Kuchma five years before were on the side of the opposition.

¹¹ *Nezavisimaja Gazeta*, April 25, 2001. www.ng.ru/cis/2001-04-25/5_state.html

¹² Web site of the Our Ukraine (Nasha Ukraina) bloc. www.razom.org.ua

¹³ Web site of the Verkhovna Rada (Parliament) of Ukraine http://gska2.rada.gov.ua:7777/pls/radac_gs09/fr_sklad?kod=2

The reformers became a self-sufficient political force, with not only political structures but also widespread social support at their disposal; moreover, Yushchenko's personal reputation and authority served as the basis for this.

The Ukrainian reformists headed by Yushchenko should not be treated as a homogeneous force. They consist of both those more radically directed and those tending to considerable reforms. The recent formation of the government on Feb. 4, 2005, has shown its ability to seek compromises. The chief roles have been taken by the representatives of radicals – their leader, Tymoshenko, became prime-minister and the moderate reformer Kinakh now occupies the position of First Vice-Prime Minister. Moreover, other former opposition radicals now have control over the Interior Ministry (Yuriy Lutsenko) and the State Security Service (Oleksandr Turchynov). The evidence of Yushchenko's as well as his coalition's image in corresponding to the expectations of the people is the result of the considerable social mobilization in support of Yushchenko during the past campaign. Before the first round, the number of citizens participating in the campaign, attending rallies led by Yushchenko, was incredibly high, setting records for attendance: In Sumy, he drew not fewer than 60,000; in Poltava, not fewer than 50,000, and in Cherkasy not fewer than 40,000. In addition, a considerable number of people were engaged in "network" activities in particular places working as agitators or observers. The mass character of Yushchenko's campaign proves not so much the organizational possibilities of the command as the appeal of his personality to great social expectations - the expectations of the most creative and vitally active part of society.

The events during the Orange Revolution, essentially from Oct. 22 till Dec. 8, 2004, went far beyond the most optimistic forecasts for a society ready to consolidate and act rationally towards defending their election rights, which were in doubt after the violations during the second round of voting on Nov. 21, 2004. Every day during a two-week period, the demonstrations that gathered on Independence Square in Kyiv numbered more than 200,000-300,000 people. More than 10,000 people inhabited the tent city on Khreshchatyk, which posed as the permanent protest body, and which led to the Supreme Court canceling the falsified results from the second round of voting and announcing a repeat run-off set for Dec. 26, 2004.

Presumably, Yushchenko is a certain phenomenal answer of the political elite to the needs of society: the need for a European-type leader who integrates both traditional and contemporary values in his personality. In this sense, he not only carries the transformational charge into society, but he is also the product of the transformational impulse coming from society.

CIVIL SOCIETY AS A NEW SOCIAL-POLITICAL RESOURCE FOR THE POST-REVOLUTION UKRAINE

The further development of Ukraine can be hardly imagined without civil society actively and systematically participating in the political processes, as with being the main subject during the Orange Revolution.

The winners' coalition now faces the task of establishing the conditions for engaging the most active public actors in the political processes, although the newly appeared working centers, undoubtedly, will continue without any request sent from above. However, the very fact of

such a request could significantly intensify the interacting processes between the authorities and citizens, which was not the case during Kuchma's presidency.

The society which has experienced a subjective deciding policy will not be a passive observer or allow for it to be manipulated any more. The new authorities are already experiencing a whole range of different influences from NGOs, and notably from the liberated mass media, public opinion, etc.

Maidan has posed as a concentrated kind of public subculture representing the interests of the majority of citizens. It is capable of creating a clear social demand and strove for its implementation. By conducting a non-violent revolt, the protesters on Maidan managed for the foddered results of the Nov. 21, 2004, ballot to be cancelled and for the opposition to gain an ultimate victory during the final vote on Dec. 26, 2004. But it wasn't opposition to the regime of Kuchma-Yanukovych that would satisfy protesters on Independence Square: there are grounds to reckon that a new type of social culture was born there, and it has all it needs in order to impart influence on the new political system of Ukraine.

For example, the significant influence of a circle of "orange" activists can not be denied, if speaking about President Yushchenko's selection of Tymoshenko as prime minister. As for the protests on Maidan, there was a capital component to them as well as widespread regional representation. The Yushchenko-Tymoshenko tandem goes without saying as the organic alliance that will be able to effectively implement a transformational program subsequent to the Orange Revolution and its ideology. In the period after victory on Dec. 26, 2004 - in particular on the eve of and during the inauguration of Yushchenko as president – the protesters on Maidan, by using certain communication such as mass media and the Internet, as well as the public rallies themselves, sent clear messages to Yushchenko about their preferences for prime minister. To the severe disappointment of some of Yushchenko's closest circle, the public voice muffled the logic of lobbying groups that wished to see Poroshenko or Zinchenko as the prime minister.

In that crucial moment, street activists weighted the scale on the side of the radical wing of the democratic opposition and its leader, regardless of other existing grounds, and advanced Tymoshenko to the position of PM, for example the agreement on the People's Power coalition signed last summer, which had already stipulated this option.

A further bow by Yushchenko's staff towards its democratic assets happened when key speakers from Maidan were appointed to the government – Yuriy Lutsenko (Minister of Internal Affairs) and Mykola Tomenko (Vice-Premier, Minister for Humanitarian Affairs). Apart from this, and absolutely unprecedented within Ukrainian political practice, was the appointment of Anatoliy Hrytsenko, President of the Razumkov Centre for Political and Economical Studies as Defense Minister. The leader of a center of major authority within civil society, which was often accused of serving "Western supervisors," joined the new government. This speaks of the great respect paid by the new power to the "third sector" in the democratic transformational processes in Ukraine.

It is obvious for public activists to demand a place in various levels of the new administration – many vacancies have already been filled by those that have been working in NGOs. To a certain extent it may even cause a problem of staff shortage in the third sector structure – the reserve is hardly numerous there.

It is, however, not enough to appoint several public sector leaders to the government in order to reach some qualitative changes. The important task of transformation is to create a communication net both for information exchange and legitimate forms of influence and even for structural civil society to conduct pressure upon the authorities.

The energy born by the awakening of civil society should not be treated just like a challenge by the new power, but as a resource for ensuring the irreversibility of democratic change.

CONCLUSIONS

As the main contenders for the Ukrainian presidency in 2004 represented alternative projects for the country's development, their positions were defined, first of all, by different stances on socio-political resources. In particular, one of the major factors influencing the main candidates for the presidency in Ukraine's 2004 elections was their interactions with executive power structures.

A key instrument of the campaign by Yanukovych, the authorities' candidate, was usage of possibilities associated with the "executive vertical," that is administrations at all levels, including Interior Ministry agencies, the state tax inspection service, the transportation and communications ministries, the Prosecutor General's Office and other government agencies, as well as government-controlled mass media. This instrument prevailed among other methods and instruments used by the team of this candidate. In the calculations of Yanukovych, the society has been given a role of a manipulated object – consumer of technologies and holder of a Soviet matrix of values that had been widely in use. As a result, at a crucial moment, the electorate of Yanukovych found itself unable to further expand beyond limits both quantitative and mental. The social strata supporting Yanukovych appeared to possess an extremely low level of creativity and self-coordination.

The set of instruments attributed to the Yushchenko campaign reflects his position as a candidate from the opposition. This position was discriminated against, denied access to media, and needed to counteract the open government policy of support for Yanukovych.

Basing itself upon the most organized and most creative part of society became Yushchenko's main resource. That part of society not only managed to be self-conscious in choosing democratic and social-market reforms, but also to stand by their choice during the unprecedented, non-violent public protests that have been dubbed the Orange Revolution.

New within the Ukrainian reality is the self-organized movement, which provided Yushchenko with the victory. It then further created a new socio-political reality, placing the new power under conditions of democratic control. It has resulted in a system of dominant influences on the new power to become more diversified and, meanwhile, transparent.

As the parliamentary elections of 2006 will be held under completely new political and legal conditions, stipulated by implementation of the political reform bill adopted on Dec. 8, 2004, there still may be a continuation of different proposals for Ukraine's future. However, this will happen on a different level. Because of the fact that from 2006 onward the Parliament will form the government, the competition during the next parliamentary elections could

appear as strong as in 2004. The forces defeated in 2004 will try for payback, and a variety of allies from the power coalition will attempt to intensify their positions.

Nevertheless, a repetition of the same circumstance that led to the dramatization of the elections in 2004 is quite improbable. In the parliamentary elections in 2006 there will be no longer a competition between two equally large forces – wider and multifaceted real choice will have to be made. But the most important aspect is that the elections in 2006 promise to be free and democratic for the first time in many years. The new power arriving on a wave of democracy will not likely utilize “administrative resources” to suppress their contenders.

Perhaps, these elections will produce a crystallization of a new political system with a party structure that, in combination with the administrative reform, may become a fundament for the formation of a more responsible executive power. As a result, it will generate a deeper and more democratic consensus in Ukraine.

International Orientation and Foreign Support

Iris Kempe, Iryna Solonenko*

Ukraine's election not only influences the future internal development and transition of the country, but also affects its international position. The new European Union member states, first and foremost Poland and Slovakia, perceive Ukraine as a key actor in Europe. A democratic and reform-oriented Ukraine would contribute to security at the EU's new eastern border. The EU and the United States are interested in a democratic Ukraine as an anchor of stability inside the former Soviet sphere. For Russia, Ukraine is decisive for the establishment of Russia's political dominance, as well as its economic and social interests in the former Soviet territory. Thus, external actors are carefully scrutinizing the question of how the election was carried out and who is the new president of Ukraine.

From both perspectives—internal development and external orientation—the election placed Ukraine at a crossroads. Previous presidential election in many former Soviet republics have been dominated either by a single candidate, with no alternative, or a competition between a “democratically” oriented candidate and a communist one. Leonid Kuchma, the second president of Ukraine, stayed in office for two terms spanning 10 years. The 2004 presidential election offered voters a choice between the two front running candidates, Viktor Yushchenko and Viktor Yanukovich.

International factors carry a higher importance within a defective democracy (see Beichelt/Pavlenko in this volume) than in a consolidated democracy because of their impact on the domestic agenda. A shared language, a high degree of economic dependence and shared media space might create a strong overlapping between Ukrainian and Russian interests. At the same time one might also assume that Ukrainian decision makers in favour of national independence and a democratic transition might promote Western values as a cleavage within the election campaign. Further, one has to ask how, and by whom external factors are utilized within the power struggle between different players and interests groups.

Beginning December 2004 this paper considered that the international framework of the Ukrainian election might change the further direction of Ukrainian transition. Basing on this very assumption the analyses focused on the role of international factors in presidential election from two perspectives – international (Iris Kempe) and domestic (Iryna Solonenko). From each perspective the role is analyzed in terms of interests, goals and methods of international actors. The perspectives of both Western and Russian actors, as well as domestic actors, are included.

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I. International Perspective

1. Key actors

Key actors interested in the procedures and results of the election can be evaluated by basic assumptions of the transition literature. First, the level of international influence is related to the country's level of foreign diplomatic and economic dependency.¹ Second, neighbouring countries are particularly important due to their geographic interdependence and the spill-over effects from the neighbouring country's political, economic, and social system. According to Ernst-Otto Czempiel, the close link between European countries obliges democratic states to strengthen democracy inside neighbouring countries. Thus national security and stability strongly depend on the level of adherence to democratic values inside a neighbouring country.² Finally, the EU's enlargement to the East has set an example for setting external standards.³ More generally, membership in international organisations can also have an impact on a country's national agenda. As far as the election is concerned, this influence is related to the number of democratic members within a particular international organisation.

Dominated by Ukraine's geographic position, external interest in the election can be divided between East and West. Considering their geographic closeness, strong historic and cultural ties and economic dependency, Russia is the most important actor from the Eastern perspective. Until a little more than a decade ago, Ukraine was governed from the Kremlin in Moscow, and Ukrainian independence has been always predicated on Russian willingness not to interfere. From the Western perspective, Ukraine has both a "good guy" and a "bad guy" position. Washington and European capitals have welcomed the withdrawal of Soviet warheads, the complete shutdown of the Chernobyl nuclear reactor and Kyiv's participation in the military intervention in Iraq. But problem areas remained, including violations of press freedom, President Leonid Kuchma's alleged involvement in the murder of journalist Georgy Gongadze, weapon deals that were struck with "axis of evil" countries (such as the alleged sales of Kolchuga radar systems to Iraq and the related "Kuchma-gate" affair), as well as illegal migration and corruption on a large scale that provoked financier George Soros to say that "Ukraine gives corruption a bad name."⁴ Particularly after EU enlargement, Ukraine is a direct neighbour to the West, and one might assume that the EU is one of the most important international actors. Obviously Washington's position is guided more by geostrategic interests related to preventing and fighting terrorism, as well as stabilizing Afghanistan and Iraq. In this regard, Ukraine could serve a two-fold function as both a refuge for international terrorism but also as a reliable partner in a sensitive region.

As a young nation-state and democracy in transition, Ukraine's membership in international organisations also has an impact on the election. From the Western perspective, with its

¹ Pevenhouse, Jon C.: "Democracy from Outside-In? International Organisations and Democratization", in: *International Organisations and Democratization* 56, 3, Summer 2002, pp. 515-549.

² Ernst-Otto Czempiel: Intervention in den Zeiten der Interdependenz, HSFK Report 02/2000.

³ Merkel, Wolfgang, Hans-Jürgen Puhle: Von der Diktatur zur Demokratie: Transformationen, Erfolgsbedingungen, Entwicklungspfade, Opladen 1999, pp. 81 – 82.

⁴ Soros, George, (The New Republic, Apr. 15, 2002), in: www.rferl.org/corruptionwatch/2002/04/15-190402.asp

membership in the Council of Europe and the OSCE, Ukraine is obligated to take on Western values and norms. At the same time Ukraine is also a member in the CIS and the Single Economic Space between Kazakhstan, Belarus, Ukraine and Russia, institutions driven by Eastern, mainly Russian, interests. There is no direct relation between being part of the Single Economic Space and the election, but fulfilment of the provisions envisaged by the Agreement on the Single Economic Space (which entails establishing a free trade zone and then harmonization of legislation, the creation of a customs union and supranational institutions) would move Ukraine closer into Russia's orbit and gradually deprive it of the opportunity to make decisions independently from Russia. Economic cooperation with the West, on the other hand, could offer options to orient economic decisions around international standards and to advance Ukraine's transformation. If Ukraine takes its interest in becoming an EU member country seriously, fulfilling the Copenhagen criteria has to be the guide to transition. Among others, the criteria include the existence of a functioning market economy as well as the ability to cope with competitive pressure and market forces within the EU. Again one has to assume that Western-oriented economic reforms would hardly be strengthened by additional cooperation with Russia, which has only a limited amount of interest in applying Western economic standards. That would not mean cutting economic links with Russia altogether but establishing relations based on interdependence and mutual interests.

2. Interests and resources of external actors

Western interests are guided by common values and geographic proximity, which would be reflected in a stable and democratic Ukraine. Considering the state of transition, the West assessed Ukraine as having "deficiencies in terms of market-based democracy"; at the same time, the transformation is only being managed "with moderate success".⁵ Western criticism of the shortcomings of Ukrainian democracy, rule of law and freedom of the press reflected the country's continued democratic shortcomings. Just recently the Council expressed its concerns about the internal situation in Ukraine based on an information mission to Kyiv, conducted on March 16–19, 2004.⁶ The mission's main recommendations pointed out major concerns about restrictions on a pluralist democracy, the lack of an independent judiciary, widespread corruption, and violations of media freedom.

