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Make everything as simple as possible, but not simpler.  
- Albert Einstein



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## The Unfinished Orange Revolution?

By Taras Kuzio



President Viktor Yushchenko's decree of April 2 to disband parliament and hold early elections came as a surprise to both Ukrainians and foreign experts like me. Perhaps the fact that it was Easter week may have played a role. After all, pysanky are usually brought out of safe keeping during that time of year.

When we begin to analyze the background to the crisis we should not be surprised that Yushchenko finally had one too many pokes in the eye. With Yulia Tymoshenko it is more straightforward; you may succeed in poking her once in the eye but you will not be given a second chance. With Yushchenko it takes a considerable number of pokes before he deems it necessary to set aside antique hunting and bee keeping to deal with the lesser important affairs of state. Yushchenko's explosion of anger, and there is no other way of putting it, was reminiscent of two earlier events and tells us a lot about the personality behind the president. Until late March only Tymoshenko was in favor of early elections. In the third week of March, when Yuriy Lutsenko's apartment was raided and Anatoliy Kinakh defected from Our Ukraine to the Anti-Crisis coalition, Yushchenko, his presidential secretariat, Our Ukraine and Lutsenko moved to the Tymoshenko position.

The first thing we need to get clear is that the decree is not an example of Yushchenko's leadership qualities. Yushchenko has never had these and has had no inclination to ever learn them. President Yushchenko's management style has been to envelope himself with domestic and foreign sycophants who have repeatedly heaped praise on the 'great leader'.

Yushchenko has never admitted to making a single mistake even though his first two years in office are full of home goals. A Ukrainian-American close to the Yushchenko inner clique told me during the crisis that he had advised

Yushchenko to recruit an 'honest broker'. His reply was instructive, 'What is that?' The very concept of a loyal, but critical ally is beyond Yushchenko's comprehension.

The April decree disbanding parliament was reminiscent of two earlier periods in fall 2004 and fall 2005. In the first, the naive and trusting Yushchenko was finally convinced that the authorities would never allow him to win the elections. But, this only came after he had been poisoned at an evening meal where he had not taken his bodyguard. He should have reached this conclusion after the Mukachevo elections in April of that year.

The second occasion was when he fired the Tymoshenko government without thinking through the consequences of dividing the orange camp seven months before crucial elections that would elect a new parliament that was not only longer (five, not four, years) but also one that would obtain enhanced powers from constitutional reforms. Just when orange voters were still in shock Yushchenko then went on to score a second home goal when he signed a memorandum with Yanukovich that included a pardon for election fraud. Yushchenko left the obnoxious Prosecutor Svyatoslav Piskun in office longer than his revolutionary ally Tymoshenko.

Another home goal was the handling of coalition negotiations following the 2006 elections. Until June, Yushchenko could not decide whether to back an orange or grand coalition. In the end his decision was taken away from him when Our Ukraine refused to support Oleksandr Moroz as parliamentary speaker. The Socialist's defection created the basis for the Anti-Crisis coalition. Yushchenko had more legal grounds to dismiss parliament in August 2006, thereby thwarting Yanukovich's return to power, than he had in April, but he did not take the opportunity.

The spring 2007 political crisis is therefore as much the fault of Yushchenko as it is of Yanukovich.

### **A Blase' President**

Yushchenko has a propensity to do nothing of any substance for a long time and then to have his emotions take over and explode. This either requires him to sign up for anger management classes or leadership training, or for both.

In the event, my British colleague James Sherr is correct when he made the following observation about Yushchenko's first two years in power:

"In the event, Yushchenko acted as if he were the spiritual, rather than the political leader of the country. He displayed no spirit of urgency in employing the powers of the 1996 constitution to stamp a vision of change on the country, establish a national strategy and energize a process of reform. He showed an

entirely haphazard appreciation of the importance of institutions and appointed very few figures (e.g. Minister of Defense Anatoliy Hrytsenko) committed to systemic change. Instead, he displayed a marked predilection for empowering friends (e.g., Petro Poroshenko, then secretary of the National Security and Defense Council and Oleksandr Tretyakov, then head of the Office of the President), who engaged in a notorious spree of empire building. By these sins of omission, Yushchenko lost the initiative almost as soon as he had it. He seemed blissfully unaware that most of his powers would expire within a year of taking office, that his enemies in Ukraine were still at large and that the Kremlin was banking on his failure."

