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# election monitoring

parliamentary elections 2012

UKRAINE

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## ***Monitoring of the pre-election situation in Ukraine (15.05.2012—15.06.2012)***

Domestic policy

17.05.2012

The Supreme Council of Ukraine adopted the law "on the rules of ethical conduct" which forbade the politicians from speaking negatively of the state authorities, as well as prohibiting them from accepting donations. Representatives of the opposition, Vyacheslav Koval and Vladimir Bondarenko, stated that the new law provides the government with more opportunities to influence the opposition and creates difficulties in the conduct of electoral campaigning, because, first of all, elections are largely conducted with the help of donations, and, secondly, it is unknown which sanctions will be applied to the opposition for criticism of the government.

Sources:

<http://kommersant.ua/doc/1936406>

<http://www.pravda.com.ua/news/2012/05/18/6964774/>

17-23.05.2012

President of Ukraine, Viktor Yanukovich, signed a decree on the establishment of the Constitutional Assembly. According to the document, the Constitutional Assembly is a special subsidiary body operating under the guidance of the President of the Ukraine. Viktor Yanukovich emphasised the importance of all fractions' participation in the work of the Assembly. One of the most pressing issues, according to the President, is the issue of judicial reform. The leader of the Front for Change, Arseniy Yatsenyuk announced that the United Opposition refused to participate in the Constitutional Assembly. In the first place, they consider the body to be unconstitutional, and secondly, the purpose of the body is to ensure the election of the President in 2015.

Sources:

[http://lb.ua/news/2012/05/17/151570\\_yanukovich\\_sozdal\\_konstitutsionnyuy.html](http://lb.ua/news/2012/05/17/151570_yanukovich_sozdal_konstitutsionnyuy.html)

<http://www.unian.ua/news/505157-opozitsiya-do-yanukovicha-ne-priyshla.html>

<http://korrespondent.net/ukraine/politics/1351478-yacenyuk-yanukovich-hochet-izmenit-konstituciyu-chtoby-ego-izbrala-vr>

24.05.2012-05.06.2012

The Parliament assessed the Kivalov-Kolesnichenko bill "on the foundations of state language policy" and adopted it in first reading. On the 24<sup>th</sup> of May brawls between MPs started, and the parliament speaker Volodymyr Lytvyn closed the meeting. The results of the fractions' negotiations regarding both the bill and resuming the meeting were unsuccessful. After that, Lytvyn stated at a press briefing that he considers it necessary to dissolve Parliament and call early elections.

The authorities say that the law will help regional languages to be treated on an official level in different re-

gions, which means that it will protect the rights of the citizens. But the opposition argues that the law protects only the Russian language and undermines the constitutional, official status of the Ukrainian language.

On the 5<sup>th</sup> of June MPs voted for the bill in first reading, after which protests of the opposition and clashes with the supporters of the government started at the Parliament building. The protesters began to fight with the "Berkut" Special Forces, who responded by using tear gas.

Sources:

<http://www.pravda.com.ua/news/2012/05/24/6965233/>

[http://zaxid.net/home/showSingleNews.do?litvin\\_hoche\\_rozpustiti\\_radu&objectId=1255913](http://zaxid.net/home/showSingleNews.do?litvin_hoche_rozpustiti_radu&objectId=1255913)

<http://www.pravda.com.ua/news/2012/06/5/6965939/>

<http://www.pravda.com.ua/news/2012/06/5/6965942/>

29.05.2012

**CEC members, Andriy Magera and Michael Ohendovsky, introduced a bill on amendments to the law on Supreme Council elections to the Parliament.** Representatives of the opposition raised concerns that this could be only an opportunity to make more significant changes to electoral law which would lead to falsifications. Instead, the authors of the document insist that the amendments are solely technical in nature and necessary to regulate the electoral process. On the 5<sup>th</sup> of June the Party of Regions, in order to avoid of speculation and accusations of the opposition, withdrew the bill and invited the opposition to prepare an alternative.

Sources:

<http://www.pravda.com.ua/news/2012/05/29/6965501/>

<http://www.rbc.ua/ukr/newslineshow/zakon-o-vyborah-narodnyh-deputatov-ostanetsya-bez-izmeneniy--05062012132800>

01.06.2012

**The leader of the Ukrainian People's Party, Yuriy Kostenko, stated that the part of the national-patriotic forces, which did not join the United Opposition, is negotiating the establishment of a united centre-right party to participate in the parliamentary election.** According to the politician, the negotiations are being conducted with the right-liberal: "Our Ukraine" movement, the ultra-right Congress of Ukrainian Nationalists and the centre-right Ukrainian Platform "Sobor".

