

The Party of Regions monopolises power in Ukraine

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Since the Party of Regions took power in Ukraine, the process of strengthening the executive branch of government at the expense of the others, together with the instrumental use of the law, has been progressing steadily. By seeking to restrict criticism of the government, the ruling party is aiming at marginalisation of opposition groups and establishing informal control over the main media (largely by exerting pressure on their owners). The role of the Security Service of Ukraine (SBU) is growing, as it is used increasingly frequently to put pressure on Western-oriented NGOs. The government's control over the judiciary is expanding. These trends had existed before the Party of Regions' ascension to power, but they were much weaker, as the previous governments did not enjoy such a strong position or the ability to achieve their ends so efficiently. The Party of Regions is planning to take another step towards total power during the local elections scheduled for October 2010. The party is determined to establish control over the local self-governments; to this end, it has amended the legislation in a way which now undermines local civil initiatives.

These changes not only illustrate the interests and political standpoint of the ruling elite; they also result from systemic reasons, and these are deeply rooted in the Soviet past. The present Ukrainian state has evolved through the evolutionary transformation of the Ukrainian Soviet Socialist Republic. As a result, the main features of the previous system have been sustained, including the weakness of the representative bodies and the instrumental use of the law. Twenty years into its independent development, Ukraine has developed a merely formal democracy, which is distant from EU standards.

Post-Soviet Ukrainian democracy

Since its victory in the presidential election and its defeat of Yulia Tymoshenko's government, the Party of Regions has sought to monopolise power. The new government has a much stronger position and greater potential for action than the previous ones. The president's office and the cabinet of ministers are now in the hands of the Party of Regions, as is a firm majority in parliament. However, in its attempts to strengthen its influence, the party has not limited itself to measures that are in line with contemporary democratic standards; some of its decisions are highly dubious, or openly inconsistent with the democratic principles. These actions are aimed at two goals: restricting political pluralism, and strengthening the executive's control over other institutions of the state and civil society.

This trend is nothing new in Ukrainian political life: former governments and presidents acted likewise. What is new is the determination and the pace of actions which the Party of Regions' leadership, the President Victor Yanukovich and Mykola Azarov's government have taken. This determination is supported by the extent of the party's electoral success, which gives it much greater freedom of action compared to any of its political predecessors.

This trend should not be surprising, as it is deeply rooted in the mechanisms of Ukrainian democracy. These have developed in an evolutionary manner, through reforms of the institutions of the Soviet system with their apparent (and deliberately simulated) democratic nature, the superficial nature of representative organs, and the instrumental use of the law. Thus, the current structures of the government, state administration, local self-government and many of the social institutions (including labour unions), are in fact transformed versions of Soviet institutions. They have retained both an institutional continuity (including their so-called organisational culture) and, to a large extent, their personal continuity. Likewise, the political culture of both the elites and the general public is a transformed version of the Soviet political culture.

Ukraine has succeeded in creating an efficiently functioning formal (electoral) democracy, wherein authority is transferred according to election results that are accepted by the international community as being fair (there was only one attempt at overt falsification of the elections, in 2004, and the subsequent massive social protest forced the authorities to withdraw). Another feature of Ukrainian democracy is that the executive and legislative branches of the government are in formal balance (especially since the strengthening of the parliament at the expense of the president in 2004).

Thus, Ukrainian democracy complies with only a minimum of the standards imposed on democratic states in the Western world. It lacks a modern party system, wherein parties express the main ideological and political options of society. In reality, Ukraine's largest parties represent big business (oligarchic) groups, and smaller parties are often simply owned by businessmen with political ambitions. The judiciary has failed to become the 'third estate' that could co-participate in the democratic balance of government. Neither have influential and genuinely independent media and non-governmental organisations emerged. Ukraine also lacks local self-government in the form it exists in Europe: despite some positive changes, a post-Soviet model of a 'nomenklatura self-government' still prevails, and is now one of the Ukrainian state's most corrupt structures. Finally, despite some promising announcements from the new government, corruption is not considered something reprehensible, but as one of the mechanisms that regulate relations between the state and

the citizen, especially businessmen, while the corruption rent remains an important source of income for officials.

The constitution of Ukraine claims that it is a 'state governed by the rule of law', which Ukraine has in fact failed to become. The European notion of law and order is simply alien to the Ukrainian political elites, regardless of their political option. Instead, there remains the Soviet understanding of the law as one of the instruments of political power, which encourages the instrumental use of legal norms and, which is much worse, an instrumental approach to

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the process of lawmaking. This kind of approach to the law is probably the greatest impediment to the development of democratic institutions in Ukraine. Other impediments are the very low quality of the legislation (including the constitution), as well as the weakness and deep-rooted corruption of the courts.

Another important element of the Ukrainian political system is the public's lack of faith in the parliament and, in a more general sense, in the institutions and procedures of representative democracy as such.

