


Identifier	Created	Classification	Origin
07KYIV211	2007-01-29 15:46:00	CONFIDENTIAL	Embassy Kyiv

Cable title: **UKRAINE: NATO REFERENDUM ON HOLD AFTER**

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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000211

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TAGS: PGOV PREL NATO UP

SUBJECT: UKRAINE: NATO REFERENDUM ON HOLD AFTER
CONSTITUTIONAL COURT APPEAL

REF: 06 KYIV 4679

Classified By: Political Counselor Kent Logsdon for reasons 1.4(a,b,d).

1. (C) Summary. President Yushchenko's January 26 decision to refer two constitutional articles on holding a referendum to the Constitutional Court for clarification effectively pushes down the road the need to decide whether there will be a referendum on membership in NATO and the Single Economic Space (SES) in 2007. Given the Court's heavy caseload and the recent January 18 start on hearing its first case, we do not expect a ruling for at least six months, if not longer. Although the President has the constitutional authority to decline the petition for the referendum, buying time from the Court better suits his aversion to confrontation. Comments from the Prime Minister's team, the Presidential Secretariat, and outside experts suggest that all parts of the GoU would prefer to delay holding a vote that they know will fail if conducted too soon. The most vocal MP in the Rada (parliament) previously pushing the referendum, the late Regions MP Kushanaryov, died unexpectedly January 17 in a hunting accident, which may reduce pressure in the Rada in favor of an early referendum.

2. (C) Comment: PM Yanukovich's role in this saga is important. His team, notably Chief of Staff Lyovochkin, told the Ambassador that it is not in the PM's interests to hold a referendum in the near future. Yanukovich could help take the pressure off the President by making a public statement regarding the inadvisability of holding the referendum in conjunction with the comprehensive NATO information campaign of the sort he indicated was necessary while in Brussels September 14. However, it is also possible that he could use Yushchenko's strong desire for Ukraine to join NATO, and the referendum wildcard, as a way to extract political concessions on other issues. End summary and comment.

Legal Questions

3. (SBU) Since the Central Election Commission announced on



December 29 that it had approved as valid more than 4 million signatures in support of a referendum on NATO/Single Economic Space (SES) membership (see reftel for details), a number of legalities surrounding the proposed referendum have arisen. Deputy Head of the Presidential Secretariat for legal affairs Ihor Pukshyn, who chaired a working group to examine the CEC protocol, announced on January 26 that the Presidential Secretariat had asked the Constitutional Court to interpret

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the relevant constitutional articles on conducting a referendum. In particular, he said that Court should clarify what could be asked in a referendum. Based on the Presidential Secretariat's read of the constitution, a referendum's questions must relate to a normative or legal act; therefore the proposed question: "Do you agree that Ukraine should become a member of NATO?" does not fit into that category.

4. (SBU) There also has been a debate about whether the President is under any time limit to make a decision on calling a referendum. Most experts believe he is not. However, the 1991 law on referendums, which predates the 1996 constitution by five years and was adopted expressly to allow the Rada to hold a referendum on Ukraine's independence from the Soviet Union, says that the Rada must make a decision on referendum petitions within 30 days of receipt. While most analysts agree that the 1991 law is outdated and contradicts the constitution, some claim this clause from the 1991 law should oblige Yushchenko also to make a decision within 30 days.

5. (C) Political analyst Oleksandr Sushko, a pro-NATO think-tanker and one of the country's leading foreign policy experts, cited potential signature fraud to us in late December 2006 as another reason why there should be no referendum in 2007. The Presidential Secretariat could challenge the validity of the signatures in court, he maintained. There had not been a noticeable campaign in late 2005-early 2006 to get Ukrainians to sign the referendum petition, he noted; how could anyone have collected over four million signatures without anyone noticing? Sushko concluded that this was indirect evidence of forged signatures. (Note: the last serious referendum signature collection effort in 2000 under President Kuchma was marred by forged signatures and exposed by investigative journalist Heorhiy Gongadze.) Moreover, the CEC's method of using a limited random sampling of signatures, which resulted in 200,000 signatures being disallowed, was not a valid way to verify the signatures.

Political Considerations - where does Regions stand?

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6. (C) Comments from Prime Minister Yanukovich and his team have generally leaned against holding a referendum in the near future. PM Chief of Staff Lyovochkin told the near Ambassador on January 22 that in his view, and the PM's view, it was not time for a NATO referendum. He took note of the Ambassador's suggestion that it was important for the PM to show leadership on this issue.

7. (SBU) Publicly, Yanukovich said that the referendum ideally would be held in a "calmer environment," when the regional clefts from 2004 had healed and after more pressing social and economic needs had been addressed. He pledged to

create conditions for an "honest and open discussion" of the referendum's questions, since the public needed to be educated before making such an important decision. (Note: Septel will address the state of the 2007 NATO information campaign.) In addition, Segodnya, a high-circulation newspaper owned by Regions' MP and financier Rinat Akhmetov, argued on January 3 that there is no law that compels the President to consider a referendum within a certain timeframe.

8. (C) Regions' most vocal anti-NATO voice, so-called "Rada radical" Yevhen Kushnaryov, forcibly supported moving forward on the referendum after the CEC certification of signatures. However, Kushnaryov died unexpectedly January 17 after a hunting accident, removing him from the political equation. While others in Regions no doubt share Kushnaryov's views, none come close to his prominence or force of personality. Opposition leader Yuliya Tymoshenko told Ambassador January 19 that the departure of Kushnaryov the most prominent non-Donetsk figure in Regions, left the party that much more in the hands of what she described as Regions' "iron Donetsk triangle" of decisionmakers: Akhmetov, Yanukovych, and DPM Kluyev.

9. (SBU) Political analyst Vadym Karasyov, an advocate of Ukrainian neutrality in the past, said to the press on January 3 that he believes the referendum will not take place because neither Yanukovych nor Yushchenko wants it to happen. He argued that the PM wants to remain in good standing with Washington in order to influence relations between Ukraine and the U.S. Moreover, in his view, Regions, Our Ukraine, and the Socialists are concerned that conducting a referendum in the near term would give a platform to the anti-NATO Progressive Socialist Party, led by Nataliya Vitrenko, and to SDPU(o), led by pro-Russian former Chief of Staff Medvedchuk, both currently marginalized without parliamentary representation. (Note: the SPDU(o) led the referendum signature drive but failed in its attempt to time it to coincide with the March 2006 parliamentary and local elections.)

10. (C) On the other hand, Sushko maintained that NATO membership was primarily a bargaining tool for Yanukovych. The PM had no strong feeling for or against NATO membership, but since he knew that Yushchenko really desired it, he could use the referendum issue to extract concessions from the President on other issues. Supporting Sushko's theory was Yanukovych's comment, issued on the Party of Regions website, that he is "forced to honor the CEC decision," leaving an opening to push the referendum if needed. Sushko also argued that Yanukovych thought he could use American and European desire for Ukraine to join NATO to his advantage. Finally, and separately, Sushko blamed Russia for pushing the referendum in order to keep Ukraine out of NATO.

11. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.
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