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## **WHAT NOW FOR LEONID KUCHMA?**

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With the second round of Ukraine's election set for November 21, President Leonid Kuchma will soon become an ex-president. The final vote tally is due no later than 15 days after election day; therefore, the new president should be inaugurated in early December.

After a decade in power, Kuchma seemed reluctant to leave office. In December 2003 the Constitutional Court ruled that he was actually in his "first" term, which began in 1999. Under this logic, and despite domestic and Western criticism, Kuchma's first term (1994-99) did not count, as it began before Ukraine adopted its present constitution in 1996. This ruling meant that Kuchma could have stood in this year's election, and it also served an "insurance policy" if the pro-Kuchma camp had not been able to field a strong candidate to face Viktor Yushchenko.

Kuchma's staff floated several career alternatives for the outgoing president. One idea was to amend the constitution to create a Senate in which former presidents would have permanent seats. A second proposal tried to postpone this year's elections until the parliamentary elections in 2006, thereby extending Kuchma's term by two years. A third scenario would have upgraded the post of prime minister to be more powerful than the presidency. The opposition suspected that Kuchma coveted the more powerful post of prime minister as a way to continue to rule Ukraine.

Ultimately, Kuchma did not opt for a third term, although one wing of the pro-presidential camp led by Viktor Medvedchuk, head of the Presidential Administration and Social Democratic Party-United, intensely lobbied for it. Medvedchuk always felt

threatened of victory by either the opposition (Yushchenko) or a rival oligarchic clan (Prime Minister Viktor Yanukovich). In addition, the West threatened to isolate Ukraine should Kuchma try for a third term. Medvedchuk could have lived with isolation, but most of Ukraine's oligarchs fear that such isolation would place Ukraine completely within Russia's sphere of influence.

Finally, Kuchma's son-in-law, oligarch businessman Viktor Pinchuk, offered an alternative plan for Kuchma's retirement. Between the first and second rounds of the elections, Kuchma unveiled the "retirement package" Pinchuk had created for his father-in-law. Specifically Kuchma would head the Ukrayina think tank, a foundation seeking to "develop and consolidate civil society and defend human rights and the freedoms of citizens" (*Ukrayinska pravda*, November 11). Pinchuk's retirement plan sees Kuchma acting as an elder statesman, similar to Soviet President Mikhail Gorbachev, former U.S. President George H.W. Bush, and former U.S. Secretary of State Henry Kissinger.

But to act as an elder statesman, Kuchma will need some form of immunity from prosecution if Yushchenko wins. Under a Yanukovich presidency there would no threat of criminal charges and therefore immunity would not be an issue. Only the pro-presidential camp has openly called for Kuchma to be given immunity from prosecution. When parliament re-convened after its summer recess, speaker Volodymyr Lytvyn called for the adoption of one of two draft laws on immunity. Both laws state that a former president can be criminally charged only if 300+ deputies vote for such a step (*Ukrayinska pravda*, September 8). Lytvyn's brief visit to Washington on November 15 likely sounded out U.S. views on Kuchma's immunity.

The Kuchma camp embraced the notion of immunity. The Presidential Administration welcomed the draft law as "logical and necessary," while the head of Yanukovich's election campaign, Serhiy Tyhipko, went on record as supporting immunity for a former president (*Ukrayinska pravda*, July 16, 22). Kuchma's chosen successor, Yanukovich, also -- not surprisingly -- strongly supported immunity for Kuchma (*Ukrayinska Pravda*, July 24). However, the backers of one of the draft laws, the moderate pro-presidential People's Democratic Party (NDP) Democratic Platform and the dissident pro-presidential Center faction have both backed Yushchenko in the second round.

Radical populist Yulia Tymoshenko and the left opposition have opposed immunity for Kuchma. Socialist leader Oleksandr Moroz supported a new law outlining guarantees for former presidents but argued against giving immunity to presidents who were involved in abuses in office (Interfax-Ukraine, August 5). Myroslava Gongadze, who received asylum in the United States after her husband, journalist Heorhiy Gongadze, was murdered, also opposed granting Kuchma immunity (*Ukrayinska pravda*, September 22).

Yushchenko has adopted a more pragmatic approach. In an interview in *Nezavisimaya gazeta* (July 30) he said he supported a new law on presidential immunity and guarantees. "If society wants to divorce itself from the past in a civilized manner, it needs to take this step" Yushchenko argued.

When Leonid Kravchuk left office in July 1994, he had no guarantees and never sought immunity. There were also no serious accusations of abuse of office against him and, at the time, there were still no Ukrainian oligarchs. A decade later the situation is very different. Kuchma is departing after accusations of involvement in the Gongadze murder, ordering violence against politicians and other journalists, collusion in corruption with oligarchs, election and referendum rigging, and involvement in illegal arms exports.

Kuchma himself told parliament that there was no need for a law on immunity (*Ukrayinska pravda*, October 18). In the end, parliament did not adopt either draft law prior to election day. By not seeking immunity, Kuchma must be planning for one of two possible scenarios.

First, Kuchma is engineering a Yanukovych victory in the elections. Under a Yanukovych presidency all of the above accusations will be forgotten and ignored.

Second, Kuchma -- through Pinchuk -- has struck a "gentlemen's agreement" with Yushchenko. Namely, if Kuchma would not oppose a Yushchenko victory, he would be allowed to live out his retirement as an elder statesman.

In Spring 2001 then-Prime Minister Yushchenko offered Kuchma guarantees. However,, these were not taken seriously, as Kuchma then was not planning to leave office. But after Yushchenko's government was removed in April 2001, relations deteriorated between Yushchenko and Kuchma.

Three years on, rumors in Kyiv suggest such a deal has now been made between Yushchenko and Kuchma, but the proof of the pudding will be seen by who wins on Sunday. As round two comes to a close, Kuchma, Pinchuk, and their immediate family have reportedly left Ukraine.