At an early stage Western actors and institutions perceived the 2004 presidential election as an important test case of its political transformation.⁷ If Ukraine would carry out the election in a timely and reasonable fashion, democracy may be secure. Furthermore, the election process and outcome also have an impact on the countries belonging to the former Soviet Union. Ukraine is one of the few successor states of the former Soviet Union with an election shaped by a close race between the candidate of the ruling elite, who also receives inexplicit support from Russian President Vladimir Putin, and an opponent from the democratic opposition.⁸ Therefore Ukraine's domestic agenda might be perceived as a

⁵ Bertelsmann Transformation Index 2003. Political Management in International Comparison, Gütersloh 2004.

⁶ Compliance with commitments and obligations: the situation in Ukraine, Council of Europe Information Documents, SG/Inf(2004) 12.

⁷ Aslund, Anders: „Left Behind: Ukraine's Uncertain transition“, in: *The National Interest*, Fall 2003,

⁸ „Ukraine votes for new leader under nervous eye of Russia, West“, in: *EU business*, Oct. 25, 2005.

test case for separation of powers based on democratic principles and demonstrating national independence from Russia. Providing a real democratic choice between two candidates was the positive difference between Ukraine and other CIS states, where the population either does not have a real political choice, and power is concentrated in one single person, or the choice is between a democratic candidate and a communist one. To improve its resistance to the power of interest groups, the political system has to become more transparent and align itself more strongly with democratic and formal processes. To implement its interests in Ukraine, the West was first and foremost concerned about democratic standards in the election campaign and beyond. From the perspective of Brussels, Berlin or Washington, it was more important that the election is conducted well by international democratic standards, than which candidate will be the next President of Ukraine, assuming that each candidate will be committed to democracy, a market economy, and a continuation of the Ukrainian transition process. The election was not only perceived as a test case for democratic reform, but also as an important step toward guaranteeing stability and security.

In contrast to Western actors, the Russian elite had little interest in the democratic character of the Ukrainian election. Assuming that bilateral relations are influenced by national symmetries and asymmetries, it became quite natural that the Kremlin, more and more centralised under the personal power of Russian President Vladimir Putin, does not care about issues such as freedom of the press, strong civic institutions, a differentiated party system, and a limit on the influence of key actors and interest groups.⁹ Particularly after losing direct influence over the Baltic States and with its now-limited influence over Georgia, the ruling elite in Russia were sensitive about its geopolitical interests in Ukraine. Strengthening relations with the countries of the Commonwealth of Independent States, including Ukraine remains a Russian foreign policy priority.¹⁰ According to Zbigniew Brzezinski, there is no Russian empire without Ukraine.¹¹ The importance of Russia's western neighbour is linked to the large number of Russian-speaking people in eastern and southern Ukraine, as well as to their economic relations, military cooperation, and the connections among key actors and interest groups.¹²

Considering its interests and resources, Russia's current position can be described as maintaining the status quo. Regardless who is president of Ukraine Russia's main consideration is to have access to decision-making in the country. At first glance, one might assume that Yanukovich, while acting as prime minister and the candidate supported by the state apparatus, was the best option for Russia. Yet Yanukovich owes his political career first and foremost to the "Donetsk" clan and their personal interests,¹³ providing some doubt as to whether he would protect Russian interests rather than his own agenda.¹⁴ On the other hand,

⁹ Actors, Goals and Mechanism of External Influence, in: National Security and Defense, Ed. Razumkov Centre, No. 5, 2004.

¹⁰ Putin, Vladimir: Address to the Federal Assembly of the Russian Federation, May 26, 2004, Moscow, the Kremlin, in: http://president.kremlin.ru/eng/speeches/2004/05/26/1309_type70029_71650.shtml, download. Sept. 23, 2004.

¹¹ The international implications of Ukraine's Orange Revolution, in: Ukrainian Monitor, No 1, 2005.

¹² Markov, Sergei: „Moscow's Perspective on Ukraine's election“, in: *The Moscow Times*, Oct. 27, 2004,

¹³ Kuzio, Taras: „Why Russia gains from a Yushchenko Victory“, *The Moscow Times*, June 30, 2004.

¹⁴ Ivzhenko, Tatyana: Moskva gotovit dlya Kiveva stsenariy „silnoy ruki“, in: *Nezavisimaya gazeta*, 1.7.2004, No. 133, p. 5.

Yushchenko is widely perceived as the pro-Western candidate, even if he emphasizes that Ukraine's foreign policy must be balanced between East and West.¹⁵ Gleb Pavlovsky, a highly-influential Russian image maker, argued that a Yushchenko victory will be only a victory for Western Ukraine, and could even threaten to divide the Ukrainian nation, while Yanukovich would contribute to national stability.¹⁶ Beyond the question of who will win the election and which candidate is closer to the East or West, it should be noted that an outward-looking orientation does not really influence voters' decisions. The election campaign was dominated by domestic issues, such as the fight against poverty, and preserving social benefits.

To sum up, the overall interest of the Russian elite was to keep Ukraine as a reliable neighbour and partner. Not surprisingly, the country lacks democratic standards and has very restricted civic institutions. Consequently, cooperation is not shaped by rising democratic standards, but by dependency and influence. Regardless who is the president of Ukraine Russia is interested in having access and being taken seriously.

3. Activity during the election

3.1 The Western approach to promoting democracy

The West is interested in a stable and democratic Ukraine, and the election might be a way to strengthen Western standards.¹⁷ More than a year before the election, Western researchers emphasized the importance of the 2004 presidential election. Assuming that democracy is one of the most important cornerstones of reform, carrying out the election in a timely and reasonable fashion is perceived as an important milestone, showing further progress on the domestic front and determining the future for international relations with Ukraine. Western actors had a very clear perception of what procedures, if not what outcome, the election should follow. Former U.S. Secretary of State Madeleine Albright, Former American Ambassador to the United Nations Richard Holbrooke, Jan Kalchiki and Mark Brzezinski had stressed the international relevance of the Ukrainian election by highlighting the importance of a free and fair election process. Considering that Ukrainians will decide at the ballot box whether to support those who favour integration into NATO and the European Union, or those who favour realignment with Russia and Belarus, the statements go far beyond the usual comments on free and fair elections.^{18 19}

Reacting to the first election round, US and EU leaders regretted that the presidential election in Ukraine did not meet a number of requirements to be considered democratic, noting that during the pre-election period, there was a lack of fair conditions for all candidates.²⁰

¹⁵ Ivchenko, Tatyana: „Poroshcheniy ne budet“, in: *Nezavisimaya gazeta*, July 30, 2004. No. 159, p. 1+11.

¹⁶ Panfilov, Viktor: Pavlosvskiy: „Ya uzhe desyat let tak“, in: *Nezavisimaya gazeta*, July 2, 2004. No. 133, p. 4.

¹⁷ Aslund, Anders: „Left Behind. Ukraine's Uncertain Transformation“, in: *The National Interest*, Fall 2003.

¹⁸ „How to help Ukraine vote“, Madeleine K. Albright, in: *The New York Times*, March 8, 2004.

¹⁹ Holbrooke, Richard, Jan Kalchiki and Mark Brzezinski: Comment: „Ukraine-U.S. relations hinge on fall elections“, in: *The Detroit Free Press*, Sept. 27, 2004.

²⁰ Declaration by the Presidency of the European Union on the presidential elections of Oct. 31, 2004 in Ukraine, in: www.eu2004.nl/default.asp?CMS_ITEM=987B8A310E8C4173BC1BC45E72D9A412X1X66772X44, download, Nov. 17., 2004.

US Deputy State Department spokesman Adam Ereli said on Nov. 1, 2004, that the second round of the election on Nov. 21 presents “an opportunity for Ukraine to affirm its commitments to democratic principles, and we urge the Ukrainian authorities to allow the people of Ukraine to choose freely and the government to adhere scrupulously to internationally-accepted standards for tabulating and registering results”.²¹ The democratic shortcomings and lack of international standards for a free and fair election increased the West’s attention ahead of the second election round. When evidence suggested that Yanukovich had violated democratic standards to win the closely-contested run-off election, the International Election Observation Mission (IEOM)²² issued a statement heavily criticizing Ukraine for not meeting international standards for a democratic election. According to the preliminary statement, state authorities and the Central Election Commission (CEC) displayed a lack of will to conduct a genuinely democratic election.²³ This statement drew both countless official reactions from Washington, Brussels, Berlin, Warsaw, and other European capitals as well as attracting headlines worldwide. Many parties expressed serious doubt that the official results of the election reflected the will of the Ukrainian people.²⁴ In contrast to President Putin, Western actors doubted if the election took place in free and fair conditions, demanding a recall of the election outcome and rejecting Yanukovich as the legitimate president of Ukraine.²⁵

Afterwards the International Election Observation Mission assessment of the second tour in addition to the results of the exit polls conducted by different Ukrainian institutions became the most important background of the Orange Revolution to not accept the election result and to ask for free and fair voting. During the rerun of the second tour the OSCE increased the number of international observers to guarantee democratic process. According to a statement released by the IEOM, the “process brought Ukraine substantially closer to meeting OSCE election commitments and Council of Europe and other European standards”. Democratic progress was reported regarding the balanced media coverage and equal campaign conditions in general.²⁶

Generally speaking the West did not seek to directly interfere in domestic Ukrainian politics, as it would have violated international law and also have caused a serious confrontation with

²¹ U.S. Agrees with OSCE that Ukraine Vote Was „Step Backward“ Says chance remains for fully democratic second round in Ukraine November 21, in: <http://usinfo.state.gov/eur/Archive/2004/Nov/01-993156.html>, download Nov. 17, 2004.

²² Election Observation Mission (IEOM): Jointly organized by OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly.

²³ International election observation mission: Presidential election (Second Round), Ukraine 21 November 2004, Statement of Preliminary Findings and Conclusions, Kyiv, Nov. 22, 2004.

²⁴ Declaration by the Presidency of the European Union on Ukraine, 22-11-2004, Press releases (CFSP) | General Affairs and External Relations.

²⁵ Among many other statements, e.g.:

U.S. Senate Foreign Relations Committee Chairman Richard Lugar tells the Voice of America that he was “very concerned” about the upcoming presidential elections in Ukraine, in: Press Release - Washington, D.C., Oct. 29, 2004.

Bundesaußenminister Fischer besorgt über gravierende Mängel bei zweiter Runde der Präsidentschaftswahlen in der Ukraine: Pressemitteilungen – Nov. 23, 2004.

„Powell Rejects Ukraine Election, Threatens Action“, in: Reuters, Nov. 24, 2004. www.reuters.com/newsArticle.jhtml?type=worldNews&storyID=6910773, download, Nov. 24, 2004.

²⁶ Presidential Election (Repeat Second Round), Ukraine, International Election Observation Mission, Dec. 26, 2004.

Russia. The most important Western goal was to strengthen democracy, rather than to support particular candidates verbally or financially, which would also have harmed Ukrainian election legislation. During more than a decade of Ukraine's national independence, and its membership in the OSCE and in the Council of Europe, Ukrainian elections have suffered from a lack of democratic standards. Western organisations and national democratic actors have criticized the high level of administrative pressure, as well as the limited freedom of the media.

Since appeals to international democratic standards have not had much impact, in September some American politicians decided to go one step further. On Sept. 15, 2004, U.S. Congressman Dana Rohrabacher submitted a document entitled "Ukraine Democracy and the Election Act of 2004". The bill called on President Kuchma and Prime Minister Yanukovych to "stop overt, flagrant and inadmissible violations of Ukraine's human rights commitments to the OSCE, and guarantee respect for fundamental democratic liberties". If violations of standards listed in the bill continue, it proposes sanctions. These include barring top officials of the Ukrainian government and their family members from entering U.S. territory. Other threatened restrictions against Ukrainian officials include the confiscation of their property in the US, blocking of their bank accounts, seizing of funds in these accounts and banning of loans to Ukrainian officials.²⁷

The German Bundestag also called on its government to urge Ukraine to hold a free and fair presidential election. The Bundestag resolution also mentioned the importance of the election for the future of Ukraine and its relations to Russia and the European Union.²⁸ In contrast to the American proposal, however, the German petition did not include any kind of conditionality or sanctions as an instrument to implement the democratic standards advocated by the parliamentarians. This points up the limited potential impact of forces outside Ukraine to influence the election.

3.1.1 Interference of international organisations by setting democratic guidelines

Despite the increasing gap between Ukrainian reality and Western standards, the West nevertheless perceived the election as another test of the country's strengthening democratic standards. For instance, representatives from the Council of Europe had been identifying the biggest obstacles to democratic-oriented separation of power within the country. The Council's tools for strengthening democratic procedures as part of the transition process consisted largely of two strategies: excluding Ukraine from the Parliamentary Assembly and observing the election.²⁹ Both approaches had an important symbolic impact, but did not per se strengthen sustainable democratic reforms.

Generally speaking, observing an election is one of the most powerful instruments of Western interference. In terms of the number of observers and input, the OSCE mission to Ukraine was one of the biggest missions to date.

²⁷ „America's Final Warning", in: *Zerkalo Nedeli*, No. 37 (5112), 18-24 September 2004.

²⁸ Ukraine zu freien und fairen Wahlen unter internationaler Beobachtung drängen, Auswärtiges/Antrag, Deutscher Bundestag, Oct. 21, 2004, in: www.bundestag.de/bic/hib/2004/2004_252/03.html, download Nov. 16, 2004.

²⁹ Compliance with commitments and obligations: the situation in Ukraine, Council of Europe Information Documents, SG/Inf (2004) 12.

Ukrainian Presidential Election and International Observers

Election	International Election Observation Mission	Official observers from foreign states	Official observers from international organisations
Ukraine: Presidential Election (second round), 31 October 2004	650 ^a	214 ^b	1,591 ^b
Ukraine: Presidential Election (rerun of second round), 26 December 2004	1,367 ^c	3,281 ^d	8,996 ^d

^a OSCE/ODIHR: Needs Assessment Mission Report: Ukraine – Presidential Elections, 31 October 2004; http://www.osce.org/documents/odihr/2004/06/3248_en.pdf Download: 26 October 2004

^b Central Election Commission of Ukraine: Official Observers from Foreign States and International Organisations (as on 25 October 2004); <http://www.cvk.gov.ua/elect/wp0011e> Download: 26 October 2004

^c International Election Observation Mission: Presidential Elections (Repeat Second Round), Ukraine: 26 December 2004. Statement of Preliminary Findings and Conclusions; http://www.osce.org/documents/odihr/2004/12/4007_en.pdf Download: 8. February 2005

^d Central Election Commission of Ukraine: Official Observers from Foreign States and International Organisations (as on 28 December 2004); <http://www.cvk.gov.ua/elect/wp0011e> Download: 8 February 2004

Past OSCE election observation missions have frequently assessed election in the successor states of the former Soviet Union as only partly free and fair. The main criticisms levelled are administrative pressure, limits on press coverage, and a generally undemocratic environment. National and international election observation missions are increasingly effective tools in situations where democracy is under pressure, as in Belarus, or Serbia under former President Slobodan Milosevic. In the case of Ukraine, observation was an important instrument; it may have helped point out the unfair character of the election. The OSCE conducted long-term and short-term monitoring of the Ukrainian election. Measured by the number of participants (428 for the first round, 650 for the second round and 1,367 for the repeat of the second round³⁰), this was one of the biggest election observation missions to date. For instance, 511 OSCE observers were deployed to the 2004 presidential election in Georgia, and 258 experts observed the Serbian presidential election in 2002. In addition to the observers deployed by international organisations, a huge number of observers were also sent to Ukraine by other national governments as well as non-governmental organisations (NGOs).

