Analyses OSW

CENTRE FOR EASTERN STUDIES 8.05.2013 www.osw.waw.pl

The European Court of Human Rights' verdict on the Tymoshenko case

Tadeusz A. Olszański, Werdykt Europejskiego Trybunału Praw Człowieka w sprawie Tymoszenko

On 30 April, the European Court of Human Rights issued a judgement on the case of *Yulia Tymoshenko v. Ukraine*, stating that her detention pending her trial for abuse of power when concluding a gas contract with Gazprom in 2009 was unlawful and unjustified. The Court stated that "Ms Tymoshenko's pre-trial detention had been arbitrary; that the lawfulness of her detention had not been properly reviewed; and, that she had no possibility to seek compensation for her unlawful deprivation of liberty." It further found that the decision to provisionally arrest Tymoshenko on the basis of her behaviour during the trial meant that "her right to liberty had been restricted for reasons other than those permissible under Article 5 [of the European Convention on Human Rights]". The decision was unanimous. By a majority decision, however, the judges rejected the accusation that Tymoshenko had been ill-treated during her transportation to hospital on 20 April 2012, and of the improper handling of the complaint in this case. The Court did not consider the arrest to have been politically motivated, as confirmed by Vice-Chancellor Roderick Liddell on 7 May, even though many voices in the Ukrainian media had said that the Court would find such a motivation. Ukraine has already announced that it will not exercise its right to appeal against the judgement of the Court' s Grand Chamber.

Commentary

- The Court's judgement represents a setback for the Ukrainian government, and its justification has drawn attention to significant irregularities in the functioning of the Ukrainian judiciary. However Kiev may still defend itself by pointing out that in this respect the situation has been improved by the introduction of a new Code of Criminal Procedure, which revises some procedures that human rights organisations had previously criticised.

- As Yulia Tymoshenko is no longer being detained, but has been convicted by the verdict of a court, the only practical consequence of the Court's judgement could be the granting of compensation, although Tymoshenko has not asked for this. Her supporters insist that, on the basis of the Court of Appeal's judgement, her trial in the courts of Ukraine (which is currently legally terminated) should be resumed, in order to have the sentence

against her lifted. However the Court's judgement offers no legal basis for such appeals.

- Contrary to what some of the opposition and the Ukrainian media have said, the European Court of Human Rights cannot annul Tymoshenko's conviction, as consideration of the judgements of the courts of the member states to the European Convention on Human Rights on their merits does not fall within its competence. Any recognition by the Court that the right to a fair trial has been violated may form a basis for reopening the proceedings. However, any revival and eventual acquittal will depend on the good will of Kiev. The presidential Parole Board's decision in April to negatively review a request to pardon Yulia Tymoshenko indicates that the government should not be counted on to take any steps in the case.

- Yulia Tymoshenko has brought another case against Ukraine to the Court, concerning the violation of her right to a fair trial. There is no information on when a verdict by the Court may be expected, but it is unlikely to happen this year. However, even a verdict in her favour would not lead to Tymoshenko's release from prison.