

# Is the Yanukovych Model of Governance Drifting Toward Russian Shores?

PONARS Eurasia Policy Memo No. 121

Olexiy Haran

*National University of Kyiv-Mohyla Academy*

In the second round of Ukraine's February 2010 presidential election, Viktor Yanukovych defeated Yulia Tymoshenko by a slim margin (49 to 45.5 percent). As Yanukovych's Party of Regions (PoR) did not have a parliamentary majority, most observers believed that the political situation in Ukraine would become a more or less balanced one (as the 2004 constitutional reform mandated that the president share power with the prime minister). If the PoR was unable to form a new parliamentary coalition with either Yulia Tymoshenko's bloc (BYuT) or the Our Ukraine bloc that supported outgoing president Viktor Yushchenko, Yanukovych had the right to push for early parliamentary elections. Such a move was considered too risky for the PoR, however, as it would mean the entrance of new players into parliament and, consequently, less mandates for the PoR. Instead, the Party of Regions opted to violate the constitution to form a new government and exerted direct pressure on the constitutional court to secure its approval. During Yanukovych's first official visit to Russia in early March 2010, he openly praised the Russian model of stability. Half a year into the Yanukovych presidency, it is clear that the democratic gains of the Orange Revolution have not been institutionalized and are instead fragile and at risk.

## **Original Sin: The Constitution Neglected**

One month after the election, after bargaining with members of Our Ukraine, the PoR—with the support of two small factions, the Communists and the Lytvyn Bloc (headed by parliamentary chairman Volodymyr Lytvyn)—suddenly changed the law on parliamentary procedure to allow individual deputies from other factions to join a governing coalition. As a result, the PoR was able to create a new coalition with a slim majority (219 votes from the three factions, together with 16 defectors from opposition factions). Those who defected from the opposition were motivated by pressure, promises of positions, or business opportunities. The next month, the constitutional court ruled that this change to the law was legal, even though less than two years before

the same court had affirmed that only whole factions, not individual deputies, could join a coalition. The court had clearly lost its function as an independent arbiter.

After this, parliament began serving as a “rubber stamp” for the executive. A new law enacted by parliament on the judiciary contradicted the Ukrainian constitution by giving the Supreme Council of Justice the right to appoint and dismiss judges from their positions. Against precedent, parliament approved this law without waiting for a review by the Council of Europe’s constitutional advisory group, the Venice Commission.

Parliament also canceled local elections scheduled for the end of May, ostensibly for financial reasons. According to the constitution, parliament only has the right to set, not cancel, the date of elections. In reality, the PoR wanted to create a so-called “vertical of power” from among the new heads of local state administrations and change the electoral law. After managing these tasks, parliament set a new date of October 31, a date chosen for political reasons: the PoR was not sure what the economic situation would be like through the wintertime and hence did not want to postpone elections until spring 2011.

Instead of moving to open party lists, the new law on local elections created a mixed proportional-majoritarian system for district and regional councils. In the present narrowing political space, it can be expected that majoritarian seats will be tightly controlled by the ruling party. Analysts believe that the PoR will review what happens in local elections under the new system and, if the outcome is in their favor, introduce the system at the national level. Additionally, there are many provisions that create difficulties for the opposition. For instance, both council and mayoral candidates can be put forward only by parties (a change made just four months before the election); also, no bloc candidates are allowed. These changes constitute a blow to both political competitors and regional elites, who now are forced to join the PoR (or, in theory, another political party).

Having control over the cabinet, parliament, and judiciary, Yankovych is now more powerful than Ukraine’s last strong executive, Leonid Kuchma. To secure Yanukovych’s widening authority, his administration has been trying to enact new constitution changes through one of three ways:

1. Securing a two-thirds constitutional majority in parliament (in July 2010 the coalition had 252 of 300 MPs needed).
2. Changing the constitution via referendum (which contradicts procedure as defined by the constitution).
3. Canceling the 2004 constitutional reform in the constitutional court. Even though this seemed possible, however, independent experts stressed that such a decision would not automatically return the country to the 1996 constitution. To introduce the necessary changes in the constitution would require a constitutional majority in parliament.

