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political commentary

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In this issue of *political commentary*, the International Centre for Policy Studies presents an analysis of government policy and the factors that influenced it in April 2008.

POLITICS

In the three years since the Orange Revolution, Ukraine has seen three convocations of the Verkhovna Rada and even more coalitions in the legislature, both long-term and situational ones. After the quick disintegration of the Orange team, the country entered a period of stable political instability. Every time a new group came to power, their first concern was to review the rules of the game and to re-distribute powers in the three government triangle—President, Rada and Cabinet—to the benefit of whatever post they happened to be occupying at the time.

This shortsightedness means that Ukraine's political parties have failed to reach the kind of compromise needed to institute proper political reform. The net result was that stable political institutions have still not materialized in this country. The VR coalition formed barely five months ago is on the verge of collapse. This means that the country faces yet another change of government soon.

The non-existent coalition

From the start, in late summer 2004, the main purpose of the union between Yulia Tymoshenko and Viktor Yushchenko was to keep Viktor Yanukovich and the Party of the Regions from coming to power. But growing rivalry between President Yushchenko and Ms Tymoshenko, whose popularity has been growing steadily since her Government was dismissed in September 2005, has redrawn the political map in Ukraine. The traditional political balance between “democratic forces” and “the Donetsk camp” has taken second place to the rivalry between the two leaders of the non-existent Orange camp.

Growing competition between the leaders of the coalition is leading to its ultimate break-up. Taking advantage of the rights and political instruments available to him, the President is preventing the Government from taking its initiatives forward. He has effectively blocked the privatization process, which makes it impossible for the Government to carry out its Budget policies and

***Ukraine is facing
another change of
government***

***Rivalry between the
President and Premier
is putting an end
to the coalition***

the campaign promises BYT made as to compensating depositors at the old soviet Oschadny Bank, the state savings bank, and increasing social benefits. Within the coalition, the BYT faction has not supported Bills submitted by the President. The refusal of its members to vote on the Presidential version of the Bill “On the Cabinet of Ministers” and on alternative draft amendments to the Constitution has killed the President’s plans for Constitutional reform.

Formally, the coalition remains together only because of political imperatives. At the moment, none of the coalition members is interested in seeing the Tymoshenko Government retire, partly because no one wants to be seen as the “traitor.” Nor does BYT want to lose the premiership. To go into opposition for 18 months prior to the next election could hobble their election campaign: any new coalition is bound to raise doubts about anything achieved by the Tymoshenko Government. The President has no alternative to the current coalition, which leaves him few options for acting.

The spring break in the current plenary session was a temporary measure to keep the coalition going. Still, when the Rada reconvenes, the coalition’s viability will once again be put to the test. The last nail in its coffin could be the debate of a bill amending the Constitution that has been drafted by BYT as an alternative to the President’s bill.

And non-existent state policy

The system of government is not functioning

For starters, the coalition no longer has a common action program. The run-up to a presidential race in which both leaders plan to run necessitates a certain amount of mutual criticism and even sabotage, rather than a search for compromise. This makes it impossible to come up with effective state policy. The political rivalry between President Yushchenko and the Tymoshenko Government has, as a result, made Ukraine’s system of government even more dysfunctional than it was when Mr. Yushchenko and Mr. Yanukovich were obliged to “cohabit” 18 months over 2006–2007. At that time, the Government and Rada were able to operate decisively, while the President was only able to block them when he had the Constitutional power to do so. In the current situation, in addition to the complications from having two centers of executive power between the Cabinet and the President, the Government has little support in the legislature because of the effective absence of a proper coalition.

In April, most of the Cabinet’s initiatives were blocked by the President. He annulled a Cabinet resolution on the procedure for running land auctions. He also cancelled, not for the first time, a resolution on the privatization of the Odesa Port Plant (OPZ), revenues from which have already been allocated in this year’s State Budget (see Policy). What’s more, Presidential Chief-of-Staff Viktor Baloha called for the ministers responsible for economic portfolios to resign, blaming them for the worsening economic situation and growing inflation. Through his faction in the legislature, NU–NS, the President is preventing the Government’s Program from being placed on the VR agenda and is sabotaging its privatization plans.

