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Ukraine in Crisis

Challenges of Developing a New Political Culture

Steffen Halling and Susan Stewart

Ukraine is currently experiencing its worst crisis since obtaining independence in 1991. Violent escalation in Kyiv costing dozens of lives, separatist endeavours in Crimea and instability in the eastern provinces result not only from Russia's irresponsible great-power politics, but also from an elite prioritising its own self-interest. Viktor Yanukovich's corrupt and increasingly authoritarian regime was merely the most extreme expression yet of a political culture dedicated to serving special interests with no heed to good governance. With popular hopes of meaningful political change already dashed once after the Orange Revolution, how Ukrainian politicians handle their power now and in the future will be absolutely crucial.

In view of the broad economic and security-related implications of the Crimea crisis for the post-Soviet states and the European Union, it is easy to lose sight of domestic political developments in Ukraine. While the Ukrainian government can plausibly claim that other concerns must take a back seat for the moment, the ruling elite is in fact already establishing particular forms of power. Both Brussels and Ukrainian civil society actors should follow domestic developments very carefully in order to prevent a continuation of harmful patterns dating back at least to the presidency of Leonid Kuchma (1994–2005).

The key to a genuine new beginning in Ukraine lies with its political elites, who must fundamentally change their attitudes to both power and society. The circumstances also represent an essentially dif-

ferent challenge to external actors than would the case of a disagreement over the specifics of planned reforms. In Ukraine a substantive dimension has yet to be introduced into politics. To date politics has been shaped more by intrigues and special interests than by genuine debate about different societal models or the potential consequences of signing the Association Agreement with the EU.

In many respects Ukraine is still stuck where it was at the beginning of the transformation phase in 1991. In some ways the situation has even worsened. This is true not only for the quality of political actors, but also for the efficiency and relevance of the still Soviet-style bureaucracy. Whenever fundamental political choices have had to be made, such as drafting or amending the constitution or electoral legislation, the

elite has generally served the short-term political needs of individuals or small groups and paid scant attention to the country's long-term interests or to developing an understanding of the public good. Laws have been manipulated or selectively applied in order to satisfy special interests and shut out opposition figures. Instead of gradually improving the efficiency and professionalism of administrative structures, they have been abused for private ends.

This is why it is now vital to establish a culture in parliament (and elsewhere) that facilitates and fosters substantive debate. Its purpose must be to prepare and initiate public-minded reforms in core areas. The government needs to demonstrate its willingness to seek compromise and operate inclusively. Given that this would represent a rupture with their previous socialisation and experience, it will be an enormous challenge for Ukrainian politicians. The current elite is under pressure to make hasty decisions, on which the international community also insists. But in the present phase the process counts for as much as the outcome. In the past, severely defective decision-making processes often had decisive and negative repercussions on outcomes. That applies both to law-making and to executive decision-making. If the new leaders fail to eliminate these deficits in the first phase of their rule, there is a danger that they will revert to the old problematic behaviour patterns.

Domestic Political Developments in the Post-Yanukovich Phase

When Viktor Yanukovich fled from office at the end of February 2014, the Ukrainian parliament had no option but to respond rapidly. After Yanukovich failed to keep the promises made in the agreement negotiated with the participation of three EU foreign ministers on 21 February 2014, opposition leaders felt released from any obligations they had undertaken in the same context. Instead of the "government of national unity" laid down in the agreement,

only the Fatherland Party and Svoboda were represented in the new cabinet (alongside a number of unaffiliated ministers).

The composition of the government is problematic for two reasons. Firstly, Vitali Klitschko's Ukrainian Democratic Alliance for Reform (UDAR) is not on board, suggesting a growing rift between UDAR and the Fatherland Party. This rift has been further manifested by Klitschko's decision to withdraw from the presidential race and give his support to Petro Poroshenko (see below, p. 3). It also reflects a fundamental weakness of UDAR, which is not well-established in the regions and apart from Klitschko has no well-known figures who could have filled significant cabinet posts. Parliamentary cooperation between the former opposition parties is thus already crumbling.

