

UKRAINE IN REGRESS: THE TYMOSHENKO TRIAL

UKRAYNA'DA GERİLİM: TİMOŞENKO DAVASI

Напряженная Ситуация на Украине: Дело Тимошенко

CENTER FOR MIDDLE EASTERN STRATEGIC STUDIES
ORTADOĞU STRATEJİK ARAŞTIRMALAR MERKEZİ
Центр стратегических исследований Ближнего Востока

THE BLACK SEA INTERNATIONAL CENTER FOR RESEARCH AND DIALOGUE



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Dr. Süreyya Yiğit

Süreyya Yiğit studied for his undergraduate degree at the Department of International Relations, London School of Economics. His postgraduate degree is from Cambridge University and he holds an Honorary Doctorate in Pedagogical Science. He has lectured at the following universities; Aalborg University, Samarkand State University, Samarkand State Institute of Foreign Languages, Kyrgyz-Turkish Manas University, Kyrgyz-Russian Slavonic University, American University of Central Asia and the International Ataturk Alatau University. He has many publications relating to the fields of the European Union, Turkish Foreign Policy, British Politics and Central Asia. He is currently the Eurasian Advisor to ORSAM.

PRESENTATION

Our northern neighbour Ukraine is passing an examination. The country is still going through severe problems on providing her domestic political stability, and on building her external dependence on more solid basis, in the 20th anniversary of her independence. As everyone else, we also expect the Ukrainians, who are the source of inspiration for the people of many countries staying the democratic course especially for the people of the former Soviet geography since the Orange Revolution, to build a respectable and strong democracy.

Ukraine is candidate to be a strong actor in her region, and she has the necessary potential to be so. However, in a classical saying, also with the affect of the ongoing sphere of influence struggle on Ukraine between the West and Russia, the dispersed structure of the Ukrainian society and institutions continues to embody negativities. The turmoils in the country's domestic policy do not find an end. Recently, one of the incidents affecting the stability of the country most has been the trial process of the former Prime Minister Yuliya Tymoshenko. Having a broad repercussion in the international community, this trial process embodies question marks for everyone. For some people, the trial is an effort to put an end to the political life of the opposition leader the Prime Minister and the supporters are afraid of, by misusing the state power. For some others, it is a political duel of the two experienced politicians one dirtier than the other; and for the others, it is an ordinary corruption trial. While for some other people, this trial is a bitter struggle of the innocent former Prime Minister against the dirty politicians, or it is a political revenge supported by the external forces resembling the Cold War. There are also people considering the situation as a race to have an efficient position in European energy market. It is possible to multiply the points of view...

In order to be able to see what really happens in Ukraine, both the process and also the political structure in Ukraine should be carefully analyzed. Here, this worthy study meticulously prepared by Süreyya Yiğit is a challenging report, which will help us to be able to clearly see the current situation of Ukraine. We think that our report will be quite enlightening for people curious about the developments in Eurasian geography, and what is more important, about the developments in Turkey's neighbourhood geography.

ORSAM Eurasian Strategies will continue to henceforth reach original studies to you. Hope to meet you in our new reports.

Assoc. Prof. Hasan Ali Karasar
The Black Sea
International Coordinator

Hasan Kanbolat
ORSAM Director

By: Dr. Süreyya Yiğit
ORSAM Eurasia Advisor

UKRAINE IN REGRESS: THE TYMOSHENKO TRIAL

Executive Summary

Ukraine is currently experiencing a political crisis. The main opposition leader, ex-prime minister Yulia Tymoshenko is standing trial charged with abusing her office, in agreeing to an energy deal which was detrimental to the national interest. The international community has supported her defence that the trial is not about corruption, or her actions whilst in office, but a vendetta to kill off her political career. Ukraine has been facing many months of international criticism focusing on the political motivations behind the trial. President Yanukovich has also not received support from Russia as he did in the past. The Russians have refused to renegotiate the gas contract that is meant to be at the heart of the trial. These developments ultimately narrow the focus of attention to the semi-authoritarian regime in Kiev and the violation of the rule of law. The democratic aims and ideals of the Orange Revolution as expressed by Tymoshenko were never fully given the opportunity to materialise. Aspirations toward 21st century European norms are now being replaced by a European norm of the 20th Century: authoritarianism. The result of the Tymoshenko trial will be indicative of whether Ukraine will become a developing, reforming democracy, or a Belarus-style wasteland of shattered hopes and lost illusions.

“Ah, what a cesspool of folly and foolishness, what preposterous fantasies, what corrupt police tactics, what inquisitorial, tyrannical practices! What petty whims of a few higher-ups trampling the nation under their boots, ramming back down their throats the people’s cries for truth and justice”
 - *J’Accuse...!* (1898)

“Do you know your case is going badly?” asked the priest. “That’s how it seems to me too,” said K. “I’ve expended a lot of effort on it, but so far with no result. Although I do still have some documents to submit.” “How do you imagine it will end” asked the priest. “At first I thought it was bound to end well,” said K., “but now I have my doubts about it. I don’t know how it will end. Do you know?” I don’t” said the priest, “but I fear it will end badly. You are considered guilty”
 - **The Trial** (1925)

A trial is taking place in a European city which is not straightforward, not as it may seem. There are so many dimensions and interpretations involved in such a trial that it seems, perhaps, as if it is not even a trial. If the reader is confused then he /she is right to be. This trial does not take place in Prague or any other central European city but in Kiev, it is not the 1920s, but the 2010s and the defendant in question is not a man called Josef K, but a woman named Yulia T.

The Trial, the famous novel by Franz Kafka is about the fear, frustration, anxiety, and loneliness of a person living in a country with an oppressive government that orders a citizen’s arrest and trial without ever informing them of what they supposedly did wrong. This summer a highly controversial trial began in the ancient city of Kiev, which some observers are referring to as a witch-hunt¹. Several parallels can be drawn from the outset here with the trial of former Prime Minister Yulia Tymoshenko, as she insists the charges she faces are trumped up and that she is being tried not for legal, but sinister reasons. These sentiments are quite similar to what Josef K experiences in *The Trial*.

1) INTRODUCTION



As illustrated in box 1.1 democracies have certain requirements which must be adhered to and it is due to this that the Tymoshenko trial has turned into a litmus test of Ukrainian democracy for western observers. Not just the ‘west’, but also the ‘east’ as the Russian Federation has also voiced concern that the rule of law should be observed. Perhaps it could be argued that these geographic terms - a legacy of the cold war - explain less today. One can still benefit from them though, in terms of democratic governance (box 1.2).

In Europe, as one travels east from the Atlantic coast of Brest, (France) crossing over the Bug River onto Brest, (Belarus) the terms ‘east’ and ‘west’ retain their resonance and explanatory qualities. The traveller heading east encounters authoritarian modes of governance. It was the south of Europe that was well-known for authoritarian regimes after the Second World War. In fact, the expression ‘Europe ends at the Pyrenees’ was actually first heard during Napoleon’s time and was still mentioned in the 1970s during the Portuguese and Spanish dictatorships. Forty years later, the democratic mental map of Europe covers the Iberian Peninsula as well as central Europe, but enters a blurry grey zone when passing eastwards from Poland, Slovakia, Hungary and Romania.

Ukraine is in many ways at a crossroad. It does share a border with these four countries but is also the southern neighbour of Belarus, the western neighbour of Russia and the northern neighbour of Turkey, via the Black Sea. The aftermath of the Tymoshenko trial should shed light on which of its neighbours the Ukrainian political system will resemble; whether it will remain semi-authoritarian², get worse and become similar to authoritarian Belarus or accept reform and look more like a democratic Turkey.

Box 1.1 Dahl's Requirements for Democracy

Elected officials
Free, fair & frequent elections
Freedom of expression
Alternative sources of information
Associational autonomy
Inclusive citizenship

Source: Dahl

Box 1.2 Key Features of Semi-authoritarianism

Formal democratic institutions
Fairly open elections
Core power group membership not through election
No discussion of political power
Clientalist patronage systems
Degree of political freedom
Partially free press
Autonomous organizations of civil society
Existence of private business
Corruption
Emergence of new economic elites

Sources: Merloe, Olcott and Ottoway.

ii) BACKGROUND

Ukraine with its 45 million inhabitants, an important country squeezed between the European Union and the Russian Federation, is certainly undergoing a time of trial and tribulation as Tymoshenko is accused of corruption. Naturally, not all holders of high office are squeaky

clean and there are many instances of such persons being held to account either during their office or after having relinquished it. What is interesting in this instance is this trial is taking place within the post-Soviet space, with the ex-prime minister physically in the dock. Other post-Soviet states such as Kyrgyzstan³ have held trials concerning their president, but they were held in absentia and the verdict was quite easy to forecast.

The sine qua non of any legitimate trial is for the defendant to be presumed innocent from the outset. This is precisely the issue that Tymoshenko raises⁴ by claiming the trial has been artificially created so that the verdict can be handed: "everything that is happening with me now is ordered and controlled by [president] Yanukovych"⁵. She elaborates further saying that Yanukovych "believes that if he can destroy the opposition in one fell swoop then it will not rise up again. And that's why these criminal cases are being opened against me, one after the other"⁶.

2.1 Prior Arrests and Releases

As she has openly stated, this is not the first time that she has undergone a trial, nor the first time she has spent time behind bars. Yulia Tymoshenko entered politics in 1996 as a member of the Verkhovna Rada (the Ukrainian Parliament) after a highly successful but controversial spell as a business woman which earned her sufficient wealth to be considered one of the most influential oligarchs in Ukraine.⁷ She experienced a rapid rise under Prime Minister Yushchenko who appointed her as the Deputy Minister responsible for fuel and energy in 1999. To most observers Tymoshenko was very successful in this capacity increasing the state tax revenue by US\$ 2 billion through opposing and reining in wealthy businessmen.

In January 2001, however, she was charged with funnelling more than \$1.1 billion dollars out of Ukraine and of cheating tax authorities of nearly \$150,000 between 1997 and 1999⁸. As a former director of the United Energy Systems

company, she was also accused of fraudulently importing nearly three billion cubic metres of Russian gas in 1996 using forged documents. Such accusations were very welcome for President Kuchma who having regarded her as an undesirable political opponent took the opportunity to sack her. Immediately afterwards she demonstrated her opposition to the president by taking over the leadership of the National Salvation Committee and becoming active in the Ukraine without Kuchma protests.⁹

During these protests, in February, she was arrested and further accused of paying bribes to former Prime Minister Lazarenko and spent 42 days in jail during a stand-off with Kuchma, before being released in late March by a higher court and exonerated by the Constitutional Court in April. Tymoshenko maintained that the charges were fabricated by Kuchma's regime as the oligarchs she reined in were fearful of her efforts to combat corruption and implement market-based reforms.

In spite of being cleared of the charges, the Russian Federation held onto an arrest warrant for Tymoshenko should she enter Russia until her dismissal as Prime Minister four years later.¹⁰

In December 2010 she was accused of abusing her power for allegedly using monies totalling \$425m allocated to Ukraine for selling carbon emission quotas, while she was prime minister, as payments for pensioners. She faced another corruption charge, this time of purchasing overpriced vehicles intended for use as rural ambulances.

2.2 Trial

Just four months later in April 2011, a criminal case was initiated against Tymoshenko accusing her of misusing public finances through influencing the signing of a deal between the state-owned Ukrainian energy company Naftogaz with Russian Gazprom, to import Russian gas at artificially high prices, allegedly costing Ukraine \$440 million¹¹. The central charge against Tymoshenko remains that as prime

minister she signed a "directive" authorizing a new contract between Ukraine's Naftogaz and Russia's Gazprom. Due to this directive, Naftogaz chief Oleg Dubyna had to sign the contract. The agreement set a final import price of \$450 per thousand cubic metres for Ukraine, obliged Ukraine to take a set volume of gas each month or pay for the set volume even if it did not need the full amount. A crucial sticking point remains, which is that for such a directive to be legally valid, it had to have been approved by all the members of the cabinet, not just the Prime Minister.

3) INTERNATIONAL REACTIONS

After a court decision taken in May 23d to detain Tymoshenko, the EU High Representative Catherine Ashton issued a stern statement whereby she expressed her "concern at suggestions of political motivation behind these cases."¹² Ashton reminded Ukraine of the necessity "for respect for the rule of law, incorporating fair, impartial and independent legal processes....stress the importance of ensuring the maximum transparency of investigations, prosecutions and trials....and we recall that Ukraine currently holds the Chairmanship of the Committee of Ministers of the Council of Europe."¹³ Given that the Council of Europe is widely respected as the defender of human rights and the rule of law as well as democracy, mention of this institution by Ashton was quite deliberate. Nevertheless, this critique was not taken to heart in Kiev and the trial continued as before.

On 21st June, U.S. Senator John McCain, as chairman of the International Republican Institute (IRI) and Wilfred Martens, the President of the European People's Party (EPP), jointly called on the Ukrainian Prosecutor General to lift the travel ban on Tymoshenko so that she could attend a session of the EPP Group (as her party, the Batkivshchyna is a member of the EPP) in the Parliamentary Assembly of the Council of Europe the next day in Strasbourg. Their statement repeated their "previous call on the Ukrainian authorities to allow Yulia Tymoshenko to attend the meetings of the EPP in Strasbourg

and Brussels on June 22nd and 23rd. We are disappointed by the fact that this is the second occasion on which we have had to address this issue publicly. Consequently, we urge the Ukrainian authorities to lift all restrictions on Mrs. Tymoshenko's travel to international events. Needless to say, the continuation of this travel ban could be viewed as selective prosecution of members of the opposition in Ukraine."¹⁴ The last sentence was quite strong, going beyond a simple criticism, nevertheless, this warning also fell on deaf ears and Tymoshenko was not permitted to travel abroad.

3.1 Incarceration

Tymoshenko went on trial three days later on June 24th, charged with exceeding her powers concerning the Gazprom energy deal. The trial reached its nadir on August 5th when the judge ruled that Tymoshenko had violated the court rules in an attempt to obstruct the trial¹⁶. She had refused to stand up for the judge, called him derogatory terms and sent messages to Twitter from the courtroom, as well as insisting on speaking Ukrainian claiming she did not speak Russian. For all these actions she was arrested and taken into custody amidst scenes of pandemonium.

Almost immediately after this development, Martens made another statement asserting that the Ukrainian government's motivation was clear: "I am not surprised that today the court ordered Yulia Tymoshenko to be placed under arrest. For months now, it has been blatantly obvious that the Yanukovich regime is running a politically motivated court case. The motive is clear: the removal of the main obstacle for *returning to Soviet-style authoritarianism* [my italics]. Today Ukraine has moved one step closer....I call on Viktor Yanukovich to put an immediate end to this sham – Europe's patience has reached its limit."¹⁷

European Parliament President Jerzy Buzek also echoed the concerns saying that he was "disturbed by the news about [the] Court's decision to detain former Prime Minister Tymoshenko. The context and conditions raise concern

about the politically motivated nature of this decision, and about the application of the rule of law in Ukraine. I have recently expressed my concern to Ukraine's leaders about the apparent selectivity in opening criminal proceedings against Ms Tymoshenko and other former ministers of previous government. I urge Ukraine to uphold the principles and common values that define our relationship and that form the core of the Eastern partnership."¹⁸ More criticisms were to follow with Swedish Foreign Minister Carl Bildt referring to the trial as an "embarrassing spectacle [which] does great damage to a great country"¹⁹.

3.2 Which Ukraine?

Grigory Nemyria, Tymoshenko's former deputy prime minister, clarified the situation by asserting that "Today Ukraine has shown not its European, but an ugly, authoritarian face. How can the EU deal with a country ignoring basic human rights? The situation here is not much different than in Belarus: we had 300 special forces deployed in the courtyard,"²⁰ adding that he believed the government was "clearly testing"²¹ to see what the EU response would be, calling for a "strong and uniform"²² reaction from member states.

That reaction came from both Catherine Ashton and Stefan Füle, the EU Commissioner for Enlargement and European Neighbourhood Policy, who jointly declared the EU, was "extremely concerned by reports of today's events in Pechersk District Court, culminating in the arrest of Yulia Tymoshenko, leader of the Batkivshchyna Party. The EU and other international partners of Ukraine have repeatedly underlined the need for fair, transparent and independent legal processes to avoid any perception of a policy of selective justice. Today's events are therefore a cause for concern about the state of the rule of law in Ukraine. We reiterate previous statements that we and other colleagues have made on the high standards we expect from a country aspiring to political association with the EU. We urge Ukraine to uphold the principles and common values that form the core of the Eastern Partnership."²³

3.3 U.S. and Russia in Agreement

On August 5th, the Russian foreign ministry felt the need to clarify matters as Gazprom was involved and issued the following statement: “In relation to the decision of the Pechersk District Court of Kyiv to arrest Yulia Tymoshenko, whom the Ukrainian Prosecutor General’s Office accuses of having exceeded her authority during the conclusion of a Russian gas supply contract in 2009, the Russian Ministry of Foreign Affairs hereby states the following. All the “gas” agreements of 2009 were concluded in strict accordance with the national legislations of the two states and with international law, and for their signing there had been received the necessary instructions of the Presidents of Russia and Ukraine. We presume that the judicial process against Yulia Tymoshenko should be fair and impartial and conform to all the requirements of Ukrainian legislation while providing the possibility of defense and observing the elementary humanitarian norms and rules.”²⁴

The very next day, the U.S. government released a statement which read: “Yesterday’s incarceration of former Prime Minister Tymoshenko has raised concerns internationally about the application of the rule of law in Ukraine and further contributes to the appearance of politically-motivated prosecutions. The US Government shares those concerns and urges that Mrs. Tymoshenko’s incarceration be reviewed and consideration be given to her immediate release. We have raised our concerns with the Government of Ukraine regarding the legal proceedings against Mrs. Tymoshenko and other opposition figures and will continue to closely monitor those proceedings.”²⁵ Both the Russian and the American governments had publicly voiced that these charges lacked credibility. Whilst the two states had differing interests, their goal was the same: the dismissal of the case. The Russian government wanted a friendly administration upholding the original gas contracts and the U.S. government desired to see a more democratic, norm-respecting pro-European Ukraine.

3.4 Health Problems

Despite all the abovementioned critical declaratory statements, Tymoshenko remains incarcerated and complained of ill health on August 18th, having asked to see her family doctor which was refused by the court. Her lawyer informed the judge that she was showing “worrying symptoms that cannot be explained as those of known illnesses.”²⁶ The spokesman for Catherine Ashton expressed that they were “very concerned [Tymoshenko’s] health is deteriorating and the Ukrainian authorities must ensure timely and independent medical examination and professional care”²⁷. The EU insisted that an “independent medical team”²⁸ be allowed to visit the former prime minister in prison.

Her lawyer was still complaining a month later when he declared on September 19th that “Her health is weakened by the symptoms that we are aware of, she is still sick and has a temperature....She has not had medical care for 27-28 days now, if I’m not mistaken. She is being denied her legal right to health care. Not only her lawyers, but also the Verkhovna [Rada] Human Rights Commissioner, international and independent observers, have stressed that an innocent person has that right to a medical examination by a doctor she trusts, not to unknown conditions created as a result of being held in a prison for 49 days,”²⁹. So far, she has not undergone any medical examination.

3.5 Delays of Trial

On September 12th, just as Ukraine analysts expected the closing arguments of the prosecution and defence for Tymoshenko, the presiding judge at the trial declared a two week moratorium. The decision came as a surprise to most as the trial had been proceeding at breakneck speed for the past couple of months. In fact Tymoshenko had even complained that the trial was being rushed to reach the pre-arranged verdict, which she thought would be announced sometime that week.

On September 30th the trial was once again adjourned, this time until October 11th. In the

court Tymoshenko protested by claiming “This is pure falsification....This lynching ... is continuing to serve the liquidation of opposition in our country.”³⁰ Confusion remains with regard to both the timing and the verdict, despite the fact a new date has been pencilled in as to when the verdict will be delivered, as this has occurred before, only to be delayed again.

On the same day, Yanukovich’s Party of Regions declared that it was ready to consider decriminalizing the charges under which Tymoshenko is being prosecuted for, provided that she paid for the damages that her alleged actions cost the government. Lytvyn, the speaker confirmed that the relevant bills would be considered the following week.

At the Eastern Partnership Summit held in Warsaw on September 30th, the president of the European Parliament, Jerzy Buzek stated that they “should be sincere and frank about the fact that unfortunately there has been a clear backtracking in terms of democracy, human rights and rule of law in some of our Eastern partner countries....And I am talking not only about Belarus,”³¹ This was an obvious reference to Ukraine, to remind Yanukovich that there would be repercussions should Tymoshenko be put in jail. At the summit, French Prime Minister Francois Fillon gave support by declaring that “some symbols are a problem, such as the Tymoshenko case”³².

