

**TESTIMONY OF STEPHEN B. NIX, ESQ.**  
**DIRECTOR, EURASIA DIVISION**  
**INTERNATIONAL REPUBLICAN INSTITUTE**  
**HELSINKI COMMISSION HEARING**  
**MAY 17, 2012**

I wish to thank the Members of the Helsinki Commission for conducting this public hearing and for inviting me to testify on an extremely important part of the world. We are all cognizant of the fact that much attention is currently placed on North Africa and sections of the Middle East. However, Europe and Eurasia remain of great strategic importance for the United States, and developments, particularly in the area of democracy, are critical to the United States' interests globally.

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

We meet here today at a critical time in Ukraine's democratic development. For the past two years, we have watched what can only be described as backsliding of democracy in Ukraine. The international community has witnessed the continued selective prosecution of the political opposition in Ukraine; the report from the Ukrainian Human Rights Ombudsman with photographs that show what appear to be bruises on the imprisoned former Prime Minister Yulia Tymoshenko following an alleged attempt to forcibly transport her to a medical facility for treatment against her will; the almost daily announcement of European leaders indicating their refusal to attend the European soccer championship in Ukraine as a result of its human rights situation; and increasing talk in Washington and Brussels of the development of a visa-ban list and freezing of international assets which would seek to punish those government officials and their families who are the cause of the continued backsliding of democracy in Ukraine. None of this would have been imaginable a year ago. However the reality in Ukraine has changed significantly. Amid all of the political instability in Ukraine, it is instructive to understand how the country arrived at where it is today and analyze this in the context of how it will affect the October 2012 parliamentary elections.

The October 2012 elections will be the first parliamentary elections in Ukraine since 2007. At the time, Ukraine had just experienced the Orange Revolution resulting in a grassroots democratic breakthrough and a series of free and fair presidential and parliamentary elections. In February 2010, Victor Yanukovich was elected President in an election which was deemed by most observers to have met internationally accepted democratic standards. However, since his election, the Yanukovich administration has engaged in the practice of selective justice, targeting opposition politicians. On October 1, 2010, the Constitutional Court, following a Yanukovich-supported change in the composition of the court to include judges mostly from his home region, ruled that the amendments made to the constitution in 2005 following the Orange Revolution were invalid. In so doing, powers previously vested in the presidency under the previous constitution were reinstated, returning Ukraine to a presidential system of government. The only elections conducted thus far under the Yanukovich presidency, the 2010 local elections, were recognized by the U.S. and international organizations as having fallen short of meeting democratic standards. Massive government resources were used to consolidate power, while parties not aligned with the governing party were not able to fully and fairly participate in the elections nationwide.

The Yanukovich government has justified any perceived consolidation of power as a means to undertake unprecedented governmental and institutional reforms. However, many international organizations have not positively assessed these reforms, and Ukraine's democratic development. Freedom House, in its 2011 report, downgraded Ukraine from being "free" to being "partly free." In addition, Freedom House published a report at the one-year anniversary of Yanukovich's government, in which it stated that "If left unchecked, the trends set by Ukraine's current leadership will move the country toward greater centralization and consolidation of power—that is, toward authoritarianism."<sup>1</sup> In the report, the authors say Ukraine is characterized by:

"...consolidation of power, with a narrow ruling group under Yanukovich intent on restoring political order and implementing policy using a more intrusive and visible SBU (Security Services of Ukraine) presence as well as an increasingly malleable judicial system; a ruling group that is equally interested in dividing spoils and protecting its own (though egregious corrupt behavior has also been associated with prior governments); lingering resentment over the failure of the Orange Revolution leaders, in power from 2005 through 2009, and the continued fragmentation of the political opposition; the effects of the financial crisis, the International Monetary Fund (IMF) bailout, and ensuing economic reforms; and enervated civil society groups and independent media that are increasingly under pressure from government authorities, including the security services, with particularly difficult conditions in the regions."<sup>2</sup>

Recently, the presidential administration reshuffled key positions in the Ministry of Interior with former Minister Anatoliy Mohylev appointed Prime Minister of the Autonomous Republic of Crimea. Mohylev was replaced with the former head of the State Tax Service of Ukraine, Vitaliy Zakharchenko. Zakharchenko is a native of the President Yanukovich's home region in Donetsk. In January, President Yanukovich signed decrees to remove Fedir Yaroshenko, the Minister of Finance, from his post and replace him with the head of the Ukrainian Security Services SBU, Valeriy Khoroshkovsky. Khoroshkovsky's position as SBU chief was given to Igor Kalinin who is a former Russian citizen and formerly in charge of Yanukovich's security detail. Khoroshkovsky has since been named a Deputy Prime Minister. The new Minister of Finance, Yuri Kolubov, is a known business associate of one of the President's sons. The President then named Dmytro Salamatin as Minister of Defense. Salamatin formerly was a citizen of the Russian Federation until 2005 and it is unclear how he obtained his Ukrainian citizenship. Finally, the head of the Central Bank of Ukraine is headed by another business associate of the President's son, Serhiy Arbuzov, who previously managed a small bank in the President's home region of Donetsk. This reshuffling suggests a consolidation of power in the Yanukovich "family", as many of these new ministers and officials can trace their rise to their connection the President and his sons.

