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# The Third Republic: Ukraine struggles its way through to Europe

*Alexei Sekarev*



Eesti Idapartnerluse Keskus  
Estonian Center of Eastern Partnership

After the Ukrainian People's Republic of 1918-21 and the escape of the legitimate president, which sealed the fate of the independent Ukraine of 1991-2013, the nation identified itself anew. The Euromaidan manifested Ukraine as a European nation-state and enters history in this capacity, not just as turbulence that resulted in a replacement of one ruling force by another. The price paid with a hundred lost lives marked the depth of the change and underlined the difference of the Euromaidan 2013-14 from the Orange revolution of 2004. The loss of Crimea and tensions in the East became an acid test for the country. Lessons from both domestic developments since the independence and international reaction to changes in the Eastern Partnership region of the last decade will need to be learnt. Pivotal is however that the new Ukraine stands firm vis-à-vis the numerous new challenges, and builds up the national state on the basis of its own new experience and an effective international assistance.

## From peaceful protest to bloodshed and invasion

Ukraine's former authorities have failed completely to meet the challenge of peaceful protests that had begun upon the government decree of 21.11.2013 to withhold from signing the Association Agreement with the EU. Every step they would take – from brutal dissemination of protesters on 30 November 2013 to the adoption of anti-democratic laws on 16 January and finally signing compromise with the opposition on 21 February 2014 about earlier presidential elections – has led to the opposite result than anticipated. Moreover, already the first case of violence against peaceful protesters doomed the authorities to a complete loss of control over the developments and to a deep political crisis,<sup>1</sup> which appeared possible to defuse only as the key former players – President, Prime minister, Minister of interior and Prosecutor General – have fled the country or found a secure hideaway domestically. Massive evidence of corrupt practices found in the former residence of the President accentuated a distorted relation to reality and the rule of law of the former regime.

Similar to the Yanukovych clique, Russian authorities deliberately disregarded the nature and

objectives of the civil movement in Ukraine. Having built up an anti-democratic system in the own country, based on intimidation of any public criticism of state policies and disrespect of the rule of law, Russian leaders took an unthinkable decision to invade Ukraine to allegedly protect citizens from nationalist provocateurs.<sup>2</sup> In order to justify domestically the invasion against the historically friendly nation, Russian national media unfolded a massive propaganda campaign to black-paint the new Ukrainian authorities and deliver “horror” scenes of Russian-friendly population being attacked by Maidan supporters. Since the reality in Ukraine was different, Russian media would necessarily send false messages, such as about 140,000 refugees seeking asylum in Russia's neighbouring regions, consultations between Ukrainian pro-western forces with Chechen terrorists or Ukrainian soldiers taking the side of the Russian army in Crimea.<sup>3</sup> The brazenness and malevolence of the propaganda campaign knew no limits and logically nourished mistrust among realistically thinking parts of broad public in Russia, especially with regard to the true motives of Russia's invasion. Members of the Council for Development of the Civil Society and Human Rights under Russia's President stated that use of force was inadequate in view of the situation in Ukraine and that the Federation Council had taken its decision on the basis of “non-verified and exaggerated information”<sup>4</sup>

Based on roughly the same false assumptions as in the case of Georgia before the war of 2008 – mainly that using Russian for communication with the locals would cause immediate hostility and repressions – the invasion into Ukraine comprised

2 Sovfed RF dal soglasie prezidentu na ispolzovanie VS na territorii Ukrainy (Federation Council gave the president consent to use armed forces on the territory of Ukraine). Statement of 01.03.2014, Rossiyskaya gazeta, <http://www.rg.ru/2014/03/01/soglasie-site-anons.html> retrieved 02.03.2014.

3 Cf. Russia wages media war on Crimea, Financial Times 04.03.2014; U.S. Department of State, Office of the Spokesperson Fact Sheet “President Putin's Fiction: 10 False Claims about Ukraine” of 05.03.2014, <http://www.state.gov/r/pa/prs/ps/2014/03/222988.htm> retrieved 09.05.2014. Federation council vice-chairman Yevgeni Bushmin used the “argument” of 140,000 refugees to underpin senators' support to the use of force in Ukraine. See Rossiyskaya gazeta, 01.03.2014 op. cit.

4 Zayavlenie chlenov Soveta pri Prezidente RF po razvitiyu grazhdanskogo obshchestva i pravam cheloveka v svyazi s sobyitiyami v Ukraine (Statement of members of Council under President of Russia for civil society development and human rights in connection with the developments in Ukraine) of 02.03.2014, [president-sovet.ru/news/5632](http://president-sovet.ru/news/5632) retrieved on 13.03.2014. Following this statement, other members of the same council distanced themselves and supported Federation Council's decision.

1 See Izotov, Alexander, Kristi Raik, and Alexei Sekarev. The post-Vilnius challenges of the Eastern Partnership. ECEAP Eastern Partnership Review No.15, December 2013, p.28.

similar tactical moves. It should be recalled that the Independent International Fact-Finding Mission Report on the conflict in Georgia referred to an “influx of volunteers or mercenaries from the territory of the Russian Federation to South Ossetia through the Roki tunnel and over the Caucasus range in early August”, i.e. preceding the decision for an intervention taken by the leadership of the Russian Federation.<sup>5</sup> Even if the independent fact-finding mission did not assign the outbreak of the war alone to the actions of Russia-funded “volunteers or mercenaries”, evidence has been abundant that the shootings by those paramilitary units on Georgian armed forces inflamed the war.<sup>6</sup> Russia has nevertheless denied allegations of any military build-up in the region before its air force and artillery began to attack Georgian targets.