3.6 Domestic Politics

The political dimension of this trial is undeniable as the Financial Times’ editorial stated “Unquestionably, the trial is a deplorable example of political intimidation”³³. On September 12th, the first time the delaying of the trial was announced, it was reported that the Ukrainian Prime Minister Azarov personally voiced the charges against his previous office holder claiming that “In 2009 Tymoshenko, face to face with Russian Premier Vladimir Putin, signed an agreement on the price of gas supplies from Russia to Ukraine that caused damage to the economic interests of the state. She forged the documents for this. This agreement was not

approved by the Cabinet of Ministers and Naf-togaz”³⁴. Earlier, on September 1st, he told students of the Taras Shevchenko National University in Kyiv that “As a result of the signing of the agreement by Tymoshenko, over the next ten years, Ukraine undertook to purchase approximately 40 billion cubic meters of gas annually. And if it suddenly does not buy gas, then it still must pay for this amount and pay penalties - 150% of the cost of gas for under-consumption in summer and up to 300% for under-consumption in winter.”³⁵ With statements such as these it has become difficult to determine whether Azarov is serving as the prime minister or the prosecutor-general of Ukraine.

3.7 European Responses

It is the Prime Minister Azarov’s assertion that “In the political sense, Mrs. Tymoshenko is not a rival; she is a woman of the past,”³⁶ which lends credence to international criticisms that this trial is politically motivated. This critique was publicized in the international media through a collective letter that included as its signatories ex-heads of state such as Vaclav Havel, Richard von Weizsäcker and Nobel Peace Prize winner Desmond Tutu. They called attention to their concerns about the “prosecution of opposition members....most of the West has deemed political seems to confirm that the rule of law is being brushed aside....Ukraine’s president is now increasingly consolidating his total control over the executive, the legislature, and the judiciary.... Ukraine has reached a crossroads. One signpost points towards democracy; the other towards autocracy. The former path leads to membership in the European Union; the latter would take Ukraine to a darker and more dangerous destination....We urge the EU and its member states to insist that the rule of law is respected. At the very least, the EU should demand that Tymoshenko and the other opposition leaders are set free on bail so that they can more vigorously defend themselves in court.”³⁷ Their call was not heeded by the Ukrainian authorities, though perhaps it did make an impact on Kiev. It is one possible explanatory factor in shedding light on the surprising move to postpone the trial’s final stage for a fortnight on September 12th.

3.8 Economic Relationship with the EU

This trial has become quite important for the EU, not only due to the significance attached to it in terms of Ukraine's democratic credentials but also because of trade. The EU's impact on Ukrainian external trade was evidenced by its public support for Ukrainian WTO membership. It was due to becoming a WTO member in 2008 that the EU and Ukraine launched negotiations for an agreement on a deep and comprehensive free trade area (DCFTA) planned to be signed in December 2011³⁸ as part of a future Association Agreement, with the last round of negotiations having taken place in February 2011.

The DCFTA intention is to deepen Ukraine's access to the EU market and to encourage further European investment in Ukraine. Such a move toward closer economic integration is not surprising given that the EU is Ukraine's most important commercial partner, accounting for about one third of its external trade, with EU exports to Ukraine standing at €13.9 billion and EU imports from Ukraine €7.9 billion in 2009³⁹. The EU position has always been that closer economic integration, within the overall context of a political association, could be a significant factor with regard to economic growth in Ukraine. Given that there is a very important economic agreement on the political horizon, the Tymoshenko trial has become crucial for the EU.

3.9 Saturday in Sopot

This observation was supported by a plethora of public statements by leading European states. On September 3d, the EU Foreign Ministers met informally in the Baltic resort city of Sopot and agreed to open talks on the Deep and Comprehensive Free Trade Agreements with not only Ukraine, but also with Georgia and Moldova. Belarus was left out in the cold with the impression being given that Ukraine could well join its northern neighbour in getting the cold shoulder if it continued along the path of semi-authoritarianism.

The Swedish Foreign Minister Carl Bildt was

quite blunt in declaring "If they continue with show trials of that sort, and it's not only Yulia Tymoshenko's case, I think the chances for an agreement being ratified are fairly slim,"⁴⁰. This was supported by both his French and British counterparts with Alain Juppe saying "The majority view [in the EU] is that the agreement can be finalised only if the Tymoshenko case is solved....It means having a free and fair trial and abandoning the unjustified charges against her."⁴¹ William Hague summed up the European mood by saying he thought "there is increasing anxiety around Europe about what is happening in Ukraine....It is very important that the authorities in the Ukraine understand that there is concern among European countries about that will be increasingly strongly voiced"⁴².

3.10 Meaningful Election & Valid Trial

Jose Manuel Pinto Teixeira, the Head of the European Commission to Ukraine openly referred to Tymoshenko and the future of Ukraine's Parliament by hypothesizing "If the most popular opposition politician who lost the presidential campaign by a finger's breadth, or other government opponents, will not be able to take part in the forthcoming elections to the Verkhovna.... this will cast doubt on their outcome"⁴³. This view is also shared by Wilson⁴⁴ as he has reminded observers that without Tymoshenko the elections would make no sense.

The issue of the trial having no legal basis was given support by Hanne Severinsen,⁴⁵ the former PACE Monitoring Committee Rapporteur. She believed that there were no legal grounds to keep Tymoshenko and reminded Ukraine that it must obey the European Convention for the Protection of Human Rights and Fundamental Freedoms that it had ratified as well as respecting the principles which are fundamental to the Council of Europe.

Severinsen's analysis was shared by Petro Andrushko, a professor of criminal law at the Taras Shevchenko National University who wrote in an advisory opinion in response to a question put to him by Tymoshenko's lawyer that "An

analysis of the case as set forth in the indictment gives grounds to conclude that there was no crime in the actions of Tymoshenko.⁴⁶ According to him, the indictment was built mostly on assumptions rather than the evidence.

This accusation of political skulduggery was similarly addressed and supported by the Polish President Bronislaw Komorowski when he announced that “The Ukrainian authorities need to find a solution that removes any doubts that this trial is an act of political revenge against the opposition.”⁴⁷ As head of state he was providing support for his foreign minister, in identifying the trial as a test case for a multi-party democracy based on the rule of law.

3.11 Problem of Ratification

With Poland chairing the presidency of the EU until the end of 2011, Radoslaw Sikorski, the Polish Foreign Minister’s warning in Sopot gained added impetus when he mentioned that “Negotiations with EU structures are one thing, but ratification of the potential agreement by national parliaments and the European Parliament is another - many European parliaments have a very openly critical stance toward the standards of the processes currently under way in Kiev and I hope the authorities in Kiev treat this very seriously.....Despite the ongoing trial against the Ukrainian ex-premier, Yulia Tymoshenko, the talks on the new EU-Ukrainian agreement will continue”⁴⁸.

The possibility of non-ratification that Sikorski raised was fully supported by Catherine Ashton, when she stated the “Ratification processes will of course be taken by parliaments and countries in what they believe is the right way for them to go forward.”⁴⁹ These remarks clearly had the intention of cautioning the Ukrainian authorities that the Tymoshenko trial was seen by them as politically motivated and that if it resulted in the political isolation of Tymoshenko, there could be consequences with regard to their prospective mutual economic relationship.

Such reminders were brushed aside by the Ukrainian foreign ministry spokesman, Oleg

Voloshyn, who responded by welcoming “the willingness of our European partners to finalise negotiations by the end of the year. Ratification is a long-standing process. It would be too early to comment on it now.”⁵⁰ One could view the response firstly in terms of as the trial was still in progress and given the Ukrainian government maintained that the rule of law was being followed, the verdict, irrespective of being for or against the defendant had to be accepted. Secondly, the trial was only one item on the agenda of EU-Ukraine relations and that other future developments could well endear the member states to ratify.

3.12 Red Letter Day

Finally, on September 9th, there was a joint letter signed by Ashton and the U.S. Secretary of State Hillary Clinton which was addressed to President Yanukovich regarding the Tymoshenko trial.⁵¹ Very little information could be ascertained regarding the content of the letter, though news agencies⁵² quoted EU diplomatic sources as having expressed concern over political motivations lying behind the trial which was a departure from democratic standards.

This veil of secrecy was maintained by Yanukovich’s office too as they declined to comment on the letter. Quite naturally, attention was drawn to the timing of the letter and the decision, mounting speculation that the judges’ decision on Monday to postpone the trial did not “look accidental in the wake of the motion.”⁵³

3.13 Looking East towards Tajikistan

On Friday September 2nd, Prime Minister Putin’s spokesman in effect offered a solution by saying that Russia’s gas contracts with Ukraine could be reviewed if Naftogaz were to merge with Gazprom. In fact this offer was not new as it had been proposed by Putin himself in April 2010.⁵⁴ The next day as the EU Foreign Ministers were meeting informally in Sopot and showering the Ukraine with public criticisms, President Yanukovich attended a Summit of the Commonwealth of Independent States in Dushanbe. Both the Ukrainian President and

Prime Minister had maintained publicly that the gas deal made by Tymoshenko was illegal and against the national interest.

During the CIS Summit, the international media reported⁵⁵ that the Russian President had met Yanukovich to exchange points of view having discussed Russian gas supplies to Ukraine and its transit via Ukrainian territory. At the Summit, the Press office of President Yanukovich released the following statement:

The question of merger of Naftogaz Ukraine and Gazprom should not and cannot be considered in the context of negotiations to reduce the price of Russian gas for Ukraine, President Viktor Yanukovich told journalists in Dushanbe.

“These questions are of different planes. We have to bring order in this matter [the negotiations on gas price] first, bring this issue to a level acceptable to both parties. Further movement, either it is integration, or merger, or not, is a separate question. And we will be discussing it separately to decide what is profitable, and what is not,” Viktor Yanukovich said.⁵⁶

The press release made the Ukrainian position quite clear. Putin’s linkage of merger (perhaps acquisition by Gazprom would reflect the outcome more realistically) with lower gas prices was firmly rejected. The future of Naftogaz and the pricing of gas imported from Gazprom were entirely unrelated, separate matters that could not be linked. The two issues should be handled independently of each other. Within the hour came another statement from the Press office that was proof of the tough negotiations that had taken place.

‘According to him, [the President] in the talks with Russia, Ukraine tries to hold back emotions, since we know that they do not benefit the case. “We are in a situation of Ukraine losing money. We believe that we bear excessive costs. We cannot sit and take no action to somehow resolve this issue,” the President of Ukraine said⁵⁷. By this statement the Ukrainian

side were portraying themselves as trying to act logically and rationally, not permitting emotions to rule over them. Furthermore, explicit reference was made to the unsustainable financial costs that Ukraine was incurring.

The primacy of this matter was highlighted ten days later by Azarov who clarified the situation with regard to the previous year’s decision to extend the lease on the Sevastopol naval base for Russia’s Black Sea Fleet in Sevastopol. Speaking quite frankly he admitted that “The treasury was empty, the situation was even worse than in Greece today, cooperation with the IMF was interrupted. Under these conditions we could not allow ourselves to finance increased tariffs imposed on us by the contracts signed by Tymoshenko. Then we addressed the Russian authorities and found a solution”⁵⁸. Apparently the financial situation was so dire in April 2010 that there was no option but to come to an arrangement with the Russians.

The press release further mentioned that “The President said there are two main aspects to reviewing the gas contracts. First of all, the agreement was signed by the business entities of Ukraine and Russia without taking into account the existing agreements between the two countries. “To be exact – in violation of these agreements,” he said. “But if Russia does not agree with that, of course, we will then have to go to the international court. However, I hope we will have enough wisdom to find a common solution without the court. I consider the court as a last resort, when all our opportunities in the negotiations are exhausted,” the President of Ukraine said.⁵⁹ The precise violations that were born in mind were not disclosed. Though the statement did clearly identify the Tymoshenko agreement as breaking earlier ones and declared that Ukraine was prepared to pursue this matter all the way to the highest international legal arbiter, the international court, although that was not its preference.

“The second aspect, according to Viktor Yanukovich, is that Naftogaz Ukraine concluded the

agreement having no authority approved by the Government. Whether Yulia Tymoshenko's actions were in that case legal will be determined by the court, Viktor Yanukovich said. "We will get answer to this question very soon, I hope," he added. Viktor Yanukovich stressed that the negotiations between Ukraine and Russia should continue. "We should solve this problem together; there is no other way. Time will tell, how will we do that," he said.⁶⁰ Here, through the reiteration of the accusation that the Tymoshenko deal was illegal, the impression was given that the outcome of the Tymoshenko trial had already been decided. According to the President, further discussion was the best means to achieve a mutually satisfactory outcome.

3.14 Signature under Duress

Ukrainian ex-Foreign Minister Volodymyr Ohryzko supported the President concerning the questionable legality of the Tymoshenko gas deal through an interesting, but unlikely suggestion. In an interview he stated that "The question is whether the contract was signed under mutual understanding and mutual benefit for both sides. I'm more than sure that Ukraine signed the contracts under pressure. If that's true, then the contract is not effective under international legislation. We need [to listen to] Yulia Tymoshenko's opinion here. She could be the person to claim that it is true. The rest depends on equalizing the situation [the terms of gas contracts] in Ukraine with that in Germany, Poland, and Italy. If we see that the signed terms are obviously worse than those for other partners, then an unbiased judge would consider this as a signal that the situation was not that simple,"⁶¹

Therefore, he believed that Tymoshenko could help Yanukovich in halting the gas contracts through the courts if she admitted that the contracts were signed under duress. From someone who had served as a foreign minister, this was for all intents and purposes, a rather unrealistic proposal.

The press release continued by highlighting 'at the same time, the President stressed that Ukraine will not tolerate pressure in the negotiations. "Our position is principled and any pressure regarding this matter is humiliating for us. We will not tolerate being treated like that... being driven into a corner first, and then dictated the terms. It humiliates not me personally, but the state, and I cannot allow this," Viktor Yanukovich stressed.'⁶² The highly unusual explicit reference to Russia exerting diplomatic pressure on Ukraine was probably meant to signify a call to national unity, as this was not a personal attack on the president per se. Perhaps the idea was to state the case as it actually was, hoping there would be a national reaction giving wholehearted support to the president. It was also demonstrating that whatever the difficulties that were being faced, the position of Ukraine had not changed.

3.15 Russian Stance

Afterwards, President Medvedev's Spokeswoman Natalya Timakova told journalists that "Russia is ready to defend its interests on the agreement in any court and will act in strict compliance with the document's provisions.... The Russian side believes that the Ukrainian partners must meet their contractual obligations in full, including with regard to the prices of supplies,"⁶³. Whilst this let observers understand that Russia was sure of her case and did not fear the international court, it also reminded Ukraine that the price of gas would remain as before.

A warning was raised concerning Ukraine's internal decisions not affecting its international obligations, as should this occur it could lead to "serious consequences" for the Ukrainian economy.⁶⁴ What the repercussions could be were unspecified, but speculation soared as to what they could be⁶⁵.

4) CUSTOMS UNION

4.1 To be or not to be: Customs Union

In December 2010 just after the heads of state had signed a customs union agreement between the Russian Federation, Belarus and Kazakhstan, Prime Minister Putin made known his preference for Ukraine to join by declaring that “If our Ukrainian colleagues see some sort of benefit in joining these processes, if Ukraine was to join these processes in some form or another, then of course it would be a powerful, important boost”⁶⁶.

In March, when President Yanukovich visited Moscow, Premier Putin invited Ukraine to join the forthcoming customs union. The next month, on a visit to Kiev, Putin spoke of the benefits of economic integration that had been formed when the countries were all part of the Soviet Union and called on Ukraine to join the customs union, referring to the stimulating effects it would have for many sectors of the Ukrainian economy. He further stated that “The technological links from the Soviet period are still functioning, and one partner cannot be efficient without another...That is what we must think about and give a second wind to the capabilities formed during the previous decades.”⁶⁷ This fond recollection of the USSR was not shared by Prime Minister Mykola Azarov at the time who was warned that by shunning the customs union, Russia could take protectionist measures to prevent Ukrainian goods from flooding the Russian market.

A month later on 18 May 2011, President Medvedev said at a news conference that European integration was a “normal path [for Ukraine]... But if Ukraine chooses that path, it will be difficult for it to [integrate] with the common economic space [between Russia, Belarus and Kazakhstan] and the Customs Union....One cannot sit on two chairs at the same time,”⁶⁸. This was a reminder by the Russian President that sooner or later Ukraine would have to make its mind up and make a choice.

At the time it was reported that according to Gazprom, were Ukraine to join the Customs Union, its estimated savings would be \$8 billion a year on gas tariffs⁶⁹. Medvedev added that Moscow was ready to consider Ukraine’s proposals related to prices for gas supplies from Russia.

4.2 Parliament has Spoken

One day later, on May 19th the Ukrainian Parliament provided Medvedev with an answer, publicising its choice. It passed political recommendations to the government announcing the completion of association and free trade talks with the EU as short-term goals. Concerning entering the Customs Union, parliament advised the government to develop cooperative links with the organization and the member states of Russia, Belarus and Kazakhstan according to WTO principles. Quite significantly an overwhelming 289 of the total 385 deputies in the session voted in favour which included all the political parties except the Communist Party considered to be the most pro-Russian party in parliament. None of their MP’s voted against the resolution, they simply kept away. This was demonstrative of the fact that there was near unanimity with regard to Ukraine’s preference for the DCFTA over the Customs Union.

Despite this clear signal, one month later in June, at a meeting of the Committee on Economic Cooperation of the Russian-Ukrainian Interstate Commission in Moscow, Putin repeated his proposal for Ukraine to join saying that he was “convinced that Ukraine’s more active involvement in multilateral integration processes, primarily, of course, into the Customs Union and the Common Economic Space, would open up new opportunities for economic actors - for the businesses of our countries,”⁷⁰. He proudly confirmed that the trade and economic contacts between the two countries were steadily growing as bilateral trade had grown by 62%, to \$37 billion in 2010. He finished by stating: “I want to say that we are certainly ready for Ukraine to get involved into these processes more actively,”⁷¹

The next day Putin acknowledged that Ukraine would be welcome by announcing “There is no politics here. Ukraine should decide for itself whether it is advantageous to it or not,”⁷² He then drew a less than appetising hypothetical scenario whereby the EU could restrict certain sensitive Ukrainian products from market entry, whilst Ukraine would have to open its domestic market to European goods. In such a situation he declared that Russia would “have to protect the Customs Union’s outer borders from products that have no other place to go...We will have to protect our national producers”⁷³. This was another way of reminding Ukraine that closer economic relations with the EU could only be achieved by distancing itself from the customs union. It was clear to see that Moscow viewed Kiev’s dilemma as a zero-sum game with regard to the issue of the customs union: either they moved closer with the EU and alienated the customs union, or joined their eastern partners and subsequently distanced themselves from the west.

4.3 Integration ad nauseam

Two months later in August, the hope of Ukraine joining the customs union was again on the agenda. President Medvedev declared in Ulan-Ude that “The Customs Union is the highest form of integration, and we are interested in involving Ukraine, a large European country, a fraternal and friendly state, in the process....But we cannot agree with Ukraine’s joining under some kind of ‘three plus one’, or ‘we’ll sign 20 documents and would not sign 30 documents’ schemes....No! They should either join bag and baggage, sign in stages, become full members of the Customs Union, benefit from all advantages and incur all obligations or - but that is a different way, it’ll create a corresponding atmosphere.”⁷⁴ Medvedev considered the possibility of Ukraine rejecting the Customs Union and warned in such a situation Russia would “use other customs regimes in relation to Ukraine.... And our Ukrainian partners understand it,”⁷⁵ Once again Ukraine was reminded in no uncertain terms that there would be costs to staying out of the customs union, and inferring from

the tone of the words, those burdens could be quite heavy to bear.

Medvedev confessed that Russian-Ukrainian relations had indeed been discussed which included integration prospects, during a meeting with Yanukovych earlier in the month. It was clear to see that that nothing had been resolved so far by his admittance that “The conclusion is that our partners decided to take a pause to think about the current situation”⁷⁶.

Ukrainian Premier Azarov compared the economic relationship between the EU and the Belarusian-Kazakh-Russian Customs Union, concluding that they were very different: “Europe is also offering for us to join the free trade area. But it does not set such conditions. Unlike the abovementioned countries [the members of the Customs Union], Ukraine is a member of the WTO, which imposes certain obligations on it. How can Russia demand that we continue fulfilling the gas contracts, which cause us damage, and at the same time oblige us to join the Customs Union and break dozens of other contracts with WTO for this?”⁷⁷ This illustrated the frustration Azarov had been experiencing for many months, constantly having the choice of eastern customs union or western free trade put before him by the Russian leadership.

