

108TH CONGRESS
2D SESSION

H. R. 5247

To encourage the promotion of democracy, free, fair, and transparent elections, and respect for human rights and the rule of law in Ukraine.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2004

Mr. ROHRBACHER (for himself, Mr. BERMAN, Ms. KAPTUR, Mr. SHADEGG, Mr. SHIMKUS, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committees on the Judiciary and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To encourage the promotion of democracy, free, fair, and transparent elections, and respect for human rights and the rule of law in Ukraine.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Constantine Menges
5 Ukraine Democracy and Fair Elections Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The United States supports the promotion
2 of democracy, free, fair, and transparent elections,
3 and respect for human rights and the rule of law in
4 Ukraine consistent with the commitments of
5 Ukraine as a member country of the Organization
6 for Security and Cooperation in Europe (OSCE).

7 (2) The United States has a vital interest in the
8 independence and sovereignty of Ukraine and in its
9 successful integration into the European community
10 of democracies.

11 (3) Elections conducted by the Government of
12 Ukraine during the past ten years have not satisfied
13 the criteria established for free, fair, and trans-
14 parent elections consistent with OSCE and Euro-
15 pean democratic standards.

16 (4) Georgiy Gongadze, Igor Alexandrov, and
17 other independent journalists in Ukraine who sup-
18 ported democracy and published critical reports con-
19 cerning governmental actions have been murdered or
20 have disappeared and are presumed dead.

21 (5) Former government officials of Ukraine
22 have made credible allegations and produced evi-
23 dence that top officials of the current government
24 were involved in the disappearances.

1 (6) The current Government of Ukraine, led by
2 President Leonid D. Kuchma and Prime Minister
3 Viktor Yanukovych—

4 (A) systematically harasses and represses
5 independent media and independent trade
6 unions and journalists;

7 (B) actively suppresses freedom of speech
8 and expression and encourages a virtual black-
9 out on national television stations of the main
10 democratic opposition candidate;

11 (C) uses police to block the transit by land
12 of opposition candidates and refuses access for
13 the airplane of the opposition candidates to
14 land at city airports for campaign appearances;

15 (D) uses state and city dump trucks and
16 bulldozers to block access of voters to city
17 squares for appearances by opposition can-
18 didates;

19 (E) denies access of opposition candidates
20 to rent government-owned auditoriums and
21 public places for meetings with voters; and

22 (F) denies postal service delivery of opposi-
23 tion campaign literature.

24 (7) In spite of current and past statements by
25 President Kuchma and Prime Minister Yanukovych

1 that the up-coming presidential election will be free,
2 fair, and transparent with an honest ballot count,
3 the presidential election of October 1999, the na-
4 tional referendum of 2000, the parliamentary elec-
5 tion of March 2002, and recent by-elections to Par-
6 liament and city mayoral races, including the may-
7 oral race in Mukachevo in spring 2004, were deter-
8 mined by OSCE and other local and international
9 observers to be fundamentally unfair.

10 (8) These elections failed to meet OSCE stand-
11 ards for democratic elections as formulated in the
12 1990 Copenhagen Document, and were marred by
13 significant abusive and illegal misconduct that was
14 publicly approved at the highest levels of the govern-
15 ment, including—

16 (A) the harassment, arrest, and false dis-
17 qualification of opposition candidates;

18 (B) the arrest and beating by the police of
19 members of Parliament who were acting as offi-
20 cial precinct election observers;

21 (C) the denial of equal and fair access by
22 opposition candidates to the state-controlled tel-
23 evision, radio, and print media, and the denial
24 of the use of the postal system for sending op-
25 position campaign mail to voters;

1 (D) the seizure of equipment and property
2 of independent nongovernmental organizations,
3 radio stations, and press organizations and the
4 harassment of their staff and management,
5 causing several individuals to flee to foreign
6 countries for their safety;

7 (E) the implementation of voting and vote
8 counting procedures that were neither trans-
9 parent nor legal; and

10 (F) the implementation of a campaign of
11 intimidation directed against opposition activ-
12 ists, domestic election observer organizations,
13 and opposition and independent media, includ-
14 ing denying newsprint and access to printing
15 plants to the independent media.

16 (9) Dr. Constantine Menges, who died in July
17 2004, served as a senior official on the National Se-
18 curity Council under President Ronald Reagan and
19 was a staunch anti-Communist, a friend of the peo-
20 ples of Eastern European countries, and particularly
21 supportive of Ukrainian independence.