The Western approach towards the presidential election, and Ukraine in general, was to demand the country adhere to democratic standards. But the practical impact was restricted to monitoring Ukrainian developments or threatening Kyiv with exclusion from Western organisations. Beyond criticizing Ukraine's domestic situation, it should be in the West's interest to integrate Ukraine into Euro-Atlantic structures—not only to offer the country a

³⁰ Official Web site of the Central Election Commission of Ukraine. <http://ic-www.cvk.gov.ua/wp0011>

goal for further transition but also for the self-interest of a stable and secure Europe. Again, however, Western decision-makers were much more focused on the political realities in Ukraine, the country's ongoing internal instability, as well as the potential security risks engendered by a weak, and sometimes almost failing state. This makes Western leaders careful about formulating a clear long-term position for Ukraine.

In the year of the Ukrainian presidential election, the most significant change in the international environment was the enlargement of the EU. The Western part of the Ukrainian elite largely has been favouring the country becoming an EU member. This goal originally perceived is a guideline for Ukraine's foreign policy and less as a milestone in a successful internal transition became an important step toward guaranteeing Ukraine's independence and keeping further opportunities for reform open. For reasons of internal stability and integration, the EU has not linked the latest enlargement with offering accession or membership to Ukraine. Former EU President Romano Prodi has even stressed that Ukraine and Belarus have no place in the Union.³¹ The EU's alternative concept of a "Wider European Neighbourhood"³² was developed to prevent a new dividing line from emerging by offering Ukraine, as well as other eastern and southern neighbouring countries, the EU's four internal freedoms: free movement of goods, persons, services, and capital. The EU proposal would require far-reaching integration, but not require institutional membership. Even if the EU offers substantial concessions, the alternative concept still needs revising. From the perspective of neighbouring Eastern-oriented countries, it does not offer a true alternative to membership, and from the point of view of the EU, it does nothing to avoid a new dividing line between them and EU member countries.

The situation in Ukraine became the main issue at the EU-Russia summit on Nov. 25 in The Hague. Brussels and Moscow both had called for a peaceful approach to solving the Ukrainian political crisis and agreed that objections to the outcome should be examined by the court. But they remained split on whether the vote was free and fair. The EU leaders did not accept the election results while President Putin sent a message of support to Yanukovych. While the EU was underlining Western values, Putin supported Moscow's candidate. The disagreement on Ukraine overshadowed the summit and Moscow and Brussels failed to negotiate a „strategic partnership“ agreement on the "Four common spaces". Not only at the EU-Russia summit, but the West also took a clear position in the triangle between the Western capitals, Moscow, and the situation in Ukraine. Free and fair election became a higher priority than friendly relations with the Kremlin. Or Western leaders even used tier relations with Putin as an instrument for non-violent conflict management, for instance German Chancellor Gerhard Schroeder expressed in a telephone call with Putin his concerns about the situation.

Considering the developments in Ukraine after the second tour of the election, the EU reversed its relations toward its eastern neighbour in a two-pronged approach. On the one side the European decision-makers supported a peaceful solution to the crisis on a legal basis by not accepting the outcome of the second tour because due to its lacking democratic standards, and opting

³¹ RFE/RL Newline Vol. 8, No. 84, Part II, May 5, 2004.

³² Commission of the European Communities: Communication from the Commission to the Council and the European Parliament: Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Brussels, COM (2003) 104 final.

for a repeat run-off. EU High Representative for Foreign and Security policy Javier Solana, Polish President Alexander Kwasniewski and Lithuanian President Valdas Adamkus became important parts of the negotiated transition. While having a clear position on supporting Western values in Ukraine the a on the other hand has been challenged to offer a democratic Ukraine a perspective into Euro-Atlantic structures. So far Brussels decided to adhere to the Action Plan and made full use of it by underlining the priorities in a 10-point plan for supporting Ukraine as a signal of direction. With its plan, the EU plans to recognize Ukraine's status as a market economy and to smooth its entry into the World Trade Organisation. Other parts of the plan include cooperating more closely with Kyiv in foreign and security policy, and easing the conditions for obtaining visas to EU member states. Even this plan does not foresee, however, the accession to the EU for which a democratic Ukraine is aiming.

The missing signals from the Western side and the ongoing criticism that Ukraine falls short of Western standards made it almost impossible for the election campaign to promote Euro-Atlantic integration and further focus on Western values. As long as the West does not offer a clear perspective on how to integrate Ukraine, and since the Orange Revolution has driven from domestic actors orienting on Western values and less from outside paving a way for a democratic Kyiv to Europe.

3.1.2 Supporting civic society

Besides official involvement, Western support of Ukraine's civic institutions may offer a strong opportunity to strengthen democratic values there without interfering in the country's internal affairs. Indeed almost all technical assistance programs of the international donor community include support for civic society organisations. The European Commission's National Indicative Programme 2004 – 2006 set aside some 10 million euros from a total amount of 212 million euros to support civic society, the media, and democracy.³³ Furthermore the European Commission had allocated 1 million euros to support the CEC and Ukraine's civic life in conducting a free and fair election through a variety of technical assistance projects.³⁴ USAID gave \$1.475 million to election-related activities.³⁵ According to the Nations in Transit 2004 annual report, 60 percent of NGOs work actively with Western donors, trying to differentiate between the Kuchma regime and civic society.³⁶ The Soros-funded International Renaissance Foundation has also been very active in the election. Since autumn 2003 the Foundation provided almost \$1.3 million to Ukrainian NGOs to carry out election-related projects.³⁷ Whether civic institutions are weak or strong, international donors focused their activities on the election process and often find NGOs to implement their ideas. Activities included supporting independent public opinion polls, carrying out independent exit polls, producing television spots encouraging people to vote to protect their right to choose, publishing and distributing literature explaining to people their rights, and supporting

³³ National Indicative Programme Ukraine, adopted by the European Commission on Aug. 4, 2003.

³⁴ European Union funded projects in support of the presidential elections in Ukraine: The European Commission's Delegation to Ukraine, Moldova and Belarus, in: www.delukr.cec.eu.int/site/page31321.html, download, Nov. 22, 2004.

³⁵ USAID Mission to Ukraine Data sheet, FY 2004 Program.

³⁶ Nations in Transit 2004. Democratization in East and Central Europe and Eurasia, Country Report Ukraine, ed. Freedom House New York Washington, p 7.

³⁷ Promotion of the Fair and Open Election of 2004. IRF, October 2004.

human rights organisations to monitor violations and to prosecute those who violate them. By doing this Ukrainian civil society protested against the obvious election fraud of the second round and became the decisive factor in the Orange Revolution. The protest of the civic society was supported by representatives of the Western capitals giving statements of solidarity to the democratic protest.

3.1.3 *The particular interest and function of the neighbouring states*

According to the theoretical framework, neighbouring countries are particularly important not only because of geographic dependency, but also due to potential spill-over effects on the neighbouring political, economic, and social system. Both aspects are aggravated because of Russia's hegemonic impact on Ukraine and Ukraine's lag in the transition.

Since Ukraine and its Western neighbours—Poland, Slovakia and Hungary—gained full national independence from former Soviet structures (the CPSU and the Warsaw Pact), both sides have succeeded in developing successful neighbourly relations by overcoming legacies of the past, reducing minority problems, and developing strategies of mutual cooperation.³⁸ By doing so the accession states, first and foremost Poland and later Slovakia, have been putting the Ukrainian issue on the European agenda.³⁹ The overall aim is to combine EU and NATO membership with good neighbour relations. By not excluding future prospects for Ukrainian accession to the EU, Warsaw and Bratislava have taken an important strategic step beyond the EU approach of “sharing everything but institutions”.⁴⁰ Differing from the neighbourhood policy of the EU, Poland, and Slovakia have been emphasizing the importance of an independent and democratic Ukraine, which should have prospects for a future inside the EU.⁴¹ The position of the Western neighbours of Ukraine and new EU member states is last but not least related to the geopolitical balance between Russia and the West. From the point of view of Bratislava, Warsaw, and Budapest everything that favours an independent Ukraine is perceived as acting as a counterbalance to Moscow.

Neighbouring states have made a number of political declarations that make clear their interests in the Ukrainian election. For instance when the Sejm, Poland's parliament, adopted a resolution calling for a free and transparent election in Ukraine, 330 MPs voted in favour, with only 12 against and 22 not voting.⁴² In contrast to declarations of the American Congress, the German Bundestag, the Council of Europe, or the European Commission, the Polish statement was much more positive. Instead of criticizing the lack of media freedom or fair election campaign, Poland's statement opted to support Ukraine's future in the EU and NATO. This declaration is of the same tenor as comments made by President Kwasniewski in an article appearing in the Sept. 2, 2004, *International Herald Tribune*. “The EU has fallen short of offering any incentives to the opposition in Ukraine”, Kwasniewski was quoted as

³⁸ The EU Accession States and Their Eastern Neighbours, Iris Kempe, ed., Gütersloh 1999.

³⁹ Ministry of Foreign Affairs of the Republic of Poland, non-paper, Warsaw 2003.

⁴⁰ Prodi, Romano: “Peace, Security and Stability International Dialogue and the Role of the EU”, Sixth ECSA-World Conference. Jean Monnet Project, Brussels, 5-6 December 2002, SPEECH/02/619.

⁴¹ Ministry of Foreign Affairs of the Republic of Poland, non-paper, Warsaw 2003.

⁴² Seym Polshtche zaklinayv ukrainsky vlady provesti tchesni vibori, in: Pro Europe, Oct. 22, 2004, <http://www.proeuropa.info/news/?id=843&PHPSESSID=4e1dcd730b379cc1d0b1e58cd2e31eeb>, download 25.10.2004.

saying.⁴³ From his point of view, the EU should not stop enlargement with Turkey, which means offering Ukraine an opportunity for accession. During a state visit to Kyiv on Nov. 12, 2004, between the first and the second round of the election, Polish Foreign Minister Włodzimierz Cimoszewicz and new chairman-in-office of the Council of Europe called for a free and fair vote. His clear position underlining a democratic perspective for neighbouring Ukraine also had an influence on a scheduled state visit. Instead of the originally planned meeting with Prime Minister and front-running candidate Yanukovych and President Kuchma, the Polish Minister met only with the speaker of parliament, the head of Ukraine's CEC, and opposition presidential candidate Yushchenko.⁴⁴ Slovak Prime Minister Mikulas Dzurinda emphasized on several occasions that "Slovakia wants to act as Ukraine's voice at the European table."⁴⁵ Not surprisingly, the Slovak Minister of Foreign Affairs declared Ukraine a foreign policy priority for his country. As far as the election is concerned, the Slovakian government has not missed a chance to declare that the election should be conducted in a free and fair manner.⁴⁶ Of course neighbouring states were also part of the international election observation missions. In addition to observers deployed by international organisations, the Slovak government sent 60 observers and Poland sent 24 observers for the first round.⁴⁷ During the post-election crisis, the mediation was driven by Polish President Kwasniewski, joined by Lithuanian President Adamkus, EU High Representative for Foreign and Security policy Solana, Russian Duma Speaker Gryzlov and others. Again the neighbouring countries used their particular knowledge about Ukraine and their networks to the Ukrainian elite to negotiate a peaceful consensus. Not surprisingly, the U.S. administration decided to keep close contacts with President Kwasniewski instead of being involved in the process, which might have led to a bipolar Russo-American escalation of the Ukrainian crisis.

Beyond supporting free and fair election and conflict negotiation, the new EU member states have also been using membership in the EU to push the Ukrainian issue. To a large extent driven by new member states Poland, Slovakia, Hungary, the Czech Republic and the three Baltic states, eleven EU countries have been calling for stronger relations with Ukraine.⁴⁸ To sum up, Ukraine's neighbouring countries had taken the approach of combining EU membership with good neighbourhood relations with Ukraine by not only emphasizing the importance of free and fair election, but also simultaneously opting for a strategy to integrate Ukraine into the West. In addition to such initiatives, the German and Polish governments have underlined in a joint statement the importance of Ukraine's function as a neighbouring country as well as the importance of conducting an election according to free and fair standards.⁴⁹ This declaration is an example of how the new member states might become a driving force to put Ukraine on the European agenda.

⁴³ Dempsey, Judy: „Poland's vision of the EU”, in *International Herald Tribune*, Sept. 2, 2004.

⁴⁴ Poland urges Ukraine to hold fair presidential vote, in: RFE/RL Newline Vol. 8, No. 215, Part II, 15 November 2004.

⁴⁵ Dzurinda said during a joint press conference with his Ukrainian counterpart Viktor Yanukovich, on June 21, 2004, in Kyiv, in: *EU Business*, www.eubusiness.com/afp/040621174553.lg4nkpec, download Oct. 26, 2004.

⁴⁶ Forgacs, Daniel: Slovensko Vyváža demokraciu na Ukrajin, Oct. 20, 2004, in: *Narodna obroda*, p. 2. Prezidentské voľby na Ukrajine bude monitorovať 108 slovenských pozorovateľov Oct. 19, 2004, in: Press Agency of the Slovak Republic, Oct. 19, 2004.

⁴⁷ Official web site of the Central Election Commission of Ukraine. <http://ic-www.cvk.gov.ua/wp0011>

⁴⁸ „11 EU states urge stronger ties with Ukraine“, in: *EU Business*, Oct. 11, 2004.

⁴⁹ www.deutsche-botschaft.Kyiv.ua/de/aussenpolitik/aussenpolinfo16.html, Nov. 21, 2004.

As a part of their strategy to integrate Ukraine into the West, neighbouring countries had also strengthened technology transfer and NGO cooperation with Ukraine. The idea has been to share with Ukraine knowledge and experience on issues of regime change, transition and fulfilling Western standards. Slovakia had appropriated a special fund of SK 10,000,000 (USD\$300,000) in its 2004 budget for democratization projects in Belarus and Ukraine. The Slovaks also shared with Ukraine their experience in overcoming the authoritarian regime driven by Vladimir Meciar.⁵⁰ The same goal has been supported by the Polish Batory Foundation, which is conducting multi-year programmes supporting democracy and fostering civic engagement in Belarus and Ukraine, and at the same time opting for European prospects for Ukraine with particular attention to NGOs.⁵¹ About 30 Polish organisations have thus merged into the Grupa Zagranica (GZ), an officially registered platform of Polish NGOs working abroad. On June 23, 2004, the group addressed a letter to Polish President Aleksander Kwasniewski, the Prime Minister, Minister of Foreign Affairs, Speakers of the Sejm and Senate regarding the presidential election in Ukraine, and the role of Poland in creating a European Neighbourhood Policy. The letter from Grupa Zagranica to the top government officials in Poland urged the Polish government to become politically active at the European level with regard to the role of Ukraine after EU enlargement. The Polish NGOs suggest that Poland, together with countries of the Visegrad Group, should begin drawing up an EU declaration on the situation in Ukraine.

Ukraine's neighbouring countries have been fulfilling the assumption that they are of particular importance to Ukraine. Differing from other Western actors, the neighbouring countries put a higher priority on democratising Ukraine, offering the country prospects for European membership, and reducing Russian influence. As part of the Western actors, the neighbouring countries may go beyond opting for a free and fair election and make particular contributions towards building a strategy for Ukraine's future.