The coalition cannot agree on key policy decisions

In response, the Cabinet has declared open war on the President and his Secretariat. Although its resolutions were annulled, the Premier openly stated that her initiatives would be carried out, calling the Presidential decrees “illegal.” On most key issues, Ms. Tymoshenko is taking a position that is opposite to that of Mr. Yushchenko: privatization, land auctions, Constitutional reform, mayoral elections in Kyiv, and so on.

The Verkhovna Rada has also rejected a number of the President’s bills that were earlier agreed within the coalition, including a Bill “On the National Guard,” which was supposed to set up a military force of that name that would

be directly responsible to the President. Another Bill was supposed to regulate monopolies, but it, too, increased the President's powers.

What happens after the official break-up?

BYT could accept an official breakdown of the coalition should changes to the Constitution and to the parliamentary and presidential electoral systems be adopted. Agreeing to the latter could be a condition for passing the former. A transitional scenario for BYT could be that this coalition collapses without any alternative being formed, so that the current Government stays in place in an acting capacity until the next election.

BYT insists on amending the Constitution

Should the political crisis grow any worse, the President, "not having any other alternative," will want to preserve the Constitutional status quo and form a new coalition based on Nasha Ukraina, the Party of the Regions and, possibly, the Lytvyn Bloc. PR is also in favor of building a new coalition without going through another election.

The President will look for an alternate coalition

The main complication in the President's scenario is the lack of support for this new format of coalition among most deputies in the NU-NS faction. Within the faction, there is a serious split happening, into at least "two and a half" groups. Depending on the nature of the question under discussion, the faction's position becomes either more pro-Yushchenko or more pro-Tymoshenko.

There is an openly anti-Tymoshenko minority in this faction that is clearly prepared to follow the President's Secretariat. It includes five deputies who have declared themselves members of the newly formed "Unified Center"¹ and Our Ukraine's Deputy Vasyl Petyovka, a landsman of Viktor Baloha. These deputies operate on the basis of statements from the President's Secretariat, support the President's initiatives, and reject BYT initiatives. The majority of the Nasha Ukraina-Narodna Samooborona faction looks to its spokesman, Viacheslav Kyrylenko, and tries to be balanced, demonstrating loyalty to both the President and the Government. Within this majority, there is a significant subgroup of 18 deputies from Narodna Samooborona and a number of independent members such as former Defense Minister Anatoliy Hrytsenko. These deputies support the coalition as such, but are publicly critical of the President's Secretariat. Indeed, some of them even raised the issue of having Viktor Baloha resign. They are also critical of Presidential Bills intended to strengthen the powers of the Presidency.

NU-NS is at risk of breaking up

Party of the Regions: In search of itself

While Ms. Tymoshenko and Mr. Yushchenko compete, the Party of the Regions is looking at a possible return to power by forming a coalition with the pro-presidential faction. Notably, PR chose not to actively support a joint initiative with BYT regarding setting up a VR commission to draft Constitutional amendments, just when relations between BYT and the President reached a particularly low point. This shows how ready the Party of the Regions is to meet the President halfway, should a new coalition become necessary. Most likely, Mr. Yushchenko is counting on PR being demonstratively loyal to his bills during the honeymoon phase of such a coalition.

PR is preparing for a broader coalition

At the same time as it is prepared to form a coalition, however, the Party is faced with its own internal conflicts and divisions. Today, it can, in fact, be nominally divided into two and a half main groups. The first of these, the group associated with Rinat Akhmetov, includes some 60 of the faction's deputies. It is personified by people like Boris Kolesnikov and Raisa Bohatyriova, who is currently the Secretary of Ukraine's National Security

¹ I. Kril, O. Bilozir, O. Orobets, M. Pollianych, and V. Topolov.