Azarov’s predicament has put a premium on maintaining a delicate balance between Russia and the EU and given his ethnic Russian background, this has led to his ulterior motives being questioned by his domestic political opponents. At times, Azarov has come across as a Janus-like figure, with two heads facing opposite directions. This is very clear to see from his declaration that “Today we confirm our commitment to partnership with Russia, with which we are connected by common history and against which we never had hostile policy. But I stress one more time that our way towards European integrations is our strategic choice. We share European democratic values. They guarantee the sustainable development of Ukraine,”⁷⁸ As Azarov is undoubtedly aware,

the two faces of Janus, one looked eastward and the other westward. Symbolically they looked simultaneously into the future and the past. Azarov and the Ukrainian parliament through their choices have deemed the EU to be the future and the Russian promoted Customs Union to be the past.

5) GAS



Figure 5.1 Russian Oil and Gas Pipelines to Europe

Source: Woehrel.

The Nord Stream pipeline (figure 5.1) which starts from the Russian town of Vyborg and ends in Greifswald in Germany spanning Finland, Sweden and Denmark began operating on September 6th. Putin opened the pipeline in Russia's huge Arctic gas fields confirming the first gas would be pumped from the Vybar station but Europeans would still have to wait until the end of October or November to start using it.⁷⁹ The Nord Stream pipeline is clearly seen as an alternative in the delivery of natural gas to Europe by-passing Ukraine. Analysts have speculated that should Russia cut off Ukrainian gas as it did in 2006, 2008 and 2009 it would now have another route to export gas to the EU. With the Nord Stream in effect circumventing Ukraine, this is an issue that does raise concern in Kiev as Ukraine faces losing a considerable

amount of the \$3-4 billion it receives each year in transit revenue from Russia.⁸⁰

Given that this development is of vital importance and not unexpected it was not a surprise to learn that Ukrainian Naftogaz had already stored enough gas for the winter season.⁸¹ The implication of this was that if there was a repetition of another winter gas cut-off, the Ukrainian's would not freeze, but the rest of Europe may not be so lucky.

The very same day Yanukovych reiterated what he had made public in Dushanbe that Ukraine had "already drawn up the materials for going to court. We are absolutely sure that international agreements have been violated...Court, yes, it's an extreme measure but nothing has changed for one-and-a-half years."⁸² Yanukovych further emphasized that Kiev was overpaying \$5-6 billion annually. This was not the first time these figures were mentioned as Azarov had also stated that Ukraine was overpaying by up to \$6 billion a year for the gas.⁸³

The president continued demonstrating his frustration through his view that "The price is not fair for Ukraine. The conditions have been set out as if for an enemy...We are not poor relations. We are an independent state."⁸⁴ Aware that Gazprom had already made it known that Ukraine's obligation would continue until 2019 to fulfil the 10-year contract signed in 2009, he calculated that his country was paying far more for Russian gas than even Germany. If this situation of overpaying would continue for the next decade, then Ukraine would lose \$60 billion or 20 percent of the annual budget.⁸⁵ In fact it was the monopoly of supply that Ukraine had over Russia which was the only reason there were hopes for negotiation concerning the price they paid for imported gas. Though as mentioned above, the Nord Stream has ended the Ukrainian monopoly, which ought to entice the Ukrainian authorities to focus on reducing its notoriously wasteful use of energy resources as well as investing much more in developing its domestic gas fields.⁸⁶

Despite Yanukovich's fiery statements concerning the price of gas that is charged, it should be borne in mind that Ukraine does receive Russian gas at lower prices than Hungary, Poland, Romania and Turkey, although the transit fees are higher than those in Germany. According to Volodymyr Olemchenko, however, "The question is not really about the price of gas, but politics. Russia is simply using the gas contract to achieve its political ends - bring Ukraine into its zone of influence, drag us into the Customs Union,"⁸⁷

5.1 Reduced Demand

On September 7th the Ukrainian Energy and Coal Minister Yuri Boiko made clear that Ukraine was planning to drastically cut its natural gas imports over four years. This would be achieved precisely through what analysts had been advocating for so long: increasing its own gas production from 20 billion cubic meters (bcm) to 25 bcm, replacing gas with coal, and increasing energy efficiency. He said at a press conference in Kiev that "these measures will give us the ability to [reduce] purchases of imported gas from the 40 bcm that we buy today, to 12.5 bcm by 2015,"⁸⁸ Whereas for 2011, Ukraine was predicted to import for its own use from Russia approximately 40 billion cubic metres (bcm) of gas at a cost of between \$264 per 1,000 cubic metres in the first quarter and \$400 per 1,000 cubic metres in the fourth quarter, the week before Ukraine had stated that Russian gas purchases would be reduced to 27 billion cubic meters from the 40 bcm.⁸⁹ The Minister's call for reducing the amount of gas was responded to by the CEO of Gazprom Alexei Miller, who reminded Ukraine that it must buy 33 bcm under the 'take or pay' terms of the gas contract.⁹⁰

Whilst it is known that Ukraine's territory offers transit passage for 80 percent of Russian gas supplies to Europe, it should not be forgotten that its own economy, especially vital export sectors such as metals and chemicals are also heavily dependent on Russian gas imports. Though diversification was firmly on the Minister's mind, as he added that due to the construction of a liquefied natural gas terminal and

agreements on supplies of 5 bcm of gas from Azerbaijan through it, Ukraine would in the future import both Russian and Azerbaijani gas. Throughout his previous campaigns and as Prime Minister to Kuchma, Yanukovich and his entourage in government had been considered to be in the "pro-Russian" camp, especially by their political opponents. Azarov also shouldered this assertion but hit back at such criticism when he made clear that "The president and I are not freshmen in politics, and we will always protect Ukraine's interests. The worsening of relations you mentioned could be connected with a difficult political situation in the state, with the fact that the European Union criticizes us, and this makes Russian leaders think that we are weak and they can make use of this by posing ultimatums. Such approaches are impossible in international relations"⁹¹. Azarov had wanted to make clear that they were representing the national interest of Ukraine; not solely the eastern part of the country where they have traditionally gained their electoral support from.

5.2 Gazprom

Analysts assert that for Gazprom - the owner of the world's largest gas transmission system capable of uninterrupted and long-distance gas delivery to Russian consumers and abroad⁹² - its most profitable business is the delivery of Ukrainian gas. Though it must not be forgotten that Ukraine still pays less than the Western European customers of Gazprom.

Gazprom expects to export 155 to 158 bcm to Europe in 2011⁹³. The first phase of the Nord Stream pipeline has a capacity of 27.5 bcm, with the second phase that comes online next year to be increased to 55 bcm. This in effect means that by next winter Russia has the option of avoiding to export a significant part of its obligations to Europe via Ukraine. Russian Deputy Prime Minister Igor Sechin provided information concerning a third phase whereby, Nord Stream could carry three quarters of the gas currently delivered via Ukraine as soon as 2015.

6) LAW

6.1 1996 Constitution

The major international criticism levelled at the Ukrainian authorities with regard to the Tymoshenko trial is of political intervention into the judiciary. The international community has vehemently scolded Ukraine for reneging on the principle of the rule of law, accusing Kiev of trying to settle old scores. Unfortunately, this is not an unusual circumstance in Ukraine; although it ought to be.

Box 6.1 Key features of presidential and parliamentary regimes

Presidential	Parliamentary
Chief executive directly elected	Chief executive chosen by parliament
Fixed term of office	Term of office not fixed
President selects ministers and directs their work	

Sources: Dahl, D'Anieri.

Law and politics have both been at the mercy of a terrible evil in Ukraine ever since its incorporation into the Soviet Union and during its independence, namely corruption. Rather than being innocent or right, having the right contacts or the right amount of cash mattered more in courts and in the administration. The political regime that emerged after the collapse of the USSR did not help in righting this wrong. A presidential system of government was instigated which was prone to authoritarian rule, making accountability very difficult due to the top-down nature of executive politics which permitted corruption to reach the highest echelons of power. Ukraine in this respect followed the same path as all the other breakaway Soviet Republics in rejecting a parliamentary regime, thus, opting for a presidential system.

Box 6.2 Advantages of Presidential Systems

Visible, responsible leader
Accountable
Built in checks and balances
Arbiter, forging consensus
Introduce and sustain reform

Source: D'Anieri.

As can be seen from box 6.2 a presidential system does have the advantage of personifying power to the electorate and with the vested power in the right hands; this can be a force for speedy reform. box 6.11 highlights the important differences between the choices post-Soviet states faced; Ukraine in this regard opted for stability and a system which shared similarities with the old regime rather than a new and potentially more democratic parliamentary system.

The legitimacy for this new presidential regime, however, in terms of a supreme law was not immediate as from 1991 - when a presidential election took place (box 6.3) - until 1996 both international and Ukrainian legal experts, including The European Commission for Democracy through Law (Venice Commission) discussed, debated and finally drew up the first independent constitution of Ukraine which was adopted and ratified in June 1996. Nor was there any democratic legitimacy, despite the victory of Kravchuk in the 1991 presidential election, which was not regarded as being free or fair.

Box 6.3 1991 Presidential Election

Candidate	% of Votes
Leonid Kravchuk	61.6
Vyacheslav Chornovil	23.3
Levko Lukyanenko	4.5
Volodymyr Grynyov	4.2
Ihor Yukhnovskiy	1.7

Sources: Åslund, D'Anieri.

The constitution legitimized the presidential system of governance, providing for strong

presidential powers and unhindered legislative power to the Verkhovna Rada, receiving the approval of the Venice Commission. However, in its March 1997 Opinion on the Constitution, several quite pertinent criticisms were highlighted by the Venice Commission. These included, but were not limited to the following observations.

i) The protection of human rights:

‘Unfortunately, together with the general clause on the possible restrictions of human rights... containing the principle of proportionality has also been deleted. Since many of the restrictions permitted by the individual articles of the Constitution...are quite large, it will be essential that the Ukrainian Constitutional Court interprets the various restrictions of human rights as being subject to a general principle of proportionality.’⁹⁴

‘It is the task of the courts to guarantee the observance of human rights. It is therefore questionable to call the President guarantor of the observance of human and citizens’ rights and freedoms.’⁹⁵

ii) The responsibility of the Cabinet to Parliament:

‘The requirement that only one third of the constitutional composition of the Verkhovna Rada may raise the issue of responsibility of the Cabinet of Ministers seems very high. The provision that such motions may not be submitted within one year of the approval of the programme of activity of the Cabinet of Ministers does not seem to be well thought through. The responsibility of the government may arise for issues which are of the highest importance although they did not appear in the programme of activity. Such debates also do not have as their only aim the removal of the government but they give an occasion for public debate of highly important issues which, for varying reasons, may not be dealt with adequately by the executive.’⁹⁶

iii) The role of President and Parliament concerning legislation:

‘This Article [92] contains a list of areas to be

determined exclusively by laws. While it is positive that these areas are reserved to a parliamentary statute, there is no general provision clarifying the relationship between statutes adopted by Parliament, the power of the President...to issue decrees and directives....and the power of the Cabinet of Ministers....to issue resolutions and orders that are mandatory for execution.’⁹⁷

iv) The right to initiate laws:

‘It seems questionable whether the right of legislative initiative should be given both to the President and the Cabinet of Ministers. The Head of State exercises very specific functions and should not be involved too closely in current political activities by submitting draft laws to the Verkhovna. It seems also questionable whether the right of legislative initiative should be granted to the National Bank which should remain outside the political field.’⁹⁸

v) The impeachment of the President:

‘It is positive that the procedure of impeachment of the President is not only in the hands of Parliament but requires opinions by the Constitutional and Supreme Court.’⁹⁹

vi) The procedure of appointing the Prime Minister:

‘The Prime Minister is appointed by the President with the consent of more than one half of the constitutional composition of the Verkhovna. The Constitution contains no provisions on what happens if the Verkhovna does not accept the candidate proposed by the President but the President insists. It seems appropriate that the composition of the government does not have to be approved by Parliament.’¹⁰⁰

vii) Constitutional amendments:

‘It seems excessive to require for the submission of a draft law introducing amendments to certain chapters of the Constitution the participation of two-thirds of the deputies. This is the majority required for the adoption of an amendment.’¹⁰¹

viii) Implementation:

‘several provisions of the Constitution remain unsatisfactory from a legal point of view. These in-

adequacies have political reasons and can be explained by the fact that it was necessary to reach a political compromise to have the Constitution adopted. When implementing these provisions of the Constitution, Ukraine should take into account the opinion of the Commission as well as the relevant Council of Europe standards.¹⁰²

With this opinion, the Venice Commission had warned Ukraine that within the constitution there were several areas which fell below accepted European norms and standards. Its criticisms were highlighted within an overall atmosphere of optimism, trusting the Ukrainian authorities in not abusing the system created by the constitution. All in all, they hoped and desired that the authorities would act in good faith and improve the constitution.

Box 6.4 1994 Presidential Election

Candidate	First round	Second round
	% of votes	% of votes
Leonid Kravchuk	37.7	45.1
Leonid Kuchma	31.3	52.2
Oleksandr Moroz	14.0	
Volodymyr Lanovyi	9.4	
Valeri Babych	2.4	
Ivan Plusch	1.2	
Petro Talanchuk	0.5	
Against all	3.4	2.8

Sources: Åslund, D’Anieri.

Box 6.5 1999 Presidential Election

Candidate	First round % of votes	Second round % of votes
	Leonid Kuchma	36.5
Petro Symonenko	22.2	37.8
Oleksandr Moroz	11.3	

Natalia Vitrenko	11.0	
Yevhen Marchuk	8.1	
Yuri Kostenko	2.2	
Gennady Udovenko	1.2	
Others, against all, invalid	7.5	6.0

Sources: Åslund, D’Anieri.

Under President Kuchma - who beat the incumbent in 1994 and was re-elected four years later (box 6.4 and box 6.5) - however, the 1996 Constitution and the political regime that it envisaged, one of a democratic presidential republic, was effectively transformed into one-man-rule. Holding steadfast to a desire to protect his legacy, Kuchma prepared to hand over the presidency to his chosen successor, Yanukovych – his handpicked prime minister.

7) POLITICS

The Revolution is Orange

The only problem on the horizon was the presidential election, as the electorate might not opt for his candidate on October 31st 2004. As the campaign began Yanukovych had substantial backing from the media, nearly all controlled by oligarchs loyal to the Kuchma regime. As Yushchenko began to catch the mood of the populace, there was no cause to worry as what mattered in such an election was not the electorate who voted but the officials who counted the votes.

According to the official results, Yushchenko had just won the first round of the election with nearly 40% of the vote. This was practically the same as Yanukovych, though it was strongly suspected that he had far less support, especially in central and western Ukraine, but the ‘official’ results insisted that the two candidates were running neck and neck. The second round was held on November 21st and as had been planned all along, it was announced that Yushchenko had lost and Yanukovych declared the winner.

Discontent with the regime had been growing over the years and especially during the election period (box 7.1). Therefore, after the second round results were announced people began to gather in - Maidan Nezalezhnosti - the central square in Kiev protesting this travesty of justice. As this spontaneous protest grew in the capital city and spread to the rest of the country, inter-

national condemnations of the election results were also publicised. All the protests and demonstrations came to be identified as the Orange Revolution¹⁰³ both nationally and internationally. Against such domestic and international protests Kuchma's and Yanukovych's joint position become untenable as Yushchenko appealed to the Constitutional Court to annul the results.

Box 7.1 Orange Revolution Explanatory Factors

Short-Term Causes	Longer-Term Causes
Unpopular leader and unpopular regime	Semi-authoritarian regime
Organized opposition	Emergence and perseverance of civil society
Creating perception of a falsified vote	Middle class, economic reform and growth
Modicum of independent media	Demonstration effects
Popular mobilization to protect the vote	Pull of western norms and institutions
Division among ancien regime	
Institutions, mediations leading to peaceful resolution	

Source: McFaul

7.1 Political Bargaining: Mid-election Constitutional Amendments

With the encouragement and involvement of international mediators, of which the most active were the Polish and Lithuanian presidents, the three key actors met to hammer out a compromise. Knowing full well that Yushchenko had won the second round and would win a re-run, Kuchma and Yanukovych preferred the watering down of presidential powers. Given that Yushchenko would fulfil that role, they wanted

to ensure that the post did not possess much political power. The added benefit of such an arrangement, whereby parliament would have a much raised profile (box 7.1a) was in providing a safe haven for Kuchma's backers.¹⁰⁴ Writing in 2008 Korduban asserted "The reform has been viewed in his camp [Yushchenko] as a time bomb planted by the corrupt old elite, who were defeated in 2004, in order to prevent Yushchenko from reforming."¹⁰⁵

Box 7.1a Key Parliamentary features

Executive - chosen from the legislature
Parliament - highest legislative authority responsibility for checking the work of government and examining, debating and approving new laws
Forming a government - political party that wins the most seats usually forms the new government, led by their party leader, who becomes Prime Minister.
Head of Government - appoints ministers, including the Cabinet
Scrutiny of the government - parliament checks the work of the government on behalf of citizens through investigative select committees and by asking government ministers questions.
Confidence motion – through a vote of confidence the legislature can bring down the executive

Source: Åslund, Dahl, D'Anieri, Kubicek.

During the tri-partite meetings, Tymoshenko was quite vocal that the opposition would continue to fight over this vital issue. She told the Russian daily newspaper Nezavisimaya Gazeta that “Bill 4180 (to reduce presidential powers) in its current form, allows parliament to take over practically all presidential powers. If we approve it in full, then presidential polls will lose their point. There will be no difference who is president, because any president after such reform will be a ceremonial figure”¹⁰⁶

Finally, a change to the constitution was negotiated whereby Ukraine would cease to be a

presidential republic but become almost overnight an emerging parliamentary democracy. Ukraine was far from being a democracy as it had failed to meet the common requirements of free and fair elections, an independent legislature and judiciary (box 7.1b) to name but three. This new manner of governing was to provide greater powers for the prime minister, who elected by the Verkhovna Rada would be able to appoint his/her cabinet and be in charge of day-to-day executive decision-making, lessening the powers of the president.

Box 7.1b Common Features of Democracies

Separation of Powers:
Legislative Power - parliament
Executive Power - government and administration
Judicative Power - independent courts of justice
Constitution
Laws; debated and passed by parliament
Decrees: based on laws and regulating the details of how the laws shall be applied in practice
Elections
Political parties
Referendums

Sources: Dahl, D’Anieri.

The main changes instigated by the constitutional amendments concerned the following:

- Parliament would be elected for five years rather than four,
- MP’s could not switch their party allegiance otherwise they could lose their mandate
- MP’s could not take up state posts,
- Cabinet would be accountable to Parliament now as well as to the President.
- Parliament, rather than the President would dismiss the government
- Parliament would elect the Prime Minister and approve of the Cabinet¹⁰⁷
- A new procedure for forming a government was introduced. Within one month after Parliament convening a party or a coalition would have to command a majority. This

- party/coalition would submit to the President a number of candidates for the post of Prime Minister. The President in turn would have to choose one candidate within fifteen days and submit this to Parliament. Parliament would then have to vote on appointing the Prime Minister.¹⁰⁸
- Parliament would have the right to appoint, subject to the President’s recommendation, the Foreign and Defence Ministers, Prosecutor General and the Head of the Security Council of Ukraine.
- The president could only suspend, and not cancel as before, acts. This could only be carried out on the grounds of unconstitutionality which required a ruling by the Constitutional Court.

- The President could not dismiss Parliament during the last six months of either his or Parliament's term.
- The Constitutional Court would be removed from the mandatory legal procedure for constitutional amendments.

The final aspect of the political compromise reached between Yanukovich and Yushchenko concerned three vital changes to take place before the re-run of the second round. Firstly, they agreed to the composition of the election commissions being divided equally between their representatives. Secondly, absentee ballots would be limited to 0.5% of the total number of voters registered at the polling station. Thirdly, home voting would be limited to voters considered disabled. Before the re-run took place however, Yanukovich reneged on the final part

of the bargain by successfully challenging the "home voting" provision in the Constitutional Court, with the provision being annulled a day before the re-run¹⁰⁹.

Yushchenko agreed to all these changes, which effectively would limit his political influence if elected as president. Given the mass outpouring of support for him in the presidential elections he forecast that his party would come first in the parliamentary elections which were to be held less than a year and a half away. After that victory, he would have a freer hand in remaking the constitution according to his blueprint. It could also be asserted that Yushchenko was given a Hobson's choice: the only way to ensure a re-run of the election was to opt for these changes.

