

The EU and Ukraine: hapless but not hopeless

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»» Since his democratic victory in 2010, Ukrainian President Viktor Yanukovich has asserted his control over Ukraine's political system by arresting leaders of the opposition, restricting freedom of assembly and speech and allegedly enriching himself and his close circle in the process. This has jeopardised Ukraine's declared goal of European integration and has pushed the country into greater isolation from the West.

Last October's parliamentary elections were meant to be a litmus test for democracy in Ukraine. Amidst allegations of fraud in some districts, the polls exposed the abuse of power and corruption present in Ukraine's political system. However, the results also demonstrated some level of resilience against an illiberal political regime. The opposition did better than expected and must now use its gains wisely to resist further regime consolidation by building on popular discontent with the ruling party. The future is uncertain: the country's further democratisation is in the hands of Ukrainians. As for the EU, it is also facing its own litmus test in its relations with Ukraine. Its room for manoeuvre is squeezed between the Ukrainian opposition's calls for sanctions and the need for dialogue with the Yanukovich government. While the EU looks hapless in the East, its relations with Ukraine need not be hopeless. The EU must find a middle ground and position itself as a power broker before the 2015 presidential elections.

UKRAINE'S RELATIONS WITH EUROPE

Since mid-2010, when Ukraine's democratic regression under Yanukovich became evident to all, the EU has voiced its criticism,

HIGHLIGHTS

- The October polls exposed Ukraine's corrupted political system, but also the resilience of Ukrainian society to an illiberal political regime.
- The incumbent Party of Regions will have to ally with independent candidates to form a narrow majority in Parliament.
- Ukraine's democratisation is in the hands of its citizens: the EU should enhance its engagement with civil society and support grassroots initiatives.

»»»»» frozen its aid, downgraded the political dialogue and, most importantly, put the signature of the EU-Ukrainian Association Agreement on hold. In May 2010, European leaders boycotted the summit of Central and Eastern European countries convened in Yalta. Many of them also ignored the 2012 European football championship held in Ukraine and Poland. Germany's Angela Merkel even called Ukraine 'a dictatorship' similar to Belarus. New member states, such as Poland, have been critical too, while advocating continued dialogue for the sake of not 'losing Ukraine'. Free and fair elections, redressing cases of selective justice against opposition leaders and reforming the judiciary were put forward as conditions to move towards the Association Agreement.

But this approach does not seem to be working. Ukrainian authorities have opened a new case against former premier Yulia Tymoshenko, while the appeal sentence in the case of former interior minister Yuriy Lutsenko has increased his prison term to six years. The Donetsk-grown elite seems to be sending a clear message to Ukrainians and the West: this is our country and we will govern it our way.

YANUKOVYCH'S JANUS FACE

The recent Ukrainian parliamentary elections have shown the two faces of the current ruling class. The first face ensured a relatively peaceful and calm election day, thus pleasing the West. Election results for the party lists largely coincided with six exit polls shown across Ukrainian TV stations. International observers' first reactions were cold but not devastating. The Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (ODIHR-OSCE) disapproved of the electoral campaign for being unfair, pointing to the lack of a level playing field, but considered the voting and counting process positively.

The second and true face of the Ukrainian regime revealed itself after the elections. In a

dozen districts, candidates from Yanukovich's Party of Regions (PoR) tried to reverse the electoral results by any possible means, from delaying vote tabulation to annulling the elections through court rulings and using police force to oust observers, journalists and supporters to shield electoral fraud. While the central authorities merely watched, the prime minister was the only government official who reacted, stating that the authorities had nothing to do with the troubled vote counting.

The 2011 election law reintroduced the mixed electoral system that existed before the Orange revolution. Whereas the 2006 and 2007 parliamentary elections were based on proportional representation, in October half of the new Ukrainian parliament was elected through closed party lists in a single nationwide constituency and the other half through first-past-the-post contests in 225 single-mandate constituencies. The introduction of the majority vote in single-mandate constituencies was seen to favour candidates from the ruling party and rich independent candidates. Moreover, not all parties received fair representation in the election committees.

UKRAINE'S RESILIENCE

In line with pre-election public opinion polls and the six exit polls, five parties overcame the 5 per cent threshold to enter parliament. Yanukovich's PoR received 30 per cent of votes. The united opposition *Batkivshchyna* (Motherland) Party that had to run without its leader, Yulia Tymoshenko, obtained 25.54 per cent. Led by world box champion Vitaliy Klitschko, the Ukrainian Democratic Alliance for Reforms (UDAR; means strike, punch) came third with 13.96 per cent. The Communists and the nationalist *Svoboda* (Freedom) Party got more votes than expected, with 13.18 per cent and 10.44 per cent, respectively.