Council. These deputies are prepared to work with the President and see no problem in sacrificing some of Viktor Yanukovich's personal ambitions for the sake of such cooperation.

The leader of the second group, which counts some 80 members of the faction, is Viktor Yanukovich. In order to mobilize voter support, this group has been actively using anti-NATO and pro-Russian slogans. In addition, there is ostensibly a smaller subgroup of about 30 deputies associated with Mykola Azarov who are loyal to Viktor Yanukovich and are mostly former bureaucrats.

Rivalry between PR's two wings is growing stronger

The 19 April convention of the Party of the Regions established this balance of forces within the party. On one hand, those high-profile members who have agreed to work with the President, like Raisa Bohatyriova, have remained on the PR benches and in its executive, regardless of earlier criticism directed at them. The fact that Ms. Bohatyriova's actions were not even raised for discussion at the convention makes it likely that the Akhmetov group remains fairly strong within PR.

On the other hand, Viktor Yanukovich was re-elected head of the Party, its political council and the Presidium of the political council, making a clean sweep of its leadership positions. Mykola Azarov and Volodymyr Rybak, the ostensible old guard of PR, lost their positions as the head of the political council and the Party's political executive. A number of new faces appeared in top posts, including Yuriy Boyko and Serhiy Liovochkin, who are considered close to RosUkrEnergo co-owner Dmytro Firtash. In short, an alternative source of financing to Rinat Akhmetov has appeared within the Party. In addition, the Party's platform now clearly states its main ideological planks—and these are quite unacceptable to potential coalition partners like NU–NS: giving Russian status as an official state language and keeping Ukraine's military status neutral.

Should a coalition be formed between PR and NU-NS, the Presidential Secretariat is likely to take advantage of differences within PR. With the approach of the presidential election, the Party will have to make up its mind: will it unanimously support Viktor Yanukovich as its candidate, or will it maintain a position of supporting the current President during the campaign.

Political reform—the main item on the agenda

The President won't be able to get things his way

The Constitutional Court's ruling on the adoption of a Constitution of Ukraine via referendum and the lack of support in the Verkhovna Rada for the President's Constitutional initiatives mean that Mr. Yushchenko's initiative is unlikely to see the light of day. The similarity of positions between the leaders of BYT and PR regarding a stronger parliament in Ukraine opens new opportunities for moving the Constitutional process forward and trying a new approach to the 2010 Presidential race. The question is whether BYT will be able to cut a deal with PR about the vote in the Rada.

Were the President to accept the idea of moving towards a parliamentary republic, the 2010 race would lose some of its edge and Mr. Yushchenko would likely be re-elected to this post. Still, this would mean that the powers of the Presidency would be significantly reduced and the Premier would become the No. 1 political figure in the state. The President has shown by his actions that he is against this kind of government structure.

There will be a VR showdown between BYT's Constitutional amendments and PR's

The Party of the Regions plans to submit its own draft of Constitutional amendments to the Verkhovna Rada. It proposes a parliamentary-presidential form of government. This step, which is part of the horse-trading going on with BYT, on one hand, and the President and NU–NS on the other, means

that they could come to power either through elections or through a new coalition. In the end, President Yushchenko could be forced to go for the PR version of Constitutional amendments in exchange for support in the next election and for a re-organized coalition.

POLICY

Privatization policy is hostage to political competition

At the beginning of 2008, the Government made plans to privatize more than 400 assets over the year—among them, Ukrtelecom, the Odesa Port Plant and power companies. The money gained from these sales was supposed to be used to cover the Budget deficit—a total of UAH 8.6bn. Any money over and above this sum would obviously go to increase payouts to soviet-era Oschadny Bank depositors.

The Government has ambitious plans for privatization...

