

Pressure mounts in the Tymoshenko case

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On 4 October, Yulia Tymoshenko issued a statement in which she agreed to go abroad for medical treatment without the requirement of legal rehabilitation, while insisting this does not mean she has formally emigrated. This is an important concession on her part, which was justified by her by the need for Ukraine to sign the Association Agreement with the EU. On the same day, Aleksander Kwaśniewski and Pat Cox, the European Parliament's special envoys, passed on to President Viktor Yanukovich both Tymoshenko's statement and their own request for her to be pardoned. In addition, in Krakow on 7 October, the presidents of Ukraine, Poland, Germany and Italy held a meeting, the main theme of which was the prospects for signing the Association Agreement.

These events are a sign of rising pressure from the EU, which has been increasing in recent weeks, to release Tymoshenko; the EU regards this as a matter of prestige, and failure to address it will make the signing of the Association Agreement at the summit in Vilnius rather unlikely. President Yanukovich's reactions to Tymoshenko's decision and the EU's proposals are not yet known. However, mixed signals have been coming out of Kyiv, which indicate that the Ukrainian government is trying to delay taking a decision on what to do about the former prime minister.

Tymoshenko's situation

Yulia Tymoshenko was handed a seven-year prison sentence in 2011 for abuse of power when negotiating a gas contract with Gazprom in 2009. In May 2012, due to a spinal disorder, she was moved to a hospital in Kharkiv, where she has been ever since. According to the German doctors who have been treating her, her condition requires surgery, which should be performed outside Ukraine.

Tymoshenko and her supporters have consistently demanded not only her release from prison, but also that she should be cleared of all charges, preferably in the form of a repeal of the criminal charges of which she was convicted. Only this will allow Tymoshenko to run for the presidency in 2015, which remains her main objective (in accordance with the laws of Ukraine, a person convicted under the law cannot run for this post until the term of expungement i.e. a maximum of 10 years). The former prime minister's change in position is an important concession that would allow her to return to political life, albeit only from abroad. It must be assumed that at the end of her medical treatment Tymoshenko will not return to Ukraine at least for the duration of the Yanukovich government. Furthermore, allowing Tymoshenko treatment abroad would not change her status as a person convicted under the law. The Ukrainian authorities would also be able to enforce the collection of the

fine handed down to her (US\$190 million), which they have not yet tried to do.

Yulia Tymoshenko still faces two criminal proceedings (for tax fraud and incitement to murder) connected to her business activities in the 1990s. In both cases, charges have already been made, but there have not been any indictments as yet. The unexpected dismissal on 4 October of the Deputy Attorney General, Renat Kuzmin, who had been supervising the criminal proceedings against Tymoshenko, may indicate that the authorities are considering withdrawing from pushing through these allegations. Irrespective of this, the decision is a gesture towards the EU, as it shows that the people responsible for the so-called 'selective justice' are being removed from their positions.

Possible legal solutions to the Tymoshenko case

There is no doubt that the consent to allow Tymoshenko's treatment abroad depends entirely on the decision of President Yanukovich. However, this would require an appropriate legal formula to be devised, as currently in Ukraine there is no legal institution for interrupting a legal punishment. The rate at which work on this will take place will allow us to assess the authorities' real intentions towards Tymoshenko. At the moment there is no sign that such a draft law has been or is about to be submitted to the Ukrainian parliament. If the political will is forthcoming, the parliament would be able to consider the draft amendments to the act which allows treatment of prisoners abroad very quickly. At the same time, on 4 October, the Ukrainian media quoted the justice minister, Olena Lukash, as saying that we should not expect a resolution of the Tymoshenko case before the summit in Vilnius.

Theoretically, it would be possible to solve the Tymoshenko problem by pardoning her, which Cox and Kwaśniewski have called for. Such a solution, however, would be more difficult for President Yanukovich to implement. Although some of the legal requirements contained in the decree Yanukovich issued in 2010 (like the necessary to serve at least half of a sentence could be made to bend, a request for clemency must be made by the prisoner himself, and Tymoshenko has declared that she would not do so. A pardon at the request of the Ukrainian Commissioner for Human Rights (as in the case of Yuri Lutsenko) is possible, but in the current situation that would be too clear a concession to external pressure. After a possible pardon, Tymoshenko would remain in the country and lead the opposition, making Viktor Yanukovich's presidential campaign in 2015 even more difficult.

In the past, President Yanukovich promised the release of Tymoshenko several times, but then it turned out that there were legal obstacles, yet no steps to remove them were undertaken. It appears that until recently the President of Ukraine did not take seriously the possibility of releasing his main opponent from imprisonment, which resulted from the belief that it would be possible to sign the Association Agreement without taking a decision on the former prime minister's fate. In recent weeks, EU pressure has increased significantly, while the Cox- Kwasniewski mission was able to get Yulia Tymoshenko to consent to travel abroad, which she had previously refused. President Yanukovich has been placed in a difficult situation, because any solution will damage his image: if Tymoshenko is released, he will acquiesce after considerable pressure from the West; if he does not sign the Association Agreement, it will weaken his position towards Russia.

Unclear prospects for Vilnius

President Yanukovich's final decision on Tymoshenko is still difficult to predict, and currently there is no guarantee that the former Prime Minister will be released from prison before the summit in Vilnius. Although the chances have increased, it seems that the key decision has not yet been taken, and most likely the authorities will delay this until the last minute. On one hand, the EU has made it clear to the Ukrainian government that the Association Agreement will not be signed unless the former Prime Minister's case is addressed. It is also important for Kyiv that the agreement with the EU could open the way for Ukraine to enter into an agreement with the IMF for a loan of US\$15 billion, which it needs to combat the deep crisis in the Ukrainian economy. Tymoshenko's future became a matter of prestige, and it is difficult to expect Brussels to agree to forfeit this condition. On the other hand, President Yanukovich has treated Tymoshenko as his main political opponent, and so her release would complicate the very difficult political situation he finds himself in before the presidential election – especially as his consent to Tymoshenko going abroad would allow her to lead the opposition to Yanukovich's government from there.