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The Tymoshenko Trial and Ukraine's Balancing Act between Russia and the West

On 11 October 2011, Yulia Tymoshenko was sentenced to seven years of imprisonment. Tymoshenko served as the country's Prime Minister in 2005 and 2007–2010. The court found her guilty of abuse of power when she signed the January 2009 governmental directives to conclude a gas agreement with Russia without seeking governmental approval. The prison term is symbolic: the once "Queen of the Orange Revolution" will be spending one year in jail for each year that has passed since the 2004 Orange Revolution. In addition to the seven years, the court also ruled that Tymoshenko would be forbidden to hold public office for three additional years, and obliged to pay damages to the Ukrainian gas company Naftogaz amounting to 1.5 billion hryvnia (approx 187 million USD).

The verdict is highly controversial and may have dire consequences for Ukraine's relations with its most important partners, the European Union, Russia and the United States. First, in a rather unusual consensus, both Western and Russian leaders criticized the verdict, although with different rationales. The leaders of the EU and the US all denounced the judgment. They described the accusations against Tymoshenko as politically motivated and called for her immediate release. Russian Prime Minister Vladimir Putin criticized the trial from a different angle. He defended the 2009 gas agreement and asserted that it was signed in full

accordance with Russian, Ukrainian and international law. He also stressed that it was not signed by the countries' prime ministers, but by the presidents of the state gas companies, Ukraine's Naftogaz and Russia's Gazprom. The Russian Foreign Ministry also commented on the former Prime Minister's sentence, stating that the court's decision had "anti-Russian" overtones.

Second, if Tymoshenko is not immediately released, the EU threatens to shelve plans to sign the Association Agreement that would allow Ukrainian citizens visa-free travel and establish a Deep Free Trade Agreement (DFTA) between the EU and Ukraine. The parties had agreed to sign the agreement by the end of 2011, something which is now in doubt. Not getting the Association Agreement would be a serious blow to Ukraine's integration into Europe, as well as financially and politically costly for Kyiv.

The problem is, as is often the case, that Ukraine is torn between Russia and the West. If it becomes isolated from the West, if only temporarily, this could make Ukraine even more vulnerable to Russian pressure, as it was during the Kuchmagate scandal ten years ago. Commenting on the trial, Putin flatly rejected the proposals from the Ukrainian President, Viktor Yanukovich, to tear up and re-negotiate the gas agreement. These negotiations have been going nowhere for the last 18 months. Instead, Russia has

for a long time enticed Ukraine with a reduced price for gas if Ukraine joins the Customs Union with Russia, Kazakhstan and Belarus. So far, Ukraine has refused that offer and found it inconsistent with its plan to reach a DFTA with the EU.

Russia has stepped up its integration efforts in the former Soviet area. On 3 October 2011, Putin published an article in *Izvestia* on the creation of a Eurasian Union based on a Common Economic Space. He claimed that it should be “up and running” by 1 January 2012 and created on the basis of the Customs Union. Putin foresees the Eurasian Union being “a powerful supranational union capable of becoming one of the poles of the modern world” and it will most likely be one of Moscow’s top foreign priorities. Creating such a union would coincide with Putin’s expected return to the Russian presidency in 2012. In particular, Moscow would like to create a single currency for the Eurasian Union with a single emission centre. Even if Moscow, until now, has had only limited success in taming the former Soviet republics and tying them even more closely to Russia, the Eurasian Union could serve as a platform for assertive behaviour by Russia on the international arena. This would not leave Ukraine unaffected.

There is still a chance, however, for the Ukrainian leadership to save face. President Yanukovich has mentioned the possibility of decriminalizing article 365 in the Ukrainian Criminal Code, the Soviet-era clause under which Tymoshenko was sentenced. This would lead to her release. The question is, however, whether such a manoeuvre is sufficient to rescue the Association Agreement with the EU.

Furthermore, only a few days after the verdict, new criminal charges were pressed against Tymoshenko. The prosecution claims that Tymoshenko in the 1990s shifted the debt of her company United Energy Systems (UES) to the national budget. The matter concerns 405.5 million USD of debts to the Russian Defence Ministry. This June, the Russian Defence

Minister, Anatolii Serdiukov, sent a letter to the Ukrainian Prime Minister, Mykola Azarov, demanding the return of that money. This letter prompted the Ukrainian Security Service to press the charges against Tymoshenko. However, these accusations, as such, are not new. Tymoshenko faced the same charges in the early 2000s, by both Ukrainian and Russian prosecutors, but the case was closed when she became Prime Minister in 2005. The latest criminal proceedings are based on article 191 of the Criminal Code and could lead to a prison term of up to 12 years. Even supposing that the other charges, on abuse of power, were to be dropped as a concession to international pressure, these charges might stand.

Tymoshenko’s past continues to haunt her. Before becoming the “Queen of the Orange Revolution” she was the “Gaz Princess” of the 1990s. Like most of the people who garnered fortunes in that era, she is vulnerable to accusations of not having acquired the fortune in accordance with the law – not least considering that Soviet law was ill-suited to dealing with the introduction of market economy conditions. But, as was the case with the charges against Mikhail Khodorkovskii in Russia in 2003, the selectivity with which justice is administered is striking and opens up for accusations of political motives behind the charges. Therefore, the likely scenario is that the proceedings will continue and effectively exclude Tymoshenko from participation in future elections. That was probably one of the motives behind the criminal charges against Tymoshenko – as well as that of creating a quasi-legal foundation for revising the gas agreement with Russia.

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