However, in mid-April, the President put a halt to the privatization of a slew of companies, including:

... but the President has other ideas

- four power-generating enterprises: VAT Dniproenergo, Donbasenergo, Zakhidenergo and the Tsenterenergo State Power-Generating Company;
- four machine-building enterprises: VAT TurboAtom, More Shipbuilding of Feodosia, Electro-mechanical Instruments R&D Institute, and Atomic and Electrical Pump R&D and Design Institute;
- the Kryviy Rih Ore Oxide Enrichment Plant (KHZKOR);
- the Odesa Port Plant (OPZ).

The President gave as his reason that the privatization of these assets would affect national security negatively: the strategic nature² of the operations of these companies carries considerable risks for the economy, should they end up in private hands. Moreover, Mr. Yushchenko also stated that should the Kryviy Rih Plant be privatized, Ukraine could find itself challenged by those countries that contributed to the building of the plant during soviet times.

Table 1. The President's reasons for halting privatization

| Asset | Reasons for halting privatization |
|--|---|
| Power-generating companies | These companies are considered strategic assets as regards both the domestic economy and national security under Ukrainian law, as they affect the viability of the entire country. Taking these assets away from NAK Energy Company of Ukraine would cause the financial state of this company to deteriorate and would raise the risk of that it would have to declare bankruptcy. This would represent a threat to the country's economic security. |
| VAT Electro-mechanical Instruments R&D Institute and the More Shipbuilding | According to law, these companies cannot be privatized because they ensure that the country is able to protect itself, given that they produce and repair weapons and military technology. |

² A Presidential Decree of 6 March 2008 states that the fuel and energy complex (FEC), the military-industrial complex (MIC), transport and the residential services sector are all strategic sectors of the country's economy.

| | |
|---|---|
| Company of Feodosia | |
| VAT TurboAtom and Atomic and Electrical Pump R&D and Design Institute | Selling off these assets would make it more difficult to carry out Ukraine's Energy Strategy to 2030 and could cause Ukraine to lose its status as a leader in power engineering. TurboAtom develops and manufactures top-of-the-line models of turbines for atomic, heating and hydraulic energy stations, while the Atomic and Electrical Pump R&D and Design Institute manufactures pumping stations for atomic and heating plants, the chemical and petrochemical industries, the mining and metallurgy complex, waterworks, and the residential services sector. |
| Kryviy Rih Ore Oxide Enrichment Plant (KHZKOR) | Privatizing this plant could spoil Ukraine's investment image because this has not been agreed with other countries that contributed to building the plant in the first place: Romania, Bulgaria, Slovakia and Germany. These countries might accuse Ukraine of violating its commitments regarding this enterprise. |
| Odesa Port Plant (OPZ) | This enterprise is strategic to both the domestic economy and national security. Privatizing it is not in the interests of national security. |

Source: Presidential Decrees

The President has changed his mind regarding privatization assets

President Yushchenko's thoughts as to the purpose of selling off some of these enterprises have changed more than once during the course of his presidency. On 31 October 2005, he vetoed a law prohibiting the privatization of TurboAtom and OPZ—and the Verkhovna Rada later overturned his veto. At the beginning of 2007, Mr. Yushchenko began, instead, to insist that OPZ be included in the list of privatization items: the relevant law was signed by the President 26 January 2007 and also permitted the sale of the once-restricted More Shipbuilding Company of Feodosia. On 12 September 2007, the President stopped a tender to sell OPZ that had been called on 15 August 2007.

The President wants the privatization process and the use of proceeds to be more above-board

At the beginning of 2008, moreover, Mr. Yushchenko became highly critical of the Government's plans for using privatization revenues for social outlays, in particular to compensate soviet-era depositors of Oschadny Bank. His view of how privatization should take place and how its revenues should be applied is made clear in an 8 March 2008 decree that approves a 15 February 2008 decision of the National Security Council on protecting national interests and national security in the privatization process. Among others, this decree calls for:

- approving a program for the development of strategic branches of the economy by, among others, improving the system regulating privatization in these sectors and setting schedules and formulas for the privatization of assets in the strategic sectors of the economy;
- improving the system regulating monopolized markets in terms of the privatization of monopolist enterprises and defining the approach to privatizing companies that have monopoly status on markets of goods;
- ensuring that draft Budget Laws allocate no less than 50% of privatization revenues to funding programs for the development of socio-economic infrastructure and R&D programs, to supporting strategic enterprises, and to covering the state's costs for buying out shares (stakes or allotments) secondary issues by commercial organizations that exercise state corporate rights.

