



## Defending Democracy: Tymoshenko Takes Battle to the Courts

Prime Minister Yulia Tymoshenko has said that she will challenge the results of the presidential election in court following evidence of widespread fraud. On Sunday, the Central Election Commission (CEC) declared Viktor Yanukovich the next president and published results identical to the preliminary results announced last Wednesday.



▲ Standing up for Democracy. Prime Minister Yulia Tymoshenko addresses the nation.

speaking stronghold of Mr Yanukovich – where she alleged 3-8 percent of votes were fraudulently given to him. She said that overall Mr Yanukovich's team had stolen more than one million votes, more than enough to sway the result in his favour.

The declared results confirmed a gap between Ms Tymoshenko and the Party of Regions leader Viktor Yanukovich of just 3.48 percent, which amounts to some 900,000 votes.

Pre-empting the official result, Ms Tymoshenko addressed the nation on Saturday. She thanked her supporters and explained that, since the election on 7 February, her team had been working with lawyers to collect and catalogue evidence of election falsifications to be presented in court.

In particular, the premier cited irregularities in the southern autonomous region of Crimea – a Russian-

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Second Round Results	
Viktor Yanukovich	48.95%
Yulia Tymoshenko	45.57%
Against All	4.36%

A steely faced Ms Tymoshenko told TV viewers, “With all the evidence, I took the only possible solution - to challenge the election results in court.” Acknowledging that Ukrainians were weary from years of political instability, she stressed the need for stability and calm. But she drove home her message, “Not going to the courts today would mean leaving Ukraine to criminals without a fight.”

While election monitors were quick to declare the election process had been “free and fair,” there has been growing disquiet that their proclamations were too premature, considering the fraud demonstrated by Mr Yanukovich's supporters five years ago.

“Yanukovich's team has learned much since 2004,” said First Deputy Prime Minister Oleksandr Turchynov, “the falsifications we have witnessed are less obvious and much harder to verify, but they are there.”



In her address, Ms Tymoshenko said that several observers from the Organisation for Cooperation and Security in Europe (OSCE) election monitoring mission supported her challenge and were concerned at "systematic fraud."

Last week the OSCE and other bodies gave the Ukraine election a clean bill of health. It did however voice concern over a major change in-between rounds in the election process. Legislation hurriedly instigated by the Party of Regions dispensed with the requirement for a quorum of representatives from both sides to approve the count. It meant that in 38,000 polling stations nationwide, local Party of Regions commissioners had the power to sign-off the results without the approval from commission members from the Bloc of Yulia Tymoshenko (BYuT).

Yesterday the CEC said that it will not consider Ms Tymoshenko's complaints. Meanwhile, Ms Tymoshenko's representative at the CEC said that they will take the issue to the courts. He confirmed there are 43 cases in the Kyiv court of appeals concerning the inaction of the CEC in considering complaints. Going through the courts will be an uphill struggle for Ms Tymoshenko. Both the CEC and the courts are staffed predominantly by Party of Regions-run officials.

"I very well know, as you do, the quality of our courts. But at the same time, I have a responsibility to you and the country to fight for the restoration of justice," said Ms Tymoshenko.

### **Reported Election Irregularities**

- Unusually high number of ballots with votes cast for Ms Tymoshenko intentionally damaged and therefore invalidated.
- With the help of local government bodies, parallel lists of voters were drawn up in the Donetsk and Luhansk regions, enabling voters to vote twice.
- Numerous changes in the voter list were made on the day of voting in violation of the law.
- Cases of voting by election commissioners or other voters for other persons not present at the polling station.
- Artificial increase in the turnout in Eastern regions of Ukraine caused by the transport between voting precincts of voters organised by the Party of Regions. Furthermore, intensive campaigning on the day of elections is in violation of the law.
- Numerous violations in the PEC protocols submitted to the DEC; violations of requirements on the corrections in the PEC protocols.
- A suspiciously high number of voters who voted from home (more than 1 million), many of whom did not have permission to do so. A high incidence of home voting based on applications written in the same handwriting.
- Counting of damaged ballots in favour of Viktor Yanukovich in the southern and eastern regions of Ukraine.

# Weak Mandate for Yanukovych

**Viktor Yanukovych's alleged victory by the narrowest of margins was hardly a ringing endorsement for the twice-convicted former mechanic. His failure to breach the 50 percent barrier means that a majority of the electorate actually opposed him. So what is his next move?**



▲ Viktor Yanukovych did not do as well as many forecast.