The striking commonalities of Russia’s approach to Georgia in 2008 and Ukraine in 2014 are:

- Deliberately falsified media activities to nourish *obraz vraga* (image of the enemy)
- Deployment and stimulation of paramilitary units
- Denial of military presence

Russia could not provide any meaningful proof, neither in Georgia in 2008 nor in Ukraine in 2013-14, about intimidation of citizens on the basis of Russian language or ethnicity, which would have justified an intervention. An unbiased view on the everyday life in predominantly Russian-speaking regions of Ukraine would quickly unmask any claims about suppression of the Russian language. With reference to Art 10 of the Constitution of Ukraine, which guarantees free development, use and protection of the Russian language, the Constitutional Court of Ukraine decided in 1999<sup>7</sup> that the Russian language can be used by regional authorities, specifically those of the Autonomous Republic of Crimea, in carrying out their functions. The modern history of Ukraine proves that the language and cultural situation could be never stirred up from within the country, i.e. without Russia’s destabilising actions.

5 Independent International Fact-Finding Mission on the Conflict in Georgia. Report of September 2009, part I, p.20. [http://www.ceiig.ch/pdf/IIFFMCG\\_Volume\\_I.pdf](http://www.ceiig.ch/pdf/IIFFMCG_Volume_I.pdf). The mission was summoned according to a Council Decision 2008/901/CFSP of 02.12.2008. See OJ L 323/66 of 03.12.2008.

6 Interviews and media reports collected by the author in Georgia (Tbilisi and Kvareli district, Kakheti) on 6-10.08.2008, summarised in: Die “glaubensbrechende Aggression”. Eindrücke vom russisch-georgischen Krieg (August 2008). Ost-Europa Institut Regensburg, 20.08.2008.

7 Rishennya Konstytutsiynoho Sudu Ukrainy (Decision of the Constitutional Court of Ukraine) of 14.12.1999 No 10-pn/99, <http://zakon4.rada.gov.ua/laws/show/v010p710-99/paran54#n54> retrieved 10.3.2014.

Paramilitary units first became active at and around the Euromaidan with the aim to instigate deliberately peaceful protesters to aggressive moves and ignite clashes between the two sides. The “titushky”, thugs in tracksuits who fought anti-government demonstrators along the police, cannot be directly traced back to Russia. Obviously though, the titushky were brought into action by the interior security forces of the former Ukrainian government. Coordination between Berkut (special internal security police known for their brutality) and titushky between 17.1 and 21.2.2014 has been well witnessed and registered.<sup>8</sup> Russia’s involvement – to whichever extent – in the actions of domestic security forces cannot be excluded, in particular in view of the fact that Yanukovich had turned away from Europe under direct Russian influence.<sup>9</sup>

Despite destructive actions, titushki broadly failed to disorganise Maidan defenders (*sotnyky*). It were the snipers that shot almost one hundred protesters dead (later called the Heaven’s Hundred) and made the Euromaidan pay high price for its historic accomplishment. Media have gathered and made public many pieces of evidence about snipers’ actions at Maidan,<sup>10</sup> which caused different, often politically biased interpretations. But similar to the case of titushky, snipers’ inhuman operations could materialise only under a sanction of Yanukovich and his riot police units, all the more so as the then Ministry of Interior of Ukraine announced an “anti-terrorist” operation to “clear” the Maidan at 8 pm on 18.02.2014.<sup>11</sup>

Shortly upon Yanukovich getaway from Kyiv, paramilitary units invaded Crimea to stir up population against the new leaders of Ukraine. These

8 Cf. <http://www.dw.de/titushki-the-ukrainian-presidents-hired-strongmen/a-17443078> of 19.2.2014 retrieved 16.03.2014

9 Izotov, Alexander, Kristi Raik, and Alexei Sekarev. The post-Vilnius challenges... op.cit. p.28.

10 Eks-ministr oborony Ukrainy Gritsenko: Snaipery, strelyavshye segodnya, mogut byt tolko iz silovykh struktur: ya horosho znakom s ikh vooruzheniem (Snipers who shot today could be only from law enforcement units: I am well acquainted with their armament), transcript of interview to Russia’s Dozhd TV channel, 21.02.2014, [http://tvrain.ru/articles/eks\\_ministr\\_oborony\\_ukrainy\\_gritsenko\\_snaipery\\_streljavshie\\_segodnja\\_mogli\\_byt\\_tolko\\_iz\\_gosstruktur\\_ia\\_horosho\\_znakom\\_s\\_ikh\\_vooruzheniem-363415/](http://tvrain.ru/articles/eks_ministr_oborony_ukrainy_gritsenko_snaipery_streljavshie_segodnja_mogli_byt_tolko_iz_gosstruktur_ia_horosho_znakom_s_ikh_vooruzheniem-363415/) retrieved on 21.02.2014; Dmitri Mendeleev. Nyurnberg vnutri nas (Nürnberg inheres with us), Zerkalo Nedeli, 28.02.2014; Vasili Valuiko. Interview with Gennadi Moskal, Zerkalo Nedeli, 6.3.2014; Genprokuratura ustanovila lichnosti snaiperov (Prosecutor’s Office identified the snipers), ibid. 19.03.2014

11 Zayava shtabu natsionalnoho sprotyvu (Statement of the national resistance committee) of 20.02.2014, [http://espresso.tv/article/2014/02/20/zayava\\_shtabu\\_nacionalnoho\\_sprotyvu\\_1802\\_1902\\_kyiv\\_khronika\\_podiy](http://espresso.tv/article/2014/02/20/zayava_shtabu_nacionalnoho_sprotyvu_1802_1902_kyiv_khronika_podiy) retrieved on 20.02.2014.