Yushchenko can only win the crisis by obtaining a positive verdict from the Constitutional Court and through a subsequent orange election victory in early elections. In such an event, he could repair his ratings with orange voters by putting in place an orange coalition with Tymoshenko as prime minister, a step he should have done in spring 2006.

### **Our Ukraine Resurgent?**

It has taken a threat from the Yanukovych camp to again revive Our Ukraine that gives it improved electoral chances. Following reforms inside Our Ukraine in winter 2006-spring 2007 it again resembles the Our Ukraine of 2002, rather than that of 2006. The leader of Our Ukraine, Vyacheslav Kyrylenko, is a former member of Yuriy Kostenko's Ukrainian People's Party and opposed to a grand alliance with the Party of Regions. The UNP, like other national democratic parties who were members of Our Ukraine in 2002 but not in 2006, will join the Our Ukraine bloc if elections are held in 2007.

Our Ukraine was always divided into two wings: national democrats and 'Dear Friends' (Liubi Druzi biznesmeny). In 2002 the former dominated while in 2006 the latter did. See for yourself which of the two was more successful: in 2002 Our Ukraine won 24 percent while four years later it won ten percent less. These two wings also have different coalition partners: the national democrats incline to Tymoshenko while the 'Dear Friends' prefer the Party of Regions. Kyrylenko supports the 24 February alliance with Tymoshenko, as does presidential secretariat head Viktor Baloha. Baloha's two predecessors, Oleksandr Zinchenko and Oleh Rybachuk, are closer to the 'Dear Friends'.

Our Ukraine went through a number of perturbations in 2006-2007 which now makes it better placed to play an important role on the center-right of Ukrainian politics where, as I wrote in the April issue of UO, there was for too long a noticeable vacuum. The defection of Kinakh saved Our Ukraine the job of expelling the Party of Industrialists and Entrepreneurs. Unfortunately, there is still the Congress of Ukrainian Nationalists (KUN) in Our Ukraine that also should be removed if President Yushchenko is sincere in wanting to 'rejuvenate' his party. KUN takes away eastern Ukrainian voters while adding none in

western Ukraine.

### **Too Many Pokes in the Eye**

During the 2004 elections, Yanukovich was famously ridiculed for being an unlikely 'Professor'. It is certainly true that the California and Cambridge academic centers that he was allegedly linked to are fictional.

The current crisis is final confirmation that Yanukovich is indeed intellectually challenged. The Yanukovich government had a solid majority of like-minded anti-presidential allies that meant it could have comfortably stayed in power until the March 2011 elections. Yanukovich was also the first person to benefit from the increased powers given to the prime minister's position following constitutional reforms.

All of this though was insufficient for those used to holding monopoly power in Donetsk. Yushchenko's unwillingness to fight back until poked in the eye numerous times was understood as a sign of weakness by the Donetsk clan. Increased prime ministerial powers were not enough for those who craved monopoly power (Party of Regions) or those who had always been against the institution of presidency (Socialists and Communists).

The pokes in Yushchenko's eye have been numerous and unwarranted. Yanukovich has sought to deepen constitutional reforms, strip away all remaining powers from the president, including in the field of foreign and defense policy, and to curb the rights of the opposition. Yushchenko did have a moral right to issue a decree but whether he had a legal right to do so is a different question.

The backdrop to all of this, as Judge Bohdan Futey repeats during his presentations in the United States, are the hastily and illegally conducted constitutional reforms. The reforms adopted in the December 8, 2004 compromise package were undertaken in only one parliamentary session (when they should have been adopted over two) and each article that was changed was never debated separately (but voted on as a package). The Council of Europe's Venice Commission also criticized the reforms as a step backwards.