3.1.4 Assessment of the Western position

The Ukrainian election had attracted strong interest and attention from the West. In accordance with the West's reluctance to offer Ukraine the prospect of integration into Euro-Atlantic structures, while demanding a transition towards a market economy and democracy, their focus had been on supporting a free and fair election. From the Western perspective it was more important to assess the election process rather than decide who the future president of Ukraine should be. Consequently Western decision-makers did not support one specific candidate. Beyond their agenda to strengthen democracy in Ukraine, their strategic approach is still weak. With the negative effects of the exclusion of Ukraine from integration into Euro-Atlantic structures, the EU's eastern enlargement, which took place in May 2004, to the borders of Ukraine, was not only perceived as a sign of neglect of Kyiv, but as a withdrawal of support by Western and reform-oriented actors in Ukraine. Going beyond possible „big bang“ approaches coming from Brussels, Washington, and the Western capitals, bottom up initiatives based on NGO cooperation and contributions from the new EU member states have given important signals for Western support of the Ukrainian election. In contrast to

⁵⁰ Slovakia Promotes Democratization in Belarus, Ukraine, in: Slovakia Aid, July 23, 2004. www.slovakaid.mfa.sk/en/index.php/article/articleview/62/1/1/, download Oct. 27, 2004.

⁵¹ Citizens in Action Program funded by the Ford Foundation, www.batory.org.pl/english/byukr/index.htm. Download Oct. 27, 2004.

statements coming from the so-called old EU member states, Warsaw, and Bratislava during the election campaign already spoke out in favour of linking democratic progress in Ukraine with offering the country a position in the Union.

After the first round, the West became increasingly critical of the lack of democratic standards in Ukraine. Following the second election round, the country was overwhelmed with Western criticism of the character of the election and rejected Yanukovich as the elected president of Ukraine. During the post-election crisis, the election results became an issue of international attention. Western capitals and international organisations were driven by the overall goals of finding a peaceful solution and conducting a free and fair election. Based on these, Western actions played a decisive role in coming to a negotiated transition to the crisis.

3.2 Russian approach of supporting national interests

Russia's interest in the Ukrainian election differed considerably from Western expectations. Given Moscow's democratic shortcomings and actor-oriented decision making, supporting democracy in neighbouring Ukraine was not a high priority. Furthermore, Russia has also charged the West with applying double standards in evaluating electoral processes when judging elections in foreign Soviet republics. Russia's criticism of "Western kinds of democratic standards" led the OSCE foreign ministers' conference in Sofia on Dec. 7, 2004, to end without agreement on Russia's OSCE commitments. Considering the disagreement regarding democratic values, it is not surprising to note a large discrepancy between how the OSCE assesses the election compared to the CIS missions. For instance, when Ukraine's parliamentary election took place in March 2002, the OSCE said that "while Ukraine met in full or in part a number of commitments such as universality, transparency, freedom, and accountability, it failed to guarantee a level playing field, an indispensable requirement in ensuring the fairness of the process".⁵² The same election was characterized differently by the CIS: "We, international observers from the Commonwealth of Independent States, consider that the election for the people's deputies of Ukraine on March 31, 2002, were held by the election commission in accordance with the national election legislation, and we recognize those election as free, transparent, and legitimate."

The joint election observation mission of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament, and the NATO Parliamentary Assembly assessed the first election round as follows: "The October 31 presidential election in Ukraine did not meet a considerable number of OSCE, Council of Europe and other European standards for democratic election. During the pre-election period, the governmental, electoral and other authorities did not create conditions that ensured the free expression of the opinion of electors in their choice of representatives. Consequently, this election process constitutes a step backward from the 2002 election. Nevertheless, despite these shortcomings, the very high participation of the electorate and civic society in this

⁵² Office for Democratic Institutions and Human Rights: Final Report on Parliamentary Elections in Ukraine of March 31, 2002. Pub.: May 27, 2002.

election process shows encouraging signs for the evolution of Ukrainian democracy”.⁵³ The election observation conducted by the CIS made the statement that the presidential election conformed to the electoral law of Ukraine. They were evaluated as legitimate, free, and fair.⁵⁴ The disparities in these statements illustrate that the CIS, and Russia as the leading member of the CIS, is relying on a different set of standards for democracy. While Western actors after the second round were questioning the democratic character of the election and the legitimacy of Yanukovych as the elected president of all Ukrainian voters, Russian President Putin congratulated Yanukovych for his victory and criticized the OSCE statement as reflecting a double standard. During the Ukrainian election campaign Russian officials made no statements as to the democratic character of the election or possible violations of democratic standards. Russia’s approach is to maintain its national interests by supporting a specific candidate. In early summer 2004 it was not quite clear which candidate would be Moscow’s choice. Besides moderate relations with Yushchenko, the Kremlin also had to consider a number of cultural, political, and economic factors that made Yushchenko a Western candidate. At the same time, the Russian-speaking Yanukovych was first and foremost perceived as a representative of the Donetsk clan, opting for his own interests. To solve the situation, Moscow initially tried to support attempts to change the Ukrainian constitution to allow Kuchma to maintain his influence.⁵⁵ When the amendment failed, Moscow nevertheless had to decide between the two candidates. Under these circumstances, it was decided that Russian interests were best served by the candidate of the ruling elite and Yanukovych was assessed as favouring the Russian-speaking population, as well as Russian social, economic, and national interests.⁵⁶ Besides sharing common interests, Moscow’s ruling elite perceived Yushchenko as similar to Georgian President Mikhail Saakashvili, who opted for regime change supported by the West.⁵⁷ Ultimately, the Kremlin elite decided that supporting Yanukovych was Russia’s top priority, in spite of the initial scepticism of whether he would favour his personal interests and those of the Donetsk clan, or would prove a reliable anchor to protect Russian national interests. In the end, Putin had more trust in the ruling elite, and after meeting both Kuchma and Yanukovych in Sochi in August 2004, Putin no longer hesitated to support Yanukovych with all the administrative and personal resources available.

Starting with the decision to support Yanukovych as the future president of Ukraine, Russian officials had to find approaches to implement their interests. To do so, Moscow exerted influence through personal networks and economic dependency. Furthermore, Russia used cultural ties, such as belonging to the same media space to influence the Ukrainian election. The social and culture linkage and dependency between Russia and Ukraine became one of the factors allowing Russia to extend its influence into the domestic Ukrainian agenda. This

⁵³ Preliminary Conclusions: The International Election Observation Mission (IEOM) for the 31 October Ukrainian presidential election is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly, Kyiv, Nov. 1, 2004.

⁵⁴ Sayavlenye Mezhdunarodnykh Nablyudateley ot Sodruzhestva Nezavisimyykh Gosudarstv po rezultatam nablyudateley za podgobkoi provedeniem vyborov Prezidenta Ukrainy, sostoyavshikhsya Oct. 31, 2004.

⁵⁵ Ivzhenko, Tatyana: Moskva gotovit dlya Kiyeva stsenariy “silnoi ruki”, in: *Nezavisimaya gazeta*, No. 133, July 1, 2004, p. 5.

⁵⁶ Panfilova, Viktor: Pavlovskij: „Ja usche desyat let tak. ...” in: *Nezavisimaya gazeta*, No. 134, July 2, 2004, p. 5.

⁵⁷ Eduard Lozanskiy: Amerikanskiye illyozii Saakashvili, in: *Izvestiya*: Aug. 20, 2004.

included issues such as easing travel restrictions, introducing dual citizenship and Russian as a second state language. Under Putin's influence, on Nov. 10, 2004, the Russian state Duma adopted a protocol for an agreement between Ukraine and Russia on visa-free travel between the two countries. Under the protocol, citizens of the two countries will not have to register with the authorities if they plan to stay less than 90 days in the other country (originally Ukrainian citizens required registration to stay for more than 3 days). This action can be perceived as a Russian move to support Yanukovich by addressing issues that affect the everyday lives of the Ukrainian population. Moscow also tried to mobilize every human resource possible. Ukrainian election campaign efforts also took place in Moscow, with both statements by the political elite and posters addressing Ukrainians living in Russia.

This sort of influence is not transparent and is strongly dominated by personal factors and the cultural ties between the two states.

3.2.1 *Personal networks*

As post-Soviet politics in general, Russo-Ukrainian relations are in particular driven by personal networks and interest groups. Therefore the question of who, with whom, when and on which occasion are of much bigger importance than in Western societies that are shaped by institutions. During the election campaign, several different occasions played an important role in advancing Russian interests within Ukraine's domestic agenda. The meeting between Russian President Putin, Russian Premier Mikhail Fradkov, Ukrainian President Kuchma and Ukrainian Prime Minister Yanukovich on Aug. 18, 2004, in Sochi was not only used to demonstrate Russo-Ukrainian brotherhood, but also to offer significant economic support by announcing that soon after the presidential election, Moscow would cancel the value-added tax on oil and gas exports to Ukraine and introduce simplified regulations for crossing the Ukrainian-Russian border. Regarding the latter, it is not clear what Fradkov and Yanukovich had in mind, because border management at the Ukrainian-Russian frontier is already quite *laissez faire*. In any case Russian support for the ruling elite in Kyiv has been quite obvious, and the meeting was an attempt to directly and indirectly intervene in the Ukrainian domestic agenda.

The next top-level event on the Russo-Ukrainian agenda was Yanukovich's trip to Moscow on Oct. 8, 2004, where he attended a forum of Russia's Ukrainian Diaspora in Moscow. The following day he and Kuchma met with President Putin for a well-publicized celebration of Putin's birthday. Both meetings were intended to demonstrate to both Russian and Ukrainian television viewers that the Kremlin's sympathy in the presidential election is with Yanukovich. Again demonstrating their personal ties, Putin also visited Kyiv three days before the first round, under the pretence of celebrating the 60th anniversary of Kyiv's liberation from the Nazis in World War II.⁵⁸ The Russian President again used his personal influence as well as a massive media presence to indirectly influence the Ukraine election. To be on the safe side Putin left no stone unturned in his efforts to support Yanukovich. On Nov. 12, 2004, 10 days ahead of the second round run-off, the Russian President visited Ukraine again and was shown on Ukrainian television embracing Yanukovich and wishing him luck in the vote. Putin and his Ukrainian counterpart Kuchma attended the signing in Kerch, Crimea, of a bilateral accord to establish a ferry line between Russia and Ukrainian Crimea.

⁵⁸ „Putin to visit Ukraine 3 days before vote“, in: *The Moscow Times*, Oct. 22, 2004, p. 3.

Not surprisingly, Putin was among the view foreign actors who on Nov. 22, 2004, congratulated Yanukovych on his victory as the newly elected president of Ukraine. In accordance with Putin, Alexander Lukashenko, the authoritarian president of Belarus, and the Central Asian states of Kazakhstan, Uzbekistan, and Kyrgyzstan also recognized the outcome of the Nov. 21 election and congratulated Yanukovych on his victory. This was happening at the same time that 100,000 people were demonstrating in the streets against the officially-declared election result and the heads of most democratic states were sharply criticizing Ukraine's violation of democratic principles. It took President Putin nearly a month to congratulate Yushchenko on his victory in the repeat run-off election in Ukraine.

In addition to meetings on the highest level and signals that primarily focus on potential economic support, other means were used to demonstrate Russia's interest in Ukraine and Moscow's preference for Yanukovych as Ukraine's future president. One example was the opening of a Russian Press Club within the Premier Palace Hotel, Kyiv's most exclusive luxury hotel. The idea was to support mutual dialogue on the political, economic, and social levels. Yanukovych not only supports the institution, but also used the opening to demonstrate his closeness to Russian issues.⁵⁹ Furthermore the Kremlin also used Russian consultants, among them "spin-doctors" including Gleb Pavlovsky and Sergei Markov, as instruments to push Russia's national interests. In fact, Yanukovych's campaign was partly built up by Russian PR strategies. A letter signed by Valentyna Khrystenko, Deputy Chairman of the Board of the Council of Ukrainian Associations in Russia, was widely distributed in Ukraine. The letter made explicit anti-Yushchenko statements, claiming Yushchenko would operate under US influence and create tensions in Russo-Ukrainian relations. The letter called for voters to support Yanukovych as the guarantor of economic growth and improved relations with Russia. Another way of manipulating Russian influence was the involvement of Ukrainian civic organisations in Russia as well as via the Russian Orthodox Church in Russia and Ukraine to campaign in favour of Yanukovych. On Oct, 8, 2004, a large congress of Ukrainian NGOs in Russia was held, using the slogan "Ukrainians of Russia support Yanukovych".⁶⁰

Certainly the Russian opposition, mostly represented by members of the Union of Right Forces (SPS) or Yabloko, is interested in a democratic and independent Ukraine and using personal networks to promote the democratic opposition.⁶¹ But as long as the democratic opposition in Russia remains weak, contacts and cooperation with Russian representatives beyond the ruling elite are not focused on by the media and have little influence on a majority of the Ukrainian electorate. Russia has also tried to intimidate the opposition. In October 2004 Yulia Tymoshenko, a chief ally of Yushchenko, was charged by Russian military prosecutors with giving bribes to defence officials to raise prices. Tymoshenko refused to come to Russia for the inquiry, threatening to put up armed resistance. The military prosecutor's office put Tymoshenko on the international wanted list, which could discredit her as a corrupt official interested chiefly in her own enrichment.⁶²

⁵⁹ V Kiyvev otкрыli Rossiyskiy Klub, in: *Izvestiya*, March 2, 2004.

⁶⁰ Dmitricheva, Olga "President of Ukraine in Russia – Viktor Yanukovych?", *Zerkalo Nedeli*, #42 (517), 16-22 October 2004.

⁶¹ Ivzhenko, Tatyana: Khakamada: Yushthchenko proveli den vdvoyem, in: *Nezavisimaya gazeta*, No. 152, July 23, 2004, p. 5.

⁶² Senior Russian Defence Officials Suspected in Ukraine's Tymoshenko Bribery Case in: Created: MosNews, Oct. 8, 2004.

In contrast to Ukraine's relations with Western organisations such as NATO and the EU, Russo-Ukrainian relations were an important theme for both the Russian and the Ukrainian media. High-level meetings between the Russian and the Ukrainian elite were automatically covered by print media and television. In spite of a ROMIR Monitoring survey of 1500 Russian citizens that found that only 12 percent could identify at least one candidate running in Ukraine's presidential election, Russian interests are much more dominant than Western ones.⁶³ Media coverage has to be perceived as a catalyst for implementing foreign, in this case Russian, interests.

3.2.2 *Economic influence*

In the fall of 2003, Russian President Putin initiated the Single Economic Space, bringing Kazakhstan, Belarus, Ukraine and Russia economically closer together. Ukraine's Verkhovna Rada (parliament) ratified the agreement in April 2004. So far, the character of the new form of integration can not be described clearly, but it appears that the cooperation has more of a top-down character guided by Moscow than a bottom-up character driven by Ukraine, Kazakhstan, and Belarus. According to an analysis conducted by the Razumkov Centre, the Single Economic Space could bring the following disadvantages for Ukraine: cancellation of export duties on strategically important goods of Russian exports to Ukraine; cancellation of the value-added tax on Russian oil and gas exports to Ukraine, and cancellation of special protectionist measures against Ukrainian exports to the Russian market. These measures could cause an overall loss of about \$1 billion per year for Ukraine.⁶⁴ In addition they could bring potential economic losses and increasing dependency on Russia. One also has to consider the overall time frame. It may not be an accident that Moscow started this initiative on the eve of the EU's eastern enlargement, when Kyiv had to push its own European vocation. Furthermore, Russia also provoked a border dispute with Ukraine in the Sea of Azov and the Kerch Strait. After some serious escalation, the conflict was formally solved on April 20, 2004, by a new Russo-Ukrainian border treaty. Nevertheless, the conflict must also be perceived as a signal of Russian dominance. All in all, Russia sent some important signals concerning Ukraine's independence just before the election campaign started. Thus, Russian influence remained a serious matter of interest and concern in the Ukrainian election, and it should be considered from the point of view of international influence.