If this Decree were actually carried out, it would have a positive impact on the management of the country's economy and would make privatization policy more rational and predictable. However, it would also delay the privatization process in 2008, which is inconvenient for the Tymoshenko Government, which needs the money from privatizing major assets in order to cover the deficit and carry out BYT's election promises.

Clearly, there will not be any state privatization policy developed in 2008. Any decisions regarding privatization will be driven by purely political factors. The Government will be trying to run privatizations without changing the rules of this game, while the President will continue to block it, arguing that this kind of privatization is not in the national interest. Given the divergence in the political interests of the Cabinet and President, the privatization of most major assets is unlikely to take place prior to the presidential election.

Privatization will be driven by political considerations in 2008

Ukraine's lack of a proper strategy for developing the state sector of economy and a privatization policy has led to privatization decisions and conditions that are unpredictable and subject to frequent shifts. This makes everything more costly for investors who want to bid in privatization tenders and increases Ukraine's image as a country with unreliable rules of play.

There is no proper state privatization strategy

The Constitutional Court has returned the Constitutional process to the Verkhovna Rada

In response to an appeal by the President of Ukraine requesting that it provide an official interpretation of a number of provisions in the Constitution, the Constitutional Court issued a ruling on 18 April regarding the adoption of a Constitution and Laws of Ukraine through a referendum.

The Constitutional Court handed down a landmark decision

The President argued the need for an official interpretation of these Constitutional provisions as follows: "There are different, sometimes even contradictory, positions and points-of-view about the kinds of issues that may be decided by national referendum, such as the possibility of adopting Laws of Ukraine by referendum, the procedure for initiating and formulating decisions made by national referendum, given that the special law that establishes the organization and procedure for holding a referendum, the Law of Ukraine "On national and local referenda" was adopted on 3 July 1991, that is, long before the Constitution of Ukraine was adopted."

In addition, the President of Ukraine asked the Constitutional Court to rule on whether a national referendum initiated by voters, as provided for in Sec. 2, Art. 74 of the Constitution, is a form of direct democratic rule by the people by means of having citizens vote to adopt, amend or cancel laws, and to adopt a new or a new version of the Constitution of Ukraine.

The President asked for a ruling on whether voters could use a referendum to...

The President's appeal to the Constitutional Court was based on his desire to have a new version of the Constitution approved through a referendum, without the participation of the Verkhovna Rada. It was precisely for this reason that the President issued a decree establishing the National Constitutional Council, which was to draft the text of a new version of the Constitution. Theoretically, this Constitutional Council was to include both representatives of political parties seated in the Rada and representatives of community and human rights organizations, and experts in constitutional law. But differences of opinion over how Constitutional order should evolve and the order and procedure by which the Council should work led to the departure of Party of the Regions, and later BYT, from the Council. BYT announced that it would set up a legislative Constitutional commission and adopt a new version of the Constitution that, in contrast to the President's version, would strengthen the powers of the Verkhovna Rada and Government at the expense of the President's powers.

...adopt laws or change the Constitution

The ruling: possibly, but within the framework of existing Constitutional norms

The Court's ruling laid out all the points in the political dispute between the President and the two main VR factions as to how changes to the Basic Law should be instituted, and this will affect the shape that political reforms take in Ukraine. In its ruling, the Constitutional Court affirmed "that the people, as the bearers of sovereignty and the sole source of power in Ukraine, may exercise, in the form of a national referendum based on a voter initiative, their exclusive right to designate and alter the Constitutional order in Ukraine by adopting the Constitution of Ukraine in the order that shall be designated by the Constitution and the Laws of Ukraine." The last part of this statement, which uses norms provided for by the Constitution and the Laws of Ukraine as a point of reference, is key.