7.2 Acceptance of the 2004 Amendments

Box 7.2 2004 Presidential Election

Candidate	First round	Second round	Re-run second round %
	% of votes	% of votes	of votes
Viktor Yushchenko	39.9	46.6	52.0
Viktor Yanukovich	39.3	49.5	44.2
Oleksandr Moroz	5.8		
Petro Symonenko	5.0		
Natalia Vitrenko	1.5		
Anatoli Kinakh	0.9		
Others, against all	4.9	2.3	2.3

Sources: Åslund, D'Anieri.

On December 3d the Constitutional Court ruled the voting results published did not genuinely reflect the results gathered in the various commissions by stating that the "the Central Electoral Commission did not analyze in plenary session the protocols of the territorial electoral commissions summarizing the results of the vote [...], did not verify the authenticity of said protocols, and did not verify whether the other documents mentioned in article 83, part 6, of the Law "On the election of the President of Ukraine," were deposited with the Commission in the way prescribed by law, in their entirety."¹¹⁰

Furthermore, the Court ruled that protests had been ignored and court applications not reviewed by declaring: "At the time when the Central Electoral Commission determined the result of the run-off vote [...], the Commission had not reviewed the declarations and the complaints against violations, by territorial electoral commissions, of the procedure for determining the vote results [...], and against the decisions taken by the territorial commissions taken in response to complaints, and the time limit for reviewing said complaints had not yet expired. At the time when the Central Electoral Commission determined the result of the run-off

vote [...], the courts had not completed the review of timely submitted complaints against decisions or absence of decisions of territorial electoral commissions, concerning the determination of vote results, and the time limit for reviewing said complaints had not expired.”¹¹¹

Therefore, the Court concluded that “the possibility of determining the true will of the voters in a credible way is excluded”¹¹² and given the fact that the second round results were fraudulent, a new timetable was set for a re-run of the second round, to take place on December 26th (box 7.2). Five days after the Constitutional Court ruling, on December 8th the constitutional compromise was quickly rushed through the Verkhovna Rada with 402 MP’s voting for it. Parliament declared that these amendments would come into force on 1 January 2006 and with Kuchma’s signature the changes entered into force. Whereas the 1996 Constitution took more than five years to draw up, these changes were made in less than a month. The blatantly obvious major differences being that these changes were the result of a political bargain rather than a well-thought and long drawn out legal procedure.

7.3 Kuchma: Hedging Bets?

Questions arise as to why Kuchma immediately signed the proposal. He had agreed to it in the tri-partite meeting. That was true. His candidate had clearly lost the election and this seemed to be the best of a bad deal. These were also true. Though there was something that was more than that, perhaps not in the outcome, but concerning the procedure. The 1996 constitution that was being amended required that such bills had to be passed by at least 300 votes twice at consecutive parliamentary sessions as well as being approved by the Constitutional Court prior to their adoption. These compulsory measures had certainly not been followed.

Kuchma could have made this issue a powerful defence to oppose the changes given that he had sufficient support in both the Parliament and the Constitutional Court to block the amend-

ments. Though as mentioned earlier the political environment was not conducive as Yanukovich had lost and everyone was aware of this fact. Therefore, Kuchma chose to go along with the constitutional changes - which were welcomed by the international community - whilst being fully aware of the irregularities involved in the process which could in time be invoked to repeal the changes he was about to sign into law. At worst, these changes would mean an interregnum before returning to the old order he had managed to construct.

To nobody’s surprise Yushchenko won the re-run with 52%, though Yanukovich tried to employ the same tactic as his opponent by appealing to the Constitutional Court to annul the results. The Court upheld Yushchenko’s victory and Ukraine got its third president and looked forward to its first powerful prime minister.

8) GOVERNMENT

8.1) Orange at the Helm

Box 8.1 2002 Parliamentary Election Results

Party	% of Votes	Seats
Our Ukraine	25.1	112
Communist Party	21.3	66
United Ukraine	12.6	102
Tymoshenko Bloc	7.7	21
Socialist Party	7.3	24
Social Democratic Party of Ukraine	6.7	23
Independents; parties gaining less than 4%	19.3	95

Sources: Åslund, D’Anieri.

Just as it was no surprise to see Yushchenko as president so it was no surprise that he chose Tymoshenko to be the prime minister of a coalition of ‘orange’ parties on 24 January 2005, despite the fact that their respective parties had struggled in the Verkhovna Rada to check the authoritarian measures of Kuchma since the fraudulent 2002 election (box 8.1). She was very much identified as the fiery speaker inviting and inciting the protestors to defend their rights in

the midst of a bitterly cold winter, talking to the police to not harm and turn their backs on, but join their fellow countrymen in the snow. Ukrainians had become more familiar with Tymoshenko, who was known beyond Kiev through her television appearances and tough stance against the authoritarian state, as witnessed in her 2001 trial.

The honeymoon period between the two recognised co-leaders of the Orange Revolution did not, however, last as long as many had hoped. Their respective political parties, forming the government began to squabble and ideological differences emerged between the president, perhaps due to his central banking background preferring more market-based approaches, defence of privatization and further economic liberalization and the prime minister, reluctant to both turn a blind eye to dubious previous privatizations and to rein in welfare policies to aid the pensioners and the poor.

Tymoshenko's re-privatization policy attracted much attention. She repeated the popular Orange Revolution slogan of what had been illegally given to private hands would be returned to the state, 3,000 enterprises were said to return to the state. Whilst Tymoshenko never declared such a figure, she permitted interpretations to linger as to how many faced this prospect. This air of uncertainty greatly affected foreign investors and her political enemies, coupled with their business elite supporters made the most of this situation, to the detriment of the nation. Tymoshenko was an interventionist by nature as prime minister and did intervene in the gas, sugar and meat sectors; all in an attempt to put a stop to out of control spiralling prices. Such policy approaches also did not endear her to investors who became concerned what the interventionist streak would next target.

Therefore, the economic policies of the coalition did not help the economy at all, as the legacy of high economic growth - 12% in 2004 bequeathed by Kuchma - fell to 3% in 2005. The fears over investigations over previous privati-

sations led to a crisis in business confidence and the rising economic growth figures had in fact fallen to -1.6% by August.¹¹³ President Yushchenko dismissed Tymoshenko on September 8th as she was made the scapegoat for the significant slowdown in the Ukrainian economy.

Both Yushchenko and Tymoshenko had campaigned for further constitutional reform but when Tymoshenko as Prime Minister suggested a referendum to reform the constitution this was opposed by President Yushchenko at the time. Whilst both wanted to return to the 1996 Constitution, they were unable to. The reasons for this were threefold. Firstly, their personal rivalries prevented any significant cooperation. Secondly, they did not have sufficient support in the Verkhovna Rada to change the constitution. Thirdly, they did not have the support of ten judges in the Constitutional Court whom could declare which laws were unconstitutional.

When the nine-year terms of the constitutional court judges ended in 2005, Yanukovich successfully blocked any new appointments until he was to become prime minister in 2006. The defeated presidential candidate was quite happy to rule under the 2004 changes as he had the reins of prime ministerial power and he banned the Constitutional Court from reviewing the constitutionality of the 2004 changes. Yanukovich also gave support to this line of thought as he was the Prime Minister and Yushchenko occupied the post of president.

8.2 2006 Elections

Box 8.2 2006 Parliamentary Election Results

Party	% of Votes	Seats
Party of Regions	32.1	186
Bloc of Yulia Tymoshenko	22.3	129
Our Ukraine	14.0	81
Socialist Party	5.7	33
Communist Party	3.7	21
Bloc of Natalia Vitrenko	2.9	0
Bloc of Vladimir Lytvyn	2.4	0
Other parties	16.9	0

Sources: Åslund, D'Anieri.

Following Tymoshenko, with the brief tenure of Yahanurov as Prime Minister who steered the country to the Parliamentary elections of March 2006, the results as seen in box 8.2 showed that another attempt at an 'Orange' coalition would be possible as the Verkhovna Rada arithmetic permitted such an option. Yanukovych's Party of Regions had topped the poll with 186 MP's having received just under a third of the vote, the Bloc of Tymoshenko had polled 10% less, with only 22% of the vote and 129 MP's. The bloc of Our Ukraine trailed in third place with 81 MP's and just 14% of the national vote, whilst the Socialist and Communist Parties were able to cross the 3% threshold and received 33 and 21 MP's respectively.

All the indicators signalled that another Orange coalition was being agreed to as after three long months of negotiation a tri-partite coalition agreement between the Bloc of Tymoshenko, bloc of Our Ukraine and the Socialist Party was signed on June 22nd concurring once more that Tymoshenko would become Prime Minister. Whilst there was no more discussion about this fact, Our Ukraine did not agree with another equally important appointment. They refused to nominate Oleksandr Moroz, leader of the Socialist Party, to become Parliamentary speaker, which led to a crisis within the coalition.

In the meantime, Yanukovych's Party of Regions along with the Communist Party cooperated in creating procedural obstacles for parliament to meet. By securing the Socialist Party in switching their allegiance from the Orange coalition to his own, he was able to muster enough votes in the Verkhovna Rada for Moroz, to be elected Speaker on July 6th. It seemed obvious and quite rational that Yanukovych would become Prime Minister very soon.

8.3 National Unity Universal

Before this logical conclusion of the appointment of Yanukovych as Prime Minister, however, Yushchenko aimed to get widespread support for what he saw as the major policies the new government needed to address. Termed

the 'National Unity Universal'¹¹⁴ the aims set forth included the continuation of Ukraine's European integration policy with EU membership as the ultimate aim, developing a working partnership with NATO, with a view to membership which would be decided through a referendum, maintaining the Ukrainian language as the sole official language whilst ensuring citizens could use Russian without obstruction. This declaration was first signed on August 3d by Yushchenko himself followed by, Yanukovych, Moroz¹¹⁵, Yekhanurov¹¹⁶, Bezsmertniy¹¹⁷ and Tsushko¹¹⁸. As for Tymoshenko, she refused to sign the document, once again highlighting the differences between herself and Yushchenko.

After all these developments, Yushchenko had to make an important choice: either calling for fresh elections or appointing as his Prime Minister his defeated opponent in the presidential election of only a year and a half earlier. He chose the latter and Yanukovych duly became Premier on August 6th with the support of Our Ukraine as they had also signed up for Yushchenko's National Unity Universal. Our Ukraine supported and entered this coalition, taking over the ministerial portfolios for health, family & sports, culture and justice. This left the bloc of Tymoshenko as the only party in opposition, though it did not remain alone for long as in October, Our Ukraine pulled out of the coalition and opted to enter the ranks of the opposition alongside Tymoshenko.

8.4 Dismissal of Parliament and Justice by Telephone

Ukraine thus faced 'co-habitation' for the first time in its short post-soviet independent life. Yanukovych's tenure as Prime Minister was riddled with interpreting weak points in the constitution for his own benefit and accusing Yushchenko of violating the constitution. The tension was being ratcheted up by the prime minister, seeing just how far the president could be pushed. Such claims and counterclaims escalated into a political crisis less than a year into his premiership and led to Yushchenko calling for an early parliamentary election by his decree of April 2d dismissing the Verkhovna Rada.

The legal and political developments of this period captured the attention of the Parliamentary Assembly of the Council of Europe which declared its concern “by the political events in Ukraine which have evolved in recent months and culminated in President Victor Yushchenko’s decree of 2 April 2007 announcing the dissolution of the Verkhovna (Parliament of Ukraine). The continuing political instability is the result of the systematic failure by the successive Ukrainian governments to establish coherent policies backed by substantial legal, administrative and economic reforms. The political reforms that would set “the rules of the game” and enable law-based institutions to guarantee democratic rights and freedoms and promote political competition have not been completed to date.”¹¹⁹

It correctly identified the constitution as a potential political football and warned that “the current crisis in Ukraine is also the result of the hasty and incomplete constitutional and political reform of 2004, under which a number of changes were made to the Constitution of Ukraine without taking into account the reservations of the European Commission for Democracy through Law (Venice Commission) and without holding a comprehensive public debate in the country. The Assembly regrets that the strong criticism expressed in its Resolution 1466 (2005) on the honouring of obligations and commitments by Ukraine and its repeated calls on the Ukrainian authorities to address these issues as a matter of urgency, in order to secure the legitimacy of the constitutional changes of 2004 and their compliance with European standards, have all gone unheeded”¹²⁰

The Assembly reminded Ukraine of the vital importance of the Constitutional Court and that “Any form of pressure on the judges is intolerable and should be investigated and criminally prosecuted. On the other hand, it is regrettable that in the eight months of its new full composition, the Constitutional Court has failed to produce judgments, thus failing to fulfil its constitutional role and to contribute to resolving the

crisis in its earlier stages, which undermines the credibility of the court. There is an urgent need for all pending judgments, and in particular the judgment concerning the constitutionality of the Presidential Decree of 2 April 2007, to be delivered. If delivered, the latter should be accepted as binding by all sides.”¹²¹ Therefore, the Assembly expressed its disappointment that the legal institutions in Ukraine were highly ineffective and their judgements subject to criminal elements exerting pressure on them.

This terrible situation was addressed more directly when the Assembly drew attention to “Several local courts have made decisions to suspend the Presidential Decree only to then withdraw them, allegedly under pressure from the presidential secretariat.”¹²² A long shadow was cast on how legal decisions were taken in Ukraine by the admittance of “a worrying tendency of legal nihilism that should not be tolerated. It is as clear as day that in a state governed by the rule of law judicial mistakes should be corrected through appeal procedures and not through threats or disciplinary sanctions.”¹²³

These lengthy critiques demonstrate that as far back as four years ago the Council of Europe had extremely serious reservations concerning how the legal process was working in Ukraine, especially the manner in which the Constitutional Court was composed and how it arrived at judgements. Given the history of Ukraine’s judicial system prior to 1991, the legacy of Soviet-style “telephonic justice” continued until and after the Orange Revolution. The transformation into a system based on the Rule of Law, whilst much discussed and debated by Yushchenko and Tymoshenko was never fully and truly realized.

Such legal criticisms were lost amidst the political rivalry between president Yushchenko and Prime Minister Yanukovich, who did not wish to relinquish his newly found powerful post. He initiated legal proceedings to clarify whether the president was within his powers to dismiss parliament. MP’s belonging to The Bloc of Ty-

moshenko and Our Ukraine took up joint ranks and resigned en masse to aid the president in dissolving parliament, though it was only after several months of legal wrangling in the constitutional court and with the agreement of Yanukovich that it was agreed to hold fresh elections in the autumn.

8.5 Tymoshenko rises again

Box 8.5 2007 Parliamentary Election Results

Party	% of Votes	Seats
Party of Regions	35.9	175
Bloc of Yulia Tymoshenko	32.1	156
Our Ukraine-People's Self-Defence	14.8	72
Communist Party	5.6	27
Lytvyn Bloc	4.1	20
Socialist Party	2.9	0

Source: Åslund.

By the time the elections took place in September, Tymoshenko had served eight months, Yekhanurov (in effect) eleven months and Yanukovich nine months as Yushchenko's respective Prime Ministers. As box 8.5 illustrates, the Party of Regions once more came first with 175 MP's, eleven less than a year earlier, despite its share of the vote increasing by more than 2% to 34%. The Bloc of Tymoshenko this time increased its MP's by 27 to reach 156 MP's as well as massively increasing its support to just fewer than 31%, a rise of nearly 9% in support compared to a year before. Our Ukraine once more came in third place losing 9 seats, thereby only returning 72 MP's, although its vote marginally increased, remaining stable at around 14%. The Communist Party had done well out of the coalition as they increased both their seats, receiving 6 more having 27 MP's, as well as receiving almost 2% more votes to come in at over 5%. The only other party to cross the threshold was the Lytvyn Bloc with 20 MP's having received just a whisker under 4% of the vote. The Socialists fared badly as they just missed the threshold, receiving less than 3% of the vote, thereby losing all their MP's.

When the results were announced, despite coming second again, Tymoshenko was considered the winner as she had increased both her share of the vote and the number of MP's in the Verkhovna Rada. She was able to put together a coalition with Our Ukraine-People's Self-Defence Bloc¹²⁴ and elected prime-minister on 18 December 2007 for a second time with the absolute minimum number of votes required: 226.

8.6 Tymoshenko 2.0 - Second Term as Prime Minister

Tymoshenko's second administration proved to be much more challenging than her earlier experience as she had the added difficulty of having to face the global financial crisis. Tymoshenko wanted to demonstrate that the lessons of her previous administration had been taken to heart. She made concentrated efforts to encourage cooperation as this time she did not give high priority as she had done previously to the notion of re-privatization and made clear her firm acceptance of market principles.

She desperately wanted to improve on her previous populist image -which was quite close to the truth- and began to portray herself as a business-friendly politician who respected and would defend property rights. During her second term in office, food and energy prices were permitted to rise, foreign trade was liberalized. The natural tendency to limit damages to the needy through price controls was cordoned off. Lastly, Tymoshenko did not receive the lime-light of the coalition as much as she had done previously as she delegated more power and responsibility within the Cabinet. This was eased by the presence of capable individuals such as ex-premier Yekhanurov, now serving as Defence Minister and Nemyria, as deputy prime minister.

Working together for the second time with Our Ukraine, the party of Yushchenko, the relationship was, however, even more strained. Yushchenko seemed to have traded political rivals; rather than Yanukovich, he directed almost all his attention on attacking Tymoshenko and

criticizing the actions of the coalition. He considered that demonstrating to the electorate that there were differences between him and the other two major rivals would be his best strategy. In line with such thinking he tried to increase presidential power. As mentioned, Yushchenko had agreed to the 2004 amendments not due to wholehearted support for them but due to there being no viable alternative at the time. 2008 witnessed the prime minister continually suffering at the hands of the president through his vetoing of legislation. Government came very close to stalemate as only a few decisions could be taken.

Analysts commenting on the first 100 days of the coalition underscored the fact that 'Tymoshenko has been under continuous pressure from her supposed ally, President Viktor Yushchenko....The situation is complicated by the president's search for a partner who will ensure his re-election for a second term.'¹²⁵ This was indicative of the fact that personal rivalry played an important role in this undisguised animosity.

8.7 Tougher Times

Tymoshenko as Prime Minister focused on WTO membership as nearly two-thirds of the country's exports were considered sensitive products such as agriculture, steel, chemical and textiles. Yushchenko and Our Ukraine supported this measure and Tymoshenko was able to succeed in Ukraine becoming a member of the WTO and negotiations were begun with the EU concerning a free trade agreement.

In April, when she focused on privatization she once again faced the veto of the president who claimed that the program risked Ukraine's national security¹²⁶. Concerning energy she was more successful as she managed to reduce the role of Ukr gaz-Energo, a domestic gas trade joint venture between RUE and Naftohaz Ukrainy. She was also able to get agreement from both Gazprom and Naftohaz to trade without any intermediaries, effectively shutting out RUE from 2009 onwards¹²⁷. In a visit to Moscow in October she met with Putin and

they agreed on a three year increased price deal concerning gas - precisely for which she is technically being tried for at the moment.

As the distaste Yushchenko displayed toward Tymoshenko was visibly rising, she made a daring move in September by coming together with Yanukovych in passing a vital act: Cabinet was reformed, reducing presidential powers, thereby creating a truly parliamentary system of government for Ukraine. After this measure the orange coalition fell apart as Our Ukraine withdrew its support.

The autumn of 2008 was a tough time for most of Europe in the onset of the global financial crisis but it was a terrible time for Ukraine as it suffered from a worsening balance of payments crisis. Tymoshenko had to call the IMF and negotiated in late October a two-year standby-by agreement which was tough to digest. Head of the IMF Dominique Strauss-Kahn declared that a loan totalling \$16.5 billion was agreed to and added 'Ukraine has developed a comprehensive policy package designed to help the country meet the balance of payments needs created by the collapse of steel prices, and the global financial turmoil and related difficulties in Ukraine's financial system. The authorities' program is intended to support Ukraine's return to economic and financial stability, by addressing financial sector liquidity and solvency problems, by smoothing the adjustment to large external shocks and by reducing inflation. At the same time, it will guard against a deep output decline by insulating household and corporations to the extent possible'¹²⁸ Given the dire circumstances Ukraine faced, this was a tough pill to swallow but a breakthrough as fresh financing on a large scale had been achieved. Tymoshenko had been able to weather the economic storm for the time being.

8.8 Financial crisis transformed into a political crisis

During this financial crisis Yushchenko demanded new elections. Since the privatization program veto he had steadfastly tried to break

up the coalition which would oust Tymoshenko from the premiership and permit early elections. It was a poor political strategy given the fact that all polls showed him trailing in third place behind Yanukovich and Tymoshenko respectively.

