



HELSINKI COMMISSION BRIEFING

UNITED STATES COMMISSION ON
SECURITY AND COOPERATION IN EUROPE

Testimony :: Stephen B. Nix

Director, Eurasia Division - International Republican Institute

I wish to thank the Members of the Helsinki Commission for calling for this briefing and for inviting me to testify on both the conduct and results of the Ukrainian parliamentary elections. Ukraine remains of great strategic importance for the United States, and developments, particularly in the area of democracy, are critical to the United States' interests in the region and globally. For this reason, a careful analysis of the democratic backsliding in Ukraine and how the United States and Europe should respond is of utmost strategic importance at this time.

Again, thank you for this opportunity and I request that my remarks be entered into the record.

I would like to focus my remarks on four distinct areas: the parliamentary election campaign, the actual events on Election Day, the official results and finally, the repercussions of the elections for Ukraine and its self-expressed desire for further integration into Euro-Atlantic structures.

Pre-election campaign

Mr. Chairman,

Regardless of all of the analysis of the technical aspects of the elections which took place in Ukraine on October 28, the specter that hung over these elections was that Election Day marked the 450th day of imprisonment of the leader of the Fatherland Party, Yuliya Tymoshenko, and the 671st day of imprisonment for the leader of the People's Self Defense Party, Yuriy Lutsenko. Both faced what has been described by the US government as "selective prosecution", which kept them off the ballot and denied millions of Ukrainians who had voted for them in previous elections from doing so in these parliamentary elections.

It is from that starting point which the fairness of these elections must be judged to be a step backwards for Ukrainian democracy.

The International Republican Institute fielded an official international election observer group, with its observers visiting more than 160 polling stations on Election Day. IRI's assessment was that during the campaign period significant problems combined to create a very uneven playing field that made it difficult for the parties and candidates to compete fairly. These included the following:

The Law on Parliamentary Elections, which was adopted on November 17, 2011, was a return to the system last used in 2002 when international observers reported significant fraud. The Venice Commission strongly criticized the absence of political consensus and the lack of transparency around the drafting of the law which was done by the presidential administration and provided little substantive input from Ukrainian political parties or civil society.

The government increased pressure on independent media. The independent television station ATN was closed in September 2011 and in April 2012, the tax authorities, increasingly used as a tool of government and formerly headed by the current Prime Minister, exerted pressure on the media, began to target TVi and this past summer opened a politically motivated criminal case against the station's owner.

The Ukrainian government has also started to more closely monitor and regulate activities of domestic civil society organizations. Tax authorities have targeted independent civil society organizations with criminal cases and in one case the Association of Ukrainian Banks came under pressure from the tax authorities to cease its work.

The largest network of civic organizations in Ukraine which operates under the Civil Initiative Support Center reported that many individuals who attempted to exercise their legal rights to check their names on the voter registry during the pre-election period were contacted by representatives of government agencies inquiring why they were asking to confirm their name on the list instead of simply having their names and addresses confirmed or corrected.

Political parties and candidates have suffered intimidation and investigation by tax authorities and other governmental bodies that reduced their ability to compete in the elections.

As highlighted at the at the beginning of my remarks, key opposition figures were prevented from participating in the elections, due to their incarceration stemming from politically motivated charges.

The composition of election commissions was uneven, and major parties were at times excluded from membership in polling stations commissions. IRI observers noted what appeared to be pseudo parties that were created with the sole purpose of allowing the ruling party to dominate membership of commissions. As a result, the composition of precinct election commissions suffered from a lack of representation of legitimate political parties competing in these elections.

The fact that many election commissioners were not able to answer the simple question from

IRI observers: “which party do you represent” shows the lack of transparency in the process of allocating precinct commission memberships.

All of these factors, as well as many credible reports of the use of administrative resources by parties and candidates aligned with the government, the pre-election period was one which simply did not allow for a fair and competitive process.

Election Day

The overall conduct of the electoral process was assessed as regression of democracy by most international election observers. Here is what others had to say about the elections:

“One should not have to visit a prison to hear from leading political figures in the country.” These are the powerful words of Walburga Habsburg Douglas, the Special Coordinator who led the OSCE short-term election observation mission and the Head of the OSCE Parliamentary Assembly delegation of the Office of Security and Cooperation in Europe.

Audrey Glover, the Head of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), long-term election observation mission stated, “The lack of appropriate responses by the authorities to the various electoral violations has led to a climate of impunity.”

Andreas Gross, the Head of the Parliamentary Assembly of the Council of Europe (PACE) delegation, after observing the election first hand in Ukraine, stated “The 'oligarchization' of the whole process meant that citizens lost their ownership of the election, as well as their trust in it. Unfortunately, the great democratic potential of Ukrainian society was not realized...” He went on further to say “...we saw a trend towards the strengthening of authoritarianism.”

And to quote Special Coordinator Habsburg Douglas again, “democratic progress appears to have reversed in Ukraine.”

And Mr. Chairman, just this past weekend, Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy and Vice President of the Commission, and Štefan Füle, EU Commissioner for Enlargement and European Neighborhood Policy issued the following statement:

“We express our concern about the conduct of the post electoral process, which was marred by irregularities, delays in the vote count and lack of transparency in the electoral commissions. This comes in addition to the lack of response to the shortcomings and problems identified already earlier by the OSCE-ODIHR interim reports. Taken together, this represents deterioration in several areas compared to standards previously achieved.”