Dangerous new trends

Seeking to dominate the party scene

The Party of Regions is aiming to replace the previous system where the oligarchic elite bargains over its economic and political interests through political parties and the parliament, by a mechanism where this process would take place within the party elite or in the government it controls. To be able to do this, the Party of Regions seeks to ensure its permanent domination of the party scene by creating conditions in which the remaining parties will have to choose between becoming 'satellites' or suffering marginalisation. The status of 'satellites' has already been accepted by the Communist Party of Ukraine, the Lytvyn Bloc and the deputy PM Serhiy Tihipko's Strong Ukraine. The marginalised parties include those groups that once made up President Yushchenko's Our Ukraine and other right-wing parties. The pressure which the Party of Regions and state authorities is exerting on the Yulia Tymoshenko Bloc is probably calculated to split the party and marginalise most of its

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factions, including Tymoshenko herself.

The competition among political parties, which once dominated Ukrainian politics, is gradually being replaced by the competition between the informal factions within the Party of Regions. The key factions in the party include the following: the 'Ros-UkrEnergO faction', representing the interests of the state bureaucracy and those businessmen who opt for closer relations

with Russia (it is led by the head of the Presidential Administration, Serhiy Lovochkin; the head of the Security Service of Ukraine and a media magnate, Valeriy Khoroshkovsky; and the businessman Dmytro Firtash) and the 'Donetsk faction' that represents those entrepreneurs who are more export-oriented (they sell their products on global markets) and are therefore more open to closer relations with the West (its leaders are the billionaire Rinat Akhmetov and the deputy PMs Boris Kolesnikov and Andriy Kluyev). None of these factions is internally homogeneous; the rivalry between the different interest groups in each one is lively. Currently, the RosUkrEnergO faction holds an advantage over the Donetsk one, although it cannot be ruled out that the latter will win more influence for itself in the future.

Control over the parliament and judiciary

Following its victory in the presidential election, the Party of Regions formed a new majority in the parliament, extending the pro-government coalition with the support of dozens of deputies from opposition factions. This was made possible due to a disputable interpretation of the constitution (which was nevertheless endorsed by the Constitutional Court¹), and also by pressuring or/and corrupting opposition deputies to make them join the coalition without changing their faction.

After that, the Party of Regions carried out some reshuffles that gave it control over the chief authorities of the judiciary (the Supreme Council of Justice, the Supreme Court, and the High Administrative Court of Ukraine) and the Constitutional Court. Formally, these changes were compatible with the law², but their aim was undoubtedly to subordinate these bodies to the executive authority and to ensure legal decisions that would be favourable to

¹ This appropriate provision of the constitution is rather imprecise. It can be interpreted in two ways; either that a parliamentary coalition can be composed of factions of deputies, or by individual deputies themselves. In 2007, the Constitutional Court ruled that the former interpretation was correct, while in 2010 it pointed to the latter. In each case, the interpretation was favourable to the respective presidents (Yushchenko and Yanukovich); it can be assumed that in both cases the rulings were made under political pressure.

² However, the dismissal of three judges from the Constitutional Court in September may arouse suspicion that there might have been pressure from above.

the executive. This was particularly significant in case of the Constitutional Court, the only state body that has the authority to interpret the constitution.

The law on the judiciary system and the status of judges which was passed in May has significantly limited the powers of the Supreme Court and expanded the authority of president over the judiciary sphere. The latter amendment clearly violates the law, as the president's authority is defined by the constitution and cannot be altered by any other legal act.

The executive balances on the boundaries of the law

The government and president avoid infringing the law openly, but they treat it in a purely instrumental manner. The president has started issuing formal orders to the Prime Minister and heads of other state bodies, even though the constitution does not give him the authority to do so. The executive bodies' self-confidence (not to say arrogance) is growing visibly. The powers of the State Tax Administration have been extended again, and

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can be used to intimidate businessmen so that they do not support any media and organisations that criticise the policies of the government and local authorities. Widely publicised investigations concerning cases of corruption are now much more numerous than during Victor Yushchenko's presidency, and often seem to be politically motivated, regardless of the fact that the allegations are usually justified.

A new phenomenon is the increasing role of the Security Service of Ukraine, undoubtedly with the Presidential Administration's consent. Previously, even under Leonid Kuchma's presidency, it was almost unthinkable that a representative of the Adenauer Foundation would be detained at a Ukrainian airport, representatives of the Soros Foundation and the rector of the Catholic University in Lviv would be invited for a 'warning talk', and that historic documents would be ostentatiously confiscated from the Lviv Museum to Victims of the Totalitarian Regimes³. The common goal behind these actions seems to be to intimidate NGOs and civil society communities who are critically disposed towards the current authorities and at the same time linked to Western organisations. There have been no reports of similar actions taken towards NGOs supported by Russian organisations.