In addition to flexing its muscles, Moscow had also used economic ties to exert direct influence on the election. At the beginning of the election campaign on July 18, 2004, during the high-level meeting between Putin and Prime Minister Fradkov from the Russian side, and Kuchma and Yanukovych representing Ukraine, acting Prime Minister and front-running candidate Yanukovych signed an agreement with Russia on oil and gas supply through the Odessa-Brody pipeline to Europe.⁶⁵ The two sides agreed on transit fees related to 23 billion cubic meters of gas (ratified at USD\$50 per 1,000 cubic meters).⁶⁶ Not surprisingly the daily Russia paper *Izvestiya* called the agreement "the biggest pre-election present ever",

⁶³ Russian indifferent to Ukrainian presidential elections, in: RFE/RL NEWSLINE Vol. 8, No. 182, Part I, Sept. 23, 2004.

⁶⁴ Actors, goals and mechanism of external influence, in: National Security & Defense, No. 5, 2004.

⁶⁵ Koptev, Dmitry: Russian Crude for the Ukraine Economy, in: Moscow News, No. 38, 2004.

⁶⁶ Ivzhenko, Tatyana: Moskva i Kiyev dogovarilis o skorom ekonomicheskom proryve, in: *Nezavisimaya gazeta*, No. 136, July 5, 2004, p. 5.

donated from Moscow to Yanukovych.⁶⁷ Yanukovych could have used this deal not only to help boost the Ukrainian economy, but also to promote his position in the election as a leader whom Moscow trusts and who is able to win advantages for Ukraine. Based on cases of direct and indirect Russian interference that are evident to the public, one can see that Russo-Ukrainian economic ties are of considerable importance in the Ukrainian election. One cannot exclude the possibility that the Kremlin is using other financial sources to sway the election in Russia's interest; in this case, to support Yanukovych as the candidate of the Kremlin. As far as the transition is concerned, a Russian presence in Ukraine's economy is also a signal that Ukraine may develop less towards a market economy and more based on the interests of its Big Brother in the East. Beginning with the Orange Revolution, economic factors became of minor importance and were taken over by the pressure of the Ukrainian democratic opposition and supported by the mass protests by civil society.

3.2.3 Assessment of the Russian position

In the wake of its weakening influence over the Baltic States and Georgia, Russia's ruling elite tried to use the Ukrainian election as an important means of maintaining its influence in the former Soviet space. Swaying Ukraine's presidential election in favour of Russia's national and economic interests was a top priority of the Kremlin. Caused by the lack of democratic standards and an attractive approach for post-Soviet integration, Moscow pushed its interests through the ruling Ukrainian elite, the acting Prime Minister and front-running candidate Viktor Yanukovych.

Due to their economic, social, and political interdependence, as well as the close ties between the two countries, Russia had been able to use its access to influence Ukraine's domestic agenda. That included a range of administrative measures including influencing the media, for example using president Putin's birthday as a sign of solidarity, in an attempt to directly and indirectly influence the election result in favour of Yanukovych. At the very end true democracy based on widespread public support, a fair election, and a vibrant media in Ukraine triumphed over the Kremlin's approach to decide by personal networks, economic dependency, and a kind of aggressive post-Soviet behaviour. Symptomatically, Russia's stance in the Ukrainian election crisis has left it strategically isolated. The Kremlin has not developed and at present cannot suggest a clear set of attractive goals for shaping the post-soviet framework. One of the key challenges for Russian foreign policy in the future will be to develop a comprehensive strategy both for internal and external use, taking into consideration democratic values as well as a bottom up kind of cooperation and interests.

II. Domestic Perspective

The 2004 presidential election in Ukraine was marked by a high degree of international interference. The campaigns of both presidential candidates became platforms for discussing Ukraine's external orientation and the role of international issues within the domestic context. Different actors in the election process involved external actors and processes to influence the elections at home. This vigorous use of foreign factors even threatened the unity of the country at one point. Support of international actors played an important role in the Ukrainian

⁶⁷ Petr Netreba: *Tarif Presidenskiy*, in: *Izvestiya*, Aug. 20, 2004, p. 2.

peoples' protests against the falsified results of the second round of elections. The importance of the international dimension in the election process is surprising given that Ukrainian voters traditionally have not been aware of international factors and have tended to care more about domestic issues.

The first key question is what impact did international agendas/issues have on the election process?

The second key question is how this impact matters for Ukraine's transition? This second question needs to be elaborated. First, what types of external agendas influenced Ukrainian society and which of the candidates represented those? Analysis of the nature and content of these agendas helps to understand the development of Ukraine's foreign policy following the election. Second, what conclusions can we make about the state of Ukrainian transition by looking at how international issues were used by domestic actors in the election process? This explains the level of maturity of Ukraine's foreign policy and national identity, which are important indicators of the state of transition.

1. Key actors and their interests

We assume that Ukrainian society is very heterogeneous and consists of various actors who have different attitudes and interests with respect to international factors. Different domestic actors also interact differently with the outside world depending on the interests and the resources they have to do so.

The following Ukrainian domestic actors can be defined based on a theoretic framework and with respect to their roles in the elections, as well as from the perspective of their interaction with external factors. These include: voters (the public at large); candidates and supporting groups (political parties and interest groups); public authorities; media, and NGOs (the latter two being opinion makers).

1.1 Voters

The interests of Ukrainian voters vis-à-vis Ukraine's international standing and attitudes towards international factors varies depending on different factors (level of education, age, regions of residence, etc.) There are three important features about Ukrainian voters that are important to consider in this paper. First, foreign policy issues do not rank high among priorities for Ukrainian voters. Social issues, which belong to the domain of domestic politics, are of higher importance to a majority of voters. Second, a large number of voters simultaneously support different foreign policy objectives even if those are not consistent with each other from an expert perspective. Third, while Ukraine has become more homogeneous over recent years, the difference in attitudes towards international factors still depends on the region of residence.

Results of public opinion polls provide for valuable information in support of the claims made above. The **primacy of domestic politics over foreign policy** in the opinion of voters is evident from the results of a poll conducted by the Razumkov Centre in July 2004. According to the poll, social issues such as the increase of salaries and pensions, and the return of savings rank highest – more than 95 percent. Strengthening the independence of

Ukraine and the development of democracy ranked high – 77.0 percent and 75.4 percent, respectively. Issues related to foreign policy all rank below 70 percent. Table 1 shows the scale of attitudes of Ukrainian voters towards different policy components.

Table 1. Would you like the activities of the next president to be directed towards...? (percent of those polled)⁶⁸

	Yes, I would	No, I wouldn't	Difficult to answer
Increase of pensions and salaries	96.9	0.9	2.2
Return of savings	96.2	1.0	2.8
Fighting crime and corruption	95.7	1.4	2.9
Lower municipal service tariffs	95.3	1.2	3.5
Lower prices for goods of mass consumption	95.1	1.5	3.4
Fighting oligarchs	80.3	5.2	14.5
Strengthening independence of Ukraine	77.0	8.6	14.4
Development of democracy in Ukraine	75.4	6.9	17.7
Creation of the Single Economic Space with Russia, Belarus, and Kazakhstan	66.7	12.1	21.2
Carrying out market reforms	65.1	10.4	24.5
Closer relationship with the European Union	60.4	12.6	27.0
Accession to the European Union	48.9	19.3	31.8
Accession to NATO	22.3	45.9	31.8

As the result of such a hierarchy of interests among Ukrainian voters, those foreign policy priorities most likely to be favoured by them are those considered to bring about economic prosperity and high social protection. Given that the linkage between these is not evident, Ukrainian voters' opinion as to foreign policy and international factors is subject to influence by opinion makers.

Results of the same opinion poll (Table 1) demonstrate that **a majority of voters support different directions of foreign policy simultaneously**. While 66 percent favour creation of the Single Economic Space with Russia, Belarus, and Kazakhstan, 60 percent favour a closer relationship with the EU and 48 percent support accession to the EU. According to another poll carried out by the Batory Foundation, 55 percent of Ukrainians support accession to the EU and 68 percent support accession to the would-be union of Russia and Belarus. According to a closer analysis within the project, around 36 percent of those polled think membership in both unions is possible and entails no contradiction.⁶⁹ On the one hand this thinking is caused by objective factors, which is the position of Ukraine between the two integration spaces – the EU and post-Soviet integration projects both having strong influence on the country. Another objective factor is the different historical memory of people residing in western regions compared to those from eastern and southern Ukraine. However, the major domestic reason for such a state is the scant attention Ukrainian authorities paid to building Ukrainian national identity and developing consistent and open foreign policies. The election campaign showed authorities can be even cynical in their manipulation of foreign policy and people's consciousness.⁷⁰

⁶⁸ Poll conducted by the Razumkov Centre among 2,005 respondents over 18 years old all over Ukraine during April 22-30, 2004// Web-resource "Ukrainian Choice. Presidential elections 2004", July 2, 2004. <http://uv.ukranews.com/p4/rating/article.html?id=2642>

⁶⁹ Joanna Konieczna, *Between the East and the West*, Stefan Batory Foundation, 2003, p.5.

⁷⁰ Examples will be provided in the next part.

The difference in external orientation of voters according to geographical characteristics is still the case in Ukraine. Polls show that people from western Ukraine support EU orientation and have a stronger national ideology (support for the Ukrainian language as the single official language). People from eastern Ukraine are rather pro-Russia and CIS-oriented or support a multi-vector foreign policy. They also tend to support a bi-lingual Ukraine. According to the above-mentioned poll carried out by the Batory Foundation, 39 percent of voters from western Ukraine support a pro-Western foreign policy, while almost 40 percent of voters from central and eastern Ukraine support a pro-Eastern foreign policy.⁷¹ In addition to these different external orientations, people from eastern/central and western Ukraine have always voted differently. While eastern and central Ukraine traditionally supported communist and Russian-oriented candidates, western Ukraine tended to support candidates with a right- or West-leaning orientation.

Yet, it is important to make clear that during the 2004 election these differences have on the one hand become less significant and on the other hand the line dividing attitudes have moved further east. Signs of consolidation among Ukrainians, despite regional differences, appeared as mass demonstrations protesting against the falsifications in the second round took place all over Ukraine. Tens of thousands of people demonstrated in Donetsk, Kharkiv, and Odessa, not to mention the regions where Yushchenko won. During the course of the elections, a number of groups of voters with “would-be Eastern orientation” expressed their support for Yushchenko. A group of miners from the Donetsk region did so,⁷² as well as a group of Russian-speaking cultural elite.⁷³ This shows that Ukrainian national identity is getting stronger and more united around common values.

The fact that central and northern Ukraine opted for the same candidate as western Ukraine show how the line between the different attitudes moved further east. While Yushchenko won in 16 regions of western, central and northern Ukraine and in Kyiv, Yanukovych won in only 10 regions of eastern and southern Ukraine (including the city of Sevastopol).

These features of Ukrainian voters may account for the fact of limited direct access of Ukrainian voters to international actors and processes. For instance, only about eight per cent of Ukrainians use the Internet,⁷⁴ which unlike other mass media (TV, radio, and press) in Ukraine provided access to more or less balanced information (this was especially important during the election campaign before the 1st and 2nd rounds) and offered direct access to international communication. Also, only a limited number of Ukrainian citizens have ever travelled abroad (besides CIS countries where Ukrainian citizens do not need passports), which is evident from the fact that only a small number of Ukrainians are holders of travel passports.⁷⁵ Mostly, those are young people, top-level professionals, people working with NGOs, journalists, etc.

As a result, the majority of voters do not have a strong international orientation and opinion on foreign policy. This makes them vulnerable to misinformation and various forms of manipulation. As we will see later, this vulnerability was skilfully exploited during the elections.

⁷¹ Joanna Konieczna, *Between the East and the West*, Stefan Batory Foundation, 2003, p.8.

⁷² UNIAN informational agency. www.unian.net.

⁷³ Official Web site of Yushchenko's Campaign Headquarters. www.razom.org.ua.

⁷⁴ Information of the State Committee of Communication and Information for 2003. www.reklamaster.com/news/showfull.php?id=3766.

⁷⁵ According to unofficial data approximately 20 percent of Ukrainian citizens are holders of travel passports.

1.2 Candidates and supporting groups

The election witnessed a high level of concentration of interests of the political elite and interest groups around the two key candidates. Yushchenko and Yanukovych were considered to be the front-runners long before the election and both eventually made it through the first round. This allows us to consider Viktor Yushchenko together with political and economic forces that supported him during the election as one type of interests with respect to Ukraine's transition and international standing, and Yanukovych together with groups supporting him presenting a different type of interests.

A close look at the **election programs** of the two key candidates leads to two observations. Firstly, foreign policy was far from being a central issue as the candidates presented their agendas. Foreign policy issues were often limited to one sentence and were not elaborated. Secondly, the programmes of the two candidates were very similar in terms of international orientation. Both candidates mentioned the EU (or the notion of Ukraine being an EU country) and Russia as important partners, while their programmes included no mention of NATO, the CIS or the SES. Also, both candidates placed emphasis on the free development and use of the Russian language – a sensitive issue for many Ukrainians who speak Russian as their first language.⁷⁶

Yet somewhat different results were obtained from analyzing the pre-election rhetoric of candidates on different occasions, as well as the voting behaviour of political forces supporting the candidates. While Yushchenko and his supporters proved to be more consistent in terms of promoting Ukraine's European integration, Yanukovych and his supporters favoured a number of steps that arguably ran contrary to Ukraine's declared strategic "European choice" and were not in compliance with Ukraine's national interests. In addition, Yushchenko and his supporters were consistent in their rhetoric and did mention issues that went beyond or contrary to the program (the only exception was the issue of Ukrainian troops in Iraq). By contrast, Yanukovych made a number of statements that were not part of his electoral program and often contradicted each other.

The table below summarises three types of information:

- the positions of the two top candidates towards events important to Ukraine's foreign policy that occurred in 2003-2004, as well as their role in those events;
- voting behaviour of political forces that supported the two candidates, and
- candidate statements made during the election campaign or included on campaign posters.