22 **SEC. 3. DECLARATION OF POLICY.**

23 Congress—

24 (1) expresses its support for individuals and or-
25 ganizations in Ukraine that promote—

1 (A) democracy, free, fair, and transparent
2 elections, and respect for human rights and the
3 rule of law in Ukraine; and

4 (B) the integration of Ukraine into the
5 European community of democracies;

6 (2) expresses its grave concern over the murders
7 and disappearances of independent journalists in
8 Ukraine like Georgiy Gongadze, Igor Alexandrov,
9 and others;

10 (3) calls upon the President Kuchma and Prime
11 Minister Yanukovych to cease persecution of political
12 opponents and independent journalists and to cease
13 harassment of individuals who try to exercise their
14 rights to freedom of speech, expression, assembly,
15 and association;

16 (4) calls upon President Kuchma and Prime
17 Minister Yanukovych to end the pattern of clear,
18 gross, and uncorrected violations of relevant OSCE
19 human dimension commitments and to respect the
20 basic freedoms of speech, expression, assembly, and
21 association; and

22 (5) calls upon the Government of Ukraine to re-
23 solve the continuing constitutional and political crisis
24 by assuring—

1 (A) a free, fair, and transparent presi-
2 dential election in 2004;

3 (B) meaningful access by the political op-
4 position to state-controlled media, including ac-
5 cess to newsprint and printing plants;

6 (C) full and uninterrupted access for the
7 political opposition to postal delivery services;

8 (D) unimpeded access by the political op-
9 position to public auditoriums and other areas
10 for gathering and meeting with voters;

11 (E) unimpeded transit by road and air for
12 opposition candidates;

13 (F) modification of the electoral code in
14 keeping with OSCE commitments; and

15 (G) full freedom for international observers
16 to monitor the election and ballot counting at
17 local, regional, and national levels.

18 **SEC. 4. SENSE OF CONGRESS REGARDING MULTILATERAL**
19 **COOPERATION CONCERNING UKRAINE.**

20 It is the sense of Congress that the President should
21 coordinate with other countries, particularly European
22 countries, to formulate and implement a comprehensive
23 and multilateral strategy to further the purposes of this
24 Act, including, as appropriate, encouraging other coun-

1 tries to take measures with respect to Ukraine that are
2 similar to the measures described in this Act.

3 **SEC. 5. SANCTIONS AGAINST THE GOVERNMENT OF**
4 **UKRAINE.**

5 (a) APPLICATION AND TIMING OF SANCTIONS.—
6 Until the President makes the determination that Ukraine
7 meets all the requirements specified in subsection (b) and
8 certifies such determination to the appropriate congres-
9 sional committees, the President shall direct that the sanc-
10 tions described in subsection (c) shall apply immediately
11 with respect to Ukraine.

12 (b) CERTIFICATION.—A certification under this sub-
13 section is a certification transmitted to the appropriate
14 congressional committees of a determination made by the
15 president that the following has occurred with respect to
16 Ukraine:

17 (1) The implementation of free, fair, and trans-
18 parent elections for president and Parliament fully
19 consistent with OSCE standards for democratic elec-
20 tions and in cooperation with relevant OSCE and
21 Council of Europe institutions.

22 (2) The cessation of all forms of harassment
23 and repression against the media, independent trade
24 unions, nongovernmental organizations, religious or-
25 ganizations, and the political opposition.

1 (3) The withdrawal and cessation of politically
2 motivated legal charges against opposition figures
3 and independent journalists.

4 (c) SANCTIONS DESCRIBED.—

5 (1) DENIAL OF ENTRY INTO UNITED STATES.—

6 The President shall direct the Secretary of Home-
7 land Security to deny entry under section 212(f) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1182(f)) to the United States of any alien who—

10 (A) is a senior government official in the
11 current government of Ukraine; or

12 (B) is a spouse, minor child, or agent of
13 such an alien.

14 (2) SEIZURE OF ASSETS IN UNITED STATES.—

15 The President shall direct the Office of Foreign As-
16 sets Control of the Department of the Treasury to
17 identify and seize the personal assets or personal fi-
18 nancial accounts in the United States obtained by
19 improper or illicit means of any alien who—

20 (A) is a senior government official in the
21 current government of Ukraine; or

22 (B) is a spouse, minor child, or agent of
23 such an alien.

24 (3) PROHIBITIONS ON LOANS AND INVEST-
25 MENT.—The President shall direct that—

1 (A) no loan, credit guarantee, insurance,
2 financing, or other similar financial assistance
3 is provided on or after the date of the enact-
4 ment of this Act by any agency of the United
5 States, including by the Export-Import Bank of
6 the United States and the Overseas Private In-
7 vestment Corporation, to the Government of
8 Ukraine (except with respect to the provision of
9 humanitarian goods and agricultural or medical
10 products); and

11 (B) no funds made available to the Trade
12 and Development Agency may be made avail-
13 able on or after the date of the enactment of
14 this Act for any activity or project of the Agen-
15 cy in or for Ukraine.