Secondly, and much more problematic with respect to establishing a new more inclusive political culture, the government includes virtually no representative figures with whom the mass of citizens in the eastern and southern regions could identify. Presenting the nominated ministers to the Maidan before the vote in parliament represented a strong message to the east and south that the interests of those who failed to accept the Maidan movement were going to be ignored. Three ministers come directly from the ranks of that movement: Oleh Musiy for health, Yevhen Nyshchuk for culture, and Dmytro Bulatov for youth and sport, whereby the latter two undeniably lack political experience and expertise. Furthermore, the right-wing nationalist Svoboda initially supplied three ministers, for defence, agriculture and ecology, as well as one of the three deputy prime ministers. (The defence minister, Ihor Teniukh, has since been replaced by Mykhailo Koval, who has no party affiliation.) Svoboda was able to capitalise on good results in the 2012 parliamentary elections and its presence on the Maidan. However, its electoral success stemmed largely from its ability to mobilise a protest vote that was equally dissatisfied with the government and the opposition. Since entering parliament Svoboda's popu-

larity has fallen steadily. Even its leader and presidential hopeful Oleh Tyahnybok currently enjoys only very weak support (between 1 and 3 percent depending on the poll consulted). Right-wing extremists and ethno-nationalist currents are almost indiscernible in Ukrainian society.

It remains unclear why the government calls itself “transitional” and how long it will actually remain in office. After the reinstatement of the constitution of 2004, a new government will not automatically have to be formed following the presidential election planned for 25 May, although this may in fact occur. And while early parliamentary elections have been discussed, no decision about holding them has been taken.

A total of 23 candidates have now declared their intention to run. According to the latest polls Poroshenko, an oligarch who publicly supported the Maidan protests (and is known as the “chocolate king” for his confectionery empire) has the most support, followed by Yulia Tymoshenko, leader of the Fatherland Party, and Serhiy Tyhytko, who in recent years has led a moderate section of the Party of Regions focused on economic issues. He is running independently as a result of the decision of the Party of Regions to nominate Mykhailo Dobkin, former governor of the Kharkiv region, as its presidential candidate. Currently Tymoshenko and Tyhytko are battling for second place in the polls, while Dobkin has only low support. Much can change before the election date, but currently most observers believe the main contest will be between Poroshenko and Tymoshenko. The central government faces an uphill struggle to guarantee sufficient stability for properly conducted elections in all the regions (with the exception of Crimea, which is already beyond its control). Although Ukraine has already acquired a great deal of experience in holding elections, and Ukrainian civil society is well-equipped for the tasks of election monitoring, the new Central Election Commission is still inexperienced and past OSCE reports suggest that certain aspects of the electoral law are problematic,

e.g. the composition of local election commissions.

A free and fair election would be an important sign that the political culture is changing, and leaving behind the Yanukovich era in which elections were increasingly manipulated. However, the first acts of the Ukrainian parliament after the overthrow were not auspicious. During the process of deposing Yanukovich, the constitutional impeachment process was grossly abridged. Leading representatives of Ukrainian civil society have already flagged other violations of parliamentary procedure, such as the dismissal of serving judges by parliament. A recently passed law on lustration proceedings for judges has been criticised by human rights organisations for being overly broad in its reasons for allowing lustration and thereby opening to the door to politically biased decisions.

The government is also in the process of resuming old patterns of behaviour. Representatives of the Yanukovich regime have been summoned for questioning by the prosecutor general, and some detained, apparently for political reasons. One of these is Mykhailo Dobkin. However, he has not been prevented from running for president. His close confidant Hennadyj Kernes, the mayor of Kharkiv, is kept under house arrest at night but allowed to carry out his mayoral duties during the day. More troubling is an incident in which three members of the Svoboda Party used violence to force the head of the national television supervisory body to resign, supposedly for allowing pro-Russian material to be broadcast (see also below). How the General Prosecutor (also a member of Svoboda) deals with the investigation will be a test of whether both the procuracy and the Svoboda Party are able to handle conflicts in a professional manner.

