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Enduring Crisis in Ukraine

A Test Case for European Neighborhood Policy

Rainer Lindner

As negotiations over an “enhanced agreement” begin between the European Union and Ukraine, the EU’s neighbor is again embroiled in a stubborn internal conflict over power and resources that will lead to early parliamentary elections and possibly to a premature presidential election too. Although the economy is stable and the country has good prospects of joining the WTO in fall 2007, Ukraine is currently politically paralyzed. The conservative left alliance of Prime Minister Viktor Yanukovych and the quarreling democratic nationalist forces around President Viktor Yushchenko and former Prime Minister Yulia Timoshenko continue to face off irreconcilably. The Ukrainian parliament that was elected in free and fair elections just one year ago is on the point of being dissolved. The EU is regarded as a mediator, and it should adopt this role as part of its neighborhood policy.

Three processes are currently under way in Ukraine: *Firstly*, a two-party system is forming, with a left conservative party of labor and industry (Party of Regions, Socialists, Communists) and a democratic nationalist camp (“Our Ukraine,” “Yulia Timoshenko Bloc,” “Self-Defense Party,” “Forward Ukraine”); *secondly*, the power struggle between president and prime minister is currently mushrooming into a broader conflict over power and resources between the two camps of parties and oligarchs; and *thirdly*, the left conservative block is currently—at the beginning of May—celebrating a symbolic counter-revolution, filling Independence Square with its colors of blue, yellow, and red. The political stalemate resulting from the

elections of 2004 (presidency) and 2006 (parliament) in fact mirrors the state of the transformation process after fifteen years of independence. After making important steps toward democracy and the free market Ukraine is currently suffering a constitutional and parliamentary crisis, and foreign policy disorientation.

Constitutional Crisis

The constitutional reform of early 2006 shattered Ukraine’s already fragile political equilibrium. Alarmed at the prospect of a Yushchenko succession, former President Leonid Kuchma initiated amendments to weaken the office of the presidency, to narrow the president’s powers in general,

and to considerably restrict his prerogatives even in the fields of foreign policy and defense. Kuchma failed to realize that his rearguard action would leave Ukraine facing a situation of political paralysis.

President Yushchenko lost even more power and influence in January 2007 when parliament overrode his veto to pass the *cabinet law*. Following democratic procedure, the president then sent the matter to the Constitutional Court, but with little prospect of success. Under the new law the prime minister will appoint not only the foreign and defense ministers but also the regional governors. This would mean that after surrendering final authority in foreign policy the president would also lose an important source of domestic political influence. Although the Yulia Tymoshenko Bloc had participated in overriding the presidential veto, in spring 2007 it also asked the Constitutional Court to review the government's legitimacy.

The executive's loss of authority became blatantly obvious when President Yushchenko dissolved the Verkhovna Rada on 2 April but parliament simply continued to meet regardless. After the president's decision had been referred to the Constitutional Court, the crisis became total when the political loyalties of the constitutional court judges became apparent and several of them who are close to Yushchenko initially said they would recuse themselves from involvement in the hearing. In the end the Constitutional Court's ruling was made irrelevant by the president's removal of two judges during the case and Yanukovich's May 4 agreement to the holding of new elections. The prime minister hoped to win the elections while the president wanted at all costs to avoid losing at the Constitutional Court. Agreement to hold early parliamentary elections does not mean the end of the crisis, however, because the Party of Regions is also calling for the presidential election to be brought forward to the same date.

Crisis of the Parliamentary System

The current Verkhovna Rada was elected in the "first free and fair elections in Ukrainian history." But the exhausting power struggle between president, government, and parliament in summer 2006 over the authority to make appointments already revealed the fragility of the parliamentary order. Despite spectacular changes of loyalty (for example the leader of the Socialists, Oleksandr Moroz, moving from the Orange camp to Yanukovich's, for which he gained the office of speaker of parliament) the constitutional democratic procedures have served tolerably both in elections and in the formation of parliamentary majorities. Parliamentary defections soon began, however, and have prevented the Verkhovna Rada from developing an effective working routine. At the end of March 2007 19 deputies left the Yulia Tymoshenko Bloc and another six left the Our Ukraine group. Most of them joined the National Unity Coalition made up of the Party of Regions, the Communists, and the Socialists, which as a result grew from 243 to 260 deputies. The "imperative mandate" introduced by constitutional amendment is designed to prevent precisely such changes of parliamentary group—which are motivated not least by financial incentives.

There were also differentiation processes. The Orange camp is disintegrating into groups within and outside parliament. The "coalition" of Our Ukraine and the Yulia Tymoshenko Bloc, reconstructed at the beginning of 2007, directs its efforts toward revising the constitution, implementing the imperative mandate, dissolving parliament, and holding new elections. In all these efforts it is acting not as a force for reform but more like a defensive alliance attempting to block a complete take-over of power by the Party of Regions. The decisive integrative force here is no longer Our Ukraine, but rather the Yulia Tymoshenko Bloc, which had to deal with the aforementioned parliamentary defections but on the other hand has been able to integrate both

the People's Movement of Ukraine (*Rukh*) of sacked foreign minister Borys Tarasyuk and Viktor Penzenik's Reform and Order Party.

The Party of Regions financed by oligarchs such as Rinat Akhmetov has advanced to become the new *party of power*. It supplies most of the ministers and deputy ministers as well as countless officials in the central and regional bureaucracies. The situation that governors and mayors, factory directors and oligarchs owe their position to the Party of the Regions is certainly no longer restricted to eastern Ukraine. Despite regular friction, the Communists and Socialists remain steadfast to the coalition and further reduce the room for political compromise, to which some of the moderate Party of the Regions deputies would certainly be open.

