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**Research Report**

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# Surprises from Ukraine

## Democracy Moves Out and Russia Moves In

Susan Stewart

When Viktor Yanukovich won the Ukrainian presidential election in February 2010, there was consensus among most analysts on his probable foreign policy course. It was believed that he would reduce the emphasis on the West and return to a more balanced “multi-vectoral” policy which would include improving relations with Russia. In the domestic sphere, many observers claimed that while there might be some deterioration of press freedom, on the whole pluralism in Ukraine would be preserved, making a significant democratic rollback impossible. In fact, in both these arenas, the pace and the extent of the changes have far outstripped the original predictions, leaving the EU and its member states in something of a quandary as to Yanukovich’s goals and intentions.

Both the strong foreign policy shift towards cooperation with Russia and the emerging authoritarian tendencies in Ukraine raise questions for Germany and the EU. What does the intensified Ukrainian-Russian relationship mean for future cooperation with Ukraine? How should the EU and individual member states react to the clear deterioration in democratic achievements since Yanukovich’s election? In order to evaluate the implications of the Ukrainian developments, it is necessary to review briefly what has occurred so far.

### The erosion of democracy

One of the first signs that President Yanukovich would resort to undemocratic methods was the formation of a parliamen-

tary coalition by means which contradicted a previous Constitutional Court decision. By allowing individual members of parliament, rather than factions, to join the coalition, Yanukovich effectively violated Article 83 of the Ukrainian Constitution. Although the new president had this decision approved by the Constitutional Court, which thereby overturned its previous ruling, there were numerous allegations that individual judges had come under strong pressure to approve the new coalition. The fact that several of the dissenting judges later resigned (apparently under duress), permitting Yanukovich – via the Congress of Judges – to fill the court with his supporters, reinforces the conclusion that he is not averse to tampering with the independence of the judiciary.

This in turn set the stage for the 1 October decision of the Court to overturn the Constitutional amendments agreed in 2004, which reduced presidential power in favour of the parliament and government. This decision is likely to trigger a return to the 1996 Constitution and thereby to strengthen Yanukovych's powers considerably.

The second issue which arose with regard to democracy and pluralism was the treatment of the media. Increasing individual complaints from journalists about pressure from their editors and/or the owners of their media outlets to cover (or not cover) certain events in particular ways resulted in the creation of a movement called "Stop Censorship!" Numerous journalists resigned, citing such pressure as one reason for their departure.

Outlets willing to present views in opposition to the government have been disproportionately targeted. In the Crimea, the independent channel Black Sea TV was harassed by officials and its bank accounts frozen. The national channels TVi and Channel 5 were deprived of frequencies granted to them by the National Council of Ukraine on Television and Radio Broadcasting. A company belonging to the media empire of Valerii Khoroshkovsky, who is not only the head of the Ukrainian Security Service but is also seen as the controlling hand behind the influential television channel Inter, challenged the Council's decision in court and won. Inter is known for its pro-Yanukovych coverage and is a direct competitor of both Channel 5 and TVi. Khoroshkovsky's involvement in the frequencies case is a clear example of a conflict of interest, in particular since Yanukovych had tasked him with addressing journalists' complaints. This conflict is exacerbated by Khoroshkovsky's status as a member of the Council of Judges, which influences appointments and dismissals in the Ukrainian court system.

Democratic freedoms have been further jeopardized by the Ukrainian government's attitude towards non-governmental organi-

zations (NGOs). This has had both domestic and international dimensions. The most visible case was the detention of Nico Lange, head of the office of the Konrad Adenauer Foundation in Kiev. He was held at the airport in Kiev in June 2010 for ten hours and was released only after the intervention of the German government and the European Parliament. While some official Ukrainian sources termed the detention "a misunderstanding", others insisted that there were legitimate reasons for holding Mr Lange, implying that he or his organization had violated certain Ukrainian laws, although the actual violations remained vague. Meetings called by Ukrainian foreign ministry officials with representatives of foreign embassies to discuss the work of NGOs and the importance of obeying Ukrainian laws indicated that such incidents could recur.

On the domestic front NGOs have also received warning signals. The International Renaissance Foundation (IRF), funded by George Soros, learned that the Ukrainian Security Service was questioning grantees who had received money from the IRF to carry out projects. The official reason given for the questioning was to ensure that no undue influence on the upcoming local elections would be exercised. However, as none of the projects in question had a political component, this justification appears unconvincing.

Finally, the process of organizing the abovementioned local elections has raised many democracy-related issues. The elections, originally scheduled for May, were at first postponed indefinitely. Only later was the 31 October date announced. Then the election law was revised to benefit the Party of Regions and its allies. Political blocs were prohibited from running in the elections, which will be detrimental to the Bloc Yulia Tymoshenko (BYuT), now in the opposition. In addition, campaigning time was reduced to three weeks, and candidates are no longer required to submit political programmes to the election commission. These measures favour incumbents and make it

more difficult for voters to receive adequate information. Finally, the law was passed extremely quickly, with virtually no public debate, despite the fact that over 1,300 amendments were involved. One significant change, prohibiting parties existing for less than one year to compete, was later revoked, but apparently less due to democratic concerns and more because the Party of Regions hoped to dilute support for the opposition by spreading it across various parties instead of encouraging opposition voters to rally around Tymoshenko's "Fatherland" party.

Thus the "democratic rollback" under Yanukovych goes far beyond the initially expected pressures in the media realm and represents a disturbing trend which merits more than mild diplomatic unease. The concern demonstrated in the (currently still provisional) resolution adopted by the Council of Europe's Parliamentary Assembly on 5 October is fully warranted.