### **Attacks on Freedoms**

A string of developments after Yanukovich's inauguration showed how fragile the gains of a young democracy could be. The positive changes enacted after the Orange Revolution were not institutionalized. For example, public television was not created. Most of Ukraine's nationwide media are privately owned by oligarchs. Media is not their main business, and the opportunity always exists for the government to threaten their other businesses if media coverage is not deemed to be "correct."

Yanukovich promoted Valeriy Khoroshkovsky, an oligarch and owner of the most popular Ukrainian television channel Inter, to the position of head of the security service and then to the Supreme Council of Justice. Yehor Benkendorf, Inter's CEO, was appointed head of the National Television Company of Ukraine. Soon, Khoroshkovsky's Inter Media Group petitioned to the courts to revoke a significant part of the frequency licenses of two of Ukraine's most balanced channels, Channel 5 and RTVI. Two of the political talk shows on the popular Channel 5, which existed even under Kuchma, were cancelled (formally for financial reasons). When journalists appealed to Yanukovich regarding the issue of censorship, he naturally ordered Khoroshkovsky himself "to investigate."

Yanukovich also dissolved the National Commission for Freedom of Speech and Media Development, as well as the National Commission for Strengthening Democracy and the Rule of Law. Within the Ministry of Internal Affairs, a department for the monitoring of human rights was cancelled. The new minister of internal affairs even suggested that opposition rallies should be held only on the outskirts of Kyiv.

In parliament, the ruling coalition for half a year denied the opposition the right to chair certain committees like the committee for freedom of speech, something that was guaranteed to it via a law on parliamentary procedure from February. Even before this law existed, it was the PoR, while in opposition, that headed this committee. Now, both custom and legal requirements were ignored (only in late September was the opposition finally permitted to head up the committee). The opposition also has no representatives in the National Council for Television and Radio Broadcasting, something it enjoyed even under Kuchma.

### **Polarization of the Country**

In the 2010 campaign, Yanukovich's team relied on slogans from the 2004 election in order to mobilize their regional electorate, such as anti-NATO sentiments and promises to make Russian the second official state language. As a result, the country was again polarized. Tymoshenko won in 16 regions plus Kyiv, while Yanukovich won in ten regions. Despite promises to cure divisions in the country, the new president polarized it even more.

In April, after negotiating with the Kremlin over reducing the price for gas, Yanukovich suddenly extended the lease of the Russian base in Sevastopol after 2017 for 25 more years, even though the constitution states that there should be no foreign military troops on Ukrainian soil on a permanent basis. Then there is Moscow Mayor

Yuri Luzhkov. No longer a *persona non grata* in Ukraine, he can be heard saying on visits to Crimea that Sevastopol is a "Russian city."

Such developments, however, do not benefit local Crimean elites. Although Crimea's prime minister, Vasyl Jarty, is formally subordinated to the Crimean parliament, he and his entourage all come from Makeevka in the Donetsk region and de facto control the peninsula. This has created resentment among local elites.

The appointment as minister of education of Dmytro Tabachnyk, notoriously known for his pejorative statements regarding Ukrainian intelligentsia, has polarized the country in the cultural sphere. He has called for revisiting the role of the Ukrainian national liberation movement during World War II in Ukrainian textbooks, returning to Soviet interpretations that cast the movement in a negative light. He has also reduced the role of the independent testing system given to school graduates. This testing system was one of the few successful steps taken by the Orange coalition that reduced corruption in the educational sphere.

Yanukovych himself has rejected the view that the 1933 famine in Ukraine was genocide. The new head of the Institute of National Memory, a member of the Communist Party, went even further, denying, contrary to the record, that the famine was artificially created by the Stalin regime.

In the end, the president appears to make concessions on the issues that are of greatest symbolic importance to Russia but which, to his mind, do not threaten his power. When the economic interests of the business elites of the PoR are threatened, on the other hand, the new administration declines offers from Moscow (e.g., to join the Customs Union or to merge Gasprom and Naftogas Ukrainy). It would be difficult for these elites to compete with Russian oligarchs and state monopolies.

### **Reforms Under Question**

At first, the stable relationship of Yanukovych to his cabinet was appreciated, according to polls, by about 50 to 60 percent of the population, which was tired of the instability within the Orange team. The parliamentary majority can thus, in principle, secure support for unpopular reforms. While in 2009 the PoR undermined Ukraine's cooperation with the International Monetary Fund by helping to adopt a populist law that increased wages and pensions, the new government has agreed to IMF demands to increase gas prices for the general population and to gradually increase the pension age.