Sources:

<http://www.umoloda.kiev.ua/number/2084/180/74294/>

<http://www.radiosvoboda.org/content/article/24608590.html>

07.06.2012

**After the meeting of the United Opposition Council, the leaders of the opposition parties agreed that Yulia Tymoshenko will be their leader.** Arseniy Yatseniuk was elected as the head of the Council, and Oleksandr Turchynov will lead the central election headquarters.

Source:

<http://www.day.kiev.ua/3051519>

### Arrest of the ex-Prime Minister Yulia Tymoshenko

16.05.2012

**The Prime Minister, Mykola Azarov, while speaking at the European Parliament, stated that the use of physical force against the former Prime Minister Yulia Tymoshenko, according to an examination, was unapparent.** According to Nikolai Azarov, Yulia Tymoshenko can be released only by court order.

Sources:

[http://censor.net.ua/news/205996/azarov\\_ni\\_odin\\_iz\\_80\\_chelovek\\_ne\\_podtverdil\\_fakt\\_izbieniya\\_timoshenko](http://censor.net.ua/news/205996/azarov_ni_odin_iz_80_chelovek_ne_podtverdil_fakt_izbieniya_timoshenko)

<http://korrespondent.net/ukraine/politics/1350108-azarov-vozmozhnoe-izbienie-timoshenko-ne-podtverdil-os>

16-18.05.2012

**European and American MPs, government officials and public figures criticised the political persecu-**

**tion of the opposition in Ukraine, and state that the political situation negatively impacts the country's international image.**

On the 16<sup>th</sup> of May, the Deputy U.S. Secretary of State said that incarcerated leaders of the Ukrainian opposition should participate in the parliamentary election.

The United States Commission on Security and Cooperation in Europe (Helsinki Commission) considers that the unjust imprisonment of the former Prime Minister and leader of the All-Ukrainian Union "Fatherland", Yulia Tymoshenko, and the former Minister of Internal Affairs, Yury Lutsenko, casts a shadow over the entire electoral process.

On the 18<sup>th</sup> of May David Kramer, the president of the Freedom House, said that if Ukraine will not listen to international criticism about of the political persecution of the opposition as well as human rights violations, sanctions will be inevitable, and even the mere fact of discussions of these sanctions is not boding well for Ukraine.

Sources:

<http://obkom.net.ua/news/2012-05-22/1837.shtml>

[http://www.bbc.co.uk/ukrainian/politics/2012/05/120518\\_senate\\_usa\\_dt.shtml](http://www.bbc.co.uk/ukrainian/politics/2012/05/120518_senate_usa_dt.shtml)

<http://gazeta.ua/articles/politics/ u-cvk-poperedili-evropu-scho-tymoshenko-na-vibori-ne-pustyat/438591>

<http://novynar.com.ua/politics/227671>

19.05.2012

**On the 19<sup>th</sup> of May President Viktor Yanukovich announced that despite the desire of many European politicians to send Yulia Tymoshenko for medical treatment abroad, he is unable to do this according to the law.** But if the law permitted the President to do so, he would allow Tymoshenko to be treated abroad. Later, the President showed initiative to invite an American company to give an expert assessment of Tymoshenko's case.

Sources:

<http://obozrevatel.com/politics/32567-v-ukraine-net-uslovij-dlya-lecheniya-tymoshenko-nemetskij-vrach.htm>

<http://korrespondent.net/ukraine/politics/1351173-yanukovich-zakon-ne-pozvolyaet-lechit-tymoshenko-za-granicej>

[http://news.dt.ua/POLITICS/yanukovich\\_ekspertnij\\_visnovok\\_u\\_spravi\\_tymoshenko\\_dast\\_mizhnarodna\\_kompaniya-103040.html](http://news.dt.ua/POLITICS/yanukovich_ekspertnij_visnovok_u_spravi_tymoshenko_dast_mizhnarodna_kompaniya-103040.html)

21.05.2012

**The Kyiv District Court in Kharkiv accepted the application of the public prosecution and deferred the consideration of Tymoshenko's criminal case to the 25<sup>th</sup> of June due to the absence of the defendant for health reasons.** Upon request of the President of the European Parliament, Martin Schulz, a commission was established to oversee the disposal of the appeal in Yulia Tymoshenko's case, which included a former President of the European Parliament, Pat Cox, and a former Polish President, Aleksander Kwasniewski.

