

‘Donetsk rules’ and the looming crisis with Ukraine

Balázs Jarábik

»» 2012 is supposed to be the ‘Year of Europe’ in Ukraine. The country is co-hosting the European football championships with Poland and is expected to sign an Association Agreement with the European Union (EU). This would place Ukraine firmly in the European orbit. The speed with which Ukraine has progressed with the Association Agreement negotiations has surprised many. But it now seems that 2012 is set to be a year of conflict between the EU and Ukraine. The jailing of former Prime Minister Yulia Tymoshenko was politically motivated. In response, the EU feels it must react in an equally political way by making the final accord of the Association Agreement conditional. In his reaction President Yanukovich has in fact already made the signing of the Association Agreement conditional on Ukraine being offered EU membership.

There has been a lot of speculation as to what really lay behind the Tymoshenko trial. With the Association Agreement virtually ready after 21 rounds of negotiations, why has Ukraine risked its relations with the European Union? And why risk provoking Russia, given that the legality of an agreement with Gazprom was at the centre of the trial? Why is Ukraine bent on upsetting both its neighbours, particularly at a time when there are incipient concerns about the weak state of its economy?

The trial was not necessary domestically. Although the Yanukovich government’s popularity is declining, it has taken advantage of popular disillusionment with the Orange era both at home and abroad to consolidate its grip on power and assert control over all branches of government. The opposition is not only sidelined, but is even less popular

HIGHLIGHTS

- Instead of being the year of Europe, 2012, seems set to be the year of conflict between Ukraine and Europe.
- Tymoshenko is unlikely to be released as clan competition survives in Ukrainian politics.
- The elite’s cost-benefit analysis has gradually pointed toward Europe, but their business and political interests lie in Ukraine.

»»»»» than the government. Society is apathetic to democratic backsliding. The explanation for the trial is that Ukraine thought it could basically get away with it. The EU provides no serious carrots. The Ukrainian elite, mostly from Donetsk, want to show that the country is under - their - control. These 'Donetsk rules' will, sooner or later, and certainly before next year's parliamentary elections, lead to a crisis in relations between the West and Ukraine.

THE GREAT PRETENDERS

Intrinsic to the relationship between Ukraine and the European Union is the myth that the 2004 Orange Revolution fundamentally changed Ukraine's political course. In fact, no part of the elite actually wants to change Ukraine's political trajectory. Although the Orange Revolution was a heart-warming protest by Ukrainians over the stolen votes of pro-European citizens, the Orange political elite did not have a far-reaching transitional agenda. The Party of the Regions (PoR) has adopted a slightly more pro-European rhetoric out of expediency, as Ukrainians associate the EU with a better quality of life.

The Yanukovich plan is to control revenue flows (concentrated around the state, still the main source for accumulating wealth), the judiciary and law enforcement agencies in order to return to a rent-seeking governance model. The shrinking of democratic space is a direct result of this effort. Yanukovich does not want to be entirely like former president Leonid Kuchma, who was tied to the oligarchs, nor can he be Yushchenko wanting to 'Ukrainise' the country.

The new government has made serious efforts to secure the Association Agreement - although how much it really wants this accord is debatable. The EU is still popular, while oligarchs want to turn their financial gains into public acceptance both at home (by running numerous charities and funding development programmes) and abroad (by getting closer to the EU). The elite's cost-benefit analysis has gradually pointed them toward

Europe, but their business and political interests lie mainly in Ukraine. They clearly want to secure their interest at home in their own - Donetsk - way. The Russian bullying that led to the Kharkiv agreement (that offered a gas discount for the Black Sea Fleet lease), as well as the Kremlin's pet Customs Union project, were other factors contributing to this shift.

For the EU, Ukraine is a primary partner country in the east. The Association Agreement with Kiev is viewed in Brussels as the only concrete success of the Eastern Partnership. However, the EU's own structural and financial woes, as well as the Arab Spring, have significantly diminished its efforts toward the east. Not signing the Association Agreement would be a serious blow to the EU. But the Tymoshenko trial gives Germany and France a convenient excuse for preferring business as usual with Russia over integration with Ukraine.

The two sides' objectives are different. The EU wants Ukraine to be economically integrated with democracy in place, but does not want to integrate politically. Ukraine wants the promise of political integration and acceptance but with minimal convergence. Both sides are engaged in a serious public relations effort to convince the other side of the opposite: that the EU does want to integrate Ukraine, and that Ukraine does want to be a member. What has emerged in consequence is a stalemate.