The Role of the Oligarchs in the New Power Structure

A symbiotic relationship between economy and politics characterises Ukrainian politi-

cal culture, which is largely shaped by special interests. Under conditions of widespread corruption and inadequate rule of law, the reciprocal interdependence of economy and politics is regulated by patron-client relationships. A particular role here falls to the oligarchs, whose relevance has both political and economic implications that must be factored into the equation.

Oligarchs are businesspeople whose great wealth permits them to exert influence on the political system and its decision-making processes to further their own advantage. As a rule this occurs informally, for example through control of groups of parliamentarians and by funding political parties. But control of the mass media (which become particularly relevant at election time) is also an integral component of the oligarchs' power resources. Although the oligarchs do contribute to the political process by influencing different camps, they simultaneously erode the transparency of decision-making procedures and manipulate democratic institutions.

The oligarchs have succeeded in establishing monopoly structures and bringing entire production chains under their control to achieve higher profits than they would under conditions of fair competition. Alongside their influence on the political and legal environment, their privileged access to state resources has also proven especially lucrative in relation to privatisations and public procurement. Because the oligarchs prioritise short-term profits over long-term modernisation, past reform processes advanced only to the extent that they matched their interests. In this context it is especially difficult for small and medium-sized enterprises to operate profitably. By influencing the decisive underlying conditions for business activity, the oligarchs also have an impact on Ukraine's attractiveness to investors.

Most of the oligarchs backed Yanukovych to the end and supported his authoritarian and repressive leadership style. That was clearly evident in the voting behaviour of

the parliamentarians they controlled and in media reporting. At the same time, the events of past weeks also demonstrate that the oligarchs' political allegiances are fluid. In fact, the collapse of Yanukovych's internal power base can also be attributed to the defection of individual oligarchs. But fading loyalty to one regime did not mean that they were willing to renounce their political influence. Instead their political positioning is guided by cost-benefit calculations. One core question concerning future developments is thus how the relationship between the political and economic elites will evolve.

The new government's immense dependence on the loyalty of the oligarchs, especially in the eastern parts of the country where it possesses precious little influence, was revealed immediately after it took office. In order to calm the situation and rebuff external destabilisation moves, two oligarchs were entrusted with the governorships of Dnipropetrovsk and Donetsk. Ihor Kolomojs'kyj and Serhij Taruta were recruited on the basis that securing territorial integrity and national unity lay in the interests of both sides. But this dependence on the oligarchs undermines the freedom of choice and credibility of the political leadership and obstructs the fundamental transformation of the political system. Nonetheless, and despite great scepticism, in the current crisis situation the population appears to tolerate the direct inclusion of oligarchs in matters of government.

The Ruling Elite and Regional Differences

Developments in Crimea have shown Ukrainians and outside actors just how salient regional differences can become. One reason the situation was able to escalate so rapidly was because Ukrainian politicians have spent the past 23 years playing up regional differences for the sake of electoral advantage, and have failed to work towards an overarching Ukrainian

identity. Although more than two decades of living in a shared state have engendered a certain form of common identity, there is still a vast gap between foreign policy orientations in the eastern and western regions. Of course east and west are both internally heterogeneous, and the convenient east-west scheme also neglects the central regions, which occupy an intermediate position both in linguistic/cultural terms and with respect to foreign policy attitudes.

The events in Crimea not only underline Vladimir Putin's determination to hold onto levers of influence in Ukraine, which leads him to seek to destabilise the new government in Kyiv at any price. They also make it abundantly clear that Ukrainian politicians have made woefully inadequate efforts to foster national cohesion and are now paying the price for their failure. It was thus possible to inspire many inhabitants of Crimea with the prospect of a closer relationship with Moscow, and even that of annexation to Russia.