Sources:

<http://tyzhden.ua/News/50745>

<http://www.guardian.co.uk/world/2012/may/16/yulia-tymoshenko-appeal-euro-2012?INTCMP=SRCH>

[http://www.bbc.co.uk/ukrainian/news\\_in\\_brief/2012/06/120606\\_hk\\_euoparliament\\_tymoshenko.shtml](http://www.bbc.co.uk/ukrainian/news_in_brief/2012/06/120606_hk_euoparliament_tymoshenko.shtml)

31.05.2012

**The Prosecutor General, Viktor Pshonka, announced that in addition to the case regarding United Energy Systems of Ukraine, Yulia Tymoshenko may also face prosecution in four other cases: conspiracy to murder, monetary machinations connected with the use of money under the Kyoto Protocol and with the purchasing of ambulances, as well as the debt of the United Energy Systems of Ukraine to the Russian Ministry of Defence.**

Source:

<http://focus.ua/politics/233455/>

01.06.2012

**The European Court of Human Rights recognised that the Ukrainian government has fulfilled the**

court's requirement and provided the imprisoned Yulia Tymoshenko with appropriate medical treatment, and thus the court removed the requirement. However, the court rejected the application of Yulia Tymoshenko to undergo medical treatment in the Charité clinic in Germany.

Source:

[http://www.bbc.co.uk/ukrainian/mobile/news\\_in\\_brief/2012/06/120601\\_ko\\_european\\_court\\_tymoshenko.shtml](http://www.bbc.co.uk/ukrainian/mobile/news_in_brief/2012/06/120601_ko_european_court_tymoshenko.shtml)

## Reaction of the international community to the political situation in Ukraine

18.05.2012

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**European and American officials spoke again of the concern that exists in the EU in connection with Yulia Tymoshenko's case.** The head of the U.S. Helsinki Committee, Christopher Smith, emphasised that the arrest of the opposition members, Yulia Tymoshenko and Yuriy Lutsenko casts a shadow over the future parliamentary election, and he doubts that the international community recognises the election as being consistent with international standards. Also the President of Poland, Bronislaw Komorowski, said on the 25<sup>th</sup> of May that he considers the political situation in Ukraine to be a threat to its integration with Europe.

Sources:

<http://korrespondent.net/ukraine/politics/1351022-evroparlament-ne-nameren-zamorazhivat-otnosheniya-s-ukrainoj>

<http://www.radiosvoboda.org/content/article/24584794.html>

<http://un.ua/ukr/article/392102.html>

21.05.2012

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**The Chicago Summit Declaration states that the leaders of NATO member countries are concerned about the selective justice in Ukraine** and urge the authorities to solve the judicial issues and ensure free and fair parliamentary elections.

Source:

<http://www.unian.ua/news/504618-lideri-krajn-nato-mi-sturbovani-vibirkovim-pravosuddyam-v-ukrajini.html>

22-24.05.2012

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**In Strasbourg, the European Parliament held debates about the situation in Ukraine.** By its resolution, the European Parliament called on the authorities to release the political prisoners. The EP expressed its hopes for the holding of a fair parliamentary election and suggested the politicians who came to Ukraine for the UEFA EURO 2012 football competition to visit the political prisoners and speak of the situation in Ukraine. A few days later the U.S. Congress, upon request of Sen. James Inhofe, registered a draft resolution that called for sanctions against the Ukrainian President, Viktor Yanukovich, the Prosecutor General, Viktor Pshonka, as well as other officials in order to force the release of Yulia Tymoshenko.

Source:

<http://www.unian.ua/news/505354-evroparlament-zaklikav-ukrajinu-negayno-zvilniti-zasadjenih-za-politichnimi-motivami-rezolyutsiya.html>

## ***Authorities before the election: an autocratic rollback and the old methods***

The last month's events convinced us even more that over the last two years the pendulum of evolution of the political regime swung towards an authoritarian "rollback". The year 2004 marked the beginning of something new (at least in form) in the political life that has replaced strong presidential power, which relied mostly on agreements between the oligarchs. Instead, the present authorities disrupted this short phase in the evolution of new, democratic formations and brought Ukraine even closer to the situation of Belarus. Now, the predominance of resources and the influence of one part of the elite on the representatives is even more significant. It seems that the question of whether the MEP, Krzysztof Lisek, "President Yanukovich, will be the next Lech Walesa or Alexander Lukashenko?" is now a topical matter against this background.

### **Europe: assessing, outraged, and...uninvolved**

This month was no exception: Europe also responded negatively to the situation of democracy, justice and human rights in Ukraine. The deteriorating state of freedom and democracy, as well as the issue of selective justice, are described in the report of the EU Delegation in Ukraine [1]. Moreover, the Helsinki Committee expressed an opinion that the events in Ukraine are a retreat from democracy, threatening the integrity of elections [2].

