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# *INSIDE UKRAINE*

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## *Congratulations, Ukraine is electoral democracy. Now what?*

This month, Ukrainians went to the ballot box with heavy hearts. Most of them were making "a choice with no choice" among the 18 candidates running for president—most of whom have already been, or currently, are in power, from the Verkhovna Rada (VR) to local government. While nearly 85%<sup>1</sup> of voters felt disenchanting with those in office and close to 60%<sup>2</sup> had little faith that this election would bring positive change, a good two thirds, 67%, went to the polls.

The Orange Revolution showed Ukrainians that elections are virtually the only instrument they can use to influence politicians: however imperfect, they at least offer some hope of change. Still, voting is a far cry from a panacea: 47% of voters believe that their participation in this election will not affect the future of the country, and a similar percentage expects it to have no major impact on politicians.

The battle for the top seat in the land has been heated. Despite the considerable constraints on presidential power, the main candidates still see the Presidency as the ultimate objective. The President's veto power and ability to seize the Constitutional Court afford him/her considerable influence over

the rest of government. The post also attracts politicians because of the President's power to nominate candidates for important positions, namely those of Governor of the National Bank and of Prosecutor General, and to appoint oblast governors and heads of county state administrations.

Mere weeks before the ballot, voters' expectations regarding the honesty of the process were not heartening: only 4.5% said they thought the election would be fair and free of violations. 41.4% saw potentially result-altering violations as possible, while 15.7% expected the vote to be rigged altogether. Meanwhile, politicians of all stripes fed voter distrust via mutual accusations. Charges of ill-will and abuse of "administrative resources," i.e. the inappropriate use of public institutions, abounded.

As it happened, the optimistic expectations of the international community proved accurate. The election was fair and in line with both Ukrainian legislation and international standards. According to the OSCE election observation mission, "...the first round... was of high quality and showed significant progress over previous elections ... [it] met most OSCE and Council of Europe commitments."

### Foreign Players: Process über alles

In contrast to the 2004 Presidential race, when Ukraine's Western and Eastern partners openly supported specific candidates, this year foreign involvement was minimal, and some actors even drastically changed their positions.

Russia made it known that it would be happy with any of the candidates – except Viktor Yushchenko. Moscow chose new means of influencing Ukraine's politics: continuing long-term integration projects (Crimea, a Customs Union) and ensuring conditions to protect its economic interests after the election.

The United States and the European Union emphasized the importance of a fair and transparent electoral process, while refraining from expressing opinions on the candidates. Still, these partners have no clear plan for how to work with Ukraine after the election. Much will depend on who wins and, further, whether either side will be able to overcome their stereotyped images.

One bit of good news for Ukrainians was the recognition of the process and results of the vote by official observers from both the OSCE and Western countries and the CIS as fair. This has been very much in Ukraine's interest. With the world's estimation official, none of the candidates or their supporters will have grounds to cast doubt on the results— or at least on those of the first round.

<sup>1</sup> According to a Gallup poll in May 2009.

<sup>2</sup> These and all further data regarding public opinion are from a survey run by the Democratic Initiatives Fund (DIF) in December 2009.

## Exit Polls: Business as usual

This election confirmed the popularity of one civil society instrument used to check election results: the exit poll. Among the four national surveys, one was independently funded by donations collected from various sources, while the three others were

commissioned by major television channels. The results of all exit polls confirmed the expected two frontrunners, Viktor Yanukovich and Yulia Tymoshenko.

Table 1. Exit poll results

	National	Inter, Socis	ICTV, GfK	Ukrayina, RBG	CEC official results
Viktor Yanukovich	31.3%	36.6%	34.50%	34.7%	35.32%
Yulia Tymoshenko	27.1%	25.8%	25.63%	25.0%	25.05%
Serhiy Tihipko	13.4%	13.5%	13.79%	13.2%	13.05%
Arseniy Yatseniuk	7.8%	6.6%	7.01%	7.1%	6.96%
Viktor Yushchenko	6.0%	5.2%	5.65%	5.8%	5.45%

Despite differences in methodology, the results were very similar. Only the National exit poll run jointly by the Democratic Initiatives Fund (DIF), the Razumkov Center and the Kyiv International Institute of Sociology showed a smaller gap between the two top candidates. The poll's organizers attributed their survey's imperfections to inadequate funding and a consequently smaller pool of polling stations covered.