In short, changing the Constitution requires the approval of the Verkhovna Rada

The order and procedure for amending the Constitution are described in Section XIII of the current Constitution—and it does not provide the option of making amendments on the basis of a referendum. Moreover, in order to institute such changes, this very Section XIII would have to be amended, and it is very strongly protected by the Constitution itself. Indeed, Art. 156 states: "A Bill to change Section I 'General Provisions,' Section III 'Elections. Referendum' and Section XIII 'On amending the Constitution of Ukraine' shall be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine or by no less than two thirds of the constitutional majority in the Verkhovna Rada of Ukraine and, provided that it is passed by no less than two thirds of the constitutional majority in the Verkhovna Rada, shall be confirmed by a national referendum called by the President of Ukraine. A second Bill on amending Sections I, III and XIII of this Constitution based on one and the same point may only be submitted to the next convocation of the Verkhovna Rada."

In this way, the Constitutional Court's ruling confirmed the opinion of independent experts that current legal norms do not allow a new Constitution to be approved at a national referendum until after the Verkhovna Rada has entered the necessary changes to the Basic Law and these actual changes have been approved by a national referendum.

Work on the Constitution remains hobbled by shortsightedness

In short, the approval of amendments to the Constitution requires broad-based agreement among political forces in the legislature, which is lacking at the moment. The problem with the Constitutional process in Ukraine remains that each political force is trying to rewrite the country's Basic Law to fit the chair its leaders currently control. The only point of agreement, one that is shared by most deputies in the Rada, is that Ukraine should continue to evolve as a parliamentary republic. And yet, other than the Communist Party, none of the parties have proposed eliminating the direct election of a President, although they generally favor reducing the executive powers of this office.

Ukraine's voters want a mixed system of government

There is no broad consensus among Ukraine's voters, either, as to what form of government Ukraine should have. According to opinion polls, 38% of Ukraine's citizens think that a presidential-parliamentary republic is the best form of government for Ukraine, 21% would like to see a parliamentary-presidential republic, 19% want a presidential republic, only 7% prefer a purely parliamentary system, and 2% would like one-person rule.³ Clearly, most Ukrainians are not interested in seeing a single center of power but tend to prefer mixed forms in which the legislative and President form a system of checks and balances against each other.

³ This national opinion poll was run by the Kyiv International Institute of Sociology over 22–27 February 2008. 2,038 respondents from all oblasts of Ukraine, Crimea and Kyiv were interviewed using random selection of a representative group of Ukrainians age 18 and older. See http://www.kiis.com.ua/txt/doc/05032008/06032008_3.pdf.

However, there is some doubt as to how well the average voter understands the difference between a parliamentary-presidential model of government and a presidential-parliamentary one. Voters can express their preference for the form of government, but such a referendum should have more of a legitimizing function, in order for its results to have a restraining effect on those political forces that are inclined to violate Constitutional norms. Rather, Constitutional reform should take place within the walls of the Verkhovna Rada with the participation of constitutional experts and authoritative representatives of the electorate.

The question of whether the Verkhovna Rada will be able to work up amendments to the Constitution and muster the necessary majority to pass them remains open, given that the logic of pre-election competition dictates separation rather than the search for common ground. Nevertheless, Constitutional reform—not necessary approving a new version but possibly simply instituting some key amendments—has become one of the main topics of public debate in the country as one of the main challenges facing its political leaders. Moreover, it is clearly one of the cornerstones of political stability and the further consolidation of democracy in Ukraine. This increases the likelihood that any amendments will be more carefully worked out and will reflect a long-term strategy for the country's development.

In addition, in the context of the 18 April, it is even more important that the role of the Constitutional Court, as the only organ of constitutional jurisdiction and as one of the cornerstones upholding the inviolability of Constitutional order and rule of law, be gradually renewed.

***Growing political
instability in the face
of an election hampers
the Constitutional
process***

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