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A FEW REFLECTIONS ON THE RELATIONS BETWEEN UKRAINE AND THE EUROPEAN UNION

Introduction

The appearance of the independent state of Ukraine on the map of Europe caused a reconfiguration of relationships in Central and Eastern Europe. From a geopolitical perspective, Ukraine is a very important area in the region. Zbigniew Brzeziński, in his book entitled *The Grand Chessboard: American Primacy and Its Geostategic Imperatives*, wrote that the importance of Ukraine does not stem from its power or political will, but rather from an important geographical position¹.

The history of Ukraine may partly justify why the country is so crucial. First of all, it should be stressed that the eastern territories of modern Ukraine belonged to Russia since the seventeenth century. In 1654, when Bohdan Chmielnicki signed an agreement on the inclusion the eastern territories of Ukraine to Russia and on allegiance to the Tsar of Russia. It seems that Chmielnicki Uprising was an embryo of Ukrainian identity. W. A. Serczyk notes that it is difficult to overestimate the importance of the agreement in Pereyaslav. There is no doubt that Ukraine clearly gravitated towards the Muscovite state. It was caused by a few reasons. Centuries ago these lands were a single state and were connected by affinity of language, the same religion, and – increasingly – economic ties. Moreover, the expansion of the

¹ Z. Brzeziński, *Wielka szachownica. Główne cele polityki amerykańskiej*, Warszawa 1998, p. 13.

Polish magnates and Tatar invasions gave additional grounds for a quest of support from outside. Chmielnicki did not need to use extraordinary measures to persuade the Cossacks to consent to the adoption of Tsar's sovereignty².

In 1654 the Russian army crossed the Polish border. Some thirty years later, the Grzymultowski Treaty concluded in 1686 in Moscow), officially ended Polish-Russian dispute (confirming the terms of the Truce of Andruszow), approved the division of Ukraine and established the border between the Republic and the Russian Empire until 1772. Based on the Treaty, Poland surrendered the left-bank Ukraine, with Kiev, Zaporizhian Sich, Siverian and, Starodub, Chervihiv and Smolensk. That was a major success for Russia.

As result of partitioning of Poland in 1772, 1793 and 1795 Ukraine's lands were divided between Russia and Austria. In the nineteenth century Ukrainian lands belonged to the Russian Empire and the Austro-Hungarian Empire.

Tsar of Russia carried out a firm policy against manifestations of Ukrainian independence, language or culture. In the mid-nineteenth century, the Brotherhood of Saints Cyril and Methodius was established as manifestation of opposition.

Its activity was focused on the cultivation of the Ukrainian language and Ukrainian culture. A sense of national unity Ukrainians was created in Austro-Hungarian Empire as well. The consequence of that was the replacement of the term "Rusin", which gave rise to a sense of the connotation with the Russians, the phrase "Ukrainian" – to emphasize their individuality.

Ukrainian present territory was formed as a Soviet republic in 1944 and it gained independence in 1991.

The Eastern Partnership

It seems that one of the most important elements of the construction of security architecture and stability in Europe is the reorientation of Ukraine to the West in general and towards the European Union in particular. In this process, Poland is an active player.

The Polish and Swedish initiative for the creation of Eastern Partnership found the approval of the other EU member states. Deepening relations between Ukraine and the EU has been recognized as a long-standing priority of the Polish foreign policy, particularly during its presidency in the EU.

Russian leaders, in turn, do not hide their dissatisfaction with the prospect of Ukraine coming closer to the EU rather than to Russia. This attitude is consequence of the Russian view of Ukraine as historical part not just of the Russian sphere of influence but also as part of the Russian civilization area.

The concept of the involvement of the European Union in cooperation with its eastern neighbours has been promoted by Poland since 1998. In this year, the

² W.A. Serczyk, *Historia Ukrainy*, Wrocław 2009, p. 108.

head of Polish diplomacy Professor Geremek summoned to the creation of the Eastern dimension of the European Union external policy³.

The Eastern Partnership was inaugurated during the EU summit on 7th May 2009 as Polish-Swedish initiative. The participants of the Eastern Partnership are countries of Eastern Europe and South Caucasus, namely Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The main objective is to strengthen the relations of these countries with the EU through promotions in these countries European standards and values.