The contradictory reactions of politicians to the results of the National exit poll and accusations of bias from some quarters appear to be attempts to discredit this democratic instrument prior to the run-off. The presence of "paid for" exit polls plays into the hands of these politicians. In addition to these accusations, lack of funding could definitely jeopardize the running of this poll in February. Given the key role that the National exit poll played in 2004, the need for this instrument is obvious. After all, the professionalism and high reputation of its organizers is a guarantee of the independence and quality of the survey.

## How did Ukrainians vote?

Most Ukrainian politicians are convinced that, to win an election, all it takes is a good image and sweet promises. Despite their serious dissatisfaction with those in power, voters once again gave most of their votes to the current and previous premiers. Ukrainians appear to have voted more "with their hearts than with their heads."

The relative irrelevance of candidates' ideas and positions was a key characteristic of this campaign. Old chestnuts like NATO membership and the use of Russian as a second language disappeared from the campaign trail and foreign policy rhetoric was cautious. Each candidate tried to portray his or herself as the country's only possible "savior." People chose their "savior" based on their attitudes towards candidates' personalities, specific aspects of their biographies, and their slogans.

## The Results: As expected... with a few surprises

The official results of the January 17 vote allowed Viktor Yanukovich, with 35.32% of the vote, and Yulia Tymoshenko, with 25.05%, to move on to the run-off. The gap between the two was of 10.27%, which, although high, cannot be considered a clear victory for the frontrunner.

In contrast to 2004, when there was strong polarization among regions, only Viktor Yanukovich enjoyed unquestioning and unchanging regional support, receiving 50–70% of votes in Eastern and Southern Ukraine. He was also able to make inroads into his main rival's territory and to come out on top in Zakarpattia. Compared to the 2007 VR elections, Viktor Yanukovich was able to attract 600,000 more votes, while Yulia Tymoshenko lost nearly 1 million.

Serhiy Tihipko's third-place finish had been predicted by quite a few analysts. During the fall 2009, he was able to pick up disenchanting Arseniy Yatseniuk's

niuk voters and persuade many undecideds to go for him as well. But no one expected him to receive 13.05% of the vote. This testifies to a strong desire among voters for "new faces," and a positive reaction to his campaign. Focusing not on mudslinging and fear-mongering, Mr. Tihipko's campaign strategy of talking systemic sectoral reforms worked. What his voters and Arseniy Yatseniuk's electorate do in the run-off—together, they represent 20% of the vote—will be a deciding factor.

The incumbent President drew, 5.45% of the vote, in line with expectations. Still, his supporters are unlikely to play a major role in the February run-off. Most will probably abstain or vote "Against both candidates." Mr. Yushchenko's support confirms the fact that ideologically — and even psychologically — these Ukrainians cannot accept either of the leading candidates.

The vote offered a few other interesting results as well:

- Ukraine has learned to hold democratic elections. Politicians' warnings of widespread vote-rigging proved unfounded and seemed to be simply a

way to justify their own defeats. Even Viktor Yanukovich, who was once seen as the main enemy of fair elections, now clearly favors them.

- All candidates recognized the results, as illustrated by the absence of official complaints to the CEC or the courts. The CEC declared the vote void in only five polling stations, in four electoral districts.
- The level of public support for the candidates indicates the prospects for the parties and political projects they lead in the next local and legislative elections (2010 and 2012).
- Concerns in the West about xenophobia in Ukraine stirred by statements from Uzhhorod mayor Serhiy Ratushniak, with his anti-Semitic rhetoric, and by L'viv's radical nationalist Oleh Tiahnybok proved unfounded. Combined, they received little more than 1.5% of the vote—approximately 380,000 voters, or about a quarter of the population of Zakarpattia oblast, where Uzhhorod is a center.

## The Run-off: What's next?

So, the first round of the Presidential election is over and the results are in. Now the country faces a three-week blitz for the top post, a vote, and the calculation of its results. What could affect the results of the run-off? Which of the two candidates will manage to get the votes of the candidates who lost in the first round? What coalitions might be formed and what will they cost? What institutional and legislative pitfalls could affect the second round? What are the biggest risks in this run-off election?

### Who gets the pumpkin<sup>3</sup>?

Immediately after the announcement of the exit polls, it became clear that both Viktor Yanukovich and Yulia Tymoshenko would need more votes in the

second round. Given that neither of them picked up just over 60 per cent of votes combined, the votes of the 10 million Ukrainians who cast their ballots for other candidates will figure strongly in this run-off. And more than six million of those 10 voted for Serhiy Tihipko, Arseniy Yatseniuk or Viktor Yushchenko.

