

## Overview of Ukrainian Domestic politics (28/10/2011)

February and March 2010 form a **major rupture in Ukrainian domestic politics** with the election of Victor Yanukovich as president and forming of a new parliamentary majority (and government by Mykola Azarov) with procedures which have been questioned by independent legal experts. In the following 19 months, the new Ukrainian leadership has been consistently building a strong vertical power with the President controlling executive, legislative and judiciary branches and backtracking on democracy, as reported by a number of authoritative international HRs watchdogs.

Further a **power shift** can be noted. Major decisions are now taken in the Presidential administration. According to the assessment of most political observers, the role of the Rada is mostly to confirm decisions taken by the president and a small group of oligarchs surrounding him.

The latest evidence of the ongoing backtracking in democracy is the conviction of opposition leader **Yulia Tymoshenko** on 11 October 2011 for abuse of power when concluding gas contracts with Russia in 2009. She was sentenced to seven years in jail, three additional years ban from holding high public posts. Further she must pay compensation of 1.5 Bio UAH (ca. 140 Mio Euro) to Naftogaz. The trial was, according to local and international experts, far **from European standards on rule of law**. An appeal has been filed and is still pending. The verdict on one of major opposition figures in Ukraine marks a **change of political culture** in a country, which used to be more advanced in democracy than most other former CIS countries.

Despite the outspoken criticism voiced by the EU after the conviction of Mrs Tymoshenko on 11 October, the UA authorities have launched soon after two new criminal cases against Yulia Tymoshenko:

- i) The case by SBU regarding the state guarantees allegedly unduly given by the UA government to the commercial debt by United Energy System of Mrs Tymoshenko.
- ii) The case regarding commercial activities of Tymoshenko's company United Energy System in 1996-1997 (alleged embezzlement of 25 million hryvna and evasion of 20 million hryvna in taxes).

European expectations for a "decriminalisation" of the articles 364-365 (abuse of power) under which Tymoshenko has been tried have not materialized up to now.

However, even if the party in power decides to decriminalise those articles, Mrs Tymoshenko will likely be kept in custody or jailed again under the two new cases launched against her, as charges brought under those cases do not concern abuse of power but corruption (at altera).

Other negative developments in the field of **democracy** are:

- In 2010 the constitutional court re-established the **1996 constitution**. The procedure was heavily criticised by Venice Commission.
- At **regional elections** in October 2010 international observers reported several cases of **severe fraud**. Also the law on local elections was changed shortly before the ballot.

- In the past months, **several trials against members of the former government** have been initiated (selective justice)
- Restrictions on **media freedom** have become common, above all on TV.
- A new draft **law on parliamentary elections** has been prepared without taking into account the proposals on key issues from political parties and civil society. The draft law has been finalised and registered in the parliament before the publication of the final Opinion of the VC (see for details the attached document).

Achievements in other sectors have been mixed:

- A reform of the **pension system** was adopted (following IMF demands, very unpopular in Ukraine)
- A **administrative reform** was started, but largely following the Russian model rather than the European one, thus criticised by Western experts.
- **Some steps, although at times contradictory, to reform key legislation** were taken (among others adoption of the Public Procurement Law, draft of the Criminal Procedure Code, laws in the context of visa action plan).
- **Economy is growing** at 4-5% p.a.
- Ukraine remained capable to **serve its debts**, including **salaries**.

On four other major issues, **state aid, social security, health system and agriculture, promises for reform** have **not** been implemented up to now.

Despite heavy control over the media, the **present administration** is comparatively **unpopular in Ukraine**. According to an IFES study, 70% of the Ukrainian population are **dissatisfied** with the political situation and 87% with the economic situation – considerably more than in 2011. Nine in ten Ukrainians say that they are dissatisfied with Yanukovich's performance in creating jobs and keeping prices low. There continues to be significant dissatisfaction with handling corruption and oligarchs.

At present, the politician with the **highest approval rate is the Arseniy Yatsenyuk** from the "Front of Change Party" with 30%, **followed by Yanukovich** (29%, 43% in 2010) **Tymoshenko** (24%, similar to 2010), **Azarov** (20%, 2010: 37%) and **DPM Tigipko** (20%, 41% in 2010.)

Parties have seen a similar development: According to this poll, Party of the Regions is supported by 16% (34% in 2007), Yatsenyuk's "Front of Change" would come in second with 9% , closely followed by Tymoshenko's Batkivschyna (9% as well, 30% in 2007).

## Attachment

### Draft law(s) on parliamentary elections - latest developments

***The presidential draft law was submitted to the parliament before the final Opinion of the VC-OSCE/ODIHR***

On 14 September the Ukrainian Ministry of Justice published on its website the Preliminary Draft Joint Opinion of the Venice Commission/ODIHR on the Draft Law on Elections of people's deputies, provided by the VC in anticipation of a visit by the rapporteurs and experts to Ukraine.

A delegation of the Venice Commission and OSCE/ODIHR travelled to Ukraine between 21 and 23 September 2011 and held meetings with Mr Lavrynovych, a group of experts of the working group in charge of the draft law on parliamentary elections, representatives of political parties, civil society and international organisations and embassies present in Ukraine.