The task of the partner countries lies in the progressive alignment and implementation of EU legal solutions oscillating around: democratic values and institutions, the rule of law, individual and collective freedoms. An important pillar of the Eastern Partnership is also the stimulation of economic reforms, reduction trade barriers in order to eventually establish a free trade area with the EU and to create a visa-free travel between partner countries and the EU. The Eastern Partnership is also to provide a forum to agree on common positions on foreign policy and security matters. The Eastern Partnership gives each partner the opportunity to choose to what extent they wish to cooperate. It depends on partner countries whether they decide to make a strategic choice and they want to tie their future with the European Union.

There are two key principles of the Eastern Partnership programme: conditionality and differentiation. The first means that the Eastern partners need to fulfil a set of conditions. The second means that the various states may have different intentions with regard to the degree of cooperation with the EU. Their political will is central here. The dimension of multilateral cooperation presupposes a debate and exchange of experiences between countries. The aim is an association of countries covered by the Eastern Partnership of the European Union. This is to be an alternative to the non-enlargement of the EU. The Eastern Partnership does not guarantee accession to the European Union, though – as is often highlighted in literature – it certainly does not exclude it. In summary, the Eastern Partnership opens the perspectives of:

- a) the signing of an association agreement,
- b) the establishment of a deep and comprehensive free trade area,
- c) the liberalization of the travelling regime,
- d) energy security,
- e) economic development.

³ J. Starzyk-Sulejewska, *Partnerstwo Wschodnie jako element stosunków zewnętrznych Unii Europejskiej*, [in:] *Polska prezydencja w Radzie Unii Europejskiej. Wybrane zagadnienia w perspektywie politologicznej i medialnej*, ed. C. Żołędowski, Warszawa 2012, p. 69.

Yulia Tymoshenko and the Association Agreement

The Eastern Partnership was one of the interests areas of the Polish Presidency of the EU Council in 2011. Despite the closure of the talks with Ukraine about Association Agreement, including free trade, no success was achieved eventually. It must be stressed that the talks were terminated against the background of anti-democratic practices by Viktor Yanukovich government. The case of Yulia Tymoshenko was crucial to the finalization of the talks. On the 11 October 2011, after the Eastern Partnership Summit in Warsaw, Yulia Tymoshenko was sentenced to seven years in prison for the alleged abuse of power when negotiating a gas contract with Russia.

On 30 April 2013 the European Court of Human Rights in Strasbourg ruled in the case of Yulia Tymoshenko that the Ukrainian authorities had violated Article 5 of the European Convention on Human Rights and Fundamental Freedoms. The Court recalled the importance of art. 5 of the Convention, stating that it is a fundamental right of a citizen to be protected against unlawful and arbitrary decisions of state authorities. The Court held that the arrest of Yulia Tymoshenko was an excessive measure undertaken in order to stop her. Subsequently, the Court found that the reasons for the arrest of Yulia Tymoshenko were not justified in light of the art. 5 of the Convention (a possible escape and disrespectful behaviour). Given the above, it was concluded that Tymoshenko's arrest was unlawful and arbitrary.

Following on this judgment the European Parliament published a resolution on the situation in Ukraine and the Yulia Tymoshenko case (2012/2658 (RSP)). The resolution "sharply criticized the sentencing of former Prime Minister Yulia Tymoshenko", stressing that "the strengthening of the rule of law and credible fight against corruption are essential not only for the deepening of EU-Ukraine relations, but also for the consolidation of democracy in Ukraine". The Parliament also expressed "concern with the current restrictions of democratic freedoms and the practice of the instrumentalisation of state institutions". Lastly, the resolution reminded "the authorities of Ukraine of responsibility for ensuring free and fair electoral process in Ukraine".

Thus, the European Union clearly articulated its negative position on the Ukrainian government actions against opposition activists. This was extremely important in the context of a possible strengthening of cooperation between Ukraine and the European Union. During the third Summit of the Eastern Partnership, which took place in November 2013 in Vilnius