⁷⁶ For the detailed information please see Iris Kempe/ Iryna Solonenko: International Orientation and Foreign Support of Presidential Election, in Iris Kempe/Helmut Kurth (ed.): Presidential Election in Ukraine. Implications for the Ukrainian Transition, Kyiv, December 2004, p. 119. www.cap-lmu.de/publikationen/2004/ukraine-election.php

Table 2. Reaction/role of candidates and related interest groups in events/decisions related to foreign policy or international standing of Ukraine and attitudes expressed towards international factors⁷⁷

	Yushchenko and supporting parliamentary factions	Yanukovych and supporting parliamentary factions
Agreement on Single Economic Space	The “Our Ukraine” faction together with Yulia Tymoshenko block voted against.	Supporting factions voted in favour. Yanukovych in his capacity as prime minister promoted development and implementation of SES.
Energy policy: Odessa-Brody pipeline decision and gas supply to Ukraine	Gas balance should consist of not only Russian sources but also of domestic and third party. Monopoly in supply by one party is a threat to stability of national interests of Ukraine.	The government of Yanukovych allowed for the “reverse” use of the pipeline. Backed agreement according to which Russia would supply Turkmen gas to Ukraine during 2005 – 2028 (currently Turkmenistan supplies 45 percent of Ukraine’s gas imports). The agreement puts Ukraine into total dependence on gas coming from Russia.
Ukraine’s military doctrine. Prospects of NATO membership	Deepening of its integration with NATO. ⁷⁸	Ukraine is not ready to join NATO. ⁷⁹ Ukraine will join NATO in “natural way”. Cooperation with NATO will be strengthened in the nearest future. ⁸⁰ Prime Minister Yanukovych was aware of and behind this decision. In addition he stated accession to NATO would hamper military industry in Ukraine. Ukraine can participate in a European security system together only with Russia. ⁸¹
Ukrainian troops in Iraq	Ukrainian troops should return to Ukraine. On Sept. 2, 2004, Yushchenko proposed that parliament launch public hearings on Ukrainian soldiers in Iraq.	Ukrainian troops should return home as soon as the democratic elections take place in Iraq in the beginning of 2005.
European Union/ European integration	Ukraine’s relations with the EU should be based on well-thought-out and step-by-step integration with consideration of the readiness on both sides. The New Neighbourhood Policy is a temporary instrument leading from partnership to association with membership prospective. EU-Ukraine relations are a two-way street, although more steps must be made by Ukraine. ⁸² European integration is the means for domestic transformation. Ukraine should work towards being admitted to the World Trade Organisation. ⁸³	Ukraine would best benefit from relations with EU based on short-term agreements. Equal partnership relations. WTO accession might undermine Ukraine’s economy. ⁸⁴

⁷⁷ Information has been taken from news stories posted by different informational agencies, mostly UNIAN.

⁷⁸ Yushchenko said this while meeting former U.S. Secretary of State Henry Kissinger on Oct. 22, 2004, in Kyiv. Ukrainian News Agency, Kyiv, Ukraine, Oct. 22, 2004.

⁷⁹ Talking to military officers on July, 27, 2004. www.korrespondent.net/main/98893.

⁸⁰ Talking to journalists on Aug. 1, 2004. www.korrespondent.net/main/99212

⁸¹ Statement of Viktor Yanukovych at a meeting with the Russian mass media on Sept. 27, 2004.

⁸² Interview in *Süddeutsche Zeitung*, Oct. 1, 2004.

⁸³ Yushchenko says this while meeting Henry Kissinger on Oct. 22, 2004, in Kyiv. Ukrainian News Agency, Kyiv, Ukraine, Oct. 22, 2004.

	Yushchenko and supporting parliamentary factions	Yanukovych and supporting parliamentary factions
Status of Russian language and relations with Russia	There should be a state programme aimed at the development of Russian and other languages in Ukraine. ⁸⁵ Agreement on mutual travel regime between Ukraine and Russia according to external travel passport to be abolished. Citizens to travel with domestic passports. ⁸⁶ Russo-Ukrainian relations should be based on national, not family interests (private channels). ⁸⁷ Yushchenko will not revise Ukrainian-Russian agreement allowing the Russian navy to stay in Ukraine until 2017. ⁸⁸	Russian language should become second state language in Ukraine. According to Yanukovych, dual Russian-Ukrainian citizenship will be introduced if he becomes president. ⁸⁹ At the same time the Government of Yanukovych signed an agreement with Russia according to which Ukrainians can travel to Russia with external travel passports only.

This information shows Yushchenko's behaviour and that of his supporters was consistent with his electoral program and consistent in general, while Yanukovych spoke differently depending on the occasion and audience. Another difference was the importance of mentioning democratic principles, European norms and values, freedom of speech, and fair and transparent elections. Yushchenko often spoke about political values, while Yanukovych positioned himself as a pragmatic politician driven by exclusively economic interests.

This leads to the conclusion that the difference between the two candidates was not so much different foreign policy interests, but rather the principles of foreign policy: a consistent and open foreign policy aimed at promoting national interests (Yushchenko) versus a manipulative foreign policy (Yanukovych).

The behaviour of parliamentary factions close to the two candidates demonstrated considerable difference between the two camps. Pro-presidential factions (those who voted in favour of Yanukovych's candidacy for president) all supported ratification of the Agreement on the Single Economic Space and the reverse use of the Odessa-Brody pipeline. Factions close to Yushchenko voted against these. The decisions the pro-presidential factions took arguably led to increasing Ukraine's dependency on Russia. Results of public opinion polls also indicate that voters perceive Yushchenko to be more European-oriented than Yanukovych. According to a poll by the Razumkov Centre, 29.6 percent believed Yushchenko could bring Ukraine closer to the EU, while 18.4 percent believed that Yanukovych could. It also showed 14.6 percent believed that neither of the candidates can bring Ukraine closer to EU accession, while 30.3 percent could not answer the question.⁹⁰

⁸⁴ Statement made during the national TV debate on Nov. 15, 2004.

⁸⁵ Interview with journalists on Nov. 12, 2004. Source – press centre of Viktor Yushchenko, www.yuschenko.com.ua

⁸⁶ The agreement was signed.

⁸⁷ Interview with Russian newspaper *Novaya Gazeta*, Oct. 29, 2004, and interview with Moscow News, Oct. 29, 2004.

⁸⁸ Yushchenko said this while meeting journalists. Press Service of Viktor Yushchenko, Aug. 18, 2004.

⁸⁹ Statement of Viktor Yanukovych at a meeting with Russian mass media on Sept. 27, 2004. It is important to note that introduction of dual citizenship and Russian as a second language demand introducing changes to Ukrainian Constitution – a decision the Parliament, not the President can take.

⁹⁰ The poll was carried out by the Razumkov Centre between July 22-28, 2004, in all regions of Ukraine. 2,014 people over 18 years of age were polled. UNIAN News Agency, Aug. 6, 2004.

An important observation of the election campaign was that issues having to do with Russian relations and interests of the Russian-speaking population were frequently mentioned by both candidates. We argue, however, that to a large extent this was a public relations strategy rather than addressing issues important for voters. In the case of Yanukovych, these issues were used to gain votes among Communist Party supporters and he succeeded to do so (in 1999 presidential election Communist leader Symonenko gained 37.8 percent of votes in the second round and won in five southern and eastern regions⁹¹ which Yanukovych won in 2004; in 2004 Symonenko received only 4.7 percent of the vote). For Yushchenko, these issues were the means by which to counterbalance propaganda that was shaping an image of him as an anti-Russian and pro-western candidate.

While the issues of the Russian-speaking population and relations with Russia are important for Ukrainian voters from eastern/southern Ukraine, these have never led to any social tensions. These issues traditionally did not receive much attention in Ukrainian policy and the government of Yanukovych during the two years in the office did not take a single decision to address the status and rights of Russian-speaking citizens of Ukraine. The fact that these issues came into the centre of attention before the election proves their manipulative character.

In order to define the foreign interests of candidates, we also must consider the **business interests** that back them. This information is not easily accessible, as the real owners of many businesses are hidden. Still, the information, which is available from open sources, allows us to conclude that business interests of groups that back Yanukovych or Yushchenko have strong interests in both Russian and the EU markets. The table below lists the major business-political groups in Ukraine and their foreign interests.

Table 3. Foreign business interests of Ukrainian business groups⁹²

Business-political group	Business interests abroad
Donbas Industrial Union (DIU) (Vitaliy Haiduk and Sergei Taruta)	Metallurgical industrial complex DAM Steel (Hungary) Metallurgical industrial complex Huta Czysta (Poland) Pipe plant Walcownia Rur Jednosc (Poland) Metallurgical industrial complex Vitkovice Steel (Czech Republic) ⁹³ Dunaferr Steelworks (Hungary) Ruzneftegazstroi (Uzbekistan)
Privat (Ihor Kolomoiskyi, Gennadiy Bogoliubov and Alexander Dubilet)	A ferroalloy plant in Poland ⁹⁴ A II-II in Romania ⁹⁵ AZOT Chemical plant (Perm region, Russia) Privatinvest Bank (Russia) Moskomprivatbank (Russia) Commercial Bank Privatbank, International Banking Unit (Cyprus)

⁹¹ Data of the Central Election Commission. Official Web site - <http://ic-www.cvk.gov.ua>

⁹² For classification of business groups, as well as information about their property and owners please see ProUA.com.

⁹³ The two Polish plants and the Czech one are those the DIU is planning to purchase. Please see *Korrespondent* #43, Nov. 13, 2004, p. 29.

⁹⁴ No name available. Please see *Korrespondent* #43, Nov. 13, 2004, p. 29.

⁹⁵ Ibid.

Business-political group	Business interests abroad
System Capital Management (Rinat Akhmetov ⁹⁶)	Owner of 15 Metallurgical industrial complexes Network of hotels Rixos (Turkey)
Interpipe (Viktor Pinchuk ⁹⁷)	Much of the property in pipe production, agrarian sector, metallurgy and machine building belong to Ukrainian-US company “BIPE Co Ltd”
TAS (Serhiy Tihpko)	Insurance Company “Rutas” (Russia)
SDPU (u) (Viktor Medvedchuk ⁹⁸ and Hryhoriy Surkis)	_____
Energo (Henadiy Vasiliyev ⁹⁹)	Zrechnaya mine (Russia) Kostromskaya mine (Russia)
UkrpPromInvest (Petro Poroshenko ¹⁰⁰)	Lipetsk confectionery factory (Russia)
UrkSibBank (Oleksandr Yaroslavsky ¹⁰¹)	Multibanka (Latvia) ¹⁰²
Alfa-Group (Mikhail Fridman and Viktor Wekselberg)	_____

All the groups listed above (aside from UkrPromInvest controlled by Petro Poroshenko) are closely linked to former pro-presidential factions in the parliament. The information in the table shows that many of them have clear interest in EU markets (not only in Russia). Also, many of the groups are involved in metallurgical, machinery, chemical, and pipeline businesses. These items are export-oriented to both Russian and EU markets. For instance, in Ukraine’s exports to Russia, machinery and equipment comprise 36 percent, metals 19 percent and chemicals 13 percent. In Ukraine’s export to the EU, metals comprise 32 percent, fuel and energy 22 percent, machinery and equipment 10 percent, and chemicals 10 percent.¹⁰³ The UkrPromInvest group close to Yushchenko is the largest candy exporter from Ukraine to Russia. In addition the group owns a candy factory in Russia.

Based on this information, all large business interests in Ukraine are equally interested in Russian and European markets. Therefore, at least from the perspective of economic interests, we cannot say that the group close to Yushchenko is strictly pro-European and the groups which supported Yanukovych are strictly pro-Russian. Following that logic, groups that supported Yanukovych would not be interested in the isolation of Ukraine from the EU following a falsified election.

The international contacts of the two leading candidates during September-October 2004 (the election campaign) are also important to consider.¹⁰⁴ The important observation is that while Yanukovych met Putin and other Russian officials five times within four months,

⁹⁶ Rinat Akhmetov is considered to be the Donetsk king and leader of the Donetsk financial clan.

⁹⁷ Viktor Pinchuk is the son-in-law of the President Leonid Kuchma (1994 – 2004).

⁹⁸ Viktor Medvedchuk was head of the Presidential Administration of Ukraine before the election.

⁹⁹ Henadiy Vasiliyev was the Prosecutor General of Ukraine in the government of Yanukovych.

¹⁰⁰ Poroshenko is an MP with the Our Ukraine faction and very close to Viktor Yushchenko.

¹⁰¹ MP, Parliamentary group “Democratic Initiatives of Peoples Power”.

¹⁰² Please see *Korrespondent* #43, Nov. 13, 2004, p. 29.

¹⁰³ Data of the National Bank of Ukraine. Provided by the Institute for Economic Research and Policy Consulting in Ukraine.

¹⁰⁴ Please see the detailed version in Iris Kempe/ Iryna Solonenko: International Orientation and Foreign Support of Presidential Election, in Iris Kempe/Helmut Kurth (ed.): Presidential Election in Ukraine. Implications for the Ukrainian Transition, Kyiv, December 2004, p. 126. www.cap-lmu.de/publikationen/2004/ukraine-election.php

Yushchenko did not have any meetings of the kind. In addition, none of the meeting with Putin was linked to any interstate working relations. These were, rather, personal meetings. This does not mean, however, that Yushchenko avoided contacts with Russian representatives, but rather the Russian side did not initiate any meetings of the kind. On the other hand, Yushchenko was more active in meeting foreign diplomats in Kyiv, particularly during the days close to the voting in the first and the second rounds.

To summarize, one can define two types of interests as to Ukraine's transition and international standing that prevailed in Ukrainian politics before the election, and which were backed by the two leading candidates.

The **first approach** can be summarised as European-oriented and reform-minded. It presupposes a balanced foreign policy in accordance with the national interests of Ukraine. The approach can be summarized as: "We must not lose the Russian market, but it will be a great mistake if we miss the train to Europe". This approach presupposes a policy of integration with the EU as the major foreign policy and domestic transformation objective. Therefore, and more importantly, this approach is reform-oriented, focusing not only on market reforms, but also on meeting political criteria as set out by European organisations. An open and transparent foreign policy is another key point of this approach. Interest groups that supported Yushchenko in the 2004 presidential election support this model of transformation according to the analysis provided above.

The **second approach** can be summarized as rather pro-Russian (this does not mean isolation from the EU) and conservative in terms of carrying out reforms. It claims Ukraine should finally grasp that the EU will not recognize Ukraine as a potential member state in the foreseeable future. Therefore, Ukraine should remove the goal of EU membership from its agenda. Ukraine should carry out reforms needed to reach the living standards of the EU and develop such relations with the EU as have Norway and Iceland – close integration without membership. This model presupposes close relations with Russia to the extent that it does not contradict the interests (mostly business interests) of ruling elites. This model is convenient in terms of justifying continued balancing between the EU and Russia. It is in the interest of those groups who wish to preserve the status quo in relations with the EU and Russia (decorative EU integration in order to avoid isolation without EU-oriented reforms, and close personal networking-based relations with Russia). Business environment/interest groups supporting Yanukovych's candidacy seemed to be promoters of this model.

1.3 Public authorities

The role of public authorities in the election process has been crucial both in terms of direct interference in election campaign and voting, and in terms of reacting to mass protests and international attention in order to help to settle the crisis.

From the perspective of their role in the elections three types of actors representing public authorities are important to consider - the President (and Presidential Administration) and the government (including regional and local governments), who all took the same side aimed at bringing the successor candidate Yanukovych to power; the parliament – the Verkhovna Rada of Ukraine (with Speaker Volodymyr Lytvyn playing an active role), which proved to be responsive to the need to carry out free and transparent elections and to the protests against

falsifications, and the judiciary, especially the Supreme Court, which laid the legal basis for carrying-out the re-run of the second round of the election.

The interests of **the President, his administration, and the government** with respect to the 2004 elections were focused on bringing the successor candidate Yanukovych, at that time the prime minister, to power. The authorities actively used international factors and Ukraine's foreign policy as tools to achieve their goals.

Analysis of the activities of the President, his administration, and the government before the election and during it proves that it was in the interest of these actors to minimize the influence of Western actors working towards conducting free and fair election in Ukraine and to exploit to the largest extent informal networking with Russian officials to both support Yanukovych at home and use any possible resources available in Russia to increase the level of falsifications and undermine support for opposition candidate Yushchenko.