The two remaining candidates now have to persuade voters who initially chose other candidates to change their positions. According to the exit polls, however, 30 – 50% stated that they intended to support "neither of the candidates" in the run-off. So a change of position will largely depend on whether their candidate in the first round throws his support behind one of the remaining two. Neither Mr. Yatseniuk nor Mr. Yushchenko will openly support Mr. Yanukovich or Ms. Tymoshenko. So far, Mr. Tihipko has also kept his cards close to his chest, despite obvious offers from both camps.

<sup>3</sup> In Ukrainian tradition, young women who were being courted turned down unwanted suitors by handing them a pumpkin.

Yulia Tymoshenko was first to offer the post of Premier to Mr. Tihipko, who has been both Economy Minister and Deputy Premier. Should she win, she is definitely in a position to guarantee a favorable vote for his candidacy in the Verkhovna Rada, as he is likely to find support outside the coalition. Although Mr. Tihipko has declined to endorse Ms. Tymoshenko and his talks with Viktor Yanukovich are still very secretive, he has already publicly stated that he would be happy to serve as Premier under either candidate, suggesting that he is not buying into either of them...yet. This leaves the field wide open for the run-off, as both candidates will need the support of his voters to win.

Most likely Mr. Tihipko will continue to avoid any official alliance with either of the candidates. He understands the limited impact that he will have over the choices of his electorate and knows that there are other elections coming up as well. Still, his official stance of remaining neutral towards both candidates until the end of the election risks removing him from the field as a serious player and leaving him to compete with insignificant also-rans in the local and VR elections.

On the other hand, a coalition with Serhiy Tihipko would also bring certain risks for both candidates. For Viktor Yanukovich, it will be hard to forget Mr. Tihipko's "betrayal" in 2004<sup>4</sup> and reconcile him with the Party of Regions' (PoR) business backers, as well as with chief economist Mykola Azarov. An alliance between Mr. Tihipko and Yulia Tymoshenko would primarily be complicated by the fact that both are very strong personalities with their own ambitions and their own views for the country's future.

In either case, Serhiy Tihipko must understand the risky nature of the post of Head of Government in the current economic situation, when unpopular moves can no longer be postponed. At the same time, he will not consent to being a mere "executive" Premier, and will attempt to play his own game. This is precisely what threatens to reproduce the old duel between President and Premier and to block even simple attempts at reform.

<sup>4</sup> Mr. Tihipko was in charge of Mr. Yanukovich's electoral campaign in 2004, but quit after the Supreme Court overruled the results of the massively rigged second round.

## An institutional minefield

In preparing for this election, politicians took into account the experience of 2004 and acted to resolve the problems that had had such a serious impact on the results. On one hand, new mechanisms have reduced opportunities for vote-rigging during the actual vote. On the other hand, they have made life more difficult for voters and left room for mutual accusations. Those changes made the enormous institutional crisis in Ukraine's public administration more obvious. After all, there is little reason to believe that polling stations will work any better than the country's residential services administrators or the police.

### *Voter lists: Look for your name...again and again*

Although a consolidated State Voter Registry was set up and by fall 2009 voters could check their information, errors and omissions on the lists were among the biggest problems on Election Day. Voters were forced to wait in long lines for administrative courts to rule on corrections and insertions—including people who had been properly registered in the previous list. At the moment, it is not clear what percentage of voters ran into such problems and how many cases were resolved.

The Central Electoral Commission announced its intention to fix all the problems that came up with the lists prior to the second round, but how realistic this statement is remains to be seen.

### *At-home voting: Homesick?*

This option became the focus of most accusations of vote-rigging during the first round. At the last minute, on 16 January, the Kyiv Administrative Court of Appeals passed a ruling changing the procedure for voting at home, according to which voters now had to provide a medical note confirming their inability to go out. This created a major conundrum, as applications to vote at home had to be submitted no later than January 15 - that is, prior to the ruling. Applications previously submitted without a medical note could not comply with the new requirements.

In fact, 1,004,128 voters applied for this privilege. This added up to less than 3% of all voters and somewhat more than 4% of those who actually voted on 17 January. However, the Committee of Voters of

Ukraine (CVU) noted that in some rural areas, this figure was almost 30%. Unusually cold weather conditions could explain this, given the high number of elderly voters in such districts. Still, this difference could possibly suggest a certain abuse of home voting privileges.

The effect of all this on the run-off could be minimized if politicians, firstly, recognize the court's decision and, secondly, refrain from pressuring courts to establish new requirements for home voting.