The law enforcement bodies have initiated a series of criminal proceedings against high-ranking state officials who have been suspected of 'white-collar crimes'. One such case was the takeover of gas stockpiles belonging to the RosUkrEnergo company, which is co-owned by Dmytro Firtash of the Party of Regions (the gas was taken over by the Tymoshenko government; RosUkrEnergo filed a lawsuit to the Stockholm Arbitration Tribunal and won the case). During this case, Tymoshenko's closest aide Oleksandr Turchynov, a former deputy PM, was interrogated several times as a witness. No such proceedings have been initiated against high-ranking officials working under then-PM Yanukovich, although there is evidence that they had been breaking the law. The actions which the law enforcement bodies are currently taking may thus be qualified as harassment of the major opposition party⁴.

There is suspicion that the government is trying to fuel internal disputes in the Yulia Tymoshenko Bloc, and even to inspire splits in the regional organisations of Batkivshchyna, the Bloc's main party. It cannot be currently identified to what extent the splits in the party have been caused by external inspiration, or even corruption, and to what extent they are a result of a natural decomposition process following the electoral defeat. However, one part of this problem is the legislation that grants the government excessive authority over political parties⁵.

³ This is a result of a peculiar legal situation: this museum, like others of this kind, is an organisational unit of the Security Service of Ukraine.

⁴ Ukraine's Prosecutor's Office is a structure with hierarchical subordination (prosecutors have no independence), and the Public Prosecutor General has a practically unlimited ability to interfere in ongoing proceedings.

⁵ For example, the local bodies responsible for internal affairs issue seals to the local units of political parties.

Finally, the government's stance towards politically-oriented assemblies has grown visibly stricter. During opposition rallies and pickets, the militia have been acting much more firmly, and the administrative bodies have started to enforce the regulations of the law on public assemblies, which were originally passed in the Soviet period.

New threats to the media

The fact that the Security Service of Ukraine is headed by Valeriy Khoroshkovsky, the owner of Ukraine's largest media company Inter, seems unacceptable from the democratic perspective (although it must be added that Khoroshkovsky was first nominated as the deputy head of the SBU by Victor Yushchenko in March 2009). There is no doubt that Khoroshkovsky will use his office for his own business interests, as well as in the interest of his political party. Weaker media owned by minor businessmen (who in most cases are linked to current opposition) may fall victim to this policy. The first manifestation of this trend was when two TV stations which strongly opposed the government's policy – 5 Kanal and TVi – had part of their frequency band removed⁶.

Most of the Ukrainian national media are sensitive to suggestions made by the government's representatives, as these media companies' owners are big businessmen who operate in different branches of the economy; they therefore try to keep good relations with the political authorities. These owners are inclined to respect and even anticipate the government's suggestions regarding media information policy.

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Despite numerous accusations, there has been insufficient official evidence that the state authorities have put pressure on the media, although it seems highly likely that this pressure has been exerted, as some TV channels have visibly softened their criticism of the government.

On the other hand, it must be said that Ukrainian journalists tend to ascribe the decisions made by editors to political pressure whenever these decisions do not suit the journalists themselves. Also,

they often read censorship into the very existence of information and editorial policy, and are suspicious about consent for interviews which is made dependent on authorisation. The journalist community's serious anxiety about the situation is signified by the 'Stop the Censorship' journalists' movement that appeared in 2010, although the cases presented are rarely unambiguous.

The situation of the media operating at the local level is much worse than for those on the national level. This is both because they are weaker in organisational and financial terms, and also because the arrogance of the authorities (state and self-government) at the local level is often much greater than in case of the national government. Moreover, much of these media is still owned by the local authorities. The situation in the local media seems to be worsening, but this is hard to assess as the national media display little interest in the situation in provincial centres. The only instance that has received much publicity was the case of Vasyl Klymentyev, an investigative journalist from Kharkiv who went missing in August; it may reasonably be presumed that the local authorities and/or organised criminals were involved. There is no evidence as yet that Klymentyev has been kidnapped or murdered, but the investigation does seem to be being conducted sluggishly.

⁶ They were deprived of part of their frequencies, and not their licences to broadcast, as was mistakenly stated in the European People's Party resolution of 13 September 2010. The above-mentioned TV stations are broadcasting on the same frequencies as in 2009.

The opposition in crisis

The parliamentary opposition (which consists of Our Ukraine/ People's Self-Defence and the Yulia Tymoshenko Bloc) remains deep in crisis. The opposition is apparently unable to reflect upon the reasons for its defeat and develop a program of further actions, including questions that should be raised as for the responsibility for the defeat. The esteem Victor Yushchenko once enjoyed is long gone, and Yulia Tymoshenko's charisma has been tested by her time in power, which required her to take responsibility for the state. As a result it has grown much weaker, and it is not certain whether Tymoshenko will be able to lead her party to another electoral battle, especially if the local elections bring her further defeats⁷. The previous losses have already made some of the politicians from the aforementioned blocs, and especially the businessmen that had supported them, come over to the ruling team's side.