DONETSK RULES

The main feature of 'Donetsk rules' is the absence of any national interest or ideology. Compared to Yushchenko's policy of 'Ukrainisation', the Donetsk approach is technocratic and does not go beyond the interests of the elite. Yanukovich is politically driven by personal considerations. His goals are simple: ensure re-election for himself, protect his family, and gain acceptance from the international community. A comparison with Kuchma shows there are clear differences. While Kuchma was the patron of a similar system,

The Ukrainian elite want to show that the country is under their control

Yanukovych is not the ‘patriarch’ of Donetsk, but only one of the more powerful actors. Ruling in Donetsk is defined by volatile competition between business interests, a Western style of management and zero tolerance for political dissent.

Although revenge certainly played a role in this absence of ideology, the main motivation was to destroy the competitive ‘clan’. While the Yuschenko-run Our Ukraine applied a live-and-let-live approach, neither the PoR nor Yulia Tymoshenko’s Bloc provided space for democracy. The PoR has internal competition not of ideologies, but of business interests. The other parties are merely blocs representing their leaders, political verticals

dependent on the image of their leaders. In a clan competition, there is little mercy shown to losers.

Yanukovych’s electoral victory opened the door for people with managerial backgrounds. These typically have come from the Soviet era as managers of big plants and state companies, later succeeding on their own, most of them by now in Western-style businesses. The common feature of the current power holders is their image as capable and successful managers with the ability to meet objectives. The new executive branch certainly works more effectively than any of the Yuschenko governments.

Discrimination is on the rise though. Being from Donetsk has become the major determining factor for government jobs; there is little room for others. Raids, business takeovers and tax controls in all regions have intensified since the presidential elections. The disputed local elections in 2010 were the first sign of how future elections will be managed. Donetsk has not stopped there. Tymoshenko was already sidelined before the trial, her backers having shifted allegiance. Rumours

point to the right wing Svoboda Party being bankrolled by oligarchs. Arsenij Yatsenuk’s Front of Change party has also received such contributions through its fund. Other reports point to wealthy members of Klichko’s UDAR party being engaged in and tainted by corrupt land deals in Kiev while serving as city counsellors, making the party vulnerable to blackmail. The unexpected legal process against former President Kuchma is believed to be intended to keep his powerful son-in-law, Viktor Pinchuk, in check. There is reduced space for any meaningful opposition and so democracy remains a faint hope.

The Donetsk takeover of Ukraine is happening partly due to the Orange Revolution running out of steam, but also because the lack of resources and the economic crisis are stifling small and medium sized enterprises, which tend to be pro-European. But how far could Donetsk go? Yanukovych is trying to assert increasing control over a Soviet-style centralised government. However, such an approach has never been successful in Ukraine, not even during Soviet times. One can win elections or occupy the country, but not control its society. Controlling Kiev does not mean controlling the entire country, due to its strong regional identities and elites. Economic conditions are also not conducive to authoritarian rule. Yanukovych is struggling to generate any economic success. Although there is strong pro-reform rhetoric, current economic policy is no different to previous governments, maintaining an unreformed system that is compatible with Yanukovych’s aim of controlling all branches of government.

BEING IN BETWEEN

The recent Eastern Partnership summit in Warsaw brought only one surprise: the rejection by all the Eastern partners of the EU’s prepared draft statement on Belarus’ human rights situation. Consider this attitude the new reality in the Eastern Partnership. The EU offer is not attractive, and reform is viewed as too costly, with fewer pro-reform forces now visible in the region. Vladimir



»»»»» Putin's new Eurasian Economic Union, a possible blueprint for his presidency, urges the Eastern Partnership countries to make further adjustments to keep their societies under control, as a means of maintaining their independence. The result will be further backsliding away from democracy, and therefore conflict with the EU. At the same time Belarus' successful extraction of benefits from the geopolitical rivalry between the EU and Russia could become a model for its Eastern neighbours.

Similar to Belarus, which uses its strong state to extract rents from both East and West, Ukraine is counting on its size and geopolitical appeal to attract attention and reap benefits. The more the government controls all branches of government, the more it will be confident about achieving these objectives. The government is already increasingly using the Russian threat in its talks with the West, as was evident after the Tymoshenko trial. Not good news for democracy in Ukraine.