### *The CEC: Empty-chair politics*

According to preliminary assessments by international observers, the CEC carried out its functions properly. It quickly published the preliminary results of the election based on electronic tabulations. On 25 January, the CEC announced the official final results and the date of the run-off election, Sunday, 7 February 2010. Moreover, it did so in less than the allotted time period.

Still, the CEC did not completely avoid political contretemps. Commissioner Anatoliy Pysarenko, who had reached the upper age limit for members of the Civil Service in March 2009, continued to carry out his duties up until the election. All this time, neither the CEC nor any of the branches of government, such as the Verkhovna Rada or the President, raised the question of replacing him.

Then, just before and during the first round of the election, this situation suddenly led to lawsuits. On 19 January, two days after the vote, the Verkhovna Rada passed a Resolution dismissing Mr. Pysarenko without having a candidate to replace him, which was the President's prerogative to propose. It was already 21 January when the Rada considered Mr. Yushchenko's nominee, Valeriy Karpuntsov, whose candidacy it rejected.

When one of the seats on the 15-member CEC remains empty, the decisionmaking process becomes complicated, as votes can split down the middle. At the moment, it is hard to see a possibility to reach political compromise among the main factions in the Rada. We can only hope that the OSCE and the Council of Europe, to whom most Ukrainian politicians tend to listen, will offer clear recommendations regarding the obligation to appoint a new member of the CEC before 7 February.

### *The Electoral Commissions: No money, no voting*

The main problem facing electoral commissions at all levels has been inadequate and delayed funding. This made it difficult for them to carry out their functions completely and in a timely manner. As a result, some polling stations opened very late or not at all, while some were lacking sufficient ballot papers. On the other hand, this did not have a decisive impact on the overall voting process and the commissions handled the vote count quite well.

The issue of funding could be more critical in the second round, given the difficult situation with the State Budget.

### *Electoral Law: Work in progress...*

The need to fix the law governing Presidential elections remained off the radar for politicians almost until summer 2009. Despite recommendations from both the OSCE and the Venice Commission regarding the adoption of an Election Code, Ukraine moved into election mode with only mild amendments to the Law "On the Election of the President."

Some provisions of this law raised serious concerns among Ukrainian and foreign experts. The mechanisms for verifying voter lists, voting at home and resolving disputes over the process and results of the election remained contradictory and insufficiently effective. Still, Ukraine's foreign partners did note that a democratic Presidential election could be ensured if the law were applied "...in good faith and in a non-restrictive manner." The first round confirmed this assessment.

Despite their imperfections, the changes to electoral legislation demonstrated that politicians were not looking to institute mechanisms for vote-rigging. Unfortunately, this is not so much a reflection of their high political culture as a protective reaction to political competition under conditions when no candidate was in a position to seriously influence the outcome of the elections.

BYT deputies have already submitted a bill to adjust certain contradictions in the current election law. But the first attempts to debate it in the Verkhovna Rada failed, as the bill was not even put on the agenda. BYT's activism on this issue is an attempt to confirm widespread expectations of wholesale vote-rigging. Given that these predictions proved

unfounded during the first round, BYT's efforts look more like an attempt to aggravate the situation and to prepare Ukrainian opinion for negative outcomes. The Party of Regions has strongly opposed the proposed amendments, arguing that changing the rules in the middle of the electoral process is improper. On the other hand, the PoR thus seems to be defending certain opportunities for vote-rigging, which brings up bad memories of 2004.

Most likely, politicians from both camps will listen to the OSCE about refraining from changing electoral legislation before this election cycle is completed. Still, given the confrontations around this issue, it is possible to predict that there will be challenges to the last court rulings regarding electoral legislation. If no final ruling is issued prior to 7 February

by the High Administrative Court or the Verkhovna Rada, electoral commissions will face an ambiguous situation. Windows of opportunity for vote-rigging will remain, and, along with them, opportunities for further challenges of the election's results.

## The Courts: Back in centre stage

Based on the official statements by all those who ran in the first round of the Presidential election, no one plans to challenge the results in court. Most of the complaints reviewed by electoral commissions and courts prior and during the vote concerned voter lists. Still, the camps of both run-off candidates are preparing voters for the likelihood that it will be quite different from the first round. Both groups are predicting vote-rigging and preparing themselves for lawsuits.

### Administrative Courts: A new player in the election process

On 1 September 2005, an administrative court system was set up in Ukraine that, among others, was granted **full powers to hear matters related to elections**. Administrative courts alone can remove a member of an electoral commission, temporarily restrain the media when electoral legislation is being violated, remove or add voters to voter lists, withdraw a candidate for the Presidency from registration, and, finally, declare an election void.