During the visit, the Ukrainian authorities were informed that the text of the preliminary draft opinion would be changed on the basis of the discussions held in Kyiv.

Nevertheless, on 23 September Minister of Justice Lavrynovych announced the intention i) to finalise the draft parliamentary election law by including some of the VC recommendations reported in the Draft Opinion and ii) to present such draft parliamentary election law to the President for his submission to the parliament.

On 28 September EU HoD issued a local statement "asking Ukraine to abide by the pledges it has made to follow OSCE/ODIHR recommendations in electoral matters, and in particular to await the final Joint Opinion of the Venice Commission and ODIHR to be presented in October before finalizing any draft law and submitting it to the Parliament."

On 10/10 the presidential draft law on parliamentary elections was submitted to the parliament - however not directly by President Yanukovich, but by the following MPs from the parliamentary majority:

- Yefremov – Leader of the PoR faction
- Sharov – Leader of the People's Party faction (Lytvyn)
- Rybakov – Leader of the Reforms for the Future
- Oliynyk – PoR Member
- Martynyuk – First Vice Speaker, Communist party
- Kozub – PoR Member

***The presidential draft law does not include main recommendations from the draft Opinion of the VC-OSCE/ODIHR***

The presidential draft law includes all main conditions pre-set by President Yanukovich and publicly announced by Minister of Justice Lavrynovich: the mixed electoral system (50% proportional, 50% majoritarian), the 5% threshold and the banning for blocs of parties to participate in the elections (however, in single-mandate constituencies self-nomination by 'independent candidates' is also possible).

Most local and international observers consider that the mixed electoral system provided by the presidential draft law is crucial for the party in power to win a majority in the parliament, given the low and still dropping electoral rating of the PoR.

According to the analysis made by a leading Ukrainian independent election watchdog, the presidential draft law in the version as presented to the parliament includes, with one exception, only recommendations of minor importance from the DRAFT Opinion of the VC-OSCE/ODIHR. Only one issue of major importance, recommended for change by the VC-OSCE/ODIHR DRAFT Opinion, has been included in the draft law: it concerns the deadline for the announcement of boundaries of electoral districts that was changed from 90 to 110 days prior to election day). Moreover, experts have noted that in the draft law eventually presented to the parliament there are additional provisions which were not screened by the VC as not included in the text sent for assessment. Some of these provisions are of crucial importance, such as the reasons for cancellation of registration of candidates.

### ***Final Joint Opinion of the VC-OSCE/ODIHR on the parliamentary election law***

The FINAL Opinion of the VC on the presidential draft law was issued on 17 October.

Along with a list of more technical recommendations, the Opinion i.a. :

i) Calls on Ukraine to include VC recommendations into the draft law before submitting it to the parliament [the law was submitted to the parliament on 10/10];

ii) Regrets that the draft law was prepared without taking into account the existing draft election code;

iii) Notes that the choice of the mixed system, the threshold for gaining mandates and the banning of electoral blocs was made by the majority unilaterally and without consultations with the representatives of the other political parties and civil society. These different changes do not facilitate the access of different political forces to parliament. Making these fundamental changes in the electoral system without broad public discussions and consultations can compromise the legitimacy of the draft law regardless of how it is implemented.

iv) Acknowledges that an open and constructive discussion in the parliament should facilitate the preparation of a single draft project that would be the result of a compromise between the majority and the opposition.

### ***Expected developments in the coming weeks (election experts opinion)***

Opposition parties have presented three alternative draft laws on the parliamentary elections, all of them suggests running the next parliamentary elections under the proportional election system. Out of the three, only one draft law was registered before the presidential draft law and, therefore, by rule it has to be put on vote before the bill from the President.

According to most experts' assessment, it seems that there is no chance for the opposition draft laws to be seriously considered for discussion or adoption. They can serve only the purpose of delaying somehow the process of adoption of the president's draft law, since by procedure the parliament has to hold some debates on all the draft laws registered.

On 31 October Committee hearings have been called to discuss the different draft laws on parliamentary elections with the participation of all political parties. Experts anticipate that the Committee hearings would not result in a real 'compromise draft law' between the position of the PoR/President and all other political parties. Instead, they will likely be used to claim that 'an open discussion with all political parties, as requested by the VC, was held before the adoption of the draft law...'.

According to indicative estimations made by election experts, the indicative calendar of the expected adoption of the presidential draft law could be the following (depending on decision of the parliamentary majority):

**31/10-** Committee hearings/debate on the parliamentary election draft laws presented by both the President and the opposition;

**02/11** (date TBC)- Meeting of the Committee (for State Building) for expert assessment of the draft law;

**03-04/11-** (theoretically) the presidential draft law might be put on the agenda for adoption in first reading;

**7-11/11** – No plenary session week in the parliament

**15/11-**

i) If the presidential draft law was adopted in first reading on 03-04/11, it could be passed in second and final reading;

ii) If the presidential draft law was not adopted in first reading on 03-04/11, it could be passed for first reading. Then the second reading might be already scheduled, with an agreed shortened procedure, during the following plenary session 29/11-02/12.