But Russia does not necessarily want Belarus or Ukraine in the same way as before. Perhaps it is more interested in the Belarusians and the Ukrainians as people. Moscow seems to have learnt that Ukraine is slowly changing, and that soft power is now the key to Ukrainian society. The reduction in democratic space and a lack of reforms will essentially backfire on the current Ukrainian elite. In the meantime, it is Russia that is focusing on civil society, using the Russian Orthodox Church as its most appealing tool. Europeanisation is in the pipeline, but equally there is Russification, in terms of culture and society. Russia's policy is backed up by trade concessions to Ukraine. Since Yanukovich took power, trade between the countries has grown by almost 80 per cent, to more than \$22.2 billion. Russia's exports to Ukraine have spiralled 89 per cent to \$13.8 billion, while imports from Ukraine have shot up 59.7 per cent to \$4 billion, the largest trade turnover between Russia and any post-Soviet state.

Gas bribes are being treated with less impunity. In this regard the Tymoshenko trial could signal a new trend. This has been in line with the change of position of the gas industry as the main

financier of Ukrainian politics. At the same time Ukrainian oligarchs have diversified their business assets away from the energy sector. Many of them are investing heavily in agriculture, which could develop into an important money-making sector. Ukraine could become a global power in food security, playing only a secondary role in energy security. However the example of the emergent grain trade monopoly (the so-called Khlib Investobud) confirms that this will be developed in the same rent-seeking way. Positively, Ukraine has taken serious steps to extract more domestic gas and the government has attempted to reduce energy consumption, all of which are intended to reduce its dependency on Russia.

This internal positioning has had an impact on the competitive business interests of the oligarchs. Although Rinat Akhmetov has spent a serious amount of time and money on a reform agenda, this has not got very far, even with the blessing of the president. As of today, the most powerful group in the country includes the head of the Ukrainian secret services, Valerij Khoroshkovskij, his business partner Dmytro Firtash, the former owner of GasUkrEnergo (the subsidiary company that was finally shut down by the 2009 Tymoshenko agreement with Gazprom) and the head of the presidential administration, Lyavochkin. Khoroshkovskij, who effectively guarantees the security of the Yanukovich government, is believed to harbour ambitions to succeed Yanukovich after his second term, and such ambition and positioning seems unmatched by other oligarchs. They are posing as patriots and may well believe that a strongly controlled Ukraine is the way to keep the country truly independent. This would have lasting implications for relations with the West – requiring realistic engagement with the current president.

SHIFTING FOCUS

Kiev may still revise its criminal code in order to release Tymoshenko from prison. After all, why uphold such Soviet-era language, which could be used against any political decisions, for instance

the signing of the Kharkiv Agreement? However, a new investigation into Tymoshenko started just after her sentence began concerning her role in the gas industry during the infamous Pavlo Lazarenko government. If Donetsk is confident of following such a path, this suggests that they are not considering giving up power, which raises serious questions about the conduct of next year's parliamentary elections.

There is one serious issue remaining: the broader acceptance of Yanukovych and the ruling elite among Ukrainian society. The EU must begin to sideline the current political leaders and focus more on influencing the long-term trends of underlying social opinion. Care must be taken to ensure that relations are not irreparably damaged, in particular the Association Agreement. The biggest test will be the parliamentary elections in 2012. Empty Western threats will not work in ensuring that these are relatively free. There should be a patient engagement process in order to educate the Ukrainian public, supplemented with strict conditionality and transparency. The EU must learn that backroom deals work only among sides playing by the same rules.

This should herald a major shift of focus in EU policies away from the elite and towards society. Part of the reason why independent countries yield to an authoritarian trajectory is because society is not strongly opposed. Even before the Association Agreement has been signed European diplomats are worried about Ukraine's willingness to implement it. In its efforts to promote democratic reforms, the EU must seek partnership with society rather than focusing its efforts on the ruling elite.

But civil society should not be confused with the political opposition. It is much more about interest groups of all kinds engaged in developing political alternatives and convincing the public of the need for change. In Ukraine today there is little or no public debate about reform, mainly because there is not enough understanding and pressure by the public. Civil society can improve the situation in the regions, but the main driver of

reform in Kiev is the IMF. Ukraine's main development issue remains the weakened middle class, a result of the economic crisis and government tax policies. This section of society lacks nationwide unity. As the Orange movement has crumbled, there is no one who can match Donetsk's resources or provide effective checks and balances.

However this does not mean that the current imbalance will last forever. Social change will be the key. Every year one of the most popular weeklies publishes a list of the hundred most influential Ukrainians. Almost none of those that appear in the list were educated in the West. But the majority of their children have been schooled in Europe or the United States. This raises hope that the EU and Ukraine will come to share common values and that those will not be the Donetsk ones.

Balázs Jarábik is an associate fellow at FRIDE.

**e-mail: fride@fride.org
www.fride.org**