units, unmistakably witnessed as Russian,<sup>12</sup> violently seized or put under blockade strategic military and infrastructure objects – roads linking the peninsula to Ukraine, Ukraine’s military and navy bases, the ferry connection from Kerch to Russia, not to mention public administration buildings. Nevertheless, President Putin stated on 04.03.2014 that persons who blocked Ukrainian armed forces in Crimea and were not Russian military but “local forces of self-defence”. (In the same interview Putin said Russia had no plans to annex Crimea to Russia.)<sup>13</sup> With the annexation of Crimea, paramilitary continued destabilising the situation in the eastern oblasts of Ukraine, notably Donetsk and Luhansk.

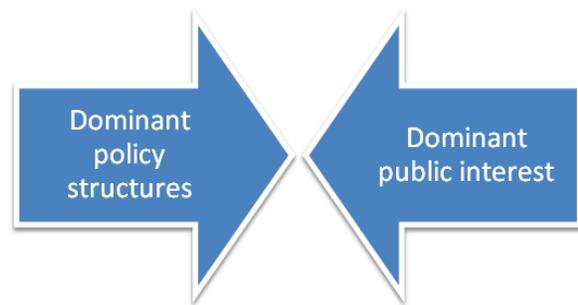
So far, Ukraine has been standing off numerous incendiary moves from the Russian side with calmness and dignity, in an understanding that opening up an armed conflict would cause new casualties and over-complicate any political solution. In this sense one can say that the country has learnt well the lessons from Russian aggression against Georgia of 2008. Nevertheless, the task of the state building is exactly as (if not more) challenging as in Georgia.

## The new domestic set-up in Ukraine

The Euromaidan is a historic accomplishment of Ukraine. Instigated as a protest against an abrupt turn-away from Europe, it grew into a nation-wide movement to oppose the corrupt and adversely motivated public administration. Yanukovich and his accomplices knew no limits in instigating police to brutalities toward peaceful protesters. The overall feeling that individuals in power had gone too far in neglecting voters’ interests was precisely confirmed by public encounters in the opened-up houses of the former president and prosecutor general.

After the first deaths of 30 November 2013 the protest turned against the methods of public governance practiced in the last decade. Logically, it

became clear that a mere replacement of one political force by another would neither correspond to the nature of protests nor satisfy the Maidan defenders. The former opposition leaders reaped mistrust, an agreement between the political opponents facilitated by the three ministers of foreign affairs of the EU member states would not work out, and the former influential Yanukovich followers quickly re-incarnated themselves on the winners’ side as Maidan supporters. As an overall result, and distinct from the Orange Revolution of 2004, the Euromaidan dismantled the usual balance between the political opponents (ruling party v opposition) and created a new confrontation between public interest and politics as a whole.



Maidan has thus put under question Ukraine’s policy structures as such. It should be recalled that Ukraine, similarly to the most post-Soviet states, has transposed the old system of political establishment to the new independent state, among others by simple replacement of the former communist party central committee with a president’s office. This system, under a general endemic weakness of national institutions, has proven its ineffectiveness or led to the dominance of anti-democratic, corrupt methods of public governance. For example, in Russia, the institution called “internal security” yielded in 2004 to the undermining activities (including direct bribery) by terrorist groups<sup>14</sup> and thus has to share the responsibility for the deaths of schoolchildren and teachers at Beslan.

The deaths of peaceful protesters in Kyiv in 2014 are likewise the result of the weakness of public institutions. Law enforcement units were unable to avert and later settle peacefully the open conflict. This fiasco should be seen as a follow-up of the overall failure of national authorities to find an acceptable political solution during the 7-week peaceful stage of the Euromaidan. Omission of the necessary,

12 Vooruzhennyi rossiiskii spetsnaz vysadilysya v Kerchi (Armed Russian special forces disembarked in Kerch), <https://news.pn/ru/politics/98051> of 1.03.2014, retrieved on 18.03.2014. This is just one of many similar media reports.

13 See International Fact-Finding Mission report, op.cit, and Vladimir Putin otvetil na voprosy zhurnalistov o situatsii na Ukraine: transcript of 4.03.2014, <http://kremlin.ru/transcripts/20366> retrieved 11.03.2014; <http://www.vesti.ru/doc.html?id=1345445&tid=106334> retrieved 31.3.2014.

14 See documents collected under the public initiative for an independent investigation of Beslan terrorist attack, in particular M.Litvinovich, Kto privel k Beslanu (Who led to Beslan): [http://www.pravdabeslana.ru/kto\\_privel.htm](http://www.pravdabeslana.ru/kto_privel.htm) retrieved 19.3.2014.

politically responsible action for the country in the period of public discontent is a grave misconduct. It could only happen in an environment where officials recklessly perceive impunity, which in turn comes from non-accountability for disregarding the law at high administrative positions.

Maidan protesters represented many different societal groups: both Russian- and Ukrainian-speakers, urban and rural population, representatives of many political parties and very different age brackets. There were followers of different religions – Christians, Muslims and Jews, and likewise of different social groups.<sup>15</sup> In any case, the diversity of protesters by no means allows misinterpretation of Maidan as a coup d'état organised by ultra-nationalists from Western Ukraine.