Thus one of the foremost priorities of the new Ukrainian government must be to convince the population in the east and south of the country that it also represents their interests. That would be a step on the road to a political culture in which willingness to communicate and to compromise plays an important role. Now that the Russian occupation has made the situation in Crimea too unstable, such attempts should be directed instead in particular towards the eastern regions bordering Russia. They differ significantly from Crimea: Firstly, they are more Ukrainian in both linguistic and cultural respects. Secondly, they have no significant tradition of support for independence or accession to Russia (although the majority do desire close relations with Russia, including joining its customs union with Belarus and Kazakhstan). Such preferences are certainly instrumentalised by Russia, by Russian media and in direct intervention by Russian activists on the ground, as the recent occupation of governmental buildings in Kharkiv, Donetsk and Luhansk demonstrates.

However, many Ukrainian politicians appear oblivious to the need for persuasion in the eastern regions. Not only, as already outlined, is the new government less than inclusive, but one of the very first decisions by parliament after the overthrow of Yanukovich was to revoke an amendment to the language law recognising Russian (and the languages of other ethnic minorities) as an official language at the regional level. Although Acting President Oleksandr Turchynov declined to sign the measure, the vote itself had already sent a negative message to the numerous Russian-speaking inhabitants of the east and south. On 5 March 2014 the national parliament registered a draft law on accession to NATO. Such a law would strongly polarise the country, where attitudes to NATO are diametrically opposed in east and west. These and other proposals (such as banning television channels broadcast from Russia or temporarily closing the border to Russia) only heighten the mistrust of those who feel excluded by the new rulers and feed resentments that Russia can exploit to mobilise parts of the population for its own ends. This in turn increases the likelihood of a creeping Russian intervention in the eastern provinces.

Channelling Civil Society Protest

The protests that erupted in Kyiv at the end of November 2013 demonstrated the importance and influence of Ukrainian civil society. The protest movement still remains present with its general demands for rule of law, transparency and democracy. After the removal of the Yanukovich regime, it seeks above all lasting change in the country's dominant political culture.

The general level of protest potential within society and the capacity to mobilise opposition groups – both characteristic of the country's pluralism – already distinguished Ukraine from other countries in the region. But the Maidan protest movement stands out from the classical post-Soviet electoral revolutions of the kind

Ukraine itself experienced almost ten years earlier in the course of the Orange Revolution. The “Euromaidan” movement initiated by students and intellectuals originally sought a specific change in government foreign policy: the signing of the EU-Ukraine Association Agreement, which had come to be seen as a symbol of modernisation and progress. It only gradually turned into a resistance movement against the Yanukovich regime after the state security organs attempted to violently suppress it. In the end the movement even reached the eastern and southern regions, with the effect of fostering both national cohesion and the emergence of a civic, i.e. politically based identity. Both the concrete demands of the protesters and the instruments deployed to achieve them generated their own momentum: The protests grew massively in response to intensifying state repression, while their trajectory also reflected the heterogeneity of the movement.

From the outset the established opposition parties Fatherland, UDAR and Svoboda found it difficult to dispel the protesters’ mistrust and gain a foothold on the Maidan. Fractures in the interdependent relationship between parliamentary opposition and civil society were exposed whenever concrete decisions about actions to be taken needed to be made. Regular public meetings (veche councils) served as venues for forming opinion and legitimised the activities of the opposition leadership. The newly founded Maidan People’s Union brings together established politicians and activists and represents a formalised attempt to find a binding framework for the heterogeneity of the protest movement and lend it influence and representation. Maidan representatives who gained popularity in the course of the protests were also included in the new government, partially as a response to the pressure of “the street”. The establishment of a national guard integrating members of the self-defence units that emerged in the course of the protests can also be understood as an attempt to

take the significance of the protest movement into account and concede greater influence and responsibility to civil society. But both forms of direct participation in executive power structures by the Maidan movement are also associated with problems of legitimacy.