16 (4) INTERNATIONAL FINANCIAL INSTITU-
17 TIONS.—The President shall direct the Secretary of
18 the Treasury to instruct the United States executive
19 director to each appropriate international financial
20 institution in which the United States participates,
21 to oppose and vote against the extension by each
22 such institution of any loan or financial or technical
23 assistance or grant to the Government of Ukraine
24 (except for loans and assistance that serve humani-
25 tarian needs).

1 (d) WAIVER.—

2 (1) IN GENERAL.—The President may waive
3 the application of subsection (c)(1), (c)(2), (c)(3), or
4 (c)(4), or any combination of such subsections, if the
5 President determines—

6 (A) that it is in the national security inter-
7 est of the United States to do so;

8 (B) that a new president is elected in
9 Ukraine in November 2004 who—

10 (i) has corrected the abuses and elec-
11 tion irregularities outlined under section 2;
12 and

13 (ii) has pledged to conduct a free,
14 fair, and transparent election in the par-
15 liamentary election scheduled for March
16 2006; or

17 (C) that in the case of the application any
18 such subsection or combination of such sub-
19 sections to an individual, such individual was
20 not directly or indirectly involved in any of the
21 abuses or election irregularities outlined under
22 section 2.

23 (2) CERTIFICATION.—If the President exercises
24 the waiver under paragraph (1), the President shall

1 submit to the appropriate congressional committees
2 a report containing the reasons for such waiver.

3 **SEC. 6. REPORTS.**

4 (a) DATES FOR SUBMISSION.—Not later than 90
5 days after the date of the enactment of this Act, and every
6 year thereafter, the President shall transmit to the appro-
7 priate congressional committees a report containing the
8 information required by subsection (b). In the case of the
9 second and all subsequent reports, each such report shall
10 contain such information with respect to the preceding 12-
11 month period.

12 (b) CONTENTS.—The reports required by subsection
13 (a) shall contain information regarding the following:

14 (1) The personal assets and bank accounts of
15 the current president, prime minister and other sen-
16 ior government officials of the Government of
17 Ukraine that are located in the United States or
18 other country, and, if such assets and accounts are
19 determined to have been acquired through improper
20 or illicit means, any actions the United States has
21 taken to investigate and seize such assets and ac-
22 counts and encourage such other country to take
23 similar action.

24 (2) The sale or delivery of weapons or weapons-
25 related technologies from Ukraine to any country,

1 the government of which the Secretary of State has
2 determined, for purposes of section 6(j)(1) of the
3 Export Administration Act of 1979 (50 U.S.C. App.
4 2405 (j)(1)), has repeatedly provided support for
5 acts of international terrorism.

6 (3) An identification of each country described
7 in paragraph (2) and a detailed description of the
8 weapons or weapons-related technologies involved in
9 such sale.

10 (4) An identification of the goods, services,
11 credits, or other consideration received by Ukraine
12 in exchange for the weapons or weapons-related
13 technologies involved in such sale.

14 (c) FORM.—A report transmitted pursuant to sub-
15 section (a) shall be in unclassified form but may contain
16 a classified annex.

17 **SEC. 7. DEFINITIONS.**

18 In this Act:

19 (1) APPROPRIATE CONGRESSIONAL COMMIT-
20 TEES.—The term “appropriate congressional com-
21 mittees” means the Committee on International Re-
22 lations of the House of Representatives and the
23 Committee on Foreign Relations of the Senate.

1 (2) SENIOR GOVERNMENT OFFICIAL.—The term
2 “senior government official” means, with respect to
3 Ukraine—

4 (A) any official of the Government of
5 Ukraine who is personally involved in the sup-
6 pression of freedom and free, fair, and trans-
7 parent elections in Ukraine, including judges,
8 law enforcement personnel, prosecutors, re-
9 gional governors, mayors, and administrators,
10 including the president, prime minister, deputy
11 prime ministers, government ministers, chair-
12 men and members of state committees, includ-
13 ing the Central Election Commission and re-
14 gional and local election commissions, members
15 of the Presidential Administration, members of
16 Parliament, and the heads of the Security Serv-
17 ices, State Tax Administration, and the State
18 Customs Services; and

19 (B) any other individual determined by the
20 Secretary of State to be personally involved in
21 the formulation or execution of policies or ac-
22 tivities that are in contradiction of internation-
23 ally recognized human rights and free, fair, and
24 transparent elections standards.

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