

# BULLETIN

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## The Importance of the Tymoshenko Case for Ukraine's Relations with the EU

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*The imprisonment of Yulia Tymoshenko became one of Ukraine's major problems in relations with key international partners. Postponements of a review of the verdict against the former prime minister indicate that the Ukrainian authorities do not intend to respond to international pressure on this matter immediately. It is in the interests of the European Union to find the solution to these problems in a way that might support a thorough reform of the Ukrainian judiciary in accordance with European standards.*

On 11 October 2011, Ukraine's former prime minister Yulia Tymoshenko was convicted of abuse of power relating to negotiations with Russia in 2009, about a gas contract. She was sentenced to seven years imprisonment. The verdict was based on an outdated criminal law that allows state officials to be punished for their political decisions. On 26 June, an appeal against the sentence of the court of second instance was postponed until 12 July, because an expert opinion on the state of Yulia Tymoshenko's health was required. Moreover, a case investigating fraud in the second half of the 1990's, which had been closed in 2004, was resumed. At the end of April, pictures of the former prime minister, showing traces of beatings on her body, appeared on the internet. According to her lawyers, the beatings were inflicted during transport to the hospital.

**The International Reaction.** The imprisonment of the main opposition leader and the way she is treated by the Ukrainian authorities have raised concerns in the international community. Additionally, the case reinforces doubts about respect for democratic values in Ukraine, which has become the most important problem in the country's relations with its key partners. The European Union regards a free and fair parliamentary election in October as a precondition for signing an association agreement with Ukraine. The NATO Chicago Summit Declaration also raises its members' concerns about the selective application of justice and politically motivated prosecutions in Ukraine. Most presidents invited to the Yalta Summit of Central European leaders on 11–12 May refused to visit Ukraine. Moreover, authorities in Germany, Sweden and Great Britain were not represented at the group phase matches of the European football championship, which took place in Ukraine. In June, the European Parliament (EP) appointed former Polish President Aleksander Kwasniewski and former EP President Pat Cox as envoys, to monitor the fairness of Yulia Tymoshenko trials.

**Possible Reactions of the Ukrainian Authorities.** The case of Yulia Tymoshenko has challenged an unwritten rule about not prosecuting political opponents in Ukraine after a democratic and peaceful transfer of power. It should be considered as a precedent. As a result, any government may now fear for their own safety after losing an election. Indeed, leaders of the united opposition (party Yulia Tymoshenko's "Batkivshchyna", Arseniy Yatsenyuk's "Front Zmin" and Anatoly Hrychenko's "Hromadyanska Pozytsiya") have announced that one of their first steps in the event of victory in the parliamentary election this autumn will be an attempt to impeach President Viktor Yanukovich. If a law allowing criminal prosecution for political decisions remains in force, the democratic and peaceful process of the transfer of power in Ukraine may be seriously threatened.

It should be noted that the imprisonment of Yulia Tymoshenko has not resulted in her increased popularity as a politician. At least half of all Ukrainian citizens do not support her political activities. A recent public opinion survey indicates that Tymoshenko's case has not been translated into greater support for her political party. According to the polls, the ruling Party of Regions remains in the lead.

Therefore, one should not expect an increase of public pressure on the Ukrainian authorities to resolve the case of Yulia Tymoshenko as a response to international pressure on this matter.

It is difficult to predict the reaction of the Ukrainian authorities to deepening international isolation of the country. On the one hand, it is unfavourable to the current Ukrainian government. The situation impedes the continuation of cooperation with the International Monetary Fund, as well as blocking financial support from the EU to reconstruct the Ukrainian gas transportation system. This in turn may result in increased economic cooperation with Russia in the long term, leading to loss of control over strategic enterprises by Ukrainian political elites.

On the other hand, the above-mentioned concerns about the possible loss of power will encourage the Ukrainian leadership to maintain the status quo, i.e. to avoid taking any decision in the case of Yulia Tymoshenko, at least until the parliamentary election this autumn. Recently introduced changes to the electoral law (such as introducing a mixed electoral system, raising the electoral threshold, banning blocs of political parties from participating in elections) suggest that the ruling Party of Regions will remain a significant political force even if it loses the election. International pressure will probably not become sufficient as a means to force the Ukrainian authorities to release the leader of the largest opposition party immediately. It may, however, become one of the factors inducing the Ukrainian authorities to look for a solution of the Tymoshenko case after the parliamentary election (e.g., changing the law to allow the opposition leader to be released, and closing other criminal cases against her). However, this will depend on how the opposition parties fare in the election, and on the distribution of power in the new parliament.

**Conclusions and Recommendations.** In order to maintain a positive image of Poland as a country supporting Ukraine's European aspirations, the Polish authorities should strive to maintain a constructive dialogue with Ukraine and limit the possibility of deepening international isolation. The Polish government should, at the EU forum, emphasise that isolation by European partners will also contribute to an increase in Russian influence, and thus undermine the implementation of long-term interests of the EU, that is bringing Ukraine closer to European standards as well as ensuring its energy security.

One should keep in mind that Yulia Tymoshenko's case is largely a tool of political struggle between the current authorities and the opposition, a tool which is used by both sides to achieve short-term political goals. In continuing dialogue with the current Ukrainian authorities, the EU should avoid promoting any specific solutions (e.g., the unconditional release of the former prime minister). Such a scenario would not improve the state of Ukrainian democracy and may have a negative effect on the EU's image. Taking into account the doubts of the international community, the need to find a compromise that would take into account the concerns presented by the European partners as well as the need to ensure the stability of the Ukrainian political system should be emphasised.

In the short term, informal consultations between Ukraine and the EU should be encouraged. They should focus on the need to ensure the transparency of any decisions made by the Ukrainian authorities on this matter. The EP's observation mission, which is carried out in agreement with Ukrainian authorities, is a step in the right direction. Conclusions from observations should become an important reference point for political dialogue with Ukraine on democratic standards and human rights. One cannot exclude that the EU may make continued economic support conditional upon the Ukrainian authorities' acceptance of the mission's conclusions. Poland should support the mission both politically and on a technical level, providing all the necessary legal expertise.

In the longer term, Polish and EU diplomacy should try to use the situation to persuade the Ukrainian authorities to establish cooperation to improve the nation's legal, judiciary and penitentiary systems, and to avoid similar concerns in the future. In particular, Ukraine should be offered an option of adopting existing EU solutions in the fields of political responsibility and criminal liability for constitutional tort. Strengthening the priority of legal and judicial reform in Ukraine, in the framework of support programs funded under the European Neighbourhood Policy and Eastern Partnership, as well as within the "Polish Aid" program, should also be considered.