However, it appears as though the government has no genuine reform program, and by the fall of 2010 the popularity of the PoR had decreased almost by half (although it still leads in the polls). Prime Minister Mykola Azarov, a loyal supporter of the president and former head of the Kuchma tax administration, represents the old style of administrative methods. Both the reform-minded deputy head of the presidential administration, Iryna Akimova, associated with oligarch Rinat Akhmetov, and Deputy Prime Minister Serhiy Tihipko (who finished third in the presidential election and is now building his own party "Strong Ukraine") appear to have limited influence.

The government also continues to fight corruption only on paper. After Yanykovych's victory, lobbyists from the notorious natural gas middleman

RosUkrEnergo (RUE) received various positions: head of the presidential administration (Serhiy Liovochkin), minister of energy (Yuri Boyko), and head of the security service. Under Boyko, the state oil and gas company, Naftogas Ukrainy, agreed in a Stockholm arbitration court to return 12 billion cubic meters of gas to RUE.

The dismissals of three ministers in early summer 2010 were done without transparency and reflected power struggles between different groups operating within the PoR. Yanukovych is returning to Kuchma's methods of dismissing and reshuffling ministers at his will.

### **Checks and Balances?**

The opposition did not prepare itself for such open violations of the rules of the game. Tymoshenko remains the strongest figure operating within the opposition, but after her 2010 defeat, BYuT faces the real prospect of further electoral losses if it fails to modernize and transform itself into a more programmatic force, especially as it comes under pressure from the government.

Yanukovych's party encourages the engagement of the "constructive" Arseniy Yatseniuk's Front of Change and Tihipko's Strong Ukraine, new parties that in reality are playing old games. They have not yet provided answers to central questions about team composition, political programs and ideology, and, importantly, funding. In contrast, Ukraine's former minister of defense, Anatoliy Hrytsenko (Civil Position party), enjoys a clean reputation and does not rely on oligarchic money. Unfortunately, he did not make a successful appeal to civil society (from where he originated) and received just 1.2 percent of the vote in the first round of the presidential elections. New forces like Hrytsenko need financial and managerial resources to become serious players in Ukrainian politics – resources, alas, that oligarchs are most qualified to provide.

In a situation where opposition parties are split and quarreling amongst themselves, the role of civil society could become greater. For example, journalists have already organized a visible campaign to counter media censorship. At the same time, even influential figures in the ruling coalition are unenthusiastic about concentrating power in the hands of one leader and one business group (i.e., RUE). No oligarch is eager to play the role of the Ukrainian Khodorkovsky. Moreover, by institutional logic, parliamentarians, including some groups within the PoR and their smaller allies (the Communists and Lytvyn's Bloc), are interested in keeping their autonomy while not reducing their roles. Indeed, several of the most criticized draft laws have been postponed, including:

- A new law on constitutional referendums that would allow changes to any law or constitutional provision without the approval of the parliament (it was approved only in the first reading);
- A new tax code developed by the cabinet but vigorously criticized by experts and opposition members;

- A draft law on the peaceful assembly of citizens, which actually restricts their rights.

These are partial victories against authoritarian trends. However, on October 1, 2010, the Constitutional Court declared the constitutional reform invalid and, contrary to what independent lawyers said, returned to the 1996 version of the constitution. The president once again received the right to dismiss at any time the prime minister, prosecutor general, and head of the security services. The opposition called it usurpation of power.

### **The West's Reaction**

The European Union and the United States were correct in trying to involve the newly elected president in dialogue. For a certain time, the conformist trend prevailed: the West was happy that Ukrainian authorities started to speak with one voice, relations with Russia improved, and the issue of joining the North Atlantic Treaty Organization was put aside as Ukraine adopted a new "non-aligned status." However, a drift toward authoritarianism needs to be recognized and reacted to. A wait-and-see approach is detrimental. Conditionality from the EU and the United States in their relationship with the Yanukovich administration is necessary. Along with direct high-level interaction, international support to local civil society organizations could play a critical role in preserving the fragile democracy in Ukraine that is being dissipated by the itinerant winds of the PoR.

*This publication was made possible by a grant from Carnegie Corporation of New York. The statements made and views expressed are solely the responsibility of the author.*

© PONARS Eurasia 2010