The depth and nature of Maidan has been initially misinterpreted by many, both within Ukraine and abroad. Attempts to settle the conflict within the existing policy system, for example by an agreement between the ruling part and opposition, were doomed from the very beginning. The main rivals around the country – Russia on the one hand and the EU and U.S. on the other – stood under the same misunderstanding that developments in Ukraine can only follow the pattern known and practiced by those rivals themselves: either the authoritarian rule imposed and controlled by Russia or building up democratic institutions according to European norms. Obviously, Ukraine under Yanukovich stood much closer to the Russian pattern, which at the end misguided Russia to act as if Ukraine was its province – following Putin's misperception that Russians and Ukrainians were one and the same nation<sup>16</sup> – and invade into the country militarily.

In having acted this way, Russia has denied the very possibility of Ukraine opting for its own way to build up a national state. Ukraine however has an incomparably higher affiliation to democracy compared to the majority of post-Soviet states, which have built up authoritarian regimes in the course on their independence.<sup>17</sup> The country cannot just import ready-made solutions from whichever side but needs to carry out a democratic state building

resting on its national traditions and culture. Public indignation at the attempt of the former regime to put an end to the civil society and turn Ukraine into a dictatorship – by introducing the laws of 16 January 2014 – has brilliantly manifested the dominance of democratic feeling in the country.

To the credit of the new national leaders, Ukraine wisely withstood the “invitation to war”, which the invaders from Russia brought in with them. In this sense the Georgian lesson has been learnt well. In addition, the new administration positioned themselves from the very beginning as interim, recognising the complexity of the policy tasks ahead and signalling readiness to step down if needed after general elections.

But national institutions do not change overnight. As is common in revolutions, the events in Ukraine had many negative side effects – questionable administrative appointments, doubtful decisions or omissions of action (such as letting invaders take over Ukrainian military forces), consolidation of ultra-right forces and criminals, re-incarnation of corrupt officials as Maidan supporters etc. Much criticism has been voiced as to the technical steps taken to manage the new situation after Maidan and especially after the annexation of Crimea by Russia. In many regions, local authorities, accustomed with corrupt administration practices, including interior security forces, have recognised the opportunity to stay on, including by joining separatist forces. Because in this situation corrupt practices would inevitably re-emerge, lustration seems the only option to sustain the results of Euromaidan.

The post-Maidan domestic set-up in Ukraine sees political players and forces of magnitude that would affect the new policy structures after the elections. Pravy sektor (the Right sector), labelled in Russia as ultra-fascist, has positioned itself as an instrument of civil control over the ruling party and policy decisions, regardless of which political force those decisions stem from.<sup>18</sup> The civil society, where many organisations denounced cooperation with Yanukovich regime, re-emerges as an important player as well. Finally, Ukrainian media landscape has become more diversified owing to the development of an independent on-line broadcasting, which has become broadly popular in the domestic and international event coverage.

15 Mnogoliki maidan (Many-faceted Maidan), *Kievski vestnik*, 6.02.2014; Timothy Snyder, *Fascism, Russia, and Ukraine*. The New York Review of Books, 20.03.2014.

16 “My – odin narod” (We are the same nation): Interview to Russian Channel 1 and Associated Press of 4.9.2013, <http://kremlin.ru/news/19143> retrieved 26.3.2014.

17 Budkin, Viktor S. Problemy formuvannya politychnoi natsii u posradyanskikh krayinakh na etapi nezalezhnosti (National state-building in post-Soviet states under independence), in: *Istoryko-politychni studii*. Kyiv: Kyivskyi natsional'nyi ekonomichnyi universytet, 2013, №1. P.73.

18 Chto takoe pravy sektor i kto im upravlyaet (What is the Right sector and who is behind), transcript of interview with Ukrainian policy leaders and analysts of 20.02.2014, [http://tvrain.ru/articles/chto\\_takoe\\_pravyj\\_sektor\\_i\\_kto\\_im\\_upravlyaet-363403/](http://tvrain.ru/articles/chto_takoe_pravyj_sektor_i_kto_im_upravlyaet-363403/), retrieved 22.02.2014

## Russia's interests

Russia would not take the opportunity of becoming genuine EU partner in the sense of sharing responsibility for the security in the common neighbourhood. The Euromaidan has crystallised Ukraine's clear European preference, which Russia could accept neither geopolitically nor in view of its perceived leader's role in the post-Soviet space. That role cannot be effectively played in case the countries within Russia's sphere of influence develop themselves toward the rule of law, social welfare and competition-based free markets. Seen from the other side, the countries in question have no chance for that development if effectively controlled by Russia, unless Russia embarks on genuine democratic reforms itself. Years since independence have shown that all attempts to start those reforms would yield to building up an authoritarian system of power. And the Eurasian Union unites the three countries with similar authoritarian ruling system.

The confrontation between Eurasian Union and European Union is deeply rooted in political ideology. While the EU has built up its system of free market and social welfare to avert the very possibility of a new war in Europe after the WWII, the Eurasian Union rests on the ideas of national bolshevism, which calls for drawing useful lessons from fascism and Stalinism. Alexander Dugin in his *Fundamentals of Geopolitics* argues that Russia still maintains the possibility to create an own political system because the possession of strategic weapons allows resisting the pressure from the West. At the same time, the recapture of the lost territories of the "near abroad", as an integral part of *sobiranie Imperii* (gathering the Empire together) is not only imperative but also a precondition of an independent Russian state.<sup>19</sup> According to Dugin, a sovereignty of Ukraine is an extremely negative phenomenon for Russian geopolitics and may easily provoke an armed conflict.