### **Russia's magnetic pull**

Ukraine's desperate economic situation after the financial crisis forced Yanukovych to search for quick options to reduce spending. This, together with his clearly voiced intention to improve relations with Russia, led to the "gas for fleet" deal, in which Russia lowered the gas price for Ukraine in exchange for an extension of the lease of the Black Sea Fleet base on the Crimean peninsula until 2042. This in turn paved the way for a Ukrainian budget acceptable to the International Monetary Fund (IMF), which, together with the reform programme advanced by Yanukovych and some initial reform measures (a new law regulating the gas sector and a rise in the gas price for domestic consumers), convinced the IMF to approve a new \$15 billion loan to Ukraine and issue an initial transfer.

The "gas for fleet" deal with Russia was, however, only the first step in a rapid intensification of relations. A long-awaited agreement on demarcation of the land

border was signed in May. Russian and Ukrainian firms have entered into close cooperation in aviation and nuclear power, and memoranda of understanding have been signed in the electricity and hydro-electric arenas. Russia has shown itself willing to provide significant loans as well, to the tune of \$4 billion for covering the 2010 budget deficit and constructing two nuclear reactors. Trade doubled in the first four months of 2010 compared to the same period in 2009, pointing not only to recovery from the economic crisis but also to greatly increased confidence on both sides.

Beyond the economic realm, Yanukovych has adopted positions identical or very close to the Russian ones in the areas of European security and interpretation of key historical events, such as the 1932–33 famine. Russian security service officials have been allowed to return to their posts in the Black Sea Fleet, after being ousted by former President Viktor Yushchenko. Cooperation in cultural and educational spheres has been officially initiated, and the influence of the Russian Orthodox Church has been clearly visible during prominent visits by its Patriarch Kirill.

Thus in the foreign policy realm the shift towards Russia, while expected, has been more rapid and comprehensive than most observers anticipated. That said, a point has now been reached at which the Ukrainian side is trying to decelerate the process. Yanukovych has been resisting Russian attempts to promote a merger of Gazprom and the Ukrainian Naftohaz. Furthermore, there have been cases when – through government intervention or the courts – the interests of Ukrainian oligarchs have been protected against attempts by Russian firms (often with state backing) to buy up parts of key Ukrainian sectors such as steel and chemicals.

However, Russia is clearly the stronger partner in the relationship, with greater resources and a more robust economy. Thus it may act as a magnet: the closer Ukraine gets, the stronger the pull exercised by the Russian side. This is especially true because

many Ukrainian politicians and business-people stand to profit from further intensifying relations, and also because economic influence translates into political influence due to the strong interconnections between the two spheres in both Russia and Ukraine. Thus while the “point of no return” has not been passed, many factors work in Russia’s favour in drawing Ukraine further into not only the Russian orbit, but also that of regional organizations on CIS territory.

### Focusing on the short term

The EU and its member states should not be placated by Yanukovych’s democratic rhetoric, which seldom corresponds to reality. They should also be aware that stronger Ukrainian ties to Russia will foster an increase in authoritarian tendencies in Ukraine, since 1) Russia will become more of a political model for the Ukrainian authorities and 2) the Russian elite will not encourage their Ukrainian counterparts to behave democratically. Nor will such ties strengthen Ukraine’s willingness to reform. Furthermore, persistent Russian hegemonic attitudes towards the post-Soviet space mean that EU collaboration with Russia on projects involving Ukraine – whether in the energy sphere or in the Eastern Partnership framework – will be fraught with difficulties. Thus growing Russian involvement in Ukraine is likely to mean a corresponding decrease in opportunities for EU-Ukraine cooperation.

Yanukovych is concerned about becoming too deeply drawn into Russia’s orbit because it poses a risk to his power. Thus he has not lost interest in the EU (or other players, such as China). However, at the moment the EU’s offers to Ukraine are not very attractive. Ukraine’s EU agenda consists of the Association Agreement and visa liberalization, but neither is capable of providing short-term benefits which are relevant in the Ukrainian context. Yanukovych aims above all to strengthen his own position and therefore needs to reward his domestic supporters sufficiently to keep

them on board. His time frame for doing this is measured in weeks and months, not years.

Thus EU policy towards Ukraine (and other countries of the eastern neighbourhood) would profit from introducing more short-term benefits, which should, however, be based on strict conditionality. For instance, the “action plan” to be adopted in the visa sphere could build in intermediate rewards, such as waiving visa fees after the first few steps have been completed.

Germany and other member states have an essential role to play at this stage. Since Brussels is poorly equipped to be flexible, and its policies on the eastern neighbourhood are already in place, the member states can step in with short-term bilateral projects, e.g. in public administration, infrastructure, health, energy efficiency and the environment. These should be small in scope and involve a monitoring mechanism which carefully tracks implementation. Success on this level would make Europe more visible in Ukraine and convince the Ukrainian population of EU and member state interest, and of the possibility to achieve positive tangible results.

This type of involvement should be accompanied by strong signals from both Germany and the EU that Yanukovych’s undemocratic methods are not acceptable. Since general expressions of concern are likely to be answered with equally general pro-democratic reassurances which mean little, it is preferable to focus on specific cases (a law, discrimination against a journalist or media outlet, prohibition of a demonstration) and to follow up if explanations are unsatisfactory.

The EU-Ukraine summit on 22 November provides an excellent opportunity for the EU both to display serious and informed concern about undemocratic trends and to indicate an increased willingness to incorporate short-term benefits wherever possible within the existing policy framework.

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