This system was gradually built with assistance from the OSCE in terms of training judges, monitoring court practice and preparing learning materials. The complete hierarchy of administrative courts was in place prior to 2010. Still, according to Ukrainian and foreign analysts, this branch of the judiciary still lacks experience and capacity and has not earned the necessary level of public trust, as has, say, the Supreme Court of Ukraine.

Today, 61.7% of Ukrainians do not support the work of the country's court system. Only the Verkhovna Rada and the President have worse ratings, at 66.2% and 67.5% respectively.<sup>5</sup>

As in 2004, the courts could play a major role in the electoral process, given the low level of trust among voters regarding the final results, the level of electoral culture, and legal traditions. Still, this time this role will be played, not only by the Supreme Court, but by the entire newly-created system of administrative courts.

Because of its peaceful nature, the first round of this Presidential election did not end up testing the entire system. So its real preparedness can only be assumed on the basis of comments from experts and representatives of the system itself.

## Administrative Courts: Chinks in the armor

In addition to inadequate technical and financial resources and a low level of trust among voters, there is

<sup>5</sup> Data from a survey by the Razumkov Center in July 2009.

the problem of how administrators are appointed to the courts. For instance, which body is empowered to appoint chief justices of administrative courts remains an open question in the current legislation.

This issue proved most urgent in the High Administrative Court (HAC), when the powers of its chief justice lapsed on 22 December 2009. At the moment, it is impossible to appoint someone new to the post due to this legal gap. The incumbent chief justice extended his own powers in a questionable manner and has continued to carry out his duties in an "acting" capacity. By law, the "acting" post should have been taken up by his first deputy. The effectively two-headed HAC is now in a vulnerable position, especially as the battle for the top post in the land is heating up.

In addition, current legislation fails to resolve a slew of other problems—or offers contradictory provisions:

- Which norms take precedence: those in the Law "On the Election of the President" or those in the Code of Administrative Justice (CAJ)?
- How can the jurisdictions of different types of electoral disputes be determined?
- May specific rulings on electoral disputes be appealed and, if so, how should appeals be filed?
- Should electoral disputes be decided by a single judge or a panel of judges?

In this situation, administrative courts will have to take a clear position on these issues solely at their own discretion. Yet any position they take could offer grounds for further challenges against their actions and decisions.

In addition, the courts themselves have been expressing doubts about the constitutionality of certain provisions in electoral legislation and the CAJ, such as the prohibition on challenging the tabulated

protocols of local and district electoral commissions. Such doubts could also turn into appeals to the Constitutional Court from a group of national deputies or the incumbent President, if the electoral situation attracts enough interest. Involving the Constitutional Court could block the entire electoral process for an indefinite period.

### The Run-off: Running on schedule

The run-off election could see every administrative court turn into a battleground. Ukrainians are already being prepared for this eventuality by both camps. Meanwhile, everyone is also trying to anticipate how long the process of tabulating the votes and announcing the final results will take. Is there reason to worry? Not really. For one thing, the law clearly establishes the order and timeframe for the work of electoral commissions.

**Table 2. Timetable for Round 2 of the Presidential Election**

Date	Event
7 February	Second round of voting in the Presidential election. Voters may turn to local courts, acting as administrative courts, to amend errors or be entered into the voters list until 19:00.
No later than 12 February (5 calendar days)	District electoral commissions (DECs) finalize vote counting in their polling districts, regardless of the number of polling stations in which they have declared the vote null and void. Protocols with vote tabulations in the polling district are transported to the CEC immediately after signing.
No later than 18 February (within 10 calendar days, but no later than 3 days after receiving last protocol from DECs)*	CEC establishes the results of the vote and prepares the necessary protocol. *The CEC may extend this period by 1 (one) day should a district commission require time to submit a protocol with "Clarifications."
No later than 21 February (within 3 days of approving CEC protocol)	The CEC publishes a notice of the election results and about any decisions it has made, in the Holos Ukrainy and Uriadoviy Kurier papers (official VR and Cabinet bulletins).
No later than 23 March (within 30 days of official announcement of election results by CEC)	The newly-elected President of Ukraine is inaugurated and given the powers of office.

As this timetable for the run-off election shows, both DECs and the CEC have clearly established and relatively narrow timeframes for finalizing the results of the ballot. Moreover, challenges to the results at any level cannot be used to hold up the entire process.

