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Yanukovych's Selective Use Of Justice

by Taras Kuzio

Barring an unlikely 11th-hour reprieve, it now looks inevitable that Ukraine's former prime minister, Yulia Tymoshenko, will find herself staring at a lengthy prison sentence. Yet prison bars will not silence her or those campaigning for freedom and democracy in Ukraine; a realization that is now dawning on authoritarian President Viktor Yanukovych.

Tymoshenko may be "pardoned" by President Yanukovych, who wants to appease the European Union in the face of Kyiv's deteriorating relations with Russia. But the charge would still prevent Tymoshenko from running in future elections.

A "pardon" would do nothing to change the fact that countries respecting the rule of law do not criminally charge political decisions. Tymoshenko is accused of exceeding her authority and damaging the state when, as prime minister, she authorized a natural-gas agreement with Russia in the winter of 2009.

The January 2009 gas agreement ended a bruising, 17-day standoff that saw EU households shiver as gas supplies were disrupted. At the time, she was widely praised for resolving the dispute and removing the opaque intermediary company RosUkrEnergo from the gas trade, while transitioning Ukraine to European market prices for gas with a hefty 20 percent discount.

Not surprisingly, the trial, widely regarded as politically motivated, has prompted massive criticism from the international community and crossed a line that may have buried Ukraine's hopes for a Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU. That was certainly the mood among American, Western, and Eastern European participants of the Krynica Economic Forum held on September 7-9.

The mood at the forum and in the EU as a whole is in favor of freezing the DCFTA during the ratification process until political prisoners are released. In Krynica, the Tymoshenko "show trial" was condemned as "barbarous" by some panelists.

No European or American government will accept the conviction of a defeated presidential opponent for making the "wrong" political decision. If politicians were tried for making bad decisions, itself a subjective view, there would be many sitting in the dock, blamed for everything from intervening in Iraq without explicit UN approval to bringing on the 2008 global financial crisis.

Turning All Against Him

The absence of a crime in Western eyes -- something attested to by many legal experts and even by some of the former prime minister's harshest critics -- has not changed the policies of the Yanukovych administration, whose motives appear twofold.

Firstly, revenge for the personal humiliation of the 2004 Orange Revolution and for the removal of the RosUkrEnergo cash cow, which benefited highly placed oligarchs close to the president. Tymoshenko,

unlike some other Ukrainian opposition leaders, has never been willing to play by their rules, and her removal is required to prepare Ukraine for a "managed democracy" where the ruling Party of Regions is faced by token opposition.

Secondly, giving Tymoshenko a criminal conviction and prison sentence stops her from running in next year's parliamentary and 2015 presidential elections. A "pardon" or suspended sentence means she would stay out of prison, thus allowing her to campaign on behalf of others. The EU has already stated that, without opposition leaders allowed to run, it will be impossible to declare Ukraine's 2012 elections as in accordance with democratic standards.

Today, Yanukovich finds himself on the horns of a dilemma of his own making.

Imprisoning the leader of Ukraine's largest opposition party could jeopardize the association-agreement talks with the EU and ratification of the DCFTA with member states. German parliament deputies have already suggested they will be unwilling to ratify the agreement. Gernot Erler, a prominent member of the Social Democrats, issued a stern warning, "In places where election losers end up in jail because of political decisions, the European way has clearly been abandoned."

Until now, the Socialist group in the European Parliament has been less critical of democratic regression in Ukraine than the center-right People's Party. This is now changing, making it impossible for the European Parliament to ratify the DCFTA at a time when Ukraine has 40 political prisoners -- twice the number in Belarus.

While Ukraine's stock in Brussels is in decline, Yanukovich has very poor relations with Russia. Another gas crisis is looming this year, the third since 2006. U.S. diplomatic cables leaked by WikiLeaks show that Prime Minister Vladimir Putin has never held a positive view of Yanukovich. And Putin is most likely to be elected president in March 2012, meaning Moscow's tough policies could become even harder.

A 'Second Belarus' In The Making?

Ironically, Yanukovich has succeeded in uniting 13 opposition parties and giving them a common purpose. Although self-preservation may be a motivational factor -- if it's Tymoshenko today it could be them tomorrow -- this consideration is eclipsed by a genuine sense of outrage.

Arseniy Yatsenyuk, no supporter of Tymoshenko, has called on Western governments to impose visa sanctions against leading members of the Yanukovich administration and for the opposition to boycott the 2012 elections if Tymoshenko is not allowed to participate. Yanukovich cannot hope to convince the West he is implementing reforms if he is simultaneously antagonizing the western-central half of the country, where the opposition is strongly entrenched.

Despite the threat of a long prison sentence, the Tymoshenko problem is not likely to go away. One can imagine chants of "Yulia, Yulia" at the Euro 2012 championship soccer matches and other acts of peaceful civil disobedience. Politicization of soccer fans is already an issue after anti-Yanukovich chants were heard, and later posted on YouTube, at a recent Kyiv Dynamo-Lviv Karpaty game.

As former U.S. Ambassador to Ukraine William Taylor has pointed out, the "madness" of the Tymoshenko trial is that prosecution for a political decision sets a dangerous precedent for the future. After all, it could be used against Yanukovich himself when he leaves office.

This, of course, assumes he is thinking of ever leaving office. The most dangerous aspect of the selective use of justice in Ukraine is that it sends the signal that the Yanukovich team is thinking along Putin-esque lines.

A regime that plans to stay in office forever is not one that can guarantee a free election or a peaceful transfer of power. With authoritarianism looming on the horizon, Ukraine faces the danger of becoming a "second Belarus" on the EU's eastern border.

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