Hence, Russia would never accept Ukraine's effective rapprochement toward the European Union and away from Russia-led Eurasia. Sergey Karaganov, Head of Russian Council for Foreign and Defence Policy, admitted that this has been and remains a pronounced foreign policy objective of Russia. He also made clear that banning of Ukrainian goods from the Russian market had nothing to do with quality issues but is an economic weapon

(*ekonomicheskoe oruzhie*)<sup>20</sup> to keep Ukraine under Russia's influence.

Russia's goal has been hence to ruin Ukraine's political association and free trade with the EU. It has developed a system of influencing the decisions of Yanukovich regime, among others by means of the mentioned trade embargos but also through the key players in the domestic politics and energy sector. The central purpose was to effectively capture the Ukrainian gas market and infrastructure, force the country to withdraw from the Energy Community Treaty and suspend exploration of alternative energy sources. The new orientation of the energy system was planned to prop up by appointment of the "right" politicians like Yuri Boyko, Andrei Klyuev and Viktor Medvedchuk to the key positions in the government.<sup>21</sup> Needless to say that this plan could not succeed without involvement of non-transparent system of payments through the companies controlled by Mr Firtash, Mr Kurchenko and other oligarchs, who subsequently fled from the country. Should those plans have materialised, Ukraine's economy would have been thrown away from its efforts to reduce energy intensity, diversify imports of natural gas (among others through purchases on the EU market) and develop own energy sources.

The Euromaidan has ruined those plans. However, the policy of Russia toward Ukraine has not changed. The annexation of the Crimea through an armed aggression can be seen as revenge for the loss of control over Ukraine. Russia displayed a brazen disrespect of the international law, exactly as in the case of Georgia in 2008. Apart from a completely falsified propaganda campaign and capturing Ukrainian military and strategic infrastructure objects in Crimea, Russia attempted a brutal interference into Ukraine's domestic affairs by demanding federalisation with broad autonomy rights for Eastern oblasts, upgrading Russian language to the second national, withdrawal of Ukraine from Euro-Atlantic security framework, postponement of the presidential elections. Russia's demands have been put forward to the US as a condition a post-crisis

19 A. Dugin, *Osnovy Geopolitiki. Geopoliticheskoe budushchee Rossii*. Moscow, Arkhtogeya publishers, pp. 96-97, 108, 199.

20 Transcript of interview in the documentary: Marko Lönnqvist. *Ulkolinja: Euroopan uusjako* (Re-division of Europe), YLE TV1 broadcast of 27.3.2014, retrieved 28.3.2014: [http://areena.yle.fi/tv/2152140?fb\\_action\\_ids=10203309485435072&fb\\_action\\_types=og.recommends&fb\\_source=aggregation&fb\\_aggregation\\_id=288381481237582](http://areena.yle.fi/tv/2152140?fb_action_ids=10203309485435072&fb_action_types=og.recommends&fb_source=aggregation&fb_aggregation_id=288381481237582)

21 Cf. *Yak kupuyut prezidentiv* (How to buy presidents), *Dzerkalo Tyzhnya*, Kyiv, No.45/2013; *Nomos: energo-politychni konteksty*. Express-analysis of 01.12.2013, <http://geo-strategy.org.ua/ua/analitika?start=10> retrieved 28.02.2014.

settlement, only a week after it had called the West to stop interfering into Ukraine's affairs. Obviously, the plan is far-reaching in the sense that it would destabilise internal situation in Ukraine in the medium run, aggravate bilateral relations and create grounds for future "referenda" in Eastern oblasts as the tool to return what Mr Putin labelled as "historical territories of Russia's South"<sup>22</sup> that are currently part of Ukraine.

Deep historical links between the Ukrainians and Russians cannot be denied, even though interpretations of the common history often tend to surrender to political interests, such as mitigating the consequences of the biggest geo-political disaster of the 20th century. In any case the fact that the nations have much in common does not justify an invasion of one nation by the other. For the moment, however, the invader seems unprepared to accept a clear European choice of Ukraine.

Russia's invasion calls for new solutions in the international security system, as it is obvious that the post-WWII instruments prove increasingly inefficient in preventing violent re-definition of the state borders in Europe. Neither Nato nor the UN Security Council could prevent the annexation of the part of Ukraine's territory, which is (at least) a second failure after Abkhazia and South Ossetia. Obviously, Russia knew it would happen this way, and perceived no international counteraction apart from calls for restraint and sanctions. The related serious risk is that unless new instruments are found, the seizure of foreign territories can happen over and over again, questioning European and Euro-Atlantic security system as a whole.

## Ukraine: challenges ahead

Ensuring national security is of course the primary task of Ukraine itself, even though the country cannot counterbalance Russia in military terms. The new Ukraine's leaders have not used all diplomatic and legal instruments to avert invasion of Russian troops into Crimea at the very onset on 23-24.02.2014, while internal security forces failed to neutralise anti-constitutional capture of the Crimean parliament on 27.02.2014. The overhaul of the domestic defence system on the basis of consecutive transition to western standards (without joining Nato in the medium run) is one of the most important post-Maidan tasks.

For Ukraine, Euromaidan is equally an accomplishment and challenge. Modernising the defence system is an integral part of the overall objective to anchor the achieved results by systemic reforms. Importantly, these reforms must effectively ward off any attempts to restore methods of public governance practiced under Yanukovich. And this task is both manifold and complex: an overhaul of the policy structures (including on the basis of lustration), re-establishment of trust between the politics and civil society, revival of trade with the EU, and working toward energy independence can be considered the core elements of reform.