In August, Yushchenko and Tymoshenko had demonstrated differing attitudes to the Georgian-Russian conflict with the former condemning Russian actions publicly whilst the latter only reiterating her support for Georgian sovereignty and territorial integrity. The next month when Tymoshenko proposed legislation concerning presidential impeachments and the transfer of greater powers from the president to prime minister the Party of the Regions supported it, whereas Our Ukraine withheld its support, declaring it was pulling out of the coalition.

Yushchenko considered the legislative move as an attempt to establish what he termed a “dictatorship of the prime minister....a political and constitutional coup d’état has started in the parliament.” The response of Tymoshenko was to reveal what she saw as the underlying political reason for the president’s actions. She melodramatically stated that he had “declared a war against me to ensure his victory in the next presidential elections.” Once more, it was this personal rivalry that captured the attention of both domestic and international observers.¹²⁹

Yushchenko escalated the crisis by calling for new elections, which would mean three elections in as many years. The Verkhovna Rada refused to finance the early election and with the election of Lytvyn as Speaker on December 9th, Tymoshenko received the support of the Lytvyn bloc in parliament. With the support of Our Ukraine a new coalition protocol was signed in mid-December. Therefore, Tymoshenko rather than resigning her post continued as prime minister much to Yushchenko’s chagrin with the continued support of his political party, Our Ukraine. He was to declare angrily that “the so-called coalition was formed on [the] basis of

political corruption; this coalition will be able to work only if the Communist Party will join it. Speaking about such a type of coalition, it is even more shameful.”¹³⁰

Just as soon as the ink had dried on the new protocol, in February 2009 a no-confidence vote threatened to break up the coalition but was overcome. Yushchenko clarified his position vis-a-vis Tymoshenko in March by claiming that his conflicts with her were not, as most thought, due to personal differences, but rather to the incompleteness of the 2004 constitutional reforms. Tymoshenko finally put paid to the rumours of will-she-run-won’t-she? By confirming in June that she would be competing as a presidential candidate opposing Yushchenko. With this development the pre-election campaign began to gather pace.

8.9 Rapprochement with Putin

Having already met in October in Moscow, a very interesting meeting between Tymoshenko and Putin took place two months later at Yalta where the two prime ministers reached several agreements, confirming once again that their respective countries had a close relationship. Putin reiterated that Naftohaz Ukrainy, would not be fined for its failure to buy the required gas as stipulated by the January 2009 contracts signed with Gazprom. If the fines were levied on Naftohaz it would probably have declared bankruptcy which would have made solving the problem of payments even more problematic. Putin and Tymoshenko further demonstrated a coordinated front by jointly rejecting Yushchenko’s calls for an urgent revision of the contracts.

Tymoshenko defended the new contracts, saying that they were transparent and market-based, whereas the pre-2009 relations with Gazprom were, she claimed, built on “a mega-corruption model”¹³¹. Putin’s remark at a joint press conference concerning working with the Tymoshenko government that “during the time of the cooperation, relations between Russia and Ukraine have become more stable and

strengthened¹³² was considered by many as indirect support for Tymoshenko's bid to become President. This interpretation relied on the fact that whilst Putin and Tymoshenko were meeting, so was Yushchenko and Saakashvili in Kiev. Moscow had already considered Yushchenko as having an anti-Russian agenda therefore, it seemed quite logical that Tymoshenko should receive a warmer welcome.

9) ELECTION

9.1 2010 presidential election

During the campaigning for the presidential election, Yanukovich concentrated on rejecting the legacy of the Orange Revolution and levelled harsh criticism towards Tymoshenko's handling of the economy, badly hit by the world financial crisis. In his manifesto he promised economic reform and improved social standards, with foreign policy receiving little mention except promises to restore friendly relations with Russia and staying out of NATO. Tymoshenko's manifesto¹³³ focused on fighting "oligarchy" and creating a "just society", as well as striving for European standards of democracy, whilst building friendly relations with Russia.

Box 9.1 2010 Presidential Election

Candidate	First round % of votes	Second round % of votes
Viktor Yanukovich	35.3	48.9
Yulia Tymoshenko	25.1	45.5
Serhiy Tyhypko	13.1	
Arseni Yatsenyuk	7.0	
Viktor Yushchenko	5.5	
Petro Symonenko	3.5	
Volodymyr Lytvyn	2.4	
Oleh Tyahnybok	1.4	
Anatoli Hrytsenko	1.2	
Inna Bohoslovska	0.4	
Oleksandr Moroz	0.4	
Against all	2.2	4.4

Source: <http://gazeta.ua/post/324402>

As seen in box 9.1 the first round of the election saw Tymoshenko receive a quarter of the vote, but still trail Yanukovich by 10%. They

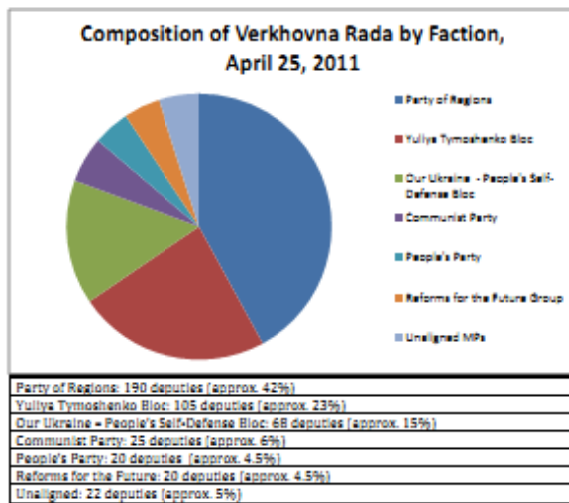
faced each other in the second round which Tymoshenko lost by less than 900,00 votes or approximately 3.5%, with neither candidate getting more than 50%.¹³⁴ Tymoshenko initially appealed to the Courts concerning the manner in which the votes were counted but withdrew her case after a few days. Joao Soares, president of the OSCE Parliamentary Assembly and Special Co-ordinator of the OSCE short-term observers, stated during a press conference held the day after the election on Feb. 8 that "Yesterday's vote was an impressive display of democratic elections. For everyone in Ukraine, this election was a victory. It is now time for the country's political leaders to listen to the people's verdict and make sure that the transition of power is peaceful and constructive,"¹³⁵.

9.2 Tymoshenko's coalition falls apart - again

A month later on 3 March 2010 the Verkhovna Rada passed a motion of no confidence in the Coalition government with several members of Tymoshenko's party supporting the collapse. Tymoshenko resigned as prime minister and handed over the caretaker role to Turchynov. On March 9th, the Verkhovna Rada amended its previous rules of a coalition only being formed as an alliance of parliamentary parties and added that individual MP's could also be counted as constituting the majority of the parliament's constitutional composition.

This went against the Constitutional Court which had ruled in September 2008 that a parliamentary coalition could only be an alliance of parliamentary parties that had the support of at least 226 MP's. The reason for changing the rules was clear: it was impossible to form a coalition with the three parliamentary parties of the Lytvyn Bloc, the Communist Party and the Party of Regions, which in total had only 219 MP's, thus falling seven short of the required majority.

Figure 9.2 Political Parties in Parliament



Source: Freedom House, “Sounding the Alarm: Protecting Democracy in Ukraine,” Washington, April 2011.

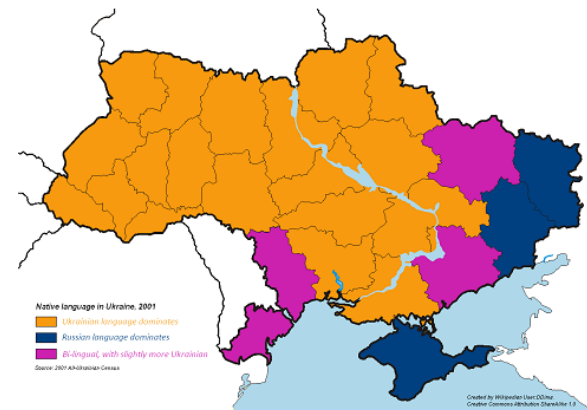
After speedy negotiations, on March 11th, Azarov received a vote of confidence in the Verkhovna Rada to form his coalition government with the Communist Party and the Lytvyn Bloc (figure 9.2 illustrates the make-up of the parliament after Azarov became prime minister). Tymoshenko accused the coalition of bribing her MP’s to join the coalition. She highlighted this assertion by the question “Can you imagine that our MPs, many of whom have not seen \$50,000 in their life, are currently being offered \$5 million? Young professionals are being offered high-ranking posts, but 150 people remain in our team, and they are ready to resist..... if historical parallels are drawn, then Jesus was sold for 30 pieces of silver, figuratively speaking, by a twelfth of the faction, but we, mere mortal and sinful people, have a significantly higher figure”¹³⁶.

The Constitutional Court ruled against the admissibility of the 2004 amendments on September 30th. The overturning of amendments was due to the case brought forward by 252 MPs loyal to President Yanukovich who had appealed, arguing that the 2004 reform was illegal as it had not been approved by the constitutional court, thereby, violating the procedure for all constitutional amendments. The head of

the court, Judge Anatoly Holovyn, announced “The court has ruled that the 2004 amendments to the Ukrainian constitution were unconstitutional due to violations of constitutional procedures in their examination and adoption,”¹³⁷. A key development that aided this ruling was the recent appointment of four judges to the court who were sympathetic to Yanukovich who subsequently tipped the balance of power in his favour. Only naive observers would be shocked that it was the same President of 2010, who as Prime Minister was vehemently opposed to a presidential system given that Yushchenko was occupying the post. Yanukovich had gone on record writing that the ‘majority of our people would take measures to cancel this [2004] political reform as a return to totalitarian times and would reject them’¹³⁸. Observers as well as the supporters of Tymoshenko claim that Yanukovich has been correct in this forecast. Naturally, the country is divided on this issue, as those who support the president dispute this conclusion.

9.3 Divided Nation

Figure 9.3 Linguistic Preferences

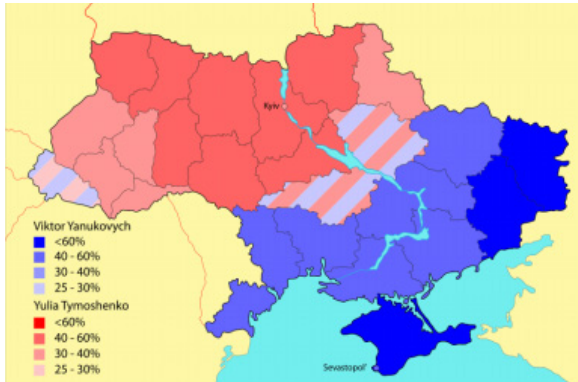


Source: Freedom House, “Sounding the Alarm: Protecting Democracy in Ukraine,” Washington, April 2011.

As has been demonstrated, it is fair to assert that the trial already has, and the verdict will inevitably reinforce, the political-geographic divide which has left the Ukrainian-speaking, nationalist West with very different ideas and hopes about the country’s future than the Rus-

sian-speaking East (figure 9.3), where the old days under the Soviet Union are not hated, but remembered in a good light. Yanukovych has traditionally been perceived as a pro-Russian politician prior to and especially since the Orange Revolution, appealing to the non-Ukrainian speaking citizens.

Figure 9.4 2010 Presidential Election First Round Voting



Source: Freedom House, "Sounding the Alarm: Protecting Democracy in Ukraine," Washington, April 2011.

This division is clear to see in figure 9.4, in terms of electoral support as Yanukovych was much more popular in the east, whereas Tymoshenko, dominant in the west, in terms of electoral popularity in the last presidential election. Therefore, it is not just Yulia Tymoshenko but Ukraine that is facing a test of resiliency and character in these difficult days. It has become an experience that tests endurance, patience and belief in Ukrainian justice.

Lastly, the abovementioned political divide is also reflected in matters of faith. The Orthodox Church is by far the biggest religious community in the country, but has been split into three. The largest of these groups, the Ukrainian Orthodox Church-Moscow Patriarchate

has fervently supported Yanukovych and others aligned with Russian nationalism. The Ukrainian Orthodox Church-Kiev Patriarchate which was formed after independence and the smaller Ukrainian Autocephalous Orthodox Church founded in 1919 but banned during the Soviet era have supported Yushchenko. The Ukrainian Greek Catholic Church mainly popular in western Ukraine which is the second largest group of believers after the Christian Orthodox churches and a large Protestant community have also traditionally favoured Yushchenko.

10) FORECASTS

10.1 Trials

A recent report by Freedom House¹³⁹ (box 10.1) on the political situation in Ukraine signifies that it is undergoing a test, or as Larabee and Kuzio suggest, that "in reality, it is his [Yanukovych's] regime, not Tymoshenko that is on trial"¹⁴⁰. Be that as it may, at the end of this process Ukraine will either emerge as a developing democracy, genuinely proud to have celebrated twenty years of independence, or be condemned as a continuation of the old authoritarian Soviet regime in another guise. Oleksandr Turchynov, who served as a deputy prime minister in Tymoshenko's government and currently the first deputy chairman of the Batkivshchyna Party announced that an opposition bloc called the Committee to Resist Dictatorship has been established¹⁴¹. According to Turchynov, this bloc is the most important consolidation of the opposition since the Orange Revolution. A joint protest march was held in the capital on August 24th, the 20th anniversary of Ukraine's independence, though the police prevented the protestors from marching towards government buildings. Once again, this was indicative of the 'old' Ukraine of Kuchma and Yanukovych, rather than the 'new' Ukraine of Yushchenko and Tymoshenko.

Box 10.1 Political Developments in Ukraine Since 2010

Ukraine under President Yanukovich has become less democratic and, if current trends are left unchecked, may head down a path toward autocracy and kleptocracy
Yanukovich and his government value their domestic standing and international reputation, and remain responsive to outside pressure. Therefore, domestic actors as well as the West retain a capability (and have a responsibility) to check antidemocratic tendencies and support constructive initiatives both inside and outside the government
Ukraine's political and cultural diversity is a bulwark against any one force dominating political space throughout the country

Source: Freedom House, "Sounding the Alarm: Protecting Democracy in Ukraine," Washington, April 2011.

Whilst attention has quite rightly focused on an ex-prime minister - Yulia Tymoshenko - undergoing trial, she is not the only one who has endured this procedure. It almost seems a rite of passage that the leaders of Ukraine be tried after leaving office. The prime minister in whose cabinet Tymoshenko served, Pavel Lazarenko, is currently serving a nine-year prison sentence in an American jail in California for corruption, money laundering and extortion. Furthermore, ex-president Kuchma is under investigation concerning the murder of journalist Georgy Gongadze in 2000.

It is precisely concerning this killing that makes Tymoshenko fear for her life. She has openly stated that she is worried about the Stalinist dictum of by getting rid of the person you get rid of the problem. She openly compares Yanukovich with Stalin by stating his fight against her is "not by democratic, honest and competitive means, but just like Stalin did in 1937."¹⁴² She also explicitly mentions the suicide of former interior minister Yuri Kravchenko, who was supposed to have shot himself in the head twice. Kravchenko was found dead in March 2005 just before he was to testify about the un-

solved murder of Gongadze. These are certainly not the credentials an evolving and developing democracy would prefer to display.

10.2 Justice and the Rule of Law

In any democracy, especially in parliamentary democracies, the separation of powers is of paramount importance. If there are any inferences that the executive and the judiciary are not separate and independent of each other, this can lead to serious instability and even a regime crisis. Where the rule of law is trampled, it is difficult to talk of democratic governance.

Whilst Ukraine is not and never was a parliamentary democracy in the true sense of the model or concept, it was established as and continues to strive to become a democracy. In this journey, the rule of law is paramount. Without it only the facade of democracy will be portrayed to the outside world, whereas genuine implementation and adherence to the rule of law will morally and materially benefit both Ukrainians and the international community.

Currently no one can say whether Tymoshenko is innocent or guilty, though it is undeniable that she has opposed the most powerful oligarchs and representatives of political repression. Freedom House and the Atlantic Council wrote in a letter addressed to President Yanukovich that "Left unchecked, the current trends in your country will move Ukraine toward kleptocracy and authoritarianism"¹⁴³. Rather than swimming with this strong corrupt political current that these two organisations have identified, Tymoshenko has sailed against the prevailing wind. By pushing and pursuing change she has made formidable enemies, namely the implied Ukrainian proto-kleptocratic elite, which has suffered at the hands of Tymoshenko with regard to being forced to pay their taxes and survive without political influence and favours. Therefore, it is they who have taken each and every opportunity provided to attack her, with their political allies in trying to erase her from the political stage.

In terms of this - at best very strange and extraordinary, or at worst, politically motivated - trial, it is a truism that justice must not only be

done, but be seen to be done. Ukraine is clearly failing the latter, if not both. Furthermore, it is also a fact that justice delayed is justice denied. This ought to encourage the Ukrainian authorities to not artificially elongate the time of the trial; the longer the trial lasts, the higher the political tension will rise. Equally so will the costs, which could turn out to be Pyrrhic victory for the prosecutor.

Tymoshenko may not have a spotless angelic character, but her rivals are certainly not in a position to judge from the moral high ground. This, she has made abundantly clear by accusing the president of “running Ukraine as his own personal company....His son, a simple dentist, has found his way in to the list of the richest people in the country. How many teeth do you need to pull to do that?”¹⁴⁴ As for any operation to weed out all corrupt politicians, that would need to closely resemble the Italian *Mani pulite*- *clean hands* trials of the 1990s; something which is quite unrealistic to expect from contemporary Ukrainian judges.

Although it seems there is no consolation in their hour of trial, if it is proven beyond all doubt that Tymoshenko is guilty, that ought to, in theory, lead to political closure. That scenario is unlikely to emerge. Vengeance begets vengeance, her supporters would almost certainly disagree strongly with such an outcome, charging the current president with his own transgressions. The addition of new criminal charges to existing ones against Tymoshenko and 12 members of her 2007-2010 government, rather than strengthening the case of the prosecution has not only weakened it, but made their case verge on the incredulous. The former Interior Minister Yuri Lutsenko has been charged with having used official funds to pay for a Police Day holiday, whilst Anti-tax protesters have been accused of having damaged tiles on Kiev’s Independence Square.¹⁴⁵ It is with good cause that the international community has steadfastly viewed this as not a trial primarily based on the public charges and the evidence.

10.3 Future Elections

Despite these terrible political and legal developments, all is not forlorn. The last presidential election was not only the freest and fairest in Ukraine it was the freest presidential elections ever held in the former Soviet Union. Further elections loom in the horizon. Firstly, Ukraine will hold parliamentary elections next year and a presidential poll in 2015. Tymoshenko remains the leading challenger for both the posts of prime minister and president, which arouse some suspicious forecasts about the verdict the court will reach. Tymoshenko makes clear that “Yanukovich’s ratings are falling fast. He knows that if there is a powerful opposition and honest elections then he will lose power in 2012. He wants to neutralise this threat and make sure that I have no access to the elections.”¹⁴⁶ Such observations have also been supported by NGO’s such as Freedom House (box 10.3).

Box 10.3 Current Key Features of the Ukrainian Political Environment

Consolidation of power, with a narrow ruling group under Yanukovich intent on restoring political order and implementing policy using a more intrusive and visible SBU presence as well as an increasingly malleable judicial system
A ruling group that is equally interested in dividing spoils and protecting its own (though egregious corrupt behaviour has also been associated with prior governments)
Lingering resentment over the failure of the Orange Revolution leaders, in power from 2005 through 2009, and the continued fragmentation of the political opposition
Effects of the financial crisis, the IMF bailout, and ensuing economic reforms
Weakened civil societal groups and independent media that are increasingly under pressure from government authorities, including the security services, with particularly difficult conditions in the regions

Source: Freedom House, “Sounding the Alarm: Protecting Democracy in Ukraine,” Washington, April 2011.

One possibility, given this assessment could be that she will receive a suspended sentence. The implications of such a verdict would be to ban her from holding any public office. This would still be received with criticism from the international community but the reactions from the EU and US would be much softer than if she ended up in jail serving the seven years prosecutors have demanded.¹⁴⁷ Given the fact that the EU remains hopeful to initial a political Association Agreement and a Deep and Comprehensive Free Trade Agreement in December with Ukraine, such an outcome would be far easier to stomach.