Ukraine had made good progress in the administration of elections and ensuring a level

playing field in its most recent presidential election and the last two parliamentary elections. The problems in the campaign period and on Election Day are particularly troubling as they indicate that Ukraine has not progressed in the way that it should and has not advanced as far as other former soviet republics, including Georgia, which just saw its first peaceful transfer of power from one democratically elected government to another.

While overall Ukraine's October 28 parliamentary elections were administered in an orderly manner, Ukraine continues to fall short in ensuring voters a campaign in which candidates have an equal opportunity to be heard and they can be confident that their individual votes count. Despite the efforts of polling officials and voters who turned out to cast their ballots, Ukraine still faces significant obstacles to its democratic development.

Results

Because half of the 450 members of parliament are selected on a proportional ballot and the other half are selected in single mandate districts, it is important to analyze the results from both.

On the proportional ballot, the governing Party of Regions received 30 percent of the vote, for 73 seats in the proportional ballot, the United Opposition received 25.54 for 61 seats, The Ukrainian Democratic Alliance for Reforms received 13.96 for 34 seats, the Communist Party received 13.18 for 32 seats and Svoboda Party received 10.44 for 25 seats. This was predicted by IRI polling data and later confirmed by local IRI polling partner "Rating Group", that opposition parties would win 120 seats under the party list system.

A threshold of five percent was required in order to win seats in parliament. These five parties were the only parties competing in the election which met the threshold.

A rough count of the 225 single mandate districts shows that the Party of Regions won the most votes in 115 districts and candidates openly backed by the Party of Regions had the most votes in an additional 14 districts for a total of 129. The opposition got the most votes in just 56 single mandate districts and candidates openly backed by the opposition won an additional four seats for a total of 60. That leaves 36 relatively independent deputies that defeated candidates from both the Party of Regions and the opposition.

What this tells us is that the collective opposition was able to outperform the governing parties on the proportional ballot. However, in the single mandate districts, the governing party was able to make up for that deficit. For this reason, we believe that the Party of Regions has the greatest likelihood of being able to form a governing coalition. Therefore between now and December 17 when the new parliament is expected to be called into session, the international community should continue to pay close attention to the manner in which any new coalition is formed.

IRI would like to note that following its public criticism of the CEC for not releasing election results by polling station protocol totals, the CEC did begin to provide PEC results online for the public to review. This had been cited as a major failure in the administration of elections,

which appears to have been rectified upon urging from IRI and the United States Embassy in Kyiv.

The fact that the election was administered in a way which gave an unfair advantage to candidates aligned with the government is an indication that more could have been done in order to level the playing field so that parties, candidates, poll workers, commission members, party observers and civic organizations participating in the election process could have more effectively contributed to a democratic election process.

Repercussions/Next Steps

In sum, Ukraine's 2012 parliamentary elections were a step backwards in Ukraine's democratic development. Although Ukraine has shown that it can improve upon its administration of Election Day activities, the uneven playing field in which the opposition did not have equitable access to media, the massive use of government resources by governing party candidates, and the intimidation of opposition candidates left the opposition unable to compete fairly. Unless and until Ukraine improves the environment in which campaigns are conducted, it will not be considered a full democracy and will not be able to fully integrate into Euro-Atlantic structures.

It should be noted that there have been numerous calls for banning visas to the US, Canada and the European Union for those individuals involved in selective prosecution of political figures and freezing of financial assets of the same individuals. The Ukrainian government had an opportunity with these elections to demonstrate that such actions were not necessary. However, with the conduct of these elections, the call for such measures has increased.

In terms of future democracy assistance in Ukraine, I have several recommendations. Against the backdrop of a newly adopted parliamentary election law less than one year before the election, the international community missed an opportunity to fully support the advancement of Ukrainian democracy. In an election being conducted under new rules, those participating were not able to realize their full potential as actors in the electoral process.

Secondly, IRI regularly receives requests from all major political parties, many candidates, poll workers, commission members, party observers and civic activists for additional technical assistance in order to prepare them to fulfill their specific roles and responsibilities in the election. IRI strongly believes that in order to contribute to a level playing field in future elections in Ukraine, appropriate attention must be given to strong political party development. Without strong, nationally representative political parties in the opposition as well as in the government, competing fairly in future elections in Ukraine, further steps backwards in Ukraine's democratic development could be expected.

IRI in Ukraine

Since 1994, IRI has actively supported the promotion of democracy in Ukraine. To address the

aforementioned challenges and respond to Ukraine's rapidly deteriorating political environment, IRI is working to strengthen political parties, foster mechanisms for good governance, support the next generation of political activists, and develop a more transparent electoral system.

In order to ensure Ukraine has vibrant, democratic parties, which reflect the needs of citizens, IRI trains parties on how to improve their structures and organization, coalesce, and recruit new members. Recently, IRI launched an innovative program to enhance communication between political parties and local CSOs.

To encourage Ukraine's elected officials to be responsive to citizens, IRI provides training to local elected officials on communications, constituent service, management and other skills necessary for effective and transparent governance.

One means to encourage government accountability is IRI's public hearing program, which enables Ukrainian civil society to bridge the gap between citizens and elected officials. By selecting a local problem and addressing it through the mechanism of a public hearing, citizens are able to participate in the decision-making process.

To ensure democracy has a strong and stable future, IRI has been supporting four youth-oriented CSOs, which established Youth Political Leadership Schools in Ukraine to teach political activism, particularly in Eastern Ukraine and Crimea. More than 1,000 students have graduated from these schools with more than 87 percent entering into some form of public service.

To assist in the development of Ukraine's electoral processes, IRI has conducted international election observation missions, observing every parliamentary and presidential election since Ukraine became independent in 1991.