As predicted, the ruling party prevailed in the single-mandate constituencies, in which PoR

candidates won 113 out of 225 seats. This gives the PoR the largest parliamentary faction – 185 mandates. The united opposition Batkivschyna Party now has 101 representatives; Klitschko's UDAR 40; Svoboda 37; and the Communists 32. Fifty seats were won by independent and small party representatives. Five seats emanating from the problematic single-mandate constituencies will remain vacant. The Central Election Committee stated that it could not endorse the results due to violations of electoral standards and offered a re-run.

UDAR and Svoboda are newcomers. Their success is mainly due to an increasing popular demand for new faces in politics. UDAR ran on a liberal economic programme of strict anti-corruption policies, lower taxes and a better business

climate for small and medium enterprises. The party owes its popularity to its leader, Vitaliy Klitschko, who entered the Kiev City Council in 2006 and twice ran for mayor. As his personal popularity gradually increases some believe that he intends to run as the main opposition candidate against Viktor Yanukovich in the 2015 presidential elections.

UDAR is the first opposition party to score evenly in all regions (except in Donbass and Crimea), thereby easing the East-West divide. However, dependence on strong personal leadership is UDAR's main weakness as it lacks a clear political platform and may end up having the same fate as Yulia Tymoshenko's block. The latter lost every fifth member of the Parliament since the former prime minister was defeated in the 2010 presidential elections.

The positive results for extreme left-wing and extreme right-wing parties can be partly explained by the protest mood among the Ukrainian population. The Communists improved their results in relation to the 2007 elections due to the growing disappointment of eastern and southern voters with the PoR and its anti-social policies. Though the Communists joined a coalition with Yanukovich's party in 2010, in October's elections they managed to present themselves as an opposition party to the current capitalist rule. Svoboda started to rise in the 2010 local elections, but its impact was limited to Western Ukraine. Its success owes to a number of factors. First, it presented itself as a traditional party with a clear ideology and party activists (not rich businessmen) on its lists, and seems to be free of oligarch funding (their campaign spending was one of the lowest). Second, it is perceived as a more radical opposition, capable of standing against the strong hand of the PoR in parliament. Finally, voters reacted against PoR policies that favoured the Russian-speaking population and diminished the status of the Ukrainian language. Whereas the Communists are pro-Russian and support Ukraine's integration in the Moscow-led Customs Union, the Svoboda is anti-Russian and is against Ukraine's membership in the Commonwealth of Independent States (CIS). However, both parties have adopted leftist economic programmes.

On the positive side, this electoral campaign has proven that wealth is not enough to win votes. While it can be said that the campaign was largely a competition between rich pockets, with spending estimated at around \$2.5 billion, Ukrainians are not easy to buy. The oligarch-sponsored political party of Natalia Korolevska, 'Ukraine – Forward!', that spent around \$150 million on its campaign, gained only 1.58 per cent of votes. In Kiev there was another surprise. Despite the ruling party's generous spending on political advertisement and gifts to voters, it was unable to win a single seat there. In contrast, the opposition candidates that did not have access to media and public spaces and had to rely

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Ukrainian society in both the east and west of the country has shown a desire for a different kind of politics and politicians

»»»»» mainly on door-to-door campaigning obtained good results.

In the new parliament, a PoR-led majority is likely to absorb most independent members and those from smaller parties who were elected in the single-mandate constituencies. This would give the PoR a narrow majority in the 450-strong parliament, even without an alliance with the Communists. However, such a majority will be less homogeneous and more difficult to control by the presidential administration.

Yanukovich's party may have won the elections, but with fewer votes than expected. This can explain why the authorities, after having organised what could be described as satisfactory elections, tolerated fraudulent vote counting in a dozen districts. Now the opposition and the ruling party seem to be engaged in a wary dialogue over how to deal with the post-electoral crisis. The authorities have so far agreed to hold new elections in five disputed districts. The opposition appealed against such a solution insisting that the Central Election Committee determine the results, but has not won a single case in the court.

Election results show that Ukraine remains divided between the south and the east that still support the ruling party, although decreasingly, and the centre and the west, where PoR ratings are lower than ever and the opposition enjoys strong support. What is more important, however, is that the Ukrainian society in both the east and west of the country has shown a desire for a different kind of politics and politicians, as well as resilience against authoritarian pressure. Some voted for parties with extreme ideologies (communists and nationalists), others put their hopes in new faces such as Vitaliy Klitschko, whereas many did not vote at all (the turnout was 58 per cent), something that can also be attributed to disappointment in both the rulers and the opposition. The government's pro-oligarch and anti-social policies are likely to increase frustration and resentment amongst the

population. The opposition did not win a majority, largely due to the 2010 changes to the electoral system that reintroduced single-mandate constituencies. But after October's elections they will have a stronger representation in parliament (178 deputies vs. 161 in the old legislature) and hopefully there will be less potential 'political migrants' to the ranks of the ruling party. Overall, these elections could signal the beginning of the end of the incumbent regime.