11) CONCLUSION

Hanne Severinsen recalls in a personal manner that “Many of us who experienced the Orange Revolution felt that the main result was the feeling of freedom, especially freedom of expression. You dared to criticize (and there was certainly a lot to criticize). But the freedom was fragile, the judiciary unreformed – at that time unpredictable - but today sadly predictable. With power concentrated, biased courts and unclear laws, the government can take to court as many people as it wants. As a defendant, you cannot understand the charges brought against you and your lawyer has very little opportunity to defend you, and your guilt is proven by the fact that you are under investigation. Thus, *methods like those in Kafka’s famous book “The Trial” have begun to play a role in Ukraine today* [my italics].¹⁴⁸

If one closes one’s eyes and imagines listening to the dialogue taking place between the minds of the prosecution and the defense, Kafka’s prose is apt:

“What do you intend to do about your case next?” asked the priest. “I still need to find help,” said K., raising his head to see what the priest thought of this. “There are still certain possibilities I haven’t yet made use of.” “You look for too much help from people you don’t know,” said the priest disapprovingly¹⁴⁹

Whilst understanding the disheartening loss of hope from domestic and international supporters, one could open one’s eyes and see that Ukraine in fact, currently resembles one of its treasured son’s most memorable paintings, one in which where Arkhip Kuindzhi created an illusion of illumination through the use of light effects. One can almost feel and sense in the painting the warmth of an idyllic rural landscape, which reddens the hill, the white walls and the thatched roofs of the cottages and trees. Despite the fact that there are no people in the picture, the themes of reassurance, freedom and stability emanate from the red tinges of the low lying clouds.

The verdict that will be delivered to Yulia Tymoshenko on October 11th - assuming there are no further delays – will certainly redden the political landscape: if she is released and permitted to contest next year’s parliamentary elections, that will be heartily welcomed by the whole international community, if her personal or political rights are infringed, a deluge of outrage will pour.



Source: <http://www.wikipaintings.org/en/arkhip-kuindzhi/evening-in-ukraine-1878>

Therefore, the ‘redness’ will either be, one of transforming into the orange glow of relief, or the white heat of anger. The supporters of Tymoshenko naturally desire an orange, rather than a red, shade to end the trial. Observers on the other hand, focus on the time of day. They hope that the timing in Ukraine will be exactly as the title of the painting by Kuindzhi – ‘Evening in the Ukraine’. For, as every political shepherd knows, red sky at night is shepherd’s delight, but red sky in the morning, means shepherd’s warning.

ENDNOTES

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- 2 Martha Brill Olcott & Marina Ottaway, "Challenge of Semi-Authoritarianism," *Carnegie Paper No. 7*, October 1999, <http://carnegieendowment.org/1999/10/01/challenge%2Dof%2Dsemi%2Dauthoritarianism/cm8>; Patrick Merloe, "Promoting Effective Democratic Reform in Semi-Authoritarian States and Pseudo-Democracies," http://www.ndi.org/files/1544_ww_pseudodems_012303.pdf Olcott & Ottaway define the characteristic of these regimes as *the existence and persistence of mechanisms that effectively prevent the transfer of power through elections from the hands of the incumbent leaders or party to a new political elite or political organization*. These mechanisms function despite the adoption of formal democratic institutions and despite a degree of political freedom granted to the citizens of the country. Semi-authoritarian countries may have a reasonably free press, for example; the regime may leave space for autonomous organizations of civil society to operate, for private business to grow, and thus for new economic elites to rise. The regime may hold fairly open elections for local or regional governments or even allow backbenchers to be defeated in a parliamentary election. But there is no room for debate over the nature of political power in society, where it resides, and who should hold it. Above all, membership in the core power group is not determined by election. At the center, competition is a fiction; even if elections are held, outsiders are not allowed to truly challenge the power of the incumbents. These regimes cannot be considered democratic because they lack the essential characteristic of democratic systems: elections are not the source of the government's power and thus voters cannot transfer power to a new leadership. If elections do not provide an opportunity for the alternation of elites, the country is not a democracy, not even an imperfect one. But such regimes cannot be considered purely authoritarian, either, because of the degree of openness of the political process and because of the fact that they tolerate at least partial challenges and allow a degree of freedom for competing organizations.
For Merloe, "semi-authoritarian states" refer generally to those states where authoritarianism is a determining factor in the political dynamic but where there is limited space for political activities that are independent from and even in opposition to the regime. Often such states are characterized also by corruption and clientelist, patronage systems. In this paper "pseudo-democracies" refers to countries where authoritarianism is less pronounced, where formal elements of liberal democracy exist (such as diverse political parties, a parliament with some ability to question government, a degree of press freedom and some level of civil society activity) and where there is even some alternation of governance – but where corruption, clientelism and other factors negate the democratic substance of politics.
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ANNEX A

Ukraine Chronology of Events

1991	
August 24	Ukraine declares independence
August 30	Communist Party of Ukraine is prohibited
December 1	National referendum supports Ukrainian independence; Leonid Kravchuk elected Ukraine's first president
December 8	Treaty between Belarus, Russia, and Ukraine dissolves the USSR
December 21	Eleven Soviet republics form the Commonwealth of Independent States in Alma-Ata
1992	
January 2	Russia liberalizes prices, forcing Ukraine to do the same
September 3	Ukraine joins the International Monetary Fund
September 30	Kravchuk dismisses Prime Minister Fokin
October 13	Leonid Kuchma is confirmed as prime minister
1993	
January 26	Viktor Yushchenko is appointed chairman of the National Bank of Ukraine
February 7	Parliament ratifies Kuchma's economic reform program
June 16	Kravchuk issues presidential decree asserting control over government
June 23	Parliament rejects Kuchma's improved economic reform program
June 24	Russia and Ukraine conclude bilateral free trade agreement
August 31	Kuchma resigns
September	Ruble zone finally ends
September 22	Yukhym Zviatkovskiy is appointed acting prime minister
September 24	Kravchuk and parliament agree to hold early parliamentary and presidential elections
October	Kravchuk attempts to return to command economy
1994	
March 27	First round of parliamentary elections
April 10	Second round of parliamentary elections
June 16	Kravchuk appoints Vitaliy Masol prime minister
June 26	First round of presidential election
July 10	Second round of presidential election; Kuchma defeats Kravchuk
November 9	Parliament approves freeing of the exchange rate and liberalizing prices
1995	
March 1	Masol resigns and First Deputy Prime Minister Yevhen Marchuk is appointed acting prime minister
June 8	Kuchma and Oleksandr Moroz sign constitutional agreement; Kuchma appoints Yevhen Marchuk prime minister
October 11	Parliament approves Marchuk's economic program of "corrected reforms"
1996	
May 27	Kuchma fires Marchuk and appoints Pavlo Lazarenko prime minister
June 28	New constitution is adopted
July 10	Parliament confirms Lazarenko as prime minister
July 16	Lazarenko escapes assassination attempt in Kyiv
September 2-16	New Ukrainian currency hryvnia replaces karbovanets
October 15	Lazarenko presents Deputy Prime Minister Viktor Pynzenyk's three-year economic program to the Ukrainian parliament, which approves it

1997	
April 2	Parliament rejects tax reforms; Pynzenyk resigns as deputy prime minister
March 11	Venice Commission issues an Opinion which warns of drawbacks within the new constitution and advocates constitutional reforms
May 28	Ukraine and Russia sign agreement on the division of the former Soviet Black Sea Fleet
May 31	Kuchma and Yeltsin sign a friendship treaty between Russia and Ukraine
June 19	Kuchma dismisses Lazarenko
July 9	Kuchma signs NATO-Ukraine special partnership charter at Madrid summit
July 16	Valeriy Pustovoitenko is confirmed as prime minister
August 25	IMF approves one-year stand-by credit for Ukraine
October 10	Georgia, Ukraine, Azerbaijan, and Moldova establish GUAM in Strasbourg
1998	
March 1	Treaty on partnership and cooperation between Ukraine and the European Union comes into effect
March 29	Parliamentary elections
April 22	Former NBU Chairman Vadym Hetman is assassinated
August 17	Russian financial crisis leads to sharp hryvnia devaluation
September 4	IMF approves a three-year credit for Ukraine under the Extended Fund Facility
November	Kuchma rejects IMF advice to combat financial crisis, calling for currency controls, monetary expansion, and limits NBU independence
1999	
February 17	Parliament strips Lazarenko's immunity, and he is arrested in the United States three days later
March 25	Rukh leader Vyacheslav Chornovil dies in a car crash
July	Parliament agrees to deploy 800 soldiers for peace-keeping in Kosovo
October 2	Natalia Vitrenko of the leftist Progressive Socialist Party was wounded in a grenade attack at a campaign meeting in Inguletsk.
October 31	First round of presidential election
November 14	Second round of presidential election; Kuchma is reelected
December	Kuchma abolishes collective farms; land to be divided among farm workers with the right to rent the land but not to sell it
December 14	Parliament fails to confirm Pustovoitenko as prime minister
December 22	Viktor Yushchenko is confirmed as prime minister
2000	
March 14	IMF accuses Ukraine of manipulating its currency reserves
April 6	Parliament adopts big economic reform package
September 16	Journalist Heorhiy Gongadze is murdered
November 28	Oleksandr Moroz publicizes a tape recording from Kuchma's office of illegal actions against Gongadze
2001	
January 19	Kuchma dismisses Deputy Prime Minister Yuliya Tymoshenko
February 9	Tymoshenko establishes the Bloc of Tymoshenko
February 12	International Press Institute to analyse audio tapes smuggled out by a former presidential bodyguard appearing to show Kuchma ordering officials to get rid of Gongadze
February 13	EU calls for an inquiry into the murder of investigative journalist Georgiy Gongadze - opposition demonstrations allege that President Kuchma was involved and call for his impeachment - Kuchma denies the allegations

February 13	Tymoshenko is arrested on charges of tax evasion
March 26	Kuchma dismisses Interior Minister Yuri Kravchenko
March 27	Tymoshenko is released from detention: spends weeks recovering in hospital
April 26	Parliament sacks Yushchenko's government through no-confidence vote
May 29	Anatoliy Kinakh is confirmed as prime minister
June 23-7	Pope John Paul II makes first visit to Ukraine amid protests by Orthodox Christians in Ukraine and Russia against the visit
August 11	Russian prosecutors charge Tymoshenko with bribery
October 4	Ukrainian military accidentally shoot down Russian air liner over the Black Sea, killing all 78 on board. Defence Minister Olexander Kuzmuk resigns
2002	
January 29	Tymoshenko suffers injuries in a car crash: seen by some as an assassination attempt
March 31	Elections results in hung parliament, parties opposed to President Kuchma allege widespread electoral fraud
May 23	Leadership announces decision to launch formal bid to join Nato
September 16	Opposition stages mass protests demanding resignation of President Kuchma whom they accuse of corruption and misrule
November 16	Kuchma dismisses Kinakh's government
November 21	Viktor Yanukovych governor of Donetsk region, appointed to replace him; he promises to fight poverty and work for integration into Europe
December 17	Serhiy Tyhypko is appointed chairman of NBU
2003	
March 9	Tens of thousands of people join Kiev demonstrations demanding that Kuchma resign
October	Border dispute with Russia erupts on the island of Tuzla
December	Presidents Kuchma and Putin meet in Crimea, sign agreement on joint use of Kerch Strait and status of Azov Sea in apparent move to defuse border dispute, although Kremlin denies that Tuzla featured in discussions.
2004	
June	Consortium in which President Kuchma's son-in-law Viktor Pinchuk plays key role buys Krivorizhstal, the country's largest steel mill, for a bargain price
September 5	Yushchenko is poisoned
October 26-29	Putin meets Kuchma in Kyiv and campaigns for Yanukovych
October 31	First round of presidential election; Yushchenko has a small lead of just 0.5% against Yanukovych triggering a second-round ballot
November 12-13	Putin meets Kuchma
November 21	Second round of presidential election; Yanukovych wins; Yushchenko claims election rigged
November 22	Central Electoral Commission declares Yanukovych the winner., but Yushchenko's supporters reject the result and gather in Kiev amid claims of vote-rigging In the following days the protests build dubbed the Orange Revolution despite sub-zero temperatures
November 24	Official results are published, giving Yanukovych 49.46% and Yushchenko 46.61%
November 25	Constitutional Court suspends publication of the results while it examines the case, after the opposition appeals
November 26	Yanukovych and Yushchenko hold talks and agree to seek peaceful solution. Yushchenko demands a re-run of the vote while his supporters besiege government buildings

November 27	MP's declare the poll invalid and pass a symbolic, non-binding vote of no-confidence in the electoral commission., rival protests backing Mr Yanukovych are held in his stronghold of Donetsk
November 28	Regional leaders in eastern Ukraine call for a referendum on federation in Severodonetsk
November 29	Constitutional Court begins considering allegations of electoral abuses; Yanukovych says he might accept vote re-runs in certain disputed areas
November 30	Kuchma declares only fresh elections can resolve the stand-off
December 1	Parliament votes no confidence in Yanukovych's government; Yanukovych refuses to step down – Yushchenko asks supporters to remain in the streets
December 2	Kuchma meets Putin for the 12 th time in 2004, at a Moscow airport Crisis talks continue as parties await the decision of the Constitutional Court
December 3	Ukraine's Constitutional Court recognizes massive electoral fraud and orders a rerun of the second round
December 8	Parliament passes constitutional amendments and other legislative measures to resolve the presidential election crisis
December 9	Government employees return to work after opposition demonstrators scale down their protest in Kiev
December 11	Yushchenko's Vienna doctors confirm after exhaustive tests that he was poisoned with a form of deadly dioxin
December 20	The two rivals accuse each other of electoral fraud, in a live TV debate ahead of the poll re-run
December 24	Campaigning ends at midnight, both candidates promise victory
December 25	Constitutional Court strikes down reform restricting home voting; election officials say vote will proceed regardless
December 26	Rerun of the second round of presidential election; Yushchenko wins
December 27	With nearly all votes counted Yushchenko's lead becomes unassailable, but Yanukovych says he will not concede, claims electoral abuse
December 30	Constitutional Court rejects all four complaints against the conduct of the presidential election lodged by Yanukovych, the Central Election Commission also rejects his appeal over the vote
December 31	Yanukovych resigns as prime minister
2005	
January 5	Kuchma accepts Mr Yanukovych's resignation as prime minister
January 6	Constitutional Court rejects an appeal by Yanukovych against the electoral commission's handling of the poll; he had wanted the commission to re-examine complaints about the election
January 11	Electoral commission declares Yushchenko the official winner of the re-run with 51.99% , Yanukovych gets 44.2%, but continues the legal battle
January 16	Thousands of demonstrators rally in Yanukovych's home town, Donetsk, and elsewhere to condemn Mr Yushchenko's "anti-constitutional" election
January 17	Constitutional Court starts hearing Yanukovych's final appeal after submitting 600 volumes of evidence indicating irregularities in the re-run election; all his previous appeals have been rejected
January 18	A ban on publication of the presidential election results is lifted by the Constitutional Court - allowing them to be published in newspapers on 20 January, making them legal
January 20	Ukraine's Constitutional Court rejects final appeal from Yanukovych and declares Yushchenko the winner; Parliament votes to hold the inauguration on 23 January

January 23	Yushchenko is sworn in as Ukraine's new president
January 24	Yushchenko nominates Yulia Tymoshenko as prime minister; he makes first trip abroad to Moscow
February 4	Parliament confirms Tymoshenko as prime minister
February 21	The European Union and Ukraine sign action plan as part of the European Neighborhood Policy
February 17	Court annuls June 2004 sale of Krivorizhstal
March 4	President Yushchenko announces that suspected killers of journalist Georgiy Gongadze are in custody. He also accuses the former authorities of a cover-up. Former Interior Minister Kravchenko, who had been due to give evidence in Gongadze investigation, shot dead in apparent suicide
September 3	Yushchenko's chief of staff Oleksandr Zinchenko resigns
September 8	Yushchenko sacks both Tymoshenko's government and Secretary of National Security Petro Poroshenko
September 22	Yuriy Yekhanurov is approved as prime minister on second vote
October 24	Kryvorizhstal is reauctioned; Mittal Steel pays six times more than the price paid for when it was originally put up for sale.
December 1	The European Union grants Ukraine market economy status
December 27	Russian prosecutors drop their 2001 charges against Tymoshenko
2006	
January 1	New constitution comes into force transforming Ukraine into parliamentary-presidential republic; Russia cuts gas supply to Ukraine in row over prices - Moscow says its reasons are purely economic but Kiev says they are political; Trial of three former policemen charged with killing opposition journalist Georgiy Gongadze begins in Kiev
January 4	Ukraine signs agreement on gas supply with Gazprom and RosUkrEnerg
January 10	Parliament votes no confidence in Yekhanurov's government, but the vote is declared unconstitutional
February 17	The United States recognizes Ukraine's market economy status
March 26	Parliamentary elections
June 22	Three Orange Revolution's parties agree to form a coalition government
July 6	Socialist Party switches to coalition with the Party of Regions, and Moroz is elected speaker of the parliament
August 3	Four parties sign Declaration of National Unity
August 4	Parliament confirms Yanukovych as prime minister
October 19	Four pro-presidential ministers resign after Our Ukraine votes against the ruling coalition
December 1	Parliament dismisses Interior Minister Yuri Lutsenko and Foreign Minister Borys Tarasiuk for advocating strong ties with the European Union and NATO
2007	
March 21	Parliament approves Yushchenko's choice for foreign minister Arseniy Yatseniuk
April 2	Yushchenko issues a decree to dismiss parliament and calls a snap election
May 27	Agreement is reached between Yushchenko, Yanukovych, and Moroz to hold early parliamentary election
September 30	Extraordinary parliamentary elections
December 18	Tymoshenko is appointed prime minister
2008	
January 15	Yushchenko, Tymoshenko, and Yatseniuk sign letter to NATO secretary general asking for membership action plan (MAP) for Ukraine

March 5	Russia's state-owned company, Gazprom, agrees new contract to supply Ukraine's industrial consumers directly, ending row over gas supply
April 3-4	NATO summit in Bucharest does not offer MAP to Ukraine
April 17	Yushchenko blocks privatization by decree
May 16	Ukraine becomes 152nd member of the World Trade Organization
July 6	Two deputies leave coalition, which makes it one deputy short of a parliament majority
July 11	Vote of no-confidence defeated by Tymoshenko in the Rada
August 8-12	Russia-Georgia War in South Ossetia
September 2	Bloc of Yulia Tymoshenko and the Party of Regions adopt the Law on the Cabinet of Ministers, weakening presidential authority
September 3	Our Ukraine faction withdraws from a coalition with Tymoshenko's Bloc
October 9	Yushchenko issues decree dissolving the parliament and calling for extraordinary parliamentary elections
October 26	Global financial crisis leads to decline in demand for steel, causing price of one of the country's main exports to collapse. Value of Ukrainian currency falls sharply and investors pull out. Agreement between government and IMF on economic program supported by a US\$16.5 billion loan
October 31	Parliament passes anticrisis legislation
November 5	IMF approves a two-year Stand-By Arrangement for US\$16.5 billion to help Ukraine restore financial and economic stability
2009	
January 1	Russia stops all gas supplies to Ukraine after collapse of talks to end row over unpaid bills and prices, leading to shortages in southeast Europe. Supplies are restored a week later when Ukraine and Russia sign a 10-year deal on gas transit.
February 5	A second no-confidence vote in the Rada, but Tymoshenko survives again
July 22	Ukrainian security service says a key suspect in the murder of opposition journalist Georgiy Gongadze is arrested and has confessed to the killing
December 29	Ukraine and Russia sign deal on oil transit for 2010, allaying fears of supply cuts to Europe
2010	
February 15	Viktor Yanukovich is declared the winner of the second round of the presidential election Tymoshenko refuses to accept the result, alleges fraud, then withdraws case
February 25	Yanukovich assumes office
March 4	Yulia Tymoshenko steps down from the premiership after a number of her supporters in parliament switch sides and she loses a no-confidence vote
March 11	President Yanukovich appoints long-standing ally Mykola Azarov to succeed her
April 12	Ukraine agrees to eliminate its stockpile of weapons-grade nuclear material ahead of the Washington nuclear security summit
April 27	Parliament ratifies an agreement to extend Russia's lease on the Black Sea fleet base at Sevastopol in Crimea for 25 years, in return for cheaper gas imports - opposition MPs attempt to disrupt the vote
June 3	Parliament votes to abandon Nato membership aspirations
June 8	International media freedom watchdogs criticise a Kiev court's decision to cancel the allocation of broadcasting frequencies to two privately-run TV channels
September 24	Customs Union agreement between Russia, Belarus, and Kazakhstan approved by Russian State Duma