The President of the European Parliament is also concerned about the situation of the sentenced Tymoshenko, and proposed his predecessor establish a monitoring committee during the disposal of the appeal in Yulia Tymoshenko's case [3]. Thus, the trial of the former Ukrainian prime minister will be monitored by a former President of the European Parliament, Pat Cox and a former Polish President, Aleksander Kwasniewski. The disposal will begin on the 26<sup>th</sup> of June due to the current health condition of the defendant.

Europe gradually ceases its diplomatic and tactful talks with Ukrainian authorities. Marietta de Pourbaix-Lundin, a Co-Rapporteur of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), spoke very assertively: "The Council of Europe is running out of patience with Ukraine. We are tired of conversations and expect some real action. Of course, we want to help you, but I repeat: first of all, you need to want the same" [4].

This is called "boiling". The Co-Rapporteur claimed against the entire judicial system of Ukraine as a whole, but the President of Ukraine owns a very effective and efficient counter argument, which gradually begins to be typical of all communication between the authoritarian leaders and European society. With this argument he passes the buck again and again, asking: How can the authorities interfere in the justice system and influence the court, if they should be independent? Vladimir Putin used to respond the same way to the accusations of Europe in order to wash his hands of the Khodorkovsky's arrest.

The authorities' appeal to "independence" is a good way of moving the responsibility to the prosecution and the justice system as a whole. The authorities emphasise that the Tymoshenko's case is not being considered on a political level, but purely on a legal level. However, the statement of the Prime Minister Azarov proves otherwise: if Tymoshenko would acknowledge her guilt, the government would think of a way out of the situation [5]. This means that in certain circumstances the problem can be solved by political means. Therefore, it proves the existence of double standards. Based on sound reasoning, it should be advantageous to the authorities to ensure the supremacy of law, not political will and clan attitude or corporate interests, because the supremacy of law provides a forecast for the future political situation and actions of the opponents. What if the opposition, which theoretically could come to power, will go further than the political ostracism and get their own back on their past "oppressors" in the same way? So far, Ukrainian law is not an independent arbitrator, and the government uses its means to influence the violators of the law selectively. Taking into account how the authorities use the law to their advantage (for which they are criticised by Europe), we can assume that they do not feel completely comfortable with the prospect of a theoretical change of the elite.

### **The red rag of languages: one old trick is better than two new ones**

On the 24<sup>th</sup> of May the parliament considered a bill "On State Language Policy" initiated by Vadym Kolesnichenko and Sergey Kivalov, who support the strengthening of the position of regional languages. The Committee on Culture and Spirituality did not approve the bill, due to the fact that the cri-

terion chosen for determining a regional language was the number of its native speakers described as 10% of all the citizens. Thus, the bill would protect the Russian language instead of the majority of languages that need to be supported. On this day, brawls between MPs took place in the Parliament and soon after, on the 5<sup>th</sup> of June, when the bill was adopted in first reading, it brought riots to the streets - protests and clashes between the supporters of the government and the opposition.

The "language" battles are another signal of the approaching election. Moreover, such a development of events is advantageous for both the government and the opposition, the second of which even had to explain why they had failed to prevent the adoption of the bill [6]. On the one hand, the "linguistic" discussion allows the authorities to divert attention from the social and economic problems: they say "this is how aggressively the opposition responds to a proposal of such a "constructive dialogue". On the other hand, the opposition woke up some of their potential voters from a coma, reminding them what kind of danger to expect from this government.

Of course, this is just "tilting at windmills" and the issue cannot be resolved before the election - there is no time or legal mechanisms to do so. But this is not the most important issue for the politicians. Desperate means of political struggle are a tribute to ossified myths and patterns that hit the sensitive spots and divide the Ukrainian society due to their ideological and philosophical nature. However, the strategy of provoking and increasing the degree of contrast between the two groups is getting more and more predictable every year.

Therefore, protecting the linguistic rights of the different parts of Ukraine's population is not a goal, but a mean - an effective tool for obtaining electoral support, even at the cost of a split in the society. So far, raising the language issue has brought more profit to the government, as the opposition failed to stand up with anything but populist and pathetic statements. Or it did not want to stand up, as the entire issue is just an integral part of the political game.

Not only raising the language issue before the election seems to prove the use of "old and tired" political technology patterns. Appealing to stomachs (food distribution) [7] and wallets (giving small amounts of money) [8] are just some other exam-

ples which lend themselves to this hypothesis. The government representatives have more opportunities to bribe voters - they actively utilise their administrative resources and financial capabilities in the majority districts.