- **Transition to parliamentary republic with reduced president's powers**

One of the first decisions taken by post-Maidan Verkhovna Rada was to restore the Ukrainian Constitution as amended in 2004,<sup>23</sup> reducing the scope of political authority of the President and respective transmission of important political functions to the parliament and the government. Similar to 2004, the change to a parliamentary-presidential republic seeks to remove the legal basis for over-concentration of powers and avert any possible abuse of authority by the president. However, both Ukraine's own history of the last decade and the experience of post-Soviet (unsuccessful) transition to democracy signify a number of serious risks to the implementation of the new Constitution.

On the one hand, Ukraine has not yet developed mechanisms that would ensure strict observance of the new Constitution by the new president to be elected in May 2014. The destiny of the same constitutional changes in 2004, after the Orange revolution, is a good example of what might still happen as soon as the new policy structures are settled. On the other hand, there is no guarantee that the Parliament elected in 2014 would be interested in establishing those mechanisms rather than re-designing the system practiced before. Hence further changes to the Constitution to the effect of reducing the number of seats in the parliament, re-introduction of the majoritarian voting and the new parliamentary elections would raise accountability of the legislative power and anchor the political result of Maidan.

22 Obrushchenie Prezidenta Rossiiskoi Federatsii, 18.03.2014, <http://kremlin.ru/transcripts/20603>, retrieved 31.3.2014.

23 Zakon Ukrainy "Pro vidnovlennya dii okremykh polozhen Konstytutsii Ukrainy" (On resumption of validity of selected norms of Ukraine's Constitution) of 21.02.2014, No. 742-VII. Vidomosti Verkhovnoi Rady Ukrainy, 2014, No.11, art. 143.

- **Overhaul of government structure, participatory institution building**

Ukraine's public administration has been the heaviest and slowest among the EU Eastern neighbours.<sup>24</sup> Public institutions in the current form are neither affordable for the society nor efficient in offering the due level of public services. In many cases, state institutions work as rent-seeking instruments for public officials, who are normally not subject to any trustworthy public control. Under Yanukovich, the legislative had been tailored to prop up inefficient institutions and open up channels for abuse of authority and corruption. It is also the inappropriate size, insufficiently coordinated and often conflicting functions of public bodies that preclude any decisive changes.

The danger of this system lies in its ability to reproduce itself: persons occupying lucrative positions as well as organisations remain adversely motivated to stay in power and keep up the networks of illegitimate enrichment. Denials to give up positions have been abundant after the Maidan at different levels, from courts to district police units, even against incontestable evidence of unlawful practice and corruption of the officials in question. The newly appointed heads of the most corruption-intensive regulatory institutions – such as the state commissions for financial market regulation and land resources – were well-known for their involvement in the bribery networks under previous governments. In fact, through the dominance of corruption and organised crime in the politics, Ukraine has put itself on the brink of restoration of the totalitarian system, a development that, as shown above, would have met the interests of Putin's Russia.

Against that background an overhaul of the government structure and lustration appear indispensable for Ukraine and are recognised as such by the new national leadership. The first reform measures, adopted within a short period of time and widely called “first-aid reform package” (reanimatsiiny paket reform), comprised among others the following steps:

- The law on government procurement, one of the most corruption-intensive, has been amended to ensure more transparency and close the channels of embezzlement. In its new version, the procurement act introduces some

EU-conform legal concepts, drastically reduces the number of exemptions from competition-based bidding and raises the demand for the disclosure of tender-related information. Interestingly enough, the faction of the Party of Regions has ignored the voting.<sup>25</sup> The new law is still not fully free of provisions allowing non-transparent procurements and will need to be revised anew to consolidate the reform.

- The law on lustration has been drafted and opened for broad public consultations. An imperative component of the post-Maidan political reform, the lustration law pursues the objective to exclude those officials from public authority who cannot be trusted in exercising governmental power in compliance with democratic principles. In this sense the draft law follows the recommendations of the Council of Europe of 1996,<sup>26</sup> while its implementation will most certainly face difficulties related to politically motivated resistance and identification of trustworthy candidates to occupy key government positions. Signs of political revenge have already been reported.
- Discussions and working groups on reforming or liquidation of inefficient government bodies have been initiated. The new Ukrainian needs to become free from organisations that duplicate or perform unnecessary regulatory functions and cannot be made accountable for diversion of public funds. Suffice it here to mention the Ministry of Culture, for which the national artistic community has initiated an organisational and functional overhaul. In addition, inefficient ministries created or reformed under Yanukovich to widen room for corruption, must undergo drastic reduction, liquidation and/or restructuring within the government system. This concerns, obviously, among others the ministry of revenues and duties (uniting tax and customs administrations), ministry of regional development, construction, and communal economy, and the ministry of industrial policy.

25 Verkhovna Rada Ukrainy, oficiyniy portal, [http://w1.c1.rada.gov.ua/pls/radan\\_gs09/ns\\_golos?g\\_id=4650](http://w1.c1.rada.gov.ua/pls/radan_gs09/ns_golos?g_id=4650); Zakon “Pro zdiisnennya derzhavnykh zakupiv” ukhvaleno (Law on public procurement adopted), <http://www.civicua.org/news/view.html?q=2211321>; retrieved 11.04.2014

26 Parliamentary Assembly. Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems. <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta96/ERES1096.htm> retrieved 02.04.2014.