Yushchenko had two options to deal with poorly inherited reforms. The first was to heed the Constitutional Commission that ruled in fall 2005 that a referendum should be held to obtain the people's view on the reforms. This would have been the more radical of the options supported by Tymoshenko as Ukrainians would have probably voted against them.

The second moderate option supported by Yushchenko was to create a constitutional commission that would improve the reforms. The Anti-Crisis coalition refused to send parliamentary and government representatives to the

president's commission and in 2005 the then opposition led by the Party of Regions prevented the Constitutional Commission from functioning by parliament not allocating its quota of judges.

The Anti-Crisis coalition has also damaged its democratic credentials by restricting the activities of the opposition in two ways. The group returned to the Kuchma era style repressive tactics against Lutsenko's People's Self Defense NGO, including the planting of weapons and explosives, a tactic last used in October 2004 against the Pora NGO. Trumped up charges against Lutsenko and accusations he had Israeli citizenship were also a return to past tactics.

The coalition also attempted to establish a constitutional majority by bribing and intimidating opposition deputies. The only reason the Anti-Crisis coalition would seek a constitutional majority would be to change the constitution to transform Ukraine into a parliamentary republic. The Anti-Crisis coalition also raised the issue of changing the constitution to upgrade Russian to a second state language.

An additional poke in the eye was the Anti-Crisis coalition's expansion of its power over foreign and defense policies, the prerogative of the president in the reformed constitution. Plans were laid to draft new laws on the National Security and Defense Council and a new legal Outline of Foreign Policy. On foreign visits Prime Minister Yanukovich regularly made statements on foreign policy issues. Parliament unconstitutionally removed Borys Tarasyuk as foreign minister, halted the financing of the Foreign Ministry and refused to accept the President's candidate to replace him, Volodymyr Ohryzko.

### **Looking Ahead to 2009**

It remains unclear even after the successful outcome of the crisis if Yushchenko could win the 2009 elections against Yanukovich. It is also unclear if Tymoshenko would, as in 2004, not stand in the 2009 elections.

Two questions remain to be answered. First, would Tymoshenko's appetite for power be satisfied by the enhanced prime minister position if early elections go ahead and an orange coalition is created? Under the new constitution, Yushchenko could no longer dismiss her as he did in 2005 under the old constitution.

Second, who would be better placed to win an election against Yanukovich? In my view, only Tymoshenko - not Yushchenko - could defeat Yanukovich. Ukraine's presidential elections are decided by central Ukraine, Ukraine's 'Ohio' in American election terms.

In 1994 the region voted for Kuchma and in 2004 it voted for Yushchenko. In 2009, central Ukraine would vote for Tymoshenko but it would vote less for Yushchenko.

Ukraine's presidential elections are not like in Georgia where candidates win with results in the 90s (Mikheil Saakashvili won 96 percent in 2004!). In Ukraine, the regional divide and swing vote in central Ukraine means that victorious candidates obtain results in the 50s. In 1994 Kuchma won 52 to Leonid Kravchuk's 45 percent and in 2004 Yushchenko again won 52 to Yanukovych's 44 percent. Even in 1999, Kuchma won only 56 to Communist leader Petro Symonenko's 38 percent.

A 2009 presidential election might never take place. If Yushchenko is defeated by the crisis Ukraine will become a full parliamentary republic where the President is elected by parliament. With an Anti-Crisis coalition in place the Party of Regions could elect Yanukovych as President and control two positions - Prime Minister and President - thereby giving them monopoly power. The move to a parliamentary republic would therefore lead to the Party of Regions exercising a monopoly of power while preventing a Tymoshenko victory in a presidential election.

### **Crisis Outcome Determines Ukraine's Future**

The outcome of the crisis will decide Ukraine's future and the survivability of the democratic gains of the Orange Revolution. Yushchenko could either be defeated, becoming a lame duck President, or win and see his ratings revived. Yanukovych could win and stay on as prime minister in the Anti-Crisis coalition or president in a parliamentary republic. If he loses he would return to the opposition.

Tymoshenko is the only one to win whichever way the crisis goes: if Yushchenko wins she becomes prime minister and if he loses she may become president if the constitution is not again changed and elections are held in 2009.

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