Secondly, the timeframes within which courts are obliged to review suits involving the election are

also clearly defined by special provisions of law and extremely tight. Each level in the system of administrative courts has only two days to review a suit. The same amount of time is provided for the review of appeals against any rulings. Still, to understand the complicated structure and sometimes convoluted formulations, one would need to be a qualified Ukrainian lawyer.

**Table 3. The secret revealed: to which court to turn, when and why?<sup>6</sup>**

Object of suit	Subject of suit	Timeframe for review
<b>Local courts of general jurisdiction acting as administrative courts</b>		
Polling station election commission (PEC) and its members	Clarifying voters lists, other issues	Within 2 days of receiving the suit but no later than 2 days prior to voting day. If a suit comes in within 2 days of Election Day, it must be reviewed immediately.
Media, businesses, institutions, organizations and their officers and staff, media artists	Violating electoral law	2 days
Media, their owners, officers and staff	Violating the rules for media activity during the electoral process, including active campaigning, especially the requirement to retract false materials published regarding candidates or the political party or bloc that nominated the candidate	2 days
<b>District administrative court with jurisdiction over the relevant EC</b>		
District electoral commissions (DECs)	Decisions, actions or inaction in the preparation and running of the election of the President	2 days
PECs and their members	Decisions, actions or inaction on the actual day of voting, during the counting of ballots and establishing the results of the vote	2 days
Central executive bodies (CEBs), local government bodies (LGBs), companies, institutions, organizations, their officers and staff	Violating the voting rights or interest in participating in the electoral process	2 days
Candidates, their proxies, parties or blocs, local party branches, their officers and authorized official observers	Violating electoral law	2 days
<b>Kyiv Administrative Court of Appeals</b>		
CEC	Other decisions, actions or inactions	2 days
Candidate for the Presidency, party or bloc	Procedure for nominating the candidate, election campaigning, other violations of civil rights or voting rights of individuals	2 days
<b>Higher Administrative Court of Ukraine</b>		
CEC	Matters involving the determination of final results	2 days Suits that are submitted prior to Election day shall be decided within 2 days but no later than 2 hours prior to voting. Suits that come in on Election Day but after the closing of the polls shall be decided within 2 days after their receipt.

<sup>6</sup> Suits on events having taken place before Election Day can be filed up to the day before election; suits on events taking place on Election Day must be filed no later than the end of day following election; all others must be filed within 5 days of the election.

Thus, provided that all suits regarding the electoral process at PECs and DEC are filed in accordance with the law, they should be reviewed and final decisions made prior to the announcement of the official results by the CEC. Five more days are allowed for possible challenges to the CEC and for review by the High Administrative Court. However, there are general provisions of the CAJ that can be interpreted as authorizing administrative courts to extend case review deadlines at their own discretion.

Dragging out the process of determining and announcing the final results through lawsuits will mean only one thing: the law is not being upheld or loopholes and contradictions are being exploited. This is the only way the current threats that have echoed from both camps could become reality. Unfortunately, evidence may not always be the determining factor in winning a case. There is also a risk that the process will go beyond the administrative courts, as cases can theoretically be taken to the Supreme Court.

Much will also depend on how far individual judges and courts are prepared to go outside the legal framework. The reputation of Ukraine's judiciary gives little cause for optimism in this regard.

## For Ukraine to win, someone must lose

Despite the high marks given to the first round by candidates and international observers, there is still

a tremendous need to pay close attention to all aspects of the second round. The biggest risk that this process could become both dishonest and undemocratic lies with Ukrainian politicians themselves.

The electoral process has been improved, but efforts to do the same with Ukraine's judiciary have been far from successful. This makes it extremely important for the attention of international observers to be directed not only at the electoral commissions, but also at administrative courts at all levels. A positive assessment of the run-off election by the OSCE and Council of Europe would limit opportunities to challenge election results in the courts and, therefore, the probability of the process being protracted.

Ukrainians have proven that they can elect according to law. But are their courts able to judge according to the law? Or, as Javier Solana once put it, Can they play by the rules and not with the rules?

Now is not the time for Ukraine to think in terms of sectoral reform, the economy, or the Constitution. The main thing is to survive this election and potential large-scale courtroom battles to get a new legitimate President before the government collapses and loses the trust of both Ukraine's citizens and its western partners.

Any politician who thinks today that he controls the courts could well become their victim tomorrow. This is why all political players should support at least one reform immediately after this election: reforming the court system in Ukraine.