24 Public administration reform in the EU Eastern partner countries: Comparative Report. Estonian Centre of Eastern Partnership, Tallinn, 2013, pp. 8, 71-80

Post-Maidan Ukraine has all the chance to advance public institutions to the level, at which the quality of public services and not rent-seeking is the main efficiency criterion. Georgia has shown the practical way of developing public- and business-oriented institutions that do not change – in contrast to some other EU Eastern partner countries – when the alternative political force wins elections. Ukraine has enough potential to follow that experience.

- **Macro-economic stabilisation and integration with the EU**

Post-Maidan Ukraine inherits a macroeconomic disaster from the Yanukovich regime, which has put the country on the brink of insolvency. The problem, similarly to the crises Ukraine has undergone in the previous two and a half decades, has short- and medium-term implications. In the short run, Ukraine does not need to bargain any more as to which side bails the economy out, Russia or the West. It has to implement stabilisation measures agreed with the IMF<sup>27</sup> and restore the macroeconomic sustainability as a precondition to medium- and long-term restructuring. The medium and long-term recovery should follow with focus on raising external competitiveness, protection of the vulnerable strata of population, deep reforms in the energy sector and business-friendly environment.

Ukraine has made several attempts to carry out economic modernisation in its modern history. Each time however those attempts would fail, firstly, at the depth and severity of structural distortions, which do not allow the economy to produce enough resources for sustaining its own development and growth. But secondly, Ukraine's reform policies would never go far enough to address those distortions in an efficient way. Moreover, as shown above, Russia has always prevented Ukrainian governments from developing that sort of reform policies and contributed to aggravating the existing distortions through its economic and political pressure.

A historical lesson for the third Ukrainian republic is that the approach to developing its economy should be balanced and carefully thought out in the long-term perspective. The overall objective is obviously to rebuild the energy-intensive inefficient industries, overhaul the energy sector by clarifying

property rights and money flows, effectively outlaw theft and embezzlement of investments. By moving toward that objective Ukraine will gradually overcome its status of an annex to the post-Soviet economy and become a self-determining player on the world markets.

Russia has demonstrated its reaction to this kind of possible economic development of Ukraine. To countervail sensitive losses of expert earnings due to closure of the Russian market Ukraine needs a stable demand for its produce in Europe and third countries. But some reasonable access to the markets of the Russia-led customs union should also be negotiated and remain in place in the medium-term perspective.<sup>28</sup> In the longer run however, the extensive regulatory and related political reform implied by the Association Agreement with the EU must be implemented.

There is however a big portion of uncertainty with the Ukraine-EU Association Agreement, after only the political part was signed on 21.03.2014. According to German media reports,<sup>29</sup> the federal government wants to introduce changes to the document by a working group set up at the EU-Russian summit in January 2014. The sense of the amendments would be to make possible Ukraine's membership in the customs union with Russia, Belarus and Kazakhstan even under the Association Agreement. The problem with this attempt is that it may vastly compromise Ukraine's commitment to regulatory convergence with the EU under a deep and comprehensive free trade and the related institution building, which, as shown above, is vital for the country.

## EaP failure?

It may seem that the EU has less interest in Ukraine than Russia. For Putin's Russia, Ukraine is indispensable as a lever to execute the predominant rent seeking from energy and nuclear fuel sales in the West. A prospect of losing that lever explains the brutality both in violating Ukraine's borders and brainwashing of population about the alleged fascists sitting in Kyiv and creating a plot

27 IMF announces staff level agreement with Ukraine on US\$14-18bn stand-by arrangement. Press release 14/131, 27.3.2014.

28 Oleksandr Shnyrkov. Ekonomichni naslidky ukladannya Uhody pro Asotsiatsiyu Ukrainy z ES z urakhuvannyam mozhyvoi reaktsii Rosii (Economic implications of EU-Ukraine Association Agreement in view of possible reaction by Russia). *Natsionalna bezpeka i oborona*, vol. 4-5, 2013. Razumkov Centre, Kyiv, p.93.

29 Keine Provokationen: Berlin will Russland in eine Lösung der Ukraine-Krise einbinden (No provocations: Berlin wants to involve Russia into resolution of Ukrainian crisis). *Spiegel*, Nr. 10/2014, p.82.

against Russia.<sup>30</sup> Ironically, Europe has developed itself to a hostage of Russia seeking energy rent, and there is a political interest to anchor that status of a hostage. The Economic council of Germany's Christian Democrats for example has blamed the EU for disregarding Russian interests in Ukraine, which had put additional burden on the West to bail Ukraine out through the IMF and put German business in Russia in jeopardy.<sup>31</sup> Attempts to reduce Europe's unsophisticated dependence on Russian energy supplies, not very much successful in the recent past, received a new impetus with the decision of the EU summit of 20-21 March 2014 to prepare and approve an action plan by June 2014.

In early weeks of Euromaidan, the EU has reaped sharp criticism for its inability to anchor Ukraine's political association and put forward workable solutions for a political settlement. Almost unanimously, policy analysts reproached the EU for demanding painful reforms of an indefinite duration with no clear prospect for membership.<sup>32</sup> It can be counter-argued that the EU has exhausted its enlargement capacity, but it has certainly been too slow to develop and introduce any other meaningful rewards for Ukraine such as visa-free travel. Europe has missed or labelled as unimportant the key developments in the country, notably the kleptocracy of the administration, the rise of civic protest and, not unimportantly, the overwhelming pro-European sentiment in the society.

Europe's stand-by in anticipation of "improvements" of national administration on its own drive has certainly been the wrong policy stance. Those improvements alone – such as raising administration's accountability – would counter the main interest of the kleptocratic regime. But even the Association Agenda with the EU appeared unable to create enough motivation for pro-European domestic reform policies. Many pre-Maidan legislative changes allowed more room for corruption and laid the basis for the reproduction of the non-accountable, inefficient administration, but that

policy relapse would not become the main subject matter of Ukraine-EU dialogue.