THE EU'S CHOICES

The first reactions from the EU largely reflected the ODIHR-OSCE preliminary assessment. European, US and domestic observers agreed that Ukraine's parliamentary elections represented a step back in the country's democratic development. The first concerns emerged at the end of the post-election week, when EU High Representative Catherine Ashton and the Commissioner for Enlargement and European Neighbourhood Policy, Stefan Fule, raised concerns about the delayed announcement of the results. The Polish president was the first to speak on the phone with President Yanukovich, voicing concerns over the 'numerous signals of serious violations during the vote count in the single-mandate constituencies'.

The EU needs to address two main issues following the elections. First, there are growing voices both within Ukraine (the opposition parties in the country) and from outside (mainly from the US Senate and some American NGOs) calling for the imposition of target sanctions against Ukraine's rulers. Second, the EU should decide how to proceed with the EU-Ukraine Association Agreement.

It is critical for the EU to condemn the violations during the vote count and the reported cases of fraud, but without seconding calls from the opposition for 'political revenge' in the form of sanctions against those involved in electoral fraud, such as President Yanukovich, the general

prosecutor and the minister of the interior. Sanctions would be morally justified, but are unlikely to weaken the regime. The experience of EU sanctions toward Belarus has shown that their effect is very low, if not null. This is mainly due to the fact that for both the Ukrainian and the Belarusian governments the priority is to consolidate their regimes and not European integration. In Belarus, the impact of EU sanctions has been largely mitigated by the country's openness towards Russia. Negative (sanctions) or positive (the Association Agreement) incentives will not work if Yanukovich sees EU demands as tantamount to regime change. This would push the EU from being a neutral broker to taking one side in the political conflict, which would close the door for dialogue with Ukraine. If sanctions are introduced against those directly engaged in fraud in the problematic districts, including judges, prosecutors and prison chiefs, among others (as did the US Congress in the case of the murder of lawyer Sergey Magnitski in Russia), it would be seen as a punishment of pawns. Despite the current backlash against democracy, Ukraine cannot and should not be put in the same basket with Syria, Iran or even Belarus. The EU should pursue a low profile engagement with the Ukrainian political leadership.

At the same time, European observers should provide a detailed assessment of the elections and post-election events in Ukraine, helping Ukrainians to document the violations that occurred in the trouble districts and insisting on a free and fair re-run in those areas where elections were rigged. This is why the dialogue should continue. It will favour those in Yanukovich's government who support a more balanced and pragmatic course and do not want to prolong the current crisis in EU-Ukraine relations at any price. Moreover, Ukraine needs money to pay its gas bills and foreign creditors, which may make government officials more inclined to dialogue with the EU.

A more strategic question is whether curbing political, economic and social links with Ukraine

can be a sustainable response to the country's democratic regression. The EU seems to be divided over this issue. New member states, notably Poland, seem to prefer to move on with the Association Agreement, in the belief that increased EU engagement with Ukraine is a strategic issue. The old member states, and most importantly Germany, are hesitant to sign an agreement with Yanukovich. When considering the further postponement of the Agreement, the EU should think twice. Such a move, conceived as a crisis response to political repression in Ukraine, could have serious implications over the long-term.

The Association Agreement should not be regarded as a reward to the government, but as a mechanism to help Ukraine as a whole. Its main aim is to assist the reform of the country's economy, advance the rule of law and introduce European standards. Free trade with the EU would give Ukrainian consumers access to a wider choice of high quality goods and introduce competition into the Ukrainian market. But there should be no hopes that the Agreement will fix Ukraine's democratic regression, mainly because it was not designed as a democracy promotion tool. Nonetheless, signing the accord could be a step forward towards setting Ukraine on a European path and inciting stronger pressure for reform by pro-European political parties, citizens and those businesses interested in free trade with the EU. The EU would also be able to demand better democratic standards and reforms during the process of ratification and implementation of the Agreement.

CONCLUSION

The recent parliamentary elections have shown that Ukrainian society is gearing up for change. The Party of Regions' victory was narrower than expected and contributed to further spoiling its image. Voters are now more mature. There is resilience and slow progress in Ukraine, but a real alternative to the current political class has yet to emerge. In this process, the EU should

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remain critical towards the government, but at the same time open towards Ukrainians. Europe and its values and standards should be more visible, present and accessible to the Ukrainian population. A visa free regime and free trade could make this happen. More initiatives engaging Ukrainian society are needed.

The EU should remain closely engaged with post-election Ukraine. Brussels should find ways to move on with the association and free trade agreement, applying conditionality in a more targeted way during the ratification and implementation stages.

The EU should not engage into a zero-sum game with the current regime, as it is unlikely to win. However, it needs to widen and deepen its contacts with the Ukrainian political class, government and opposition alike, beyond Yulia Tymoshenko's Batkivschchyna. The EU should

approach parties such as Vitaliy Klitschko's UDAR and even the ultra right-wing Svoboda. The EU should ensure that its democracy and rule of law projects help pave the way for next year's local elections in Kiev and the 2015 presidential campaign, not least by supporting grassroots citizens' initiatives.

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