September 30	Constitutional court overturns limits on presidential power introduced in 2004
November 30	President Yanukovich vetoes a tax reform that had prompted thousands of business owners and opposition activists to protest in city centres nationwide: the reform aimed to plug the gap in Ukraine's finances demanded by the terms of an IMF loan
December 9	Heads of State of Russia, Belarus and Kazakhstan sign customs union agreement
December 16	Putin invites Ukraine to join the customs union
December 26	Former Interior Minister Yuriy Lutsenko arrested
December 27	Tymoshenko arrested and charged with abuse of state funds
2011	
March 5	Putin invites Yanukovich, on a visit to Moscow, to join the customs union
March 24	Ex-President Leonid Kuchma is charged over the 2000 murder of journalist Georgiy Gongadze - he denies any part in the killing
April 12	Putin whilst visiting Kiev speaks of the benefits of joining the customs union
April 28	The main suspect in the Gongadze killing, former interior minister official Olexiy Pukach, goes on trial - he is said to have confessed to strangling and beheading Gongadze. The trial is expected to be held in camera
May 18	Medvedev declares that Ukraine must choose between the EU and the customs union
May 19	Rada announces Ukraine's aim as developing trading links with the EU, not the customs union
May 23	Ashton expresses concerns over political motivation lurking behind the Tymoshenko trial
June 7	Putin repeats his proposal for Ukraine to join the customs union
June 21	U.S. Senator McCain and Wilfred Martens jointly call for Tymoshenko to be given permission to attend the Parliamentary Assembly of the Council of Europe
June 24	Tymoshenko is charged and put on trial on charges of abuse of office over a gas deal with Russia
August 5	Tymoshenko is incarcerated after the judge accused her of contempt of court for repeatedly disrupting proceedings. Martens warns Ukraine that it is returning to Soviet-style authoritarianism
August 6	U.S. statement urges for the rule of law to be applied
August 8	Russian Foreign Ministry states all gas agreements are legitimate and Tymoshenko should face a fair trial
August 18	Tymoshenko complains of ill health whilst in prison, calls to see her personal doctor but is refused
August 24	Medvedev warns that there will be costs to Ukraine if it decides to remain outside the customs union
August 31	Collective letter signed by Havel, Tutu and others urge for the rule of law to be observed and Tymoshenko to be released on bail
September 2	Professor Petro Andrushko Head of the criminal law department at Taras Shevchenko National University announces Tymoshenko has committed no crime Putin's spokesman says a solution to the gas problem can be sought if Naftogaz is to merge with Gazprom

<p>September 3</p>	<p>EU Foreign Ministers informal meeting in Sopot agree to open talks on the DCFTA with Ukraine - several Ministers heavily criticise the Tymoshenko trial</p> <p>CIS Summit in Dushanbe: Yanukovych and Medvedev hold a meeting to discuss the gas contracts</p> <p>Ashton declares ratification of DCFTA not a certainty</p>
<p>September 5</p>	<p>Head of the European Commission to Ukraine declares Tymoshenko should be permitted to contest next year's parliamentary elections</p> <p>Former PACE Monitoring Committee Rapporteur Hanne Severinsen believes there are no legal grounds to keep Tymoshenko in jail</p>
<p>September 6</p>	<p>Nord Stream pipeline begins operations</p> <p>Yanukovych declares Ukraine is considering going to the international court to seek a solution to the gas contracts</p>
<p>September 7</p>	<p>Ukraine announces it will import much less gas from Russia</p>
<p>September 9</p>	<p>Joint letter by Ashton and Clinton to Yanukovych stress democratic standards are not being met</p>
<p>September 12</p>	<p>Judge declares a two week postponement of the trial</p> <p>Azarov declares Tymoshenko is a woman of the past</p>
<p>September 19</p>	<p>Tymoshenko's lawyer declares that she remains ill and has not had medical care for almost a month</p>
<p>September 27</p>	<p>State prosecutor calls for Tymoshenko to be jailed for seven years</p>
<p>September 28</p>	<p>Yanukovych suggests that the Rada decriminalize economic crimes – possible solution for Tymoshenko not being imprisoned if found guilty</p> <p>EU tells Ukrainian authorities the need for respect for the rule of law incorporating a fair, impartial and independent legal process</p>
<p>September 30</p>	<p>Trial adjourned until October 11th</p> <p>At the Warsaw Eastern Partnership Summit, president of the European Council expresses the opposition of the EU to Tymoshenko's trial, reminding Yanukovych that it is a serious matter which will affect their relations</p>

ANNEX B

Ukrainian Political System

Type of political regime	semi-presidential
Notes	The President is the Head of State and acts in its name (Article 102 of the Constitution). He or she is the guarantor of state sovereignty and territorial indivisibility, the observance of the Constitution and human and citizens' rights and freedoms.
Head of the executive	President of the Republic
Notes	The Cabinet of Ministers is the highest body in the system of bodies of executive power (Article 113 of the Constitution). The Prime Minister manages the work of the cabinet and directs it for the implementation of the programme of activity of the cabinet adopted by the parliament.
Method for appointing the executive	The President is directly elected by the citizens on the basis of universal, equal and direct suffrage by secret ballot (Article 103 of the Constitution). The President appoints the Prime Minister with the consent of more than one-half of all members of the parliament, terminates the authority of the Prime Minister and adopts a decision on his or her resignation (Article 106.9 of the Constitution). The President also appoints, on the submission of the Prime Minister, the other members of the cabinet, chief officers of other central bodies of executive power, and also the heads of local state administrations, and terminates their authority in these positions.
Term of office of the executive and coincidence with the term of the legislature	The President is directly elected by the citizens for a five-year term (Article 103 of the Constitution). One person may not be President for more than two consecutive terms. The parliament consists of 450 deputies who are elected for a four-year term on the basis of universal, equal and direct suffrage by secret ballot (Article 76 of the Constitution).
Incompatibility of the functions of member of the executive and member of Parliament	Yes - Ministers and chief officers of central and local bodies of executive power do not have the right to combine their official activity with other work outside of working hours, except teaching, scholarly or creative activity not may they be members of administrative bodies or boards of supervisors of profit-making enterprises (Article 120 of the Constitution).
Dissolution of Parliament	Yes

<ul style="list-style-type: none"> • Circumstances 	<p>The President may terminate the authority of the parliament prior to the expiration of its term if within 30 days of a single regular session the plenary meetings fail to commence (Article 90 of the Constitution).</p>
<ul style="list-style-type: none"> • Modalities 	<p>The authority of the parliament, which is chosen at special elections conducted after the pre-term termination by the President, may not be terminated within one year from the day of its election. The authority of the parliament may not be terminated prior to the expiration of its term within the last six months of its term. No dissolutions have occurred over eleven years between 1990 and 2000.</p>
ACCOUNTABILITY	
Accountability of Government to Parliament	<p>Yes The cabinet is responsible to the President and is under the control of and collectively accountable to the parliament within the constitutional limits (Article 113 of the Constitution).</p>
Modalities of oversight	
<ul style="list-style-type: none"> • Oral and written questions of parliamentarians 	<p>At a parliamentary session every deputy has the right to present an inquiry to the parliamentary bodies, the cabinet, chief officers of other bodies of state power and bodies of local self-Government, and also to the chief executives of enterprises, institutions and organizations located on the territory, irrespective of their subordination and forms of ownership. Chief officers of bodies of state power and bodies of local self-Government, chief executives of enterprises, institutions and organizations are obliged to notify a deputy of the results of the consideration of his or her inquiry (Article 86 of the Constitution).</p>
<ul style="list-style-type: none"> • Government reports to Parliament 	<p>The parliament hears annual and special messages of the President on the domestic and foreign situation (Article 85.8 of the Constitution).</p>
Measures	
<ul style="list-style-type: none"> • Vote of confidence on Government programs and/or legislative proposals 	<p>The parliament considers and adopts a decision on the approval of the cabinet's programme of activity (Article 85.11 of the Constitution).</p>
Motions of censure and votes of no confidence (sub-report)	
<ul style="list-style-type: none"> • Circumstances 	<p>The parliament may consider the issue of responsibility of the cabinet and adopt a resolution of no confidence (Article 87 of the Constitution).</p>

<ul style="list-style-type: none"> • Modalites 	<p>The parliament may consider the issue of responsibility of the cabinet on the proposal of not less than one-third of all deputies and adopt a resolution of no confidence by the majority of all its members. The issue of responsibility of the cabinet may neither be considered more than once during one regular session, nor within one year of the approval of the programme of activity of the cabinet.</p>
<ul style="list-style-type: none"> • Consequences 	<p>The resignation and adoption of a resolution of no confidence in the Prime Minister results in the resignation of the entire cabinet (Article 115 of the Constitution). The cabinet, whose resignation is accepted by the President, continues to exercise its powers by commission of the President until a new cabinet commences its operation but for no longer than 60 days. Between 1996 and 2001, two motions of censure were tabled in the parliament: in 1998 (within the opposition) and in 2001 (partly within the opposition and partly within the majority) but only the latter was accepted.</p>
Dismissal and/or impeachment of Government and other public officials (sub-report)	
<ul style="list-style-type: none"> • Circumstances and persons concerned 	<p>The inability of the President to exercise his or her powers for reasons of health are determined at a meeting of the parliament and confirmed by a decision adopted by the majority of all its members on the basis of a petition of the Supreme Court - on the appeal of the parliament and a medical opinion (Article 110 of the Constitution). The President may be removed from office by the parliament by the procedure of impeachment in the event that he or she commits state treason or any other crime (Article 111 of the Constitution).</p>
<ul style="list-style-type: none"> • Modalites and procedure 	<p>The impeachment of the President is initiated by a majority of all deputies. To conduct the investigation, the parliament establishes a special Temporary Investigation Commission whose composition includes a Special Procurator and special investigators. The conclusions and proposals of this Commission are considered at a parliamentary meeting. The parliament may adopt a decision on the accusation by no less than two-thirds of its members.</p>

<ul style="list-style-type: none"> Consequences 	<p>The decision on the removal of the President is adopted by no less than three-quarters of all deputies after the review of the case by the Constitutional Court and the receipt of its opinion on the observance of the constitutional procedure of investigation and the consideration of the case of impeachment, and the receipt of the opinion of the Supreme Court as to whether the effect that the acts, of which the President is accused, contain elements of state treason or any other crime.</p>
<ul style="list-style-type: none"> Have these procedures been applied? 	
<p>OVERSIGHT OVER THE ACTIONS OF THE GOVERNMENT ADMINISTRATION</p>	
<p>Oversight over the actions of the Government administration</p>	<p>Yes The cabinet is responsible to the President and is under the control of, and collectively accountable to, the parliament within the constitutional limits (Article 113 of the Constitution).</p>
<p>Means and modalities of oversight</p>	
<ul style="list-style-type: none"> Hearings in Committees 	<p>Not applicable</p>
<ul style="list-style-type: none"> Committees of inquiry and missions to Government departments 	<p>To investigate issues of public interest, the parliament establishes temporary investigation commissions if no less than one-third of all deputies have voted in favour thereof. The conclusions and proposals of such commissions are not decisive for investigations and courts (Article 89 of the Constitution).</p>
<ul style="list-style-type: none"> Oral and written questions of parliamentarians 	<p>Parliament exercises oversight over the actions of the administration by putting oral and written questions to the Government. The deadline for replies is one month, and one day in a plenary, a month is set aside for questions. Questions can give rise to a debate if more than one-fifth of all deputies insist on it.</p>
<ul style="list-style-type: none"> Role of Parliament in the appointment of senior Government officials 	<p>The parliament appoints and dismisses from office the chairman and other members of the chamber of accounting, the authorized Human Rights Representative of the parliament, the chairman of the national bank on the submission of the President, one-half of the composition of the Council of the National Bank, one-half of the composition of the National Council on Television and Radio Broadcasting, and the members of the Central Electoral Commission on the submission of the President (Article 85.16-21 of the Constitution). Parliament also appoints judges and approves other senior government officials, but does not play any role in the appointment of ambassadors.</p>
<ul style="list-style-type: none"> Activity reports of the Government administration and of public services or establishments 	<p>Not applicable</p>

<ul style="list-style-type: none"> Representation of Parliament in governing bodies of the Government administration 	Not applicable
Existence of an ombudsman	Yes
<ul style="list-style-type: none"> Method for appointing the executive 	The authorized Human Rights Representative of the parliament is appointed and dismissed by the parliament for a five-year term, and exercises parliamentary control over the observance of constitutional human and citizens' rights and freedoms (Article 101 of the Constitution).
<ul style="list-style-type: none"> Relationship to Parliament 	The parliament hears his or her annual reports on the situation of the observance and protection of human rights and freedoms.
BUDGETARY OVERSIGHT	
Consultation of Parliament in the preparation of the national budget	No The cabinet submits the draft law on the State budget for the following year to the parliament (Article 96 of the Constitution). The report on the course of the implementation of the state budget in the current year is submitted together with the draft law.
Modalities of oversight	
<ul style="list-style-type: none"> Examination of the budget / finance act by Parliament 	Any expenditure for the needs of the entire country and the extent and purpose of that expenditure is determined exclusively by the law on the state budget. The parliament approves the state budget and introduces amendments to it, controls its implementation and adopts decisions in regard to the report on its implementation (Article 85.4 of the Constitution).
<ul style="list-style-type: none"> Reports on the budget / finance act by Committees 	Not applicable
Fields overseen	
<ul style="list-style-type: none"> Defence budget 	Not applicable
<ul style="list-style-type: none"> Budget of special departments 	Not applicable
<ul style="list-style-type: none"> Role of Parliament in national development plans 	The parliament may approve some national development plans.
Parliament's deadline for the examination and adoption of the budget / finance act	The cabinet submits the draft law on the state budget to the parliament no later than on 15 September of each year. It is approved by the parliament before the first day of December for the period from 1 January to 31 December, and under special circumstances for a different period.
Consequences of failure by Parliament to adopt the budget / finance act	Disbursements are executed according to a special procedure, envisaged by the budgetary code.
Budgetary autonomy of Parliament	Yes The parliament appoints and dismisses from office the Head of Staff of the parliament, approves the parliamentary budget and its staff structure (Article 85. 35 of the Constitution).
OVERSIGHT OF THE IMPLEMENTATION OF THE BUDGET AND OF GOVERNMENT SPENDING	

Evaluation of Government spending	
Parliament approves Government expenditures annually	Yes The cabinet ensures the implementation of the state budget and submits the report on its implementation to the parliament together with the draft budget (Article 97 of the Constitution). The submitted report is made public. The cabinet also submits an annual report on the implementation of the Finance Act.
Parliamentary oversight of public companies	No Not applicable
Modalities of oversight	
<ul style="list-style-type: none"> Body for auditing the Government's books and method for appointing 	The Chamber of Accounting exercises control over the use of finances of the state budget on behalf of the parliament (Article 98 of the Constitution).
<ul style="list-style-type: none"> Reports of the public auditor's office 	The parliament exercises oversight over the execution of the budget through reports by the accounting office or any other body for the auditing of the government books.
<ul style="list-style-type: none"> Specialised committee 	Not applicable
OVERSIGHT OVER FOREIGN POLICY	
Foreign Relations Committee (sub-report)	
<ul style="list-style-type: none"> Functions of the Committee 	The parliament exercises oversight over foreign policy through the Foreign Relations Committee.
<ul style="list-style-type: none"> Powers of the Committee 	The Committee performs the work of legislative drafting, and prepares and conducts the preliminary consideration of issues ascribed to the authority of the parliament.
<ul style="list-style-type: none"> Composition of the Committee 	The composition of the Committee reflects the numerical strength of each party in the parliament.
<ul style="list-style-type: none"> Bilateral visits of Parliament, inter-parliamentary conferences and information missions abroad 	The parliament exercises oversight over foreign policy through bilateral visits, participation in inter-parliamentary conferences and information missions abroad.
<ul style="list-style-type: none"> Plenary debates on foreign policy issues 	Not applicable
Involvement of Parliament	
<ul style="list-style-type: none"> Participation of Parliament in inter-governmental meetings 	Not applicable
<ul style="list-style-type: none"> Modalities and procedures for ratifying international treaties and agreements (sub-report) 	The President represents the State in international relations, administers its foreign political activity, conducts negotiations and concludes international treaties (Article 106.3 of the Constitution). A treaty or international instrument is submitted for ratification to the parliament only on the will of the President or the Government. The parliament grants consent to the binding character of international treaties, within the term established by law, and denounces international treaties (Article 85.32 of the Constitution).
<ul style="list-style-type: none"> Other mechanisms for participation in foreign policy by Parliament 	There are no other parliamentary oversight mechanisms in addition to the above.

OVERSIGHT OVER NATIONAL DEFENCE POLICY	
National Defence Committee (sub-report)	
<ul style="list-style-type: none"> • Functions of the Committee 	The parliament exercises oversight over defence policy through the National Defence Committee.
<ul style="list-style-type: none"> • Powers of the Committee 	The Committee performs the work of legislative drafting and prepares and conducts the preliminary consideration of issues ascribed to the authority of the parliament.
<ul style="list-style-type: none"> • Composition of the Committee 	Not available
Parliamentary oversight of public arms manufacturing companies	Not applicable
Circumstances and involvement	
<ul style="list-style-type: none"> • Modalities and procedures in case of war, an armed attack or a state of emergency 	The parliament declares war upon the submission of the President, and concludes peace; it approves the decision of the President on the use of armed forces and other military formations in the event of armed aggression (Article 85.9 of the Constitution). The parliament also confirms decrees, within two days of the address by the President, on the introduction of martial law, on a state of emergency in the country or in particular areas, on total or partial mobilization, and on the announcement of particular areas as zones of ecological emergency situations (Article 85.31 of the Constitution).
<ul style="list-style-type: none"> • Role of Parliament in sending troops abroad 	The parliament exercises oversight over defence policy when troops are sent abroad.
<ul style="list-style-type: none"> • Other mechanisms for participation in national defence policy by Parliament 	There are no other parliamentary oversight mechanisms in addition to the above.
STATE OF EMERGENCY	
Circumstances	The President forwards the submission on the declaration of a state of war to the parliament, which also adopts the decision on the use of armed forces in the event of armed aggression (Article 106.19 of the Constitution). The President adopts a decision in accordance with the law on the general or partial mobilization and the introduction of martial law in the country or in particular areas in the event of a threat of aggression or danger to state independence. The President also adopts a decision, should the necessity arise, on the introduction of a state of emergency in the country or in particular areas, and should the necessity arise, declares certain areas of the country as zones of ecological emergency situations with subsequent confirmation of these decisions by the parliament.
Can parliament take the initiative to declare a state of emergency	No

<p>Consequences of a state of emergency for Parliament</p>	<p>In the event of the introduction of martial law or a state of emergency, the parliament assembles within a period of two days without convocation (Article 83 of the Constitution). In the event that the term of authority of the parliament expires while martial law or a state of emergency are in effect, its authority is extended until the day of the first meeting of the first session of the parliament, elected after the cancellation of martial law or of the state of emergency.</p>
<p>VERIFICATION OF THE CONSTITUTIONALITY AND THE APPLICATION OF LAWS</p>	
<p>Modalities of oversight</p>	
<ul style="list-style-type: none"> • Body ruling on the constitutionality of laws 	<p>A specialised body / constitutional Court The Constitutional Court is the sole body of constitutional jurisdiction (Article 147 of the Constitution). It decides on issues of conformity of laws and other legal acts with the Constitution and provides the official interpretation of the Constitution and the laws. The Court is composed of 18 judges with the President, the parliament and the Congress of Judges each appointing six judges. The judges are appointed for nine years without the right of appointment for a repeat term. The Chairman of the Constitutional Court is elected by secret ballot for one three-year term only at a special plenary meeting of the Court from among its judges.</p>
<ul style="list-style-type: none"> • Means and procedures 	
<p>Evaluation of laws</p>	<p>No Not applicable</p>

Measures

The authority of the Constitutional Court comprises deciding on issues of conformity with the Constitution (the constitutionality) of the (i) laws and other legal acts of the parliament, (ii) acts of the President, (iii) acts of the cabinet, and (iv) legal acts of the parliament of the Autonomous Republic of Crimea (Article 150 of the Constitution). These issues are considered on the appeals of the President, no less than forty-five deputies, the Supreme Court, the authorized Human Rights Representative of the parliament, and the parliament of the Autonomous Republic of Crimea. The authority of the Court also extends to the official interpretation of the Constitution and the laws. The Court adopts decisions on the issues envisaged that are mandatory for execution throughout the territory, which are final and may not be appealed. The Constitutional Court, on the appeal of the President or the cabinet, provides opinions on the conformity with the Constitution of international treaties that are in force, or international treaties submitted to the parliament for the granting of agreement on their binding nature. On the appeal of the parliament, the Constitutional Court provides an opinion on the observance of the constitutional procedure of investigation and consideration of the case of removing the President from office by the procedure of impeachment. Laws and other legal acts, by the decision of the Constitutional Court, are deemed to be unconstitutional, in whole or in part, in the event that they do not conform to the Constitution, or if there was a violation of the procedure for their review, adoption or entry into force. Laws and other legal acts, or their separate provisions, which are deemed to be unconstitutional, lose legal force from the day the Court adopts the decision on their unconstitutionality. Material or moral damages inflicted on physical and legal persons by acts or actions deemed to be unconstitutional, are compensated for by the State by the procedure established by law.