The Maidan phenomenon has temporarily eclipsed the classical distinction between parliamentary opposition and government in Ukraine’s competitive authoritarian political system. The political landscape has become foggier. The protest movement’s demand for a “reboot” of the political system with lustration to guarantee the integrity of the political leadership will maintain grassroots pressure on the ruling elite and contains potential for further protests. This potential is already being realised to some extent, for example when parts of the Maidan movement demanded a criminal investigation against a Svoboda deputy who took the law into his own hands and forced the head of the state television supervisory body to write a letter of resignation. The key question concerns the future relationship between civil society and the elite. There is a need to clarify how greater and more effective civil society participation can be ensured, and whether the elite in fact desire such participation at all. In all events, achieving more transparency will be decisive.

Options for Germany and the European Union

Supporting Ukraine presents external actors with a dilemma. On the one hand, Ukraine’s economy is heading for collapse and requires immediate assistance. And the Crimea crisis has created a series of additional problems, not all of which the European Union is in a position to respond to. On the other hand, there is a considerable danger that the new Ukrainian leadership could revert to old habits. The flood of support it has received could easily give the ruling elite the impression that the West places virtually no conditions on the assis-

tance provided, or that the danger presented by Russia's intervention divests it of the necessity to observe any such conditions. How can the European Union and Germany stabilise Ukraine economically and at the same time persuade the Ukrainian elite to improve its governance?

The developments described above show that a reversion to the previous political culture in Ukraine is all too likely. Some indicators already point in that direction, but it is still too early to speak of a stable trend. Germany and the European Union have many possibilities to counteract the consolidation of such a trend, and thus to avoid a repetition of the trajectory that followed the Orange Revolution.

It will be important to provide the support offered to Ukraine in stages. In the initial phase immediate aid should be supplied without tough conditions in order to ensure a minimum of stability. But it must be made clear that after this short phase funding flows and conditions placed on other forms of support will be strictly monitored. That will protect the European Union from accusations of double standards. At the same time, and even more importantly, it will help the new ruling elite to develop a more responsible style of governing. In the medium and long term this contribution will be just as important as the financial assistance already in the pipeline. If Germany and the European Union pursue this approach they can count on the support of large parts of Ukrainian civil society, which will take a close interest in the activities of the new rulers.

During the first phase clearly encouraging signals should be sent not only to the elite but also to Ukrainian society. The courageous contribution of those whose persistent protests toppled an extremely corrupt regime deserves acknowledgement, but the positive message should be directed to all Ukrainian citizens. It could consist in offering Ukraine an explicit perspective of EU accession. More tangible would be visa-free entry for short trips to the European Union, perhaps in the form of a temporary

suspension of the rules laid down in the Visa Liberalisation Action Plan. Visa-free travel would apply for a limited period that would only be extended if the remaining steps required under the action plan are implemented.

With respect to the Association Agreement it would make sense for Ukraine to formulate proposals on the sequence in which reforms and harmonisation with EU standards are to occur. That would force key figures in the Ukrainian elite to address the question of priorities for the country's future development. EU officials could monitor the process in order to ensure that it reflects the needs of large parts of the population rather than individual preferences. But the limited capacities of the Ukrainian administrative apparatus will need to be taken into consideration. Agreements on priorities and capacities should ideally be reached before the economic part of the agreement is signed. Such a process would convey to the Ukrainian elite that it bears primary responsibility for implementation, and thus significantly strengthen its sense of ownership. That would create a good starting point for moving on to the second phase, in which the European Union's monitoring and control capacities would have to be effectively and consistently deployed.

In this second phase the European Union should cooperate closely with Ukrainian civil society actors from all parts of the country, who will quickly recognise if the elite fall back into old habits. Joining forces in this way will enhance the likelihood that real change in the political culture of the Ukrainian elite can be achieved.

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