An important indicator of such interests of Ukrainian authorities was their lack of responsiveness to international pressure aimed at providing for free and fair election in Ukraine. Moreover, Ukrainian authorities consistently criticized foreign actors for "interference" in Ukraine's domestic affairs. Examples of such behaviour will be provided in the next chapter.

An important indicator of Ukrainian authorities seeking Russia's support was the shift of Ukraine's foreign policy in the direction of Russia a year before the election and especially during the pre-election months. The concentration of pro-Russia policy steps within the few months prior to the election, and a lack of transparency suggest the clear linkage between these steps and the election.

Already in September 2003, President Kuchma signed an agreement on creation of the Single Economic Space with Russia, Belarus, and Kazakhstan. This step was made without any preliminary consultation with parliament or even the Cabinet of Ministers. Other steps include subordination of the Foreign Ministry to the Presidential Administration¹⁰⁵ and the dismissal of a number of people from the government with clear pro-European orientation (Fuel and Energy minister Vitaliy Haiduk and Economy Minister Valeriy Khoroshkovsky).

The steps with foreign-policy implications that were taken before the election include the dismissal of Oleksandr Chalyi, first deputy minister of foreign affairs on European integration; the decision of the Cabinet of Ministers to allow the Odessa-Brody pipeline to be used for purposes others than transporting Caspian oil to the EU¹⁰⁶; the issuing of a decree amending Ukraine's defence doctrine to eliminate Ukraine's willingness to join NATO¹⁰⁷, and

¹⁰⁵ According to a decree issued by the President in December 2003, "On Measures to Increase the Efficiency of Foreign Policy of the State", the foreign ministry became subordinated to the administration of the president.

¹⁰⁶ As a result the Ukrainian company Ukrtransnafta signed a contract with Russian-British company TNK-BP obliging Ukraine to use the Odessa-Brody pipeline for the transport of Russian oil for three years. This decision was taken despite a previous declaration Ukraine adopted together with the EU and Poland supporting transportation of Caspian oil via the Odessa-Brody pipeline to Poland and further into the EU. The EU, US, and Poland all reacted negatively to this decision and expressed serious concerns.

¹⁰⁷ The 16th article of Ukraine's defense doctrine was amended. The sentence "Ukraine is preparing itself for full membership in the EU and NATO" was deleted from the article. Another phrase indicating Ukraine's willingness to join NATO was also deleted. In late July when the changes were made public, Poland, the EU, NATO, and the US expressed concerns over these changes, while Russia said it supported the new version.

the dismissal of Ukraine's defence minister, Yevhen Marchuk, who was active in promoting Ukraine's NATO membership. These decisions were taken against the background of pro-Russian rhetoric by President Kuchma, who argued that Ukraine's future lied with Russia and its partners.¹⁰⁸

The timing of those steps as well as their lack of transparency indicate they were not targeted at Ukrainian voters (these policy issues were rather high politics), but at Russia, whose support Ukrainian authorities were seeking to ensure the victory of Yanukovych. As the result, these steps seriously hampered Ukraine's image in the eyes of the EU and US, but indeed ensured Russia's active involvement.¹⁰⁹

All in all, these steps undermined the credibility of Ukraine's active European integration policy during Kuchma's second term in office. In order to provide for the victory of the candidate convenient for oligarchs surrounding Kuchma, the advancement of Ukraine's European integration, no matter how weak, was swept away in a few months. The conclusion is that Ukrainian authorities have never taken seriously the policy of European integration. This policy seems to be used in order to legitimize Ukrainian authorities in the eyes of the EU and the international community. The 2004 presidential election in fact opened a Pandora's Box and revealed a deeply rooted conflict between the interests of the ruling oligarchy and the national interests of Ukraine.

The position of **the Verkhovna Rada** of Ukraine during the election, unlike the executive branch, proved to be rather balanced. Evidence suggests that the parliament under the coordination of Speaker Lytvyn was interested in securing a positive international image: it welcomed the role of international actors in securing the free and fair conduct of the Ukrainian elections.

The Parliament made an important step on Oct. 19, 2004, when it appealed to the Ukrainian people to participate in the election. The appeal also addressed public authorities, demanding they provide for fair elections in compliance with the law. The appeal also stated that the presence of a large number of international observers for the election means Ukraine belongs to the world community. The motion also expressed a wish that international observers be non-biased and objective.

Parliament Speaker Lytvyn proved to be open to working with NGOs supported by international donors during the election. For instance, in April 2004 he created an NGO council funded by the International Renaissance Foundation (a Soros-backed NGO in Ukraine) and consisting of leading think-tank representatives. The council gathered on a regular basis and proved a valuable advising body to Lytvyn.¹¹⁰ Several days before the second round of elections Lytvyn said all responsibility for possible falsifications belonged to the authorities,¹¹¹ a step that demonstrated his democratic orientation.

The role of the Verkhovna Rada of Ukraine was very instrumental during the "Orange Revolution". It was open to protests taking place in the streets and contributed a lot to peaceful resolution of the crisis that lead to a repeat run-off of the second round.

¹⁰⁸ Interfax News Agency, Sept. 27, 2004.

¹⁰⁹ Please see Iris Kempe in this volume for elaboration of this argument.

¹¹⁰ Bulletin of the European Programme, Issue 1, July 2004. International Renaissance Foundation. www.irf.Kyiv.ua.

¹¹¹ UNIAN News Agency, Nov. 19, 2004. www.unian.net.

The Ukrainian judiciary was another active participant of the election process. While international factors did not play a direct role in the work of Ukrainian courts during the election, many successful cases adjudicated by the courts were put forward by Ukrainian human rights NGOs working due to the support of international donors. Furthermore, the decision of the Supreme Court not to recognize the outcome of the voting during the second round and its scheduling of a repeat run-off vote arguably took into consideration international legal practice (in its decision, the Court referred to international legislation to which Ukraine was a party) and the role international actors attributed to a legal means of solving the Ukrainian crisis.

1.4 Mass media and journalists

The role the media played in Ukraine's election process is two-fold. On the one hand, the media served as a tool for manipulation. On the other hand, journalists' protests, which escalated before and during the election, served as an important signal to voters.

During the election the media was actively used as a tool to manipulate voter opinion. TV channels, especially during primetime, presented the pro-government candidate in a very positive light, whereas the opposition candidate was shown in a very negative light. Numerous independent monitoring organisations reported biased coverage of the election campaign, including BBC Monitoring Service, the Academy of Ukrainian Press, and Media Monitoring in Bratislava. According to the lattermost organisation, Yanukovich received more than 60 percent of campaign coverage on UT-1, Inter, 1+1, ICTV, and TRK Ukraina TV channels, while STB and Novy Kanal provided between 40 and 50 percent of campaign coverage to Yanukovich. All these channels provided only between 13 and 30 percent of air time to Yushchenko. The only channel that provided balanced information was Channel 5. Also, all the channels (apart from Channel 5) provided mostly negative coverage of Yushchenko and only neutral or positive coverage to Yanukovich.¹¹²

In addition TV media also broadcast reports in which Yushchenko, the opposition candidate, was presented as nationalist and radical, a person who perceives Ukrainians from other than western Ukraine to be second- and third-class citizens, and who would divide the country.

On the other hand, the position of journalists who during the election campaign protested against biased reporting was very important. They brought to the attention of Ukrainian voters the fact that Ukraine had serious problems with freedom of speech. A hunger strike announced in October by Channel 5, the refusal by a group of 39 journalists from 5 major national channels to report shortly after the second round¹¹³, and mass protests by journalists in the regions in effect blocked the work of the Ukrainian mass media and made their leadership offer a better working environment to journalists.

All in all, while the media played a very negative role in the run up to the election by depriving people of objective information, the wave of protests of journalists resulted in more or less fair media coverage close to and after the second round of election and contributed to the ultimate success of the "Orange Revolution".

¹¹² EOM Media Monitoring. www.memo98.sk/en.

¹¹³ Press-release of Kyiv independent professional media union, Oct. 28, 2004.

1.5 NGOs

The Orange Revolution witnessed an unexpected level of maturity and organisation of Ukrainian NGOs. Already before the election, Ukrainian NGOs funded by international donors proved to be able to mobilise a large number of people for demonstrations. In addition, they were active in carrying out informational and awareness-raising campaigns, monitoring election campaign and providing legal advice to citizens. There were also Ukrainian NGOs that played a key role in carrying out exit polls allowing for the level of falsifications to be identified.

The role of Ukrainian NGOs in relation to international factors is important in two respects. Firstly, Ukrainian NGOs are mostly dependant on foreign funding; secondly, they have extensive direct channels of international communication bypassing traditional diplomacy.

It is in this latter capacity that Ukrainian human rights organisations brought to the attention of international organisations the numerous violations that occurred during the election. For instance, on Aug. 10, 2004, the International Helsinki Federation on Human Rights (Vienna) reported it received numerous claims from Ukrainian citizens that were pressed to support the current prime minister's candidacy and were threatened for supporting the opposition candidate.¹¹⁴ Those claims were formulated and reached Vienna due to the assistance of Ukrainian human rights organisations. Similarly, the Ukrainian Helsinki Human Rights Association filed numerous appeals to Amnesty International and Human Rights Watch that allowed these international organisations to exert additional pressure on the Ukrainian authorities, and to attract the attention of international actors.¹¹⁵

2. Activities during the election

This chapter analyses how domestic actors organised and utilised foreign factors to achieve their own goals during the elections. The chapter will look at tools domestic actors used to either limit the impact of international actors on the elections, the opinions of voters, and the overall transition process, or to enhance that influence or transform it into a different kind of influence.

2.1 Ukrainian international obligations with respect to holding fair and transparent elections and violations of those by the authorities

Given that there is a substantial body of literature on Ukraine's international obligations with respect to the rule of law, human rights and freedoms and free and transparent elections,¹¹⁶ we will not go into details. It is important to mention, however, that Ukraine's obligations with respect to providing for free and transparent elections stem from Ukraine's membership in the

¹¹⁴ Ukrainska Pravda. Aug. 10, 2004. www.pravda.com.ua.

¹¹⁵ Information provided by the Ukrainian Helsinki Human Rights Association. www.rupor.org.ua.

¹¹⁶ For a comprehensive summary and analyses on Ukraine's international obligations with respect to elections, please see, for instance, National Security and Defense, #5, 2004. Ukrainian Razumkov Centre for Economic and Political Studies.

UN, OSCE, Council of Europe, European Bank for Reconstruction and Development, CIS, and Inter-parliamentary Union. Ukraine is also a party to bilateral agreements with the EU (PCA) and NATO, which oblige it to adhere to democratic principles and values, including the holding of free and transparent elections.

While these obligations allow international organisations to exercise political pressure on Ukraine, Ukraine's domestic politics before the election showed that international pressure had never had a significant impact on the behaviour of the authorities. This ignoring of international obligations by Ukraine became exaggerated during the election. As pointed out before, media monitoring revealed biased coverage of candidates on a majority of pro-presidential channels. This was especially evident during and after the second round when neither international democratic community, nor numerous domestic actors¹¹⁷ recognized the officially proclaimed outcome of the vote. Despite numerous declarations on the part of western institutions and governments authorities insisted on the official results.

Ukraine even went so far as to accuse international organisations of interfering in Ukraine's domestic politics and of trying to revise the basic principles of these organisations. One example was Ukraine's joining the anti-OSCE declaration issued by CIS countries on July 9, 2004. Russia, together with other CIS countries including Ukraine, accused the OSCE of failing to respect their sovereignty. A written statement said the OSCE does not respect the fundamental principles of non-interference in internal affairs and respect of national sovereignty.¹¹⁸ Another vivid example was the summoning of the Canadian ambassador, Andrew Robinson, to the foreign ministry over his Sept. 21, 2004, press statement on the presidential election campaign.¹¹⁹ Also, soon after the second round of elections, which were reported as falsified by the OSCE and other international organisations, President Kuchma while talking to the prime minister of the Netherlands by telephone blamed the EU for statements criticizing the elections, saying those "might lead to an escalation of the situation in Ukraine".¹²⁰

These examples show that despite the fact that Ukraine had joined a number of international arrangements obliging it to conduct free and fair elections this was a rather limited factor of pressure over Ukrainian authorities.

2.2 Restriction of international influence over presidential elections by means of Ukrainian legislation

The basis for restrictions on foreign influence during the elections is laid down in Ukrainian legislation, in particular on the "Law On Elections of the President".¹²¹ In short, it provides

¹¹⁷ For instance, according to a national exit poll organized by the Democratic Initiatives NGO, carried out by the Razumkov Centre and the Kyiv International Institute of Sociology in cooperation with experts from Poland and Russia and funded by international donors, it reported Yushchenko received 54 percent of all votes, while Yanukovich received 43 percent. Nevertheless, the Central Election Commission recognised Yanukovich to be the winner.

¹¹⁸ www.rferl.org/featuresarticle/2004/07/7335a25f-6b7c-41aa-bc8f-94d973103166.html

¹¹⁹ The Action Ukraine Report, Year 04, Number 171.

¹²⁰ www.pravda.com.ua. Nov. 23, 2004.

¹²¹ The law was amended in March 2004 and later on in December 2004 (in a package with amendments to the Constitution).

for the activities of international observers, but restricts any activities that can be considered interference in Ukraine's domestic matters. Such activities include agitation in favour of certain candidates and financial support of electoral campaigns.

For instance, Article 37 of the law stipulates only two sources for financing electoral campaigns of candidates – the state budget and election funds of candidates – thus restricting possible financial support from non-domestic sources. In addition, Article 47 defines the election funds of a candidate as being formed out of his/her own resources, the resources of parties (or parties that belong to an election bloc) that nominated his/her candidacy, as well as optional contributions from individuals. Foreign citizens and individuals without citizenship are prohibited from making donations. Anonymous donations are prohibited as well. Furthermore, Article 64 prohibits pre-election campaigns from being carried out in the foreign mass media, which work on the territory of Ukraine. Following this Article 70 states that official observers from foreign states and international organisations have no right to use their status to act beyond the elections process or to interfere with the work of electoral committees.

While there is no direct evidence of violation of this legislation by international actors, many activities carried out by international actors during elections can well be considered as in violation of the legislation. This is especially true concerning Russian actors as will be shown below.

2.3 Russian factor as the means of manipulation by Ukrainian authorities

Russia was an important factor during the election for two reasons. Firstly, the factor of Ukrainian citizens who live and work in Russia was exploited by Ukrainian authorities. Secondly, Ukrainian authorities actively involved various Russian actors and issues to influence voters' opinion in Ukraine.

The factor of Ukrainians living and working in Russia and abroad in general did not play any significant role in terms of the outcome of the election. According to the data of the CEC, 62,373 voters cast ballots abroad during the first round, 90,168 during the second round and 103,079 during the third round of the 2004 presidential elections,¹²² which comprises no more than 0.3 per cent of all voters. However, before the election, Ukrainian authorities put a lot of efforts to use this factor as a source of manipulation.

The first aspect that became the subject of debate before the election was the number of polling stations in Russia. This issue was first raised in March when the Ukrainian embassy in Russia submitted a letter to the Russian foreign ministry asking it to allow 650 additional polling stations for the presidential elections. The initial number of polling stations in Russia was four.¹²³ On Oct. 24, 2004, the CEC allowed an additional 420 polling stations in Russia and, under the pressure of MPs from the Our Ukraine bloc, decided to open a further 41 polling stations.¹²⁴ This high attention towards Ukrainian voters in Russia on the part of

¹²² Data of the Central Election Commission. www.cvk.gov.ua.