Source: http://www.ipu.org/parline-e/reports/CtrlParlementaire/2331_F.htm#system

ANNEX C

Summary of Constitutional Developments

1996: The first Constitution of Independent Ukraine

From 1991 to 1996, international and Ukrainian legal experts worked scrupulously on the draft of a new Constitution for Ukraine, the final version of which was adopted by the Parliament of Ukraine on June 28, 1996.

This event marked the beginning of the stabilization of the country's political and economic life. According to the 1996 Constitution, Ukraine was declared to be a presidential republic. The system of the separation of powers, set forth in the Constitution, granted strong executive powers to the President and unhindered legislative power to the Parliament.

The European Commission for Democracy through Law (the Venice Commission) praised the new Constitution, emphasizing that it established an effective system of checks and balances and made the return to authoritarianism almost impossible.

2004: Political Crisis. Amendments to the Constitution (Law No: 2222)

In December 2004, the Parliament of Ukraine, facing a severe political crisis caused by the presidential elections, adopted the Law of Ukraine "On Introduction of Amendments to the Constitution of Ukraine" No 2222. As a result of these changes, Ukraine was transformed into a parliamentary-presidential republic, with the Parliament of Ukraine receiving much wider powers.

In contrast with the lengthy and painstaking process of the drafting of the 1996 Constitution, the amendments introduced in 2004 resembled more a political compromise rather than a constitutional legal procedure. The main breach of the amendments to the Constitution, claimed by its opponents at that time, was the ignorance the Constitutional Court, which was removed from the mandatory procedure of legal analysis and supervision of the amendments process.

In 2005, the Parliamentary Assembly of the Council of Europe, gravely concerned with the Ukraine's departure from the democratic procedures (i.e. the removal of the Constitutional Court from the process of the amendment of the Constitution), urged the country's political leaders to rectify the mistakes of 2004 and by doing so to ensure the legitimacy of the constitutional changes and their compliance with the European standards.

The 2004 amendments to the Constitution were subsequently criticized by the representatives of the government, the opposition, by prominent legal experts as well as many citizens. It was seen as in Ukraine political expediency took priority over Parliament's duty to follow the prescriptions of the Constitution.

2005-2010: Outcomes of the Constitutional Amendments 2004

From 2005 onwards, from the moment when the 2004 Constitutional amendments came into force, Ukrainian politicians, political leaders and constitutional lawyers were locked in a series of protracted legal disputes. The Constitutional Court was regularly barraged by countless claims concerning the inconsistency and the incongruity of the Constitutional provisions of 2004.

As a result, Ukraine's domestic politics descended into an almost continuous constitutional power struggle, which continued to mar the country's progress and reforms.

Constitutional Court: Applications

The first attempt to annul the constitutional amendments in the Constitutional Court was undertaken in 2007 by Yulia Tymoshenko. The documents necessary for the hearing were considered to have been submitted inappropriately, therefore, the Court decided not to proceed with the application.

On 13 July 2010, a group of MP's filed an application to the Constitutional Court, asking for it to declare the 2004 Law of Ukraine "On Introduction of Amendments to the Constitution of Ukraine" No 2222 as unconstitutional.

The 252 MPs requested the Constitutional Court to either return to the original Constitution of 1996, or to facilitate the adoption of new amendments, which would be adequate to the current day realities and to the needs of the Ukrainian society.

Political and legal outcomes of the Court's decision

The declaration of the Law No 2222 as unconstitutional led to the restoration of the 1996 version of the Constitution of Ukraine.

The key changes concern the powers of the President with respect to the Government of Ukraine. Under the new (old) constitutional provisions, the President will have the right to appoint, with the approval of the Parliament, the Prime Minister of Ukraine, as well as the right to dismiss him. The President will also be able to appoint and dismiss, upon the recommendation of the Prime-Minister, other members of the Government.

Among other important powers the Court's decision has bestowed upon the President are the rights to appoint and remove from office key state officials, including the Head of the Security Service of Ukraine, the Head of State Property Fund and the General Prosecutor of Ukraine.

Source: Open sources, primarily Worldwide News Ukraine, <http://wnu-ukraine.com>

ANNEX D

Ukraine Parliament

Structure of Parliament	Unicameral
Electoral Law	22 October 1997 Last amended: 8 December 2004
Mode of designation	Directly elected 450
Constituencies	<ul style="list-style-type: none"> - One nationwide constituency - Proportional: 450 seats allocated to party lists by the system of proportional representation
Voting system	<ul style="list-style-type: none"> - Parties must obtain 3% of the vote to gain parliamentary representation - Voting is not compulsory
Voter requirements	<ul style="list-style-type: none"> - Age: at least 18 years old on election day - Ukrainian citizenship - Ukrainians living and working overseas who are registered on the electoral list established by the Ukrainian diplomatic mission in their country of residence are entitled to vote
Candidates Eligibility	<ul style="list-style-type: none"> - Qualified electors - Age: at least 21 on election day - Ukrainian citizenship - Residence in Ukraine for at least 5 years prior to election
Candidates Incompatibilities	<ul style="list-style-type: none"> - Cabinet Members - Chairperson of the central executive authority - Holders of any elective post - Civil servants - Persons performing any remunerated work other than MP's (except for teaching, scientific and creative activities and medical professions) - Persons involved in pre-trial investigation, prosecution authorities and agents of the courts - Executives and board members of companies or organisations
Candidacy requirements	<ul style="list-style-type: none"> - Nomination by a political party (or coalition of registered political parties) registered by the Ministry of Justice at least 365 days prior to election day - A deposit equivalent to 2,000 minimum wages (approx US\$ 206,000) - The deposit is reimbursed if the party or the coalition obtains 3% of the votes

Source: http://www.ipu.org/parline-e/reports/2331_B.htm

ANNEX E

Key Personalities in Ukrainian Politics, 1991–2011

Azarov, Mykola - head of the State Tax Administration, 1996–2000; first deputy prime minister, 2002–05; minister of finance, 2006–07; prime minister, 2010-current.

Chornovil, Taras - Former dissident and political prisoner, head of Rukh movement, 1989–2000; killed in a suspicious automobile accident.

Fokin, Vitold - Prime minister, November 1990–September 1992.

Kinakh, Anatoliy - Prime minister, April 2001–November 2002; previously head of the presidential administration.

Kostenko, Yuri - Head of one branch of Rukh movement after 2000 split; previously minister of environment.

Kravchenko, Yuriy - Minister of interior affairs, 1995–2001; head of the State Tax Administration, 2002–04.

Kravchuk, Leonid - President, 1991–1994; previously speaker of parliament.

Kuchma, Leonid - Prime minister, October 1992–September 1993; president, July 1994–December 2004.

Lanovyi, Volodymyr – Deputy prime minister and minister of economy, 1992; first deputy prime minister, 1995-96; prime minister 1996-97.

Lazarenko, Pavlo - Prime minister, May 1996–July 1997; convicted in the United States and Switzerland on money-laundering charges.

Lutsenko, Yuriy - Leader of the popular movement Ukraine without Kuchma, 2001; Minister of interior affairs 2005–06 & 2007-2010.

Lytvyn, Volodymyr - Speaker of parliament, 2002–2006.

Marchuk, Yevhen - Prime minister, June 1995–May 1996; also head of the Security Service of Ukraine, chair of the National Security and Defense Council, minister of defense.

Masol, Vitaly - Prime minister, 1987–1990, June 1994–April 1995.

Medvedchuk, Viktor - Head of presidential administration under Leonid Kuchma; head of Social Democratic Party of Ukraine (United); leader of “Kyiv clan.”

Moroz, Oleksandr - Speaker of parliament, 1994–1998, 2006; head of Socialist Party.

Pliushch, Ivan - Speaker of parliament, 1991–1994, 2000–2002.

Poroshenko, Petro - Major owner of UkrPromInvest Group founded in 1993; Secretary of the National Security and Defense Council, 2005; foreign minister, 2009-2010.

Pustovoitenko, Valeriy - Prime minister, July 1997–December 1999; later minister of transportation.

Pynzenyk, Viktor - Minister of economy, deputy prime minister for economy , 1992–93; first deputy prime minister, deputy prime minister for economic reform, 1994–96; deputy prime minister, 1996–97; minister of finance, 2005–06 & 2007-2009.

Symonenko, Petro - Head of Communist Party of Ukraine, 1993– ; finished second in 1998 presidential election.

Tarasyuk, Borys - Foreign minister, 1998–2000, 2005– ; previously ambassador to NATO.

Tkachenko, Oleksandr - Speaker of parliament, 1998–2000.

Tyhytko, Serhiy - Deputy prime minister for economic reform, 1997; deputy prime minister for economy, 1997–99; minister of economy, 1999–2000; chairman of the National Bank of Ukraine, 2002–04; head of Viktor Yanukovich's 2004 presidential campaign.

Tymoshenko, Yulia - Minister for Oil and Gas, 1996–1997; deputy prime minister 1999–2001; leader of the Orange Revolution, prime minister, January–September 2005.

Vitrenko, Natalia – Founder and head of Progressive Socialist Party of Ukraine, 1996-current; presidential candidate, 1999 and 2004.

Yatseniuk, Arseniy - First deputy chairman of the National Bank of Ukraine, 2005; minister of economy, 2005–06; minister of foreign affairs, 2007; speaker of the Rada, 2007-2008.

Yanukovich, Viktor - Governor of Donetsk Oblast, 1997–2002; prime minister, 2002–2004, 2006; presidential candidate, 2004; previously governor of Donetsk Oblast.

Yekhanurov, Yuriy - Head of the State Property Fund, 1994–97; minister of economy, 1997; first deputy primeminister, 1999–2001; prime minister, 2005–06; minister of defense, 2007-2009.

Yushchenko, Viktor - Head of the Central Bank of Ukraine, 1993–1999; prime minister, December 1999–April 2001; leader of the Orange Revolution; president, 2005– ; head of Nasha Ukraina political bloc.

Zinchenko, Olexandr – CEO, 1995–98; president, 1998–2002 of Inter TV channel; Deputy speaker of the Rada, 2002–05; head of the secretariat of the president, 2005.

Zviahilsky, Yukhim - Prime minister, September 1993–June 1994.

ANNEX F

Presidents 1991-

Leonid Kravchuk	1991–1994
Leonid Kuchma	1994-2004
Viktor Yushchenko	2005-2010
Viktor Yanukovych	2010- until 2015

Prime Ministers 1990 -

Vitold Fokin	November 1990–September 1992
Leonid Kuchma	October 1992–September 1993
Yukhim Zviahilsky	September 1993–June 1994
Vitaly Masol	June 1994–April 1995
Yevhen Marchuk	June 1995–May 1996
Pavlo Lazarenko	May 1996–July 1997
Valeriy Pustovoitenko	July 1997–December 1999
Viktor Yushchenko	December 1999–April 2001
Anatoly Kinakh	May 2001–November 2002
Viktor Yanukovych	November 2002–December 2004
Yulia Tymoshenko	January 2005–September 2005
Yuri Yekhanurov	September 2005–March 2006
Viktor Yanukovych	August 2006–December 2007
Yulia Tymoshenko	December 2009-March 2010
Mykola Azarov	March 2010-current

Speakers 1991-

Leonid Kravchuk	To December 1991 elections
Ivan Pliushch	December 1991–April 1994
Oleksandr Moroz	April 1994–March 1998
Oleksandr Tkachenko	May 1998–January 2000
Ivan Pliushch	January 2000–March 2002
Volodymyr Lytvyn	April 2002–March 2006
Oleksandr Moroz	March 2006–December 2007
Arseniy Yatsenyuk	December 2007-November 2008
Oleksandr Lavrynovych	November 2008-December 2008
Volodymyr Lytvyn	December 2008- current

ANNEX G

Ukrainian Economy: Basic Indicators

Indicators	Years			
GDP Growth (Constant Prices, National Currency)	-14.82%	4.21%	4.50%	4.90%
GDP (Current Prices, US Dollars)	US\$ 117.404 Billion	US\$ 136.416 Billion	US\$ 157.611 Billion	US\$ 171.371 Billion
GDP Per Capita (Constant Prices, National Currency)	UAH 13,693.33 .	UAH 14,342.04 .	UAH 15,062.75 .	UAH 15,880.22 .
GDP Per Capita (Current Prices, US Dollars)	US\$ 2,568.65	US\$ 2,999.63	US\$ 3,483.10	US\$ 3,806.20
GDP (PPP), US Dollars	US\$ 290.116 Billion	US\$ 305.229 Billion	US\$ 322.458 Billion	US\$ 342.917 Billion
GDP Share of World Total (PPP)	0.41%	0.41%	0.41%	0.41%
Investment (% of GDP)	17.11%	19.63%	21.60%	22.55%
Inflation, Average Consumer Prices (Indexed to Year 2000)	28,286,804.55 (Index, Base Year 2000 = 100)	30,936,919.03 (Index, Base Year 2000 = 100)	33,775,917.60 (Index, Base Year 2000 = 100)	36,586,413.66 (Index, Base Year 2000 = 100)

Inflation, End of Year (Indexed to Year 2000)	29,425,773.08 (Index, Base Year 2000 = 100)	32,102,283.11 (Index, Base Year 2000 = 100)	35,391,996.68 (Index, Base Year 2000 = 100)	38,107,993.58 (Index, Base Year 2000 = 100)
Import Volumes of Goods Only (Percent Change)	-42.52%	18.39%	10.47%	8.21%
Export Volumes of Goods Only (Percent Change)	-25.46%	10.78%	8.01%	7.58%
Value of Oil Exports	US\$ 0 Billions	US\$ 0 Billions	US\$ 0 Billions	US\$ 0 Billions
General government revenue (National Currency)	UAH 386.328 Billions.	UAH 468.2 Billions.	UAH 526.8 Billions.	UAH 593.9 Billions.
General government total expenditure (National Currency)	UAH 443.461 Billions.	UAH 530.5 Billions.	UAH 562.1 Billions.	UAH 630.6 Billions.
Total Government Net Lending/ Borrowing (National Currency)	UAH -57.133 Billions.	UAH -62.3 Billions.	UAH -35.3 Billions.	UAH -36.7 Billions.

General Government Structural Balance (National Currency)	UAH -27.56 Billion.	UAH -35.578 Billion.	UAH -20.91 Billion.	UAH -28.885 Billion.
General Government Balance (National Currency)	UAH -46.487 Billion.	UAH -44.7 Billion.	UAH -10.9 Billion.	UAH -8.2 Billion.
Total Government Net Debt (National Currency)	UAH 291.683 Billion.	UAH 415.876 Billion.	UAH 513.675 Billion.	UAH 613.271 Billion.
Total Government Gross Debt (National Currency)	UAH 323.141 Billion.	UAH 438.493 Billion.	UAH 533.293 Billion.	UAH 626.888 Billion.
Fiscal Year Gross Domestic Product, Current Prices	UAH 914.72 Billions.	UAH 1,083.20 Billions.	UAH 1,253.01 Billions.	UAH 1,441.30 Billions.
Current Account Balance (% GDP)		-1.88%	-3.62%	-3.76%

ANNEX H

Timeline of Gas Issues**2004**

July 24 Former Ukrainian President Leonid Kuchma and his Russian counterpart, Vladimir Putin, agree on using RosUkrEnergo as intermediary in the gas trade, replacing Eural Trans Gas, a Hungarian-based intermediary used between 2002-2004.

July 29 Ukraine's state-run oil and gas monopoly Naftogaz Ukraine signs contracts with RosUkrEnergo for the import and transit of gas from Central Asia to Ukraine and Europe.

2005

Jan. 23 Viktor Yushchenko becomes Ukraine's third president after the Orange Revolution overturned rigged 2004 presidential elections in favour of Viktor Yanukovich.

Sept. 8 Yushchenko sacks Yulia Tymoshenko as prime minister and dismisses her government. Tymoshenko and her ally, former Security Service of Ukraine chief Oleksandr Turchynov, had accused Yushchenko of protecting RosUkrEnergo's status as an intermediary for gas deals with Russia.

2006

Jan. 1 Russia's state-controlled oil and gas monopoly, Gazprom, cuts off gas supplies to Ukraine.

Jan. 4 Gas supplies are restored after Yushchenko's administration increases RosUkrEnergo's role in supplying Ukraine with gas. **2007**

June 21 Ukrainian billionaire Dmytro Firtash, co-owner of RosUkrEnergo along with Russia's Gazprom, consolidates his assets into a new holding company called Group DF.

Sept. 30 Snap parliamentary elections are held giving Yulia Tymoshenko's bloc the opportunity to form a shaky majority coalition with some members of Yushchenko's Our Ukraine political grouping.

Dec. 18 Yulia Tymoshenko is re-appointed as prime minister. She vows to eliminate gas trading middlemen.

Dec. 24 Valeriy Khoroshkovsky appointed head of Customs Service.

2008

Nov. 1 World financial crisis hits Ukraine, causing a sharp devaluation of the hryvnia and leading the central bank to refinance many of the country's top banks.

Dec. 11 Group DF issues a press release confirming its intention to buy controlling stake in one of the country's largest troubled banks, Nadra Bank, which receives billions of hryvnia in refinancing from the central bank.

Dec. 8 Firtash allegedly meets with U.S. Ambassador to Ukraine William Taylor. He allegedly criticizes Tymoshenko, describes Yushchenko as a friend and says he is trying to forge an alliance between Yushchenko and Viktor Yanukovich.

2009

Jan. 1 Russia's Gazprom cuts off gas shipments to Ukraine (and Europe) after failing to renegotiate a new, higher price for gas supplies to Ukraine.

Jan. 6 Slovakia declares a state of emergency because of gas cut-offs. Other central European countries, such as Bulgaria and Serbia, complain.

Jan. 8 Russian Prime Minister Vladimir Putin says top Ukrainian officials are fighting to keep intermediaries in gas trade.

Jan. 19 Tymoshenko and Putin sign new gas accord in Moscow providing for the elimination of RosUkrEnergo as an intermediary.

Jan. 20 Gazprom transfers \$1.7 billion to Naftogaz as an advance payment for the transiting natural gas to Europe.

Jan. 20 Naftogaz buys 11 billion cubic meters of gas previously controlled by RosUkrEnergo from Gazprom for \$1.7 billion (\$153 per thousand cubic meters).

Jan. 28 Government sacks Valeriy Khoroshkovsky as Customs Service head after he refuses to custom clear the gas transfer. **Jan. 28** Yushchenko appoints Khoroshkovsky as deputy SBU chief.

Jan. 28 Government appoints Anatoliy Makarenko Customs Service chief.

Jan. 30 Khoroshkovsky requests documentation from Naftogaz about disputed gas.

Feb. 5 Tymoshenko orders transfer of 11 billion cubic meters of gas to Naftogaz citing agreement between Naftogaz and Gazprom.

March 2 SBU arrests Taras Shepitko, deputy head of energy department of Ukraine's Customs Service.

March 4 SBU "Alpha" Special Forces unit raids Naftogaz central offices in Kyiv.

March 5 SBU "Alpha" Special Forces unit raids Ukrtransgaz offices in Kyiv.

March 24 Arbitration Institute of the Stockholm Chamber of Commerce hears RosUkrEnergo's case against Naftogaz. **2010**

Feb. 25 Viktor Yanukovich becomes president after defeating Tymoshenko in a Feb. 7 election.

June 8 The Swedish Arbitration Tribunal rules Naftogaz must return 11 billion cubic meters to RosUkrEnergo, plus 1 billion cubic meters in penalties. In its plea to the court, Ukraine admitted that the gas belonged to RosUkrEnergo.

June 23 Former Customs chief Anatoliy Makarenko is arrested.

July 9 Former Deputy Naftogaz chief Ihor Didenko is arrested by SBU "Alpha" special forces in Kyiv.

July 21 SBU re-arrests Taras Shepitko, deputy head of the energy department of Ukraine's Customs Service.

Nov. 24 Ukraine's High administrative court upholds ruling by Swedish Arbitration Tribunal.

Dec. 15 Criminal case opened against former Prime Minister Yulia Tymoshenko.

2011

Jan. 26 Ukrainian government promises to return 12 billion cubic meters of natural gas to RosUkrEnergo during 2011.

Source: <http://www.kyivpost.com/news/nation/detail/96310/#ixzz1Y8eW91sp>

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 Türkmeneli TV (Kirkuk, Iraq)
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 St. Petersburg University (Russian Federation)
 Russia Strategic Research Center, Turkey-Middle East Studies Expert (Russian Federation)
 ORSAM Advisor, Middle East, Gazi University, Department of International Relations
 Gazi University, Department of International Relations
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