As a result of the consolidation of power in the hands of a small group, closely connected to the President and the continuing democratic regression, there is a growing public discontent with the authorities. In public opinion surveys conducted by the International Republican Institute (IRI), participants were asked, "Would you support the international community freezing the

---

<sup>1</sup> Freedom House Special Report; *Sounding the Alarm: Protecting Democracy in Ukraine 2011*, page ii (April 2011) [http://freedomhouse.org/uploads/special\\_report/98.pdf](http://freedomhouse.org/uploads/special_report/98.pdf)

<sup>2</sup> Freedom House; *Sounding the Alarm: Protecting Democracy in Ukraine 2011*, page 1 (April 2011) [http://www.freedomhouse.org/uploads/special\\_report/98.pdf](http://www.freedomhouse.org/uploads/special_report/98.pdf)

international assets of and suspending visas for Ukrainian officials, including judges, engaged in corrupt practices?” In a November IRI public opinion survey, 81 percent supported this idea while six percent opposed. In March 2012, 82 percent supported this idea while six percent opposed.

On November 17, Ukraine’s Parliament adopted a Law on Parliamentary Elections, which are scheduled for October 2012. The new law establishes a mixed system by which half of the deputies will be elected under a closed-list proportional system and the other half selected through individual mandates in a majoritarian system. The mixed electoral system is a return to the system last used in 2002 when international observers reported significant fraud. The law also establishes a five-percent threshold for any political party to be represented through the proportional vote and does not allow electoral blocs to compete in the election.

The Venice Commission strongly criticized the draft of the Parliamentary Election Law; however, the commission’s analysis was mostly ignored. Its report was critical of the change to the mixed election system. It had advocated for an open party list system. The commission also expressed concern about unclear criteria and deadlines for the designation of electoral districts; a lack of clarity on appealing results of elections; and an absence of full disclosure on sources and sums of election campaign funding.

According to recent IRI polling, it appears that six political parties would pass the five-percent threshold; the Party of Regions which is headed by the current Prime Minister Mykola Azarov; the Fatherland Party headed by Yulia Tymoshenko (currently serving a seven-year prison sentence) and run by Oleksandr Turchynov in her absence; Front of Change, led by the former Speaker of Parliament, Arseniy Yatseniuk; the Ukrainian Democratic Alliance for Reform led by Vitaliy Klychko; the Communist Party led by Vasyl Symonenko; and the Freedom Party headed by Oley Tyahnybok.

At the March Regions Political Party Congress, the Strong Ukraine political party headed by the third runner up in the 2010 presidential election, Serhiy Tigipko was folded into the Party of Regions. The base of support for Strong Ukraine had been small and medium businessmen. It is believed that the addition of Strong Ukraine will add several percentage points to the Party of Regions’ rating. The opposition is seeking to coalesce before the elections. The Fatherland Party and the Front of Change agreed to unite under a unified list. The Fatherland Party and the Front of Change are currently in negotiations with the Ukrainian Democratic Alliance for Reform to join a unified opposition list.

Leading up to the 2012 elections, government officials have intensified their pressure on multiple sectors of Ukrainian society such as media, civil society organizations and the opposition.

## **The Media**

One of the preeminent legacies of the Orange Revolution was a free and vibrant media. Very soon after assuming the presidency in 2010, the current government directly and indirectly pressured the media to limit critical coverage and report more positively on the government. In addition, one of the country’s Deputy Prime Ministers is the owner of the largest media conglomerate in Ukraine, *Inter*. The government has tried to censor state TV companies. For

example, recently the State Television- and Radio-Company of Ukraine, in a move reminiscent of the Soviet propaganda, sent letters to local state TV channels demanding that they “popularize” the President's social initiatives. According to a June 2011 Ukrainian Press Academy news report, 74 percent of the seven leading television channels in Ukraine cover government authorities, 20 percent cover the opposition, and six per cent other. Coverage on the First National Channel was 94 percent on governmental officials and four percent on the opposition and other.<sup>3</sup> A few months ago an independent television station in Kharkiv was closed under suspicious circumstances. In April, the tax authorities, a body increasingly used as a tool of government to exert pressure on the media and other parts of society, began to target one of the remaining independent channels, the TVi Channel.

