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Yulia Tymoshenko's trial adjourned

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On 12 September the trial of Yulia Tymoshenko, who is accused of “abusing power or exceeding her professional competences” (art. 365 of the Ukrainian Penal Code) during the negotiations of gas agreements with Russia in 2009, was adjourned. The court did not repeal Yulia Tymoshenko's temporary arrest that has been in effect since 5 August. The official reason for the break was the willingness to grant the parties (mainly the defence) the time for the preparation of final statements. The trial will be resumed on 27 September.

Commentary

- Everything seems to point to the fact that the milieu of Ukraine's President, under strong pressure from the EU, is seeking a way out of the situation which on the one hand would not jeopardise the negotiations on the EU-Ukraine Association Agreement and which would not on the other hand grant Yulia Tymoshenko a political and moral victory. Kyiv appears to not have yet found such a solution and the present measures are aimed at playing for time.

- As the speeches of the prosecution, defence and the defendant will take at least two days and then the court has to reach a verdict with its justification, which may also take at least two days, it is almost certain that the verdict will not be announced before the Eastern Partnership summit (30 September).

- Under the present legal framework the court can issue the following verdicts:
  (a) find Yulia Tymoshenko guilty of the offense she stands accused of and give her at least a seven year prison sentence (a conditional suspended sentence will not be possible);
  (b) find her guilty of the offense she is accused of and taking into account extenuating circumstances apply an exceptionally light punishment and give her a prison sentence not exceeding five years, accompanied by a conditional suspended sentence
  (c) modify the legal qualification of the offense and find her guilty of a different offense (further implications as in b);
  (d) find Yulia Tymoshenko not guilty (highly unlikely);
  (e) return the case to the prosecutor's office for the completion of the preparatory proceedings, which could lead to the case being dismissed after some time.

- A fast amendment of the Penal Code is also possible and a substantial lowering of the punishment for the offense Yulia Tymoshenko is accused of, or even the suppression of a prison sentence for it. In line with general rules of criminal law, amendments to the law which improve the situation of the defendant apply to cases which are ongoing at the moment of the amendments entering into force. This would enable Yulia Tymoshenko to be given a suspended prison sentence or the application of a punishment not involving incarceration. Voting on such an amendment in parliament is possible before the final statements in the trial.

- Contrary to hints made by a section of the media, it is not possible to pardon Yulia Tymoshenko after the first instance verdict (not legally binding) has been reached. A pardon can be granted exclusively after exhausting all possibilities offered by the appeal procedure. The appeal procedure, which is certain if Yulia Tymoshenko is found guilty, may take several months.