Since the election in 2006 the Verkhovna Rada has become an arena for demonstrative gestures with parliamentary groups regularly quitting and returning, sessions demonstratively boycotted, and occupations of rostrums, microphones, and voting systems. The distance between the political camps became clear in the list of demands issued by the opposition in March 2007, calling among other things for a constitutional referendum, confirmation of the president's foreign policy agenda and policy sovereignty, an end to the massive restrictions on the Ukrainian language and culture, the dismissal of Interior Minister Vasyl Tsushko and Prosecutor General Oleksandr Medvedko, the appointment of the secretary of the National Security and Defense Council by the president, the dismissal of ministers with business connections, the termination of all treaties with the gas trader RosUkrEnergo, and the securing of a direct gas supply from the producing regions of Russia and central Asia, as well as popular demands such as raising wages, salaries, and pensions, fighting corruption, and reversing decisions made by the Yanukovich government in connection with its *cabinet law*.

Crisis of Foreign Policy

The foreign policy dimension of the crisis reveals itself in the drama surrounding the dismissal of the long-serving pro-Western Foreign Minister Borys Tarasyuk, which played out between December 2006 and January 2007, and in the subsequent twice failed candidacy of Volodymyr Ohrysko, a professional diplomat close to Tarasyuk. According to the Party of Regions Ohrysko's appointment could have "disturbed relations with Russia," while the Communists complained that the president's favored candidate to succeed Tarasyuk was the same but worse. The outcome was another—avoidable—erosion of the president's authority. Avoidable because the new foreign minister appointed on March 21, Arseniy Yatsenyuk, is also close to the president. Yatsenyuk, a commercial lawyer, former economy minister, and author of a business studies textbook on banking supervision who is only thirty-two years old, hails from the western Ukraine and had already made a reputation as a civil servant in senior central and regional positions.

The bickering over the foreign minister appointment clearly revealed three tendencies that make it more difficult for the international community to deal with Ukraine. Firstly, foreign policy has become an arena where domestic crises are fought out. Secondly, Ukrainian foreign policy is currently expressed by many voices, often contradictory. Prime Minister Yanukovich is currently attempting to grab the lead in negotiations with the EU. The foreign ministry risks losing the initiative in the tensions between the presidency and the prime minister's office. For example, Mr. Yanukovich's team bypassed the president and the foreign ministry to conduct negotiations (that have not so far produced any results) over full Ukrainian membership in the Common Economic Space with Russia, Belarus, and Kazakhstan, about a Ukrainian gas production project in western Siberia, and about a 50 percent stake for Russia in the Ukrainian gas trans-

port system. Thirdly the EU will have to contend with regular leadership changes in Ukraine as political fortunes fluctuate.

Practical Test for the ENP

Negotiations on the “enhanced agreement,” for which EU will provide almost €500 million by 2010, started in early March 2007. The EU hopes the agreement will bring about: a) a new reform agenda for Ukraine, b) the emergence and consolidation of a democratic system of government, c) an improvement in the investment climate in Ukraine for domestic and foreign investors, d) a constructive Ukrainian contribution to European energy security, and e) a new role for Kiev in resolving regional conflicts, for example the Transnistria conflict.

The discussions between President Yushchenko, Commission President José Manuel Barroso, and EU External Relations Commissioner Benita Ferrero-Waldner on March 8, 2007, reinforced the Ukrainian impression that “the door to the EU is not closed to Ukraine,” as Oleksandr Chalyi, Yushchenko’s deputy chief of staff, put it. In particular, Chalyi regarded Ferrero-Waldner’s statements that the neighborhood policy explicitly avoids defining the format of future relations between the EU and Ukraine as a breakthrough in mutual relations.

Developing these mutual relations, however, would require an end to Ukraine’s domestic and foreign policy paralysis. Although the request for international mediation expressed on April 9 by groups in the Ukrainian parliament (and later also by the government in Kiev) came at a point where the internal options for conflict resolution had not yet been exhausted, the EU will not be able to avoid taking a mediating role in the constitutional conflict and in the normalization of institutional relations between parliament, the executive, and the judiciary. In view of the upcoming Ukraine-EU summit on September 14, 2007, that is due to finalize the

“enhanced agreement,” every month of political deadlock means lost negotiating time for the new agreement and above all lost time for the reform agenda for Ukraine itself.

Among the provisions of the agreement are the creation of a free trade area and the intensification of neighborly relations with Ukraine. The EU, the Council of Europe, and the German EU Presidency have following options for finding a way out of the current crisis:

- ▶ Forming a *Ukraine contact delegation* made up of members of the European Parliament, the Council of Europe, and international mediators. These must be figures who are accepted by the whole Ukrainian political class (such as for example former Polish President Alexander Kwaśniewski);
- ▶ Setting up a *judicial advisory team* made up of lawyers and (former) constitutional court judges to draw up proposals for resolving the constitutional crisis;
- ▶ Intensifying *inter-parliamentary cooperation* with the national EU parliaments;
- ▶ Continuing and accelerating the existing programs for implementing the *action plan* in the ENP framework;
- ▶ Supporting Ukraine’s efforts to join the WTO in 2007 or 2008;
- ▶ Expanding neighborhood policy to cover *civil society projects* such as the German *Ukraine development program* (currently in planning), which also covers eastern regions of Ukraine.

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