### **Civil Society Organizations**

The Ukrainian government has begun to more closely monitor and regulate activities of non-governmental organizations, including those of IRI. A Cabinet of Ministers decree signed on January 19, 2011 amends the registration regulations in Ukraine, making it easier to deregister international civil society organizations (CSO) and placing much higher reporting requirements on sub-grantees. Officials from SBU, have also started to intimidate and exert pressure directly on more independent CSOs. Most recently, members of Parliament from the Party of Regions have suggested legislation which would ban foreign funding of CSOs. The national security doctrine of Ukraine adopted by the National Security and Defense Council was updated in March 2011 to declare as a national security threat “any international or domestic organization which provides financial or moral support to political parties or non-governmental organizations whose goal it is to discredit the government of Ukraine.” This statement could be interpreted to apply to any number of organizations working in Ukraine. Adding further to the sense of encroachment by the government on civic association, the Parliament passed and the President signed into law legislation which requires every database which contains personal information to be registered with the national government. Therefore, all CSOs would have to disclose all information which falls under the database category with the government.

### **Marginalization of the Opposition**

The government and its allies apply economic and/or political pressure to coerce members of opposition parties to join the government on local, regional, and national levels. Ukrainian authorities have also targeted those who do not join the government or government-aligned parties with criminal prosecution. As a result, many of the most viable figures in the democratic Ukrainian opposition are currently under investigation or imprisoned. In spite of numerous European and U.S. government statements of concern about the application of selective justice in Ukraine, the Ukrainian government continues to prosecute and incarcerate the leading opposition figures.

As of today, the following opposition figures have been sentenced to prison;

- Yulia Tymoshenko – former Prime Minister, head of leading opposition party, Fatherland, sentenced to seven years in prison. Her health has significantly deteriorated in prison.

---

<sup>3</sup> Ukrainian Press Academy June 2011; <http://www.mediaosvita.com.ua/material/2919>

Prison authorities have refused to allow her to travel to Germany to seek treatment from independent medical providers as suggested by German officials.

- Yuriy Lutsenko – former Interior Minister, leader of People’s Self Defense Party sentenced to four years in prison.
- Volodymyr Ivashchenko – former Acting Minister of Defense sentenced to five years in prison.
- Grigoriy Filipchuk – former Minister of Environmental Protection sentenced to three years in prison.

In addition, Bohdan Danylyshyn, a former Minister of Economy in Tymoshenko’s government, received political asylum in the Czech Republic in January 2011 after being accused of financial mismanagement. Former Kharkiv *oblast* governor and Fatherland Party member Arseny Avakov, who lost disputed mayoral elections in Kharkiv city in the flawed 2010 local elections, is in the process of applying for asylum in Italy after being charged with similar crimes.

The U.S. has issued statements highlighting these instances as examples of selective prosecution.

In summary, there is a clear trend of prosecuting political opposition leaders and activists.

### **IRI Work 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, particularly in Crimea, 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 920 students have graduated from these schools and more than 70 percent of whom have entered 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. IRI also participated in a joint expert assessment team for the October 31, 2010 local elections.

In addition to observing elections, IRI has been assisting the country with electoral reform. In July, prior to the October 31 local elections, the Parliament adopted an election law which IRI and many other international and domestic organizations criticized for falling short of international democratic standards. Consequently, IRI and the National Democratic Institute drafted a detailed election law analysis in August, which pointed out certain undemocratic aspects of the law and the non-transparent manner in which the law was adopted. As a result, the President ordered Parliament to revise the election law. However, even though the law was slightly amended, international and domestic observers labeled the October 31, 2010 election as not meeting international standards. In response to widespread international criticism, Ukraine's President created a working group tasked with developing recommendations for new elections laws. IRI was a member of the working group until March, when it suspended its membership, after IRI made the determination that it was not being allowed to substantively contribute to the process.

### **Next Steps**

Let me once again reiterate the importance of the upcoming parliamentary elections. Elections are critical for Ukraine's continued integration into Euro-Atlantic structures. Failure to conduct elections which meet international standards will cause Ukraine to be further isolated from the West.

We encourage the United States Congress to continue to make it clear to the Ukrainian government that free and fair elections will determine the course of the future relationship between our two countries. In anticipation of the possibility of excessive fraud in the parliamentary elections, we call on the Ukrainian authorities to support international election observation missions to Ukraine and to allow district and regional election commissioners to conduct their work independent of pressure and intimidation from central authorities.

In summary, I want to convey the extreme importance of the parliamentary elections in Ukraine. The way in which elections are conducted are every bit as important as the outcome. I thank the Chairman and his staff for their focus and attention on Ukraine, and thank you again for the opportunity to appear here today.