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January 10,
2007

Ukraine's constitutional crisis drags on

2007 will be a year of stagnation if Ukraine fails to cancel the political reforms

Ukraine in 2007 will not move ahead if it cannot resolve its constitutional crisis. As we have seen in 2006, the constitutional question influences domestic politics (relations between parliament and the president), economics (relations between the government and the president) and foreign policy (as most glaringly seen in parliament's dismissal of the foreign minister) in Ukraine.

The answer as to what should be done over the constitutional crisis is a complicated one that has many nuances.

In comparative perspective with other post-communist countries, Ukraine's move from a semi-presidential to a parliamentary-presidential system is good for its democratization. The 27 post-communist states can be readily divided into parliamentary systems which have progressed in democratization and presidential systems that have regressed into autocracy.

The first group is based in central-eastern Europe and the Baltic states -countries that have joined the EU and NATO. The second group is in the CIS, most of whom have no intention of joining the EU or NATO.

A good argument could therefore be made that if a CIS state has a strategic objective of joining the EU and NATO, then it should follow the path of central-eastern Europe and reform its political system from a presidential to a parliamentary one. Only three countries in the CIS desire to join the EU – Ukraine, Moldova and Georgia – while only two seek to join NATO – Ukraine and Georgia.

Moldova is the only CIS state with a full parliamentary system, where parliament elects the president. Ukraine has a parliamentary-presidential system with separate elections for parliament and the president.

Following the Orange Revolution, Ukraine moved from a presidential to a parliamentary system. Georgia, on the other hand, moved toward a super-presidential system after its Rose Revolution, the opposite direction to that undertaken in Ukraine. Although there have been some criticisms of the autocratic style of President Mikhail Saakashvili, Georgia is progressing better than Ukraine.

Although a move to parliamentarism in central-eastern Europe has proven to be beneficial, the same may not be the case for Ukraine. Simply put, the circumstances of countries in central-eastern Europe and those in the CIS ('path dependence' in political science jargon) are very different. Georgia's path of presidential-led reforms may be more suited to CIS states.

Although some central-eastern Europe countries had autocratic leaders, such as Vladimir Meciar in Slovakia and Franjo Tudjman in Croatia, they pale in comparison to autocrats in Russia and the CIS. Meciar accepted the victory of his democratic opponents in 1998, while Tudjman died in 1999, paving the way for the victory of the opposition a year later. Although Tudjman was guilty of some war crimes, these pale compared to the deaths of 100,000 people in Russia's brutal war in Chechnya.

Ukraine's Orange leaders therefore faced a far different opponent, the likes of whom did not exist in central-eastern Europe or the Baltic states. In Georgia the opposition remains weak and fractured within the New Rights-Industrialists and Democratic Front factions in parliament. There is no possibility of a return to power by political forces loyal to former President Eduard Shevardnadze or his autocratic Ajarian ally Ruslan Abashidze. The opposition in Ukraine was initially dispirited, but rebounded to win the 2006 elections.

The Rose Revolution coalition continues to be united. In fact, the two main parties in the National Movement-Democratic Front (EM-DP) united into the United National Movement. Contrast this with the split in the Orange camp only nine months into the administration of President Viktor Yushchenko. Only the Bloc of Yulia Tymoshenko remains true to the Orange ideals. Yushchenko betrayed them in September 2005, and after the 2006 elections, when he negotiated with the Party of Regions and the Socialists, betrayed them in July 2006, when the Socialists defected to the Anti-Crisis coalition.

A major difference between Georgia and Ukraine has also been in the type of leader who came to power. In effect, the radical wing of the Georgian Rose Revolution won the presidency; in other words, the equivalent of Yulia Tymoshenko winning in Ukraine.

The Tymoshenko Bloc has been consistently against constitutional reforms and voted against them in December 2004. Our Ukraine's stance, on the other hand, has been contradictory and opportunistic: In December 2004, they voted in favor of them and today they call for the abolition of constitutional reforms.

If Ukraine's 'Saakashvili' (i.e. Tymoshenko) had been elected president in 2004, there would be fewer demands today for the abolishment of constitutional reforms. Unlike Yushchenko, Tymoshenko would find sufficient political will, self-confidence and ability to exercise power to be a successful counterweight to Prime Minister Viktor Yanukovich.

Saakashvili's performance in Georgia shows three factors absent in Ukraine. First, it brought to power a highly motivated and, in the words of Georgia's leading analyst Ghia Nodia, "impatient" group of younger politicians. Nodia points to Saakashvili's

“massive energy” in pushing forward reforms. Similar energy has been absent from the Yushchenko administration.

Second, Saakashvili defines himself in opposition to his predecessor Shevardnadze, whom he constantly criticizes. In Ukraine, former President Leonid Kuchma is only a negative ‘other’ for Tymoshenko, but not for Yushchenko, who has never once criticized Kuchma after he was elected. Orange voters expected at the minimum a moral denunciation of the Kuchma regime, or at a maximum his trial for abuse of office. They received neither and have as a consequence defected en masse to Tymoshenko.

Third, Saakashvili has self-confidence in his policies and actions both domestically and abroad. The same is not true of Yushchenko, particularly in the energy sector. Even Belarusian President Alyaksandr Lukashenka seems more determined to stand up for his country’s national interests in his dealings with Russia than Yushchenko did in the January 2006 gas crisis.

Constitutional reforms have proven to be flawed for a host of reasons outlined above. They were rushed through parliament in the Dec. 8, 2004 ‘packet’ without widespread public discussion, national referendum or removal of its weaknesses.

The Constitutional Court has every ground to consider constitutional reforms “illegal,” according to U.S. Judge Bohdan Futey, a longtime adviser to Ukraine on legal questions. Without this step, 2007 will be one of stagnation for Ukraine that could lead to the gains of the Orange Revolution being slowly removed.

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