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Yulia Tymoshenko sentenced

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On 11 October, the former Prime Minister of Ukraine, Yulia Tymoshenko, was convicted and sentenced to seven years' imprisonment. In addition, the court ruled that she was forbidden from holding public office for three years, and was obliged to pay damages to Naftogaz amounting to 1.5 billion hryvnia (approximately US$187 million). The court also upheld her detention on remand while she appeals, which her defence team has already announced she will do.

The court's decision proves that the Ukrainian president's team has decided not to make any immediate and demonstrative concessions to the European Union, such as making hasty changes to the penal code or discontinuing the criminal case against Tymoshenko before she is sentenced by the Court of First Instance. Her conviction and her stay in detention suggest that for the Party of Regions, issues of credibility within Ukraine (the court's acknowledgement of Tymoshenko's guilt) are more important than any damage to its image in the West.

In contrast to Ukraine, where the verdict was accepted quite calmly (protests have been very limited in nature), in the West it has caused very strong criticism, the scale of which has surprised the Ukrainian government.

Despite her conviction, Tymoshenko could be released quite soon if changes were made to the penal code. This seems the most likely course of events, especially as the Ukrainian government is aware that keeping Tymoshenko in prison would block the signing of the Association Agreement with the EU, and would also mean Ukraine's effective isolation in the West.

The background to the trial

The start of Tymoshenko's trial in June was linked to the signing of a contract on gas supplies from Russia, which ended the 'gas war' of 2009. The agreement was clearly unfavourable to Ukraine, which has been paying some of the highest gas prices in Europe. Tymoshenko was convicted because in the court's assessment, she misused her powers as Ukraine's acting prime minister at the end of 2008 by issuing instructions to officials negotiating the gas contract with Gazprom in a manner violating the relevant law, which – according to the Criminal Code – resulted in 'particularly sizeable' losses. This offence is punishable by seven to ten years' imprisonment. The link between the formal (procedural) error with the content of the contract as it was eventually signed is unclear, and the trial, to judge from the available materials, did not prove that Yulia Tymoshenko had broken the law. In fact, this trial was political in nature, and was aimed at showing that in accepting

unfavourable terms for the deliveries and transit of natural gas to Ukraine for the period from 2009 to 2019, Yulia Tymoshenko acted to the detriment of the state. However, that allegation has not formally been made.

The government's objectives

The main political goal of President Viktor Yanukovych and his entourage in this case is to remove Tymoshenko from political life because, according to Ukrainian electoral law, a person who has received a final and binding sentence loses the right to stand for election. Although public support for Tymoshenko significantly decreased after she lost the presidential elections (February 2010), she remains the most important leader of the opposition, and is regarded by the Party of Regions as a major threat to its rule.
The Ukrainian government could also be prepared to accept the option of releasing Tymoshenko after she has been found guilty by the court, which would undermine her political reputation. In each of these two cases, the charges raised in the trial, as well as the fact of the trial itself, could still be used against her in a political struggle. At the same time, the government has from the very beginning refused to agree to any solution which would allow Tymoshenko to be cleared of the charges.

Reactions to the verdict

So far, public reaction to Tymoshenko's sentencing has been quite weak. Although clashes broke out between supporters of Yulia Tymoshenko (just over a thousand people) and special police sub-divisions in front of the court, and a dozen people were detained, the likelihood of mass protests should be assessed as very low. Attempts to call protests after Tymoshenko's arrest in early August ended in failure, and there is every reason to suppose that the same will be true this time.
The sentence sparked immediate criticism both in Brussels and in individual EU countries. European politicians deemed the court's decision to be politically motivated and a violation of democratic standards. The head of EU diplomacy, Catherine Ashton, said in a statement that the verdict would affect bilateral EU-Ukraine relations, including the Association Agreement. At the same time, the Commissioner for Enlargement Stefan Fule indicated that he was counting on Tymoshenko's rapid release through changes to Ukraine's Criminal Code. At the moment it is not certain, but the negotiations on the Association Agreement will probably continue – although if Tymoshenko stays in prison, ratification of the document will be postponed. Some MEPs have made much more categorical statements; the head of the European People's Party, Wilfried Martens, has called for talks with Ukraine on the Association Agreement to be suspended. These responses correspond to the Union's current position; for the Association Agreement to be signed, Tymoshenko must be released and permitted to participate in the next elections.
The Russian Foreign Ministry also commented on the former prime minister's sentence, stating that the court's decision had anti-Russian overtones and was politically motivated, but deemed the signed gas contracts to have been lawful. The gas contracts were also defended by Prime Minister Vladimir Putin.

Possible further developments

The scenario of Tymoshenko remaining in prison and being excluded from political life appears to be unlikely. This would mean that the Ukrainian government was giving up its chance to conclude the Association Agreement, and Kiev's effective isolation in the West. It is thus expected that over the next two weeks, as a result of amendments to the Criminal Code, Yulia Tymoshenko will be released. On 6 October, the Ukrainian parliament adopted the draft amendments to the Criminal Code on the first reading. It is true that the project under consideration does not provide for the liberalisation of the article under which Tymoshenko was convicted, but the relevant decriminalizing amendments may be introduced before the second reading, scheduled for the next session of parliament, which starts on 18 October and then adopted. This possibility was suggested right after the court's verdict by both President Viktor Yanukovych and the Ukrainian Foreign Ministry, acknowledging that the decision to convict Tymoshenko was not final. After the president signs the changes into law, the former prime minister could be released. These amendments must be adopted before Yanukovych's planned visit to Brussels on 20 October. This solution will allow the government to save face within Ukraine, and will also be acceptable to the West.