Insiders in the Party of Regions are said to be disgruntled with Mr Yanukovych's poor performance. Given the substantial resources invested in his campaign, they hoped for a double-digit gap. Now they will insist that he consolidates his power base by seeking a vote of no-confidence in the prime minister. This could be initiated this week. But it is not a move the foreign investment community favours. Investors want stability in the country, which is best served by a power-sharing agreement with Ms Tymoshenko staying on as premier.

Interviewed last week by Bloomberg, Kaan Nazli, a director at New York-based Medley Global Advisors LLC, expressed this view but thought a no-confidence motion was likely. "Next week we will have clarity whether he will be able to put together a majority. Yanukovych's camp isn't happy as he came out a weak president. They expected a larger vote margin," he said.

## Tymoshenko did Better than Predicted

In comparison, Ms Tymoshenko did much better than many observers expected. She clawed back nearly two-thirds of the 10 percent gap from the first round, despite the handicap of being the incumbent prime minister during the worst economic recession since the collapse of the Soviet Union. During the third round of the 2004 presidential election, when Mr Yanukovych was prime minister presiding over a buoyant economy, he lost by a wider margin – 8 percent. So a victory with a gap of less than half that is nothing to crow about.

Ms Tymoshenko's performance was all the more remarkable given daily attacks from a hostile President Viktor Yushchenko. In the second round he campaigned against her by calling for a vote against everybody. In the context of the election, it was tantamount to calling for voters to vote for Mr Yanukovych. While these actions no doubt harmed him more than her, they nevertheless left a bitter taste in the mouth of the electorate.

Finally, one should not discount the influence from powerful oligarchs who stand to gain much from a Yanukovych presidency. Their control of the majority of the nation's newspapers and TV stations was evident throughout the campaign. Now they must be repaid. No doubt this will come in the months ahead. For example by reopening the gas contract with Russia, which will pave the way for the return of murky intermediaries.

But first Mr Yanukovych needs to get the IMF back into the fold if he is to dig Ukraine out of the budget crisis that he created. For his populist social spending legislation was the reason why the IMF suspended the \$3.8 billion tranche due last November. Showing just how empty his election promises were, Mr Yanukovych has already reneged on his promised rise in the minimum wage. But this alone won't bridge the budget gap he created. If Ms Tymoshenko's challenge in the courts goes unrewarded then Mr Yanukovych faces a bleak start to his term in office. As the old adage goes, he has made his bed...

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# Turchynov States Position

Viktor Yanukovych and the Party of Regions, using their majority in the Central Election Commission, are doing everything they can to cover up the large-scale fraud that was committed during the second round of the presidential elections in Ukraine, and finalise the results of the elections as soon as possible. These were the remarks of First Deputy Prime Minister Oleksandr Turchynov published on Friday last week.



▲ Yulia Tymoshenko's campaign manager, Oleksandr Turchynov.

Yulia Tymoshenko's campaign headquarters is demanding a recount at the 1,200 polling stations where we have filed complaints. We are acting within the Constitution and the law. The complaints were submitted to district election commissions and are now being handed over to the Central Election Commission, which is trying, I emphasise again, taking advantage of the majority of members who are controlled by the Party of Regions, from what it seems, to not consider these issues.

I think it's very important for Ukraine to know whether or not Yanukovych was legitimately elected. Yanukovych needs this, first and foremost, to convince Ukraine of his legitimacy, because I remind you that he won only in 10 administrative districts, while Yulia Tymoshenko received a majority of 17 administrative districts.

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It's important to know who won objectively. This simply requires a recount, without politically biased statements or pressure from the streets, tents or social unrest. Simply conduct a recount as provided by the Constitution and the election law. We appealed with this request not only to the Central Election Commission but to Viktor Yanukovych's headquarters. At first they agreed (only publicly) to hold a recount also in Western Ukraine. We supported this proposal and said that we're ready to recount the votes in any region where Yulia Tymoshenko won, provided they don't block us from having the chance to verify the results in Donetsk, Luhansk and other oblasts.

I can provide an example. We succeeded, despite the resistance, to hold a recount at 7 polling stations and discovered that 5 to 8 percent of the votes, here alone, were rigged in favour of Viktor Yanukovych.

I believe that Ukraine should have a president who was elected fairly and who the citizens actually voted for.

Questions or comments? E-mail us at [nlysova@beauty.net.ua](mailto:nlysova@beauty.net.ua)