¹²³ Olha Dmitricheva "President of Ukraine in Russia – Viktor Yanukovych?", *Zerkalo Nedeli*, #42 (517), 16-22 October 2004.

¹²⁴ UNIAN News Agency. www.unian.net.

Ukrainian authorities looks surprising in contrast to the neglecting of Ukrainian voters in the EU, US, Canada, and other countries. In those countries, polling stations are attached to embassies and consulates, whereas proposed polling stations in Russia would work beyond Ukrainian diplomatic offices. It is difficult to find lawful grounds for such behaviour on the part of Ukrainian authorities; there are no compact settlements of Ukrainian voters in Russia aside from in Moscow and western Siberia. Therefore, many polling stations would be useless.¹²⁵ Given this, many believe the high number of polling stations in Russia could lead to fraud. For instance, according to Valeriy Semenko, the deputy head of the Union of Ukrainians in Russia, an additional 400 polling stations would allow officials to falsify around 1 million votes.¹²⁶ Finally, on Oct. 29, 2004, the Supreme Court of Ukraine satisfied the appeal of Yushchenko and cancelled the decision taken by the CEC to open an additional 41 polling stations in Russia.¹²⁷

Another aspect related to Ukrainian voters in Russia was the explicit pro-Yanukovych propaganda in Russia. Several Internet publications, Channel 5, and *Korrespondent* magazine reported on Russian billboards with a picture of Yanukovych saying “Ukrainians of Russia choose President Viktor Yanukovych on October 31.”¹²⁸ Still another example was the fact that Yanukovych managed to collect 562,000 signatures of Ukrainian nationals living in Russia in support of his candidacy.¹²⁹

Similarly, Russia became a tool for manipulation to influence voters in Ukraine. Probably the most explicit example was the visit of Russian President Putin to Ukraine to commemorate the 60th anniversary of Kyiv’s liberation from Nazi occupation during World War II. Two days before the military parade in which Putin participated, three national channels in Ukraine (Inter, 1+1, and National channel UT-1) organized a live one-hour broadcast with Putin. While Putin behaved diplomatically, Ukrainian journalists asked him questions that presupposed answers showing sympathy with Yanukovych and praising his achievements as prime minister.¹³⁰

Yanukovych’s campaign also organized open-air concerts with popular Russian singers. One such concert took place in Donetsk on Aug. 29, 2004. Joseph Kobzon and Russian rock-band Reflex took part.¹³¹ On Sept. 16, 2004, a representative of the Yanukovych team submitted an appeal to the Rivne City Council asking it for permission to hold a concert there with Russian singers in support of Yanukovych.¹³² On Oct. 12, 2004, another such concert took place in Pavlovgrad.¹³³

Another example of using Russia to put pressure on the opposition was the announcement by the Russian prosecutor’s office that opposition figure Yulia Tymoshenko was the subject of

¹²⁵ Falsification of votes with the help of Russia may total 1,000,000. www.pravda.com.ua, Oct. 20, 2004.

¹²⁶ Ibid.

¹²⁷ Unian News Agency, www.unian.net, Oct. 29, 2004.

¹²⁸ A picture of the billboard can be found in “Vybor Gastarbaiterov,” *Korrespondent*, Oct. 23, 2004, pp. 24–25.

¹²⁹ „Piat Kopyok“, program of TV Channel 5, Sept. 18, 2004.

¹³⁰ The transcript of the conversation, as well as video files, can be found at the official Web site of the President of the Russian Federation. www.president.kremlin.ru/appears/2004/10/27/0000_type63379type63381_78550.shtml

¹³¹ www.korrespondent.net/main/101005.

¹³² UNIAN, Sept. 23, 2004.

¹³³ <http://5tv.com.ua/newsline/119/0/1719/>.

an international criminal investigation. No indignation was expressed or attempt to protect Tymoshenko was made by Ukrainian authorities, suggesting they were involved or even planned this move. Ukrainian mass media widely reported that Tymoshenko supported Yushchenko's candidacy to undermine popular support for Yushchenko. While there is no documented evidence disclosing the link of Ukrainian authorities in agreeing to Tymoshenko's prosecution, after the second round of elections politicians from the People's Power Coalition referred to a source in the Interior Ministry indicating that Interior Minister Mykola Bilokon had ordered Tymoshenko's arrest and extradition to Russia.¹³⁴

These examples show how skilfully Ukrainian authorities, in cooperation with Russia, managed to engage Ukrainian citizens living in Russia in the election campaign in support of Yanukovych, and also their use of Russian actors in the campaign. While there is no sufficient evidence to interpret these steps as abusing Ukrainian legislation, they obviously demonstrate the close hidden personal contacts between Ukrainian and Russian authorities. These seemed to be the major source for building relations between the two countries. The alarming news about the presence of Russian troops in Kyiv after the second round of elections shows how deeply rooted this policy-making is. It shows that the interests of the elite that ran the country for 10 years – and would continue doing so if Yanukovych became the president - were above the national interests of Ukraine.

2.4 Deteriorated east-west division of Ukraine as the result of election campaign

The 2004 presidential election campaign resulted in the creation of a division in Ukraine between east and west. While the east-west differences were present before as was shown in a previous chapter, these had never had any implications in terms of creating social tensions and even threatening the unity of the country. The deteriorated east-west division that Ukraine now has to overcome was, to a large extent, caused by the election campaign and the propaganda carried out by the authorities.

The majority of voters in the east and south of Ukraine voted in support of Yanukovych. According to the results of the re-run of the second round, nearly 13 million voters refused to accept the idea of the Orange Revolution and might have problems accepting Yushchenko as a legitimate president. The issue of separation of eastern regions from the rest of the country or federalization of Ukraine unexpectedly appeared on the agenda after the second round, which was an alarming signal.

However a closer look at the origin of separatist trends in Ukraine traces itself back to the course of the electoral campaign and reveals its somewhat artificial nature.

Firstly, the election campaign carried out by the Yanukovych camp and the authorities was marked by brutal anti-Western, anti-EU, and anti-U.S. propaganda of the Cold War type, coupled with anti-Yushchenko propaganda aimed at creating his image as a nationalist, fascist, and chauvinist. The state-controlled mass media and other pro-presidential media in Ukraine focused extensively on legal violations, corruption, and other imperfections in the

¹³⁴ www.pravda.com.ua. Nov. 24, 2004.

EU. It also reported widely on the negative impacts of accession on the new EU member states and on Euro-scepticism across the EU. As a result Ukrainians received rather negative information about the EU.¹³⁵ Opposition MP Mykola Tomenko claimed several times he was aware of anti-EU “*temnyky*” (guidelines for journalists), which were disseminated by the Presidential Administration among journalists and media outlets.

Analysis of election TV reels of some candidates shows they widely exploited the thesis that Yushchenko represented the interests of the US and the West, in general.¹³⁶ They claimed that Yushchenko as president would turn voters from eastern Ukraine into second-class citizens. Other TV reels broadcast on Inter TV showed fascist symbols combined with Yushchenko’s election campaign colors obviously aimed at discrediting Yushchenko.

Beyond media involvement, authorities applied even more brutal techniques. For instance, Vasyl Kremen, the minister of education, ordered teachers at schools to make their pupils write letters to the U.S. President complaining of “US interference”.¹³⁷ Another example: 150 tons of anti-American posters were found in Kyiv at the same warehouse where Yanukovych campaign posters were being stored. Those posters showed the upper part of Bush’s face combined with the lower part of Yushchenko’s face on the background of a U.S. flag.¹³⁸

Secondly, the idea of separation of eastern and southern regions from Ukraine was announced by governors (regional officials appointed by the president), whereas elected authorities criticized it (apart from the Donetsk region). The very authorities very quickly dropped this idea when the opposition brought into attention the possibility of criminal punishment for undermining the territorial integrity of Ukraine. In addition, it was made clear that such issues (i.e. those leading to changes in the Constitution) can be decided only by a national referendum.

Thirdly, the lack of background for separation is also evident from the fact that Yushchenko won in 17 regions, whereas, for instance, Kuchma in 1994 won in just 14 regions. Regions that traditionally voted differently from western Ukraine this time supported the same candidate as western Ukraine did.

Fourthly, the idea of separation came from the regions where most of the violations during the elections took place. Again, this can be interpreted as an attempt by the authorities involved in the violations to turn attention away from actions that could become the subject of criminal proceedings if investigated.

Finally, there are no objective prerequisites for separation. For instance, Donetsk region is not self-sustainable. It receives donations from the central budget. Overall, it is a myth that eastern Ukraine “feeds” the whole of Ukraine. In fact, more than 50 percent of Ukrainian GDP originates from Kyiv.

¹³⁵ Those are personal observations of the author. Reading through several regional newspapers distributed in eastern Ukraine proved this.

¹³⁶ For instance, Oleksandr Bazyliuk, the leader and presidential candidate of the Slavonic Party, in his pre-election TV ad says Yushchenko’s American wife should become a Ukrainian national. Earlier in September 2004, he called on the Verkhovna Rada to prohibit those aspiring for the presidency from being nominated for the post if members of their family were foreign citizens.

¹³⁷ www.pravda.com.ua. Oct. 20, 2004.

¹³⁸ *Korrespondent* #41 (130), Oct. 29, 2004, showed the picture.

2.5 Use of International factor to support protests against falsifications

As the wave of protests started after the second tour of elections and authorities kept doing their best to legitimize the victory of Yanukovych, much support for the opposition and the protesters came from abroad. Under this situation of confrontation between the people and the authorities, the value of this support was extremely high. Leaders of the Ukrainian opposition operated international support very skilfully and used it as additional leverage to maintain the support of the protesters.

Firstly, the fact that democratic countries did not recognize the outcome of the second round of elections was very much emphasized on and used as an evidence of the fact that those countries actually supported the Ukrainian people, not the authorities. The fact that Ukraine was shown on all major international TV channels and became the top story of leading newspapers was utilised to make Ukrainians feel it is due to them that Ukraine was becoming the centre of world attention. Secondly, the Ukrainian opposition invited many international politicians to talk to the crowds from the stage at Maidan Nezalezhnosti (Independence Square), which was the organisational heart of the protests. Thirdly, the protesters were informed about all major demonstrations abroad in support of them, whether Ukrainians living abroad or other nationals organised them. This was another very important support factor.

The key message said that the international democratic community actually supported the protesters, not the Ukrainian authorities who falsified the election, and that Ukraine was the focus of world attention. The Ukrainian opposition delivered this message to people very skilfully and this arguably contributed much to mobilizing the psychological resources of Maidan.

Conclusions

There is a clear link between the Ukraine election, the country's international focus, and the future of reform. Both sides—Russia and the West—identified the election as a crossroads for future reforms, but neither Russia nor the West had put in place a clear strategy. Russia's interest might be seen as keeping a certain kind of hegemony, along with maintaining strong economic and personal networks on the highest level. There was almost no Russian concept of supporting the transition process in Ukraine. The Western priority in regard to Ukraine has been pushing forward democratic reforms, and the election is perceived as a litmus test for the state of the transition.

Initially Russia was in a more favourable position in terms of influencing Ukraine's election than other actors. The presence of Russian media in Ukraine and the large size of the Russian-speaking population, a number who have strong ties to a "common motherland", put Russia in a privileged position in terms of influencing the Ukrainian election. Although officially Russia did not express explicit support for any of the candidates, it did not resist the temptation to allow pro-Yanukovych propaganda in the Russian media, and Putin openly met Yanukovych several times before the election during the latter's tenure as Ukraine's prime minister. At the same time Western institutions had limited mechanisms for setting guidelines from outside. One of the most important players and direct neighbours, the EU, was neither capable of nor interested in offering Ukraine attractive prospects for integration, and furthermore, Ukraine's

attempt to become an EU member country was refused by the EU. Criticizing the violations of democratic values and investing in NGOs became the most important mechanism of the Western capitals in terms of influencing Ukraine's election.

The impact of the international influence changed significantly after the second tour, when the entire process had been guided by a demand for democratic values and the Ukrainian election as such became internationalised. By not accepting the official election results of the second tour, Western governments and international organisations supported Ukrainian civil society in initiating a regime change. Again opting for democratic standards, the West, driven first and foremost by the knowledge and networks of the new EU member states, succeeded in negotiating a peaceful transition process. At the same time, the Kremlin lost its way in influencing Ukraine based on personal factors and economic dependency.

The domestic discourse of the election became a real battlefield of international issues despite the fact that these were of low importance for voters. The election campaign had to a large extent been dominated by the East (Russia)–West, Soviet-style antagonism. In addition, a division of Ukraine was artificially exaggerated by the state-controlled media and escalated after the second tour by questioning the territorial integrity of the country. Evidence showed this was a technical approach aimed at evoking old stereotypes, threatening voters, and discrediting the opposition candidate. The relatively low success of these techniques – the majority of voters on Nov. 21 had already voted in favour of Yushchenko (according to exit polls and parallel vote counts) – shows people opted first and foremost for democratic change. At the same time, there was active manipulation through foreign policy and international actors, demonstrating the low commitment of public authorities to safeguarding the country's national interests. Indeed, short-term tactics aimed at winning the election by certain groups of political elites overwhelmed the long-term strategic interests of the country.

A close analysis of Ukraine's foreign policy agenda, which was articulated during the election period, demonstrated two approaches. The first model suggested preserving the status quo in balancing influences from the East and West, making half-hearted moves towards democracy, and implementing limited market reforms. The second approach was for Ukraine to take the path its Central European neighbours entered upon, that is, consistent integration within the EU with full adoption of the necessary requirements and pragmatic transparent relations with Russia. The two approaches were in fact less about foreign policy and more about the principles of domestic and foreign policy-making and different value systems. An analysis of Yanukovich's interests and activities suggested that he represented the first model. Dominance of this model would gradually lead Ukraine to isolation from the democratic world and towards the growing influence of Russia. Evidence suggested that Yushchenko was a more transparent and consistent candidate who would focus on safeguarding Ukrainian interests in both Russian and Western directions. "We must not lose the Russian market, but it will be a great mistake if we miss the train to Europe" was the motto of Yushchenko's foreign policy agenda.

The Ukrainian presidential election in 2004 has become a focus of worldwide attention. On the one hand we saw Russia's attempt to maintain its influence in the former Soviet Union via personal support and non-democratic methods in Ukraine. On the other hand, the Western approach was devoted to democracy, but lacking concrete measures to integrate Ukraine into Euro-Atlantic structures. Based on the analysis of its international orientation and foreign support of the presidential election, the following aspects are of major importance to

strengthening Ukraine's national independence and democratic character. To make Ukraine's foreign policy resistant to international manipulation, there should be a mechanism to prevent the president from making important foreign policy decisions overnight. The country's national security strategy and foreign policy must be made in agreement with the parliament and in consultation with civil society organisations. The Ukrainian government should develop a policy towards Russia making the country less dependent on Moscow, and change the character of policy its from a reactive to a pro-active approach. The West should develop a strategy to integrate Ukraine into Euro-Atlantic structures. The approach should be realistic for the West and attractive for Ukraine. Offering Ukraine prospects of cooperation with the EU, and thus supporting the country's transformation is the order of the day. What role Ukraine could actually play in the future EU depends not only on Ukraine's internal development, but also on the course of European integration and the EU's rethinking its role as a pan-European actor. The democratic change in Ukraine is still to pass the test of constitutional reform and the 2006 parliamentary election. While this is largely Ukraine's homework, the "wait and see" strategy on the EU part would be insufficient. Already in the short-term perspective, Kyiv touches upon one of the EU's central tasks: the realisation of core European values and principles of law.

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