Among the new political parties which raised many expectations in 2009, Strong Ukraine has become a satellite of the Party of Regions (as it quite possibly may have been from the start), and can therefore count on a decent result in the local elections, whereas Arseniy Yatseniuk's Front for Change has remained on the political margins, and only gained good result in the western part of the country. Moreover, suspicions have been raised that the Front for Change is a part of the Party of Regions' political strategy', which is aimed at seizing a part of Tymoshenko's electorate; the behind-the-scenes relations between Yatseniuk and Firtash were noted back in 2009. Against this background, it is worth taking a closer look at the phenomenon of the chauvinistic Svoboda party whose popularity is steadily growing. There is little doubt that after the upcoming local elections it will be a major political force in the local councils in Eastern Galicia, and may also have serious chances of entering the parliament in 2012.

Local elections

The local elections scheduled for October will be a key stage in the process of the Party of Regions' reach for total power. The party is aiming to win majorities in the district and city councils, excluding perhaps districts in the Galicia region where a more nationalist electorate prevails. This objective cannot be considered blameworthy in itself. However, to this end, the ruling party has manipulated the electoral law, for example, by seriously amending the electoral system on the eve of the election campaign; the proportional representation system will be replaced by a mixed system (50% of deputies will be elected in single-member constituencies, and the remaining 50% in multi-member constituencies). At the same time, only political parties now have the right to put forward candidates in the elections (including the single-member constituencies and in the elections of city mayors). Local civil initiatives were excluded from these elections, as were persons running in their own name. This is meant to make the local self-government more party-oriented, and also to make the political system in the entire country more uniform.

Prospects for future developments of the political situation

The authority of the Party of Regions seems unchallenged, at least until the parliamentary elections in autumn 2012. The party's victory in the upcoming local elections seems almost certain (apart from the western districts, which are not important from the party's perspective). In the coming years Ukraine's political life will be shaped by the competition among the factions within the Party of Regions. This competition may intensify, as new business conflicts are likely to break out, and the parties of the conflicts will certainly appeal to the president for arbitration. However, it should not be expected that these conflicts will result in the elimination of some of the main groups, although the configuration of the groups may alter significantly. Open splits in the party are even less likely.

⁷ According to the latest polls carried out by the Razumkov Centre in August 2010, in parliamentary elections the Yulia Tymoshenko Bloc could obtain the support of 13.7% of voters (compared to 21.5% in September 2009), and the Party of Regions could get 27.6% (compared to 31.1% in 2009). Forecasts concerning the local elections are not available.

The further centralisation of power can be expected in Ukraine, including restrictions put on local self-government, as this is a form of government that the Party of Regions elites are not favourably disposed towards. Many experts expect that after the local elections, autonomy for Crimea may be significantly (albeit informally) restricted, which will allow the businessmen associated with the Party of Regions to take over attractive assets (such as holiday resorts) from the local businesses.

In the media sphere, a further concentration of the electronic media can be expected, which will deepen their dependence over the political authority. Another probable trend will be the decreasing importance of the printed press, especially local newspapers, and a mass departure to the Internet of journalists who are critically disposed towards the government.

Pro-Western NGOs are likely to be intimidated as before, although in this case an appropriate reaction from the Western states could be very successful in curbing such endeavours.

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Ukrainian society is plunged into apathy; the readiness to protest remains very low, and does not seem likely to grow. The rule of the parties and leaders who came to power in the winter of 2004 has brought great disillusionment. There seem to be no organised communities that could initiate a massive social protest (the 'Orange Revolution' was preceded by a gradually growing protest activity spanning almost 4 years). Such a situation will lead to the Party of Regions ruling in comfort and unchallenged, and will not prompt it to take public opinion into account.

The process by which power is being monopolised into the hands of the Party of Regions is likely to be completed by further amendments to the constitution. In the coming weeks, it may be expected that the Constitutional Court will rule that the amendment to the constitution adopted in 2004, which restricted the president's authority and granted more powers to the parliament, was adopted unlawfully (which is indeed true). The way this question is resolved will have a great impact on the future of Ukrainian democracy.

The possibility that anything should challenge the power of the Party of Regions before the parliamentary elections scheduled for 2012 seems very unlikely for the aforementioned reasons. The only factor that could bring about this scenario would be an economic breakdown on a scale that would cause social order to collapse. The Party of Regions' electoral prospects in 2012 will heavily depend on developments in the economic sphere, as well as on the efficiency of the party's attempts to block the formation of any influential opposition force that could enjoy popularity in both the eastern and central parts of the country.

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