### **Stubbornness in the political posts**

Currently the authorities have no remarkable achievements in the field of social or economic policy to boast of and appear to be deteriorating against the overall backdrop of declining standards of living, decreasing the value of a large section of the medium-sized businesses, corruption scandals involving, in particular, the family of the President and of course, against the backdrop of both judicial and human rights issues. Part of the electorate is also unsatisfied with the increasing tax burden, reduction of allowances for the Afghans and Chernobyl victims. Even the scientists of the National Academy of Sciences of Ukraine are being brought to the streets by social issues [9].

But at the same time the authorities maintain a "rigid" policy. Stubbornness relating to the language issue, as well as in the Tymoshenko's case is intended to attract the part of the electorate that wants to see a strong arm of government and a resolute policy towards both the West as well as political opponents. But the question is: will the image of Yanukovich as a "rigid", "uncompromising" politician ("our man") tip the scales against the social and economic problems of the country?

The tactics of the President are employed in specific steps. In the middle of May, the Supreme Council of Ukraine supported the President's initiative to restrict the powers of the Parliament to amend the Budget Code [10]. But this step may also indicate that the President is not feeling very comfortable with maintaining the integrity and confidence in the unstable conditions of social policy and amidst international criticism.

On the other hand, the President is trying to make overtures to the West, and the establishment of the Constitutional Assembly [11] seems to be relevant in this case. The official goal of the Assembly is to prepare a bill on amendments to the Constitution. This leaves the field clear for government rhetoric (for some reason changes to the Constitution as well as the language issue, are always very popular prior to elections). Viktor Yanukovich invited the opposition to participate actively in reforming the Basic Law, but the opposition refused [12]. Thus

the President had a reason to state that the opposition refuses to take steps forward and engage in the democratic process of reforming the government.

Another example is the initiative of Yanukovich to invite an American company to give an expert assessment on Tymoshenko's case [13]. Yes, this creates the impression of democracy and transparency of the trial - after all, the investigation will be conducted by an independent party. Besides, it can be assumed that the government would not be the party ordering the assessment, if it hadn't approximately predicted the decision of the company beforehand. In addition, an American company has already performed an audit of the financial activities of Tymoshenko's government and the results were not favourable for the former Prime minister at all.

"To create the impression" of a democratic trial, the guarantor of which is the President - this is how any similar actions of the authorities should be described. This also applies to the presidential order for the Minister of Internal Affairs, Vitaliy Zakharchenko and the head of the State Penitentiary Service, Alexander Lissitzky are to provide the conditions necessary for ensuring constitutional rights and liberties of suspects, accused and defendants [14]. However, the bureaucratic formality of such activities is understandable, when everything looks so clear and well-adjusted solely on paper.

### **The cold peace and the wait-and-see tactic**

Separating from the West and neglecting its standpoint can be fraught with consequences for the Ukrainian government - and not only because of the international isolation and the virtual public relations disaster [15]. It is also necessary to take into account the fact that the businesses of many government politicians are located in the West. But so far the losses of power are only reputational. The real danger for the authorities consists of "punctual" attacks - freezing the assets of Ukrainian officials in Europe, restricting their entry, etc. However, any serious, individual sanctions seem unlikely in the near future and the European Parliament resolution of the 24<sup>th</sup> of May confirmed as much [16]. There are many reasons to explain the absence of such sanctions at the moment: the wait-and-see attitude, personal interests, lobbying, complexity of seeking monetary assets of Ukrainian

politicians and more.

International pressure is almost the only "trump card" in the hands of Tymoshenko, which she uses actively when communicating with MEPs directly or passing information about the state of democracy in Ukraine through her daughter. So far, the authorities obey the following scheme: cold peace is always better than a "hot" (or even cold) war. Although there is a possibility that the actions of the authorities are simply inert and have no strategic background, at the same time, on the "eastern front" (especially in gas negotiations with Russia) the President's situation is not favourable either - arguments about reducing the volume of Russian gas purchases and searching for alternative sources of energy have not convinced Putin so far. In general, the policy towards both western and eastern neighbours is based on the wait-and-see attitude to date. The question is whether the government knows what to expect.

The authorities do not pay serious attention to international criticism and have not yet felt the threat of its legitimacy - perhaps because they feel immune within the established political and legal systems. And a huge part of the society, mostly tired and disillusioned, perceive the corruption and repressiveness of the regime as blatant, appropriate and normal for this country. The society cannot restrict the power of authorities due to a lack of resources, and neither can the opposition or the international community force the authorities to restrict themselves.

### **Sources:**

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2. <http://obkom.net.ua/news/2012-05-22/1837.shtml>
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