Whether for energy or geopolitics, one cannot be sure that Europe will be up to the task of an effective consolidation of the European interests in Ukraine. But failure to do so would push the country away from Europe and, in fact, justify Russia's aggression and annexation of Crimea. On the contrary, tangible accomplishments of the EU-Ukraine dialogue, such as product-specific free trade, gradually expanded to include more Ukrainian products, as well as the visa-free travel, would signify that Europe takes Ukrainian choice seriously. And of course, Western support focused on the main reform areas including modernisation of the Army and regulatory convergence must increase considerably. But the EU can also:<sup>33</sup>

- Extend the validity of EU legislation to Ukraine and agree that Ukraine accepts that extension
- Re-visit the Association agenda and expand the sector-specific free trade by respective agreements, similar to the solution applied with Switzerland, with respective technical assistance
- Widen Ukraine's observer status in the areas, where the EU legislation is being applied
- These and other technical solutions would avert or dismantle the existing security and integration vacuum in the Eastern Partnership region. Needless to say, this should be accompanied with a new definition of relations with Russia, the country, which strangely combines the status of a strategic EU partner with the image of an international actor, which has no problem in disrespecting the rule of law.

Ukrainians have made their historical choice against the corrupt leadership and in favour of the European standards of life. The winners of the Euromaidan are confident to have passed the point of no return, and the society in general recognises the need to overhaul the political system and its main institutional pillars. The strong motivation to do so should however go hand in hand with the understanding that the flaws of the old system have become deep-rooted and can rapidly reproduce themselves unless attended properly, that is with the standards and assistance from Europe.

30 As observed by Stefan Plaggenborg, professor of East European history at the University of Bochum, the big problem is that fascists normally sit there, where the loudest anti-fascist propaganda comes from. Cf. *Die Faschisten sitzen im Kreml*, F.A.Z. 21.03.2014, S.13.

31 CDU-Wirtschaftsrat wirft EU Fehler gegenüber Russland vor. DPA Meldung vom 18.04.2014.

32 Cf. among others Lilia Shevtsova, interview to Kyiv daily "Den", 27.12.2013; Ein Husarenstück zuviel, *Neue Zürcher Zeitung*, 8./9.3.2014; Anatol Lieven, Now Ukraine faces the toughest time of all, *Evening Standard*, 24.2.2014.

33 Cf. Vahur Made and Alexei Sekarev (ed.). *The European Neighbourhood after August 2008*. RoL Publishers, Dordrecht, 2011, p.273-4.



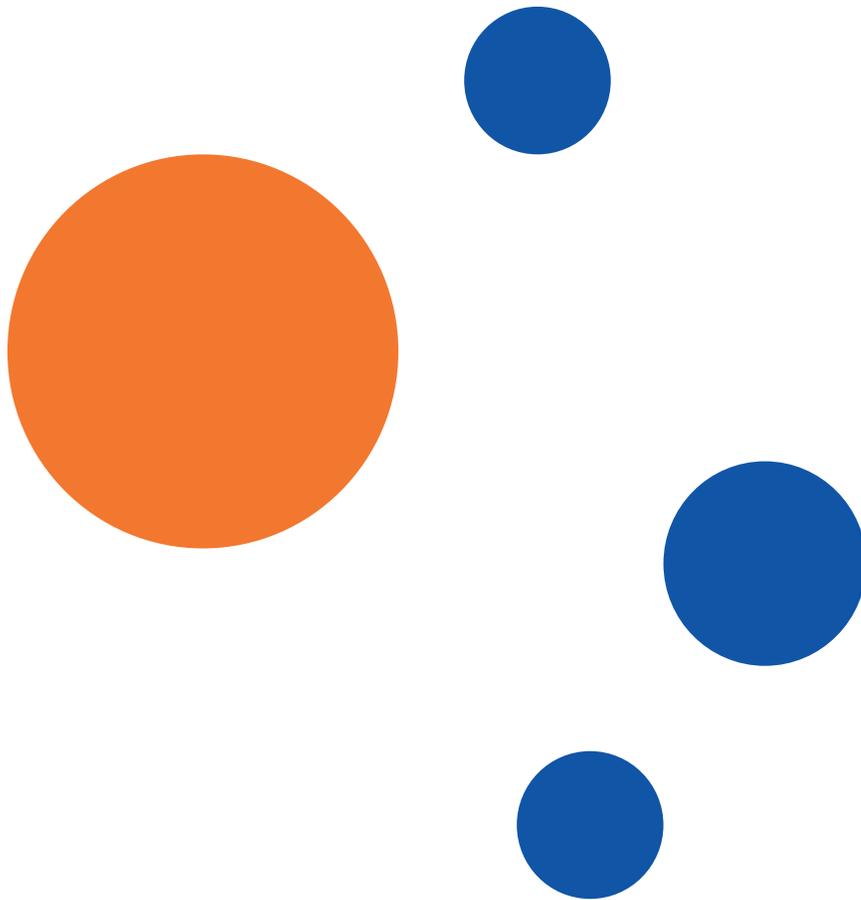
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**Estonian Center of Eastern Partnership (ECEAP)**

Tõnismägi 2

10122 Tallinn

Estonia

Tel. +372 631 7950

[eceap@eceap.eu](mailto:eceap@eceap.eu)

[www.eceap.eu](http://www.eceap.eu)