

Democracy promotion in Ukraine in the framework of the European Neighborhood Policy

Part Two

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Limits of the ‘implementation from below’

The democracy promotion policies in Ukraine have proceeded at a rather slow pace. Yet, their limited access was only partly a problem of the design and conduct of the European Neighborhood Policy. Under a detailed scrutiny, Ukrainian political and institutional constraints come forward as the main factors impeding the implementation of pro-democratic reforms in the country.

In general, the tainted progress of the Action Plan in Ukraine might be attributed to several domestic reasons.

First, the lack of a political and bureaucratic leadership to set an agenda of policy measures. Different Ukrainian ministries and agencies competed in drawing plans and executing policies related to the Action Plan (AP), while power struggles between opposing political groups in the Parliament and the Government obstructed effective central decision making. It is important to keep in mind the fierce feuds between different fractions of the ‘Orange’ elites, and the constitutional crisis of 2007, which both pushed the issue of Eurointegration to the margins of the national policy agenda. All this put the responsibility for the AP implementation on several ministerial agencies in the Ministries of Foreign Affairs, Economy, and Justice, making the implementation of the AP an incoherent bottom-up process.

Second, no effective mechanism of control and accountability of the policy implemented. The ‘translation’ of the AP objectives into ‘action’ was kept low-profile, with goals and policy benchmarks often being at the level of mere consultations, and bureaucratic ‘implementation’ being reduced to mere sending draft laws to the Parliament.

Third, even the existing policy think tanks were poorly coordinated. This links back to the issues discussed above, but which is linked to the First point, but also is due to internal bureaucratic flaws of Ukrainian state apparatus (Wolczuk 2009: 202-208). Out of the 73 objectives only 11 were implemented fully, and “62 were implemented partially and needed completion, whereas one priority was not implemented at all. Also, the more generally defined the priorities [...], the more likely they were to be reported as implemented” (Wolczuk 2009: 207). As a matter of fact, there are significant obstacles to

the processes of ‘Europeanization’ of Ukraine, which are not only political, but also organizational. In the upshot, the Ukrainian state has demonstrated a weak capacity to pursue effective reforms required by the EU as a part of the ENP.

Democracy promotion objectives were especially sensitive to the flaws of AP implementation. The Association Agenda, adopted as a continuation of the AP, listed the same priorities in the field of Political dialog and reform. A progress report on the implementation of the ENP in Ukraine in 2011 criticized the absence of significant positive changes in this area, and indeed deterioration with regards to some of the key priorities of the policy. In many policy areas (like the adoption of the new electoral law, administrative reform, or non-discrimination policies), recommendations of the EU consultative bodies were not taken into account, or violated (European Commission 2012). Thus, while there were some positive developments reported, it was hard to speak about any significant improvements in how Ukraine coped with its ‘homework’ concerning domestic approximation to democratic European standards. The president Yanukovich and the Prime Minister Azarov explicitly support of closer relations with the EU from the position of ‘euro-pragmatism’. Moreover, all political forces in the Ukrainian parliament united in their support of the ‘course towards Eurointegration’. Nevertheless, there has been a real continuity with the past ‘Orange’ leadership in ‘lagging behind’ and postponing the necessary reforms articulated within the Association Agenda.

Finally, despite the Association Agreement, and the Deep and Comprehensive Free Trade Agreement were accorded and prepared for signing, and the agreement on visa simplification has been offered by the EU to Ukraine on conditions of certain reforms, all these accords have remained in the limbo if uncertainty. It seems that anti-democratic political developments in Ukraine since August 2011 triggered the EU’s unwillingness to proceed with fully setting these agreements in motion unless Ukraine clearly demonstrates the respect for democratic freedoms and human rights.

Political obstacles to democratization

In 2011, Yulia Tymoshenko, an ex-prime minister under the Yushchenko’s presidency and the main political rival of Yanukovich (both in terms of the party rivalry vis-à-vis the October 2012 elections, and then potential opponent at the 2015 presidential elections) was charged for the abuse of office that brought about losses to the state budget. The EU almost immediately took an active stance on the ‘politically motivated justice’ towards Ms Tymoshenko and other oppositional leaders who affronted similar charges. As many domestic and foreign media political commentators suggest, the case of Tymoshenko is nothing else than an attempt to remove an unwanted political competition vis-à-vis

Yanukovich's and his Party of Regions' regime that increasingly loses its social support even in its traditional basis in the East, and decapitates opposition in a political system centered on personalities and not party agendas. The court case against Yulia Tymoshenko contradicts the principles of the impartiality of prosecution, and of the independence of judiciary proclaimed as one of the policy objectives of the ENP documents regulating EU-Ukraine relations. Moreover, the legal norm according to which Tymoshenko was initially trialed (criminal responsibility for political actions that infringe state interests) is among the norms that the EU requires to be eliminated from Ukrainian penal code in the process of legal approximation to the *acquis*.

Consequently, President Yanukovich found himself in an international isolation, with some EU member countries' officials refusing to visit the EURO 2012 championship in the quality of official country representatives, and a spectacular demarche of most delegations to the May 2012 meeting of leaders of the Central East European countries in Yalta. More importantly, in 2012 May the European Parliament issued its resolution on Ukraine, calling for an immediate release of all 'political prisoners'. The resolution stated that the October 2012 elections would be not recognized by the EU, should Tymoshenko, Lutsenko and others not be released from jail in order to participate in the elections. The European Commissioner for Enlargement and European Neighborhood Stefan Füle declared during the debates "Situation in Ukraine, Case of Yulia Tymoshenko" in the European Parliament on May, 22 2012 that

[t]he political relationship between the European Union and Ukraine will not improve without firm commitments and the effective demonstration that the rule of law and the respect for fundamental values are applied systematically in Ukraine. We have repeatedly urged our Ukrainian partners that we will not be able to move towards signing our Association Agreement if they cannot show that they live in the spirit of political association. To this end, we expect Ukraine to make visible progress (Füle 2012).

As a matter of fact, they were not released (Lutsenko was freed only in April 2013), and the EU, taking into account numerous reports of falsifications, scorned Ukraine for a non-democratic conduct of elections. The new parliament, supportive of the Association Agreement, managed to adopt several regulatory documents required by the EU as a condition for visa regime facilitation, and signing of Association Agreement and DCFTA only after it was made clear by the European side that there will be no progress in EU-Ukraine relations unless Ukraine fully complies to the European requirements concerning democratic reforms. Thus, even Poland, traditionally loyal to Ukraine, took a critical

position towards Ukrainian leadership characteristic of the rest of the EU. Recently, Polish Minister of Foreign Affairs Radosław Sikorski stressed that “If Ukraine does not do what it is supposed to do, there will be no signing [of the Association Agreement].” During its last session before the summer break, Ukrainian Parliament passed a number of bills required by the EU. However, it still left the majority of regulations for September and October, the two months before the important Vilnius summit of the ENP countries in November, where Ukraine’s progress in aligning with the European requirements will be evaluated. Such timing leaves meager hopes for Ukraine’s success with the AA and DCFTA in the recent future, for it is believed that the divided by deep rivalries Ukrainian Parliament is unlikely to muster the needed reforms (the highly politicized reform of the system of justice, and the important bill on non-discrimination among others) in such a short time span. And, after all, Yuliya Tymoshenko is still in prison.

If the post-Orange revolution gave some hopes for the consolidation of democratic politics in Ukraine, the swift reversal of the democratic course by the President Yanukovich’s team in the last 3 years demonstrated that these hopes were not rooted in reality. Ukrainian political and institutional system, as it seems at the moment, failed to produce tangible and long-standing results in democratizing itself along the lines offered by the EU. All the more important, it turns out that the conditionality imposed on Ukraine within the ENP framework, does not work in a linear way. Despite continuous warnings about the implications of non-compliance, Ukrainian establishment seems to work on the required democratization reforms only when it receives felt incentives to do so, like the incoming summit where the future of the EU-Ukraine Association Agreement will be decided. This fact demonstrates not only that Ukrainian politicians lack a prospective and strategic vision in the conduct of EU-Ukraine relationships, but also that the design of the ENP policy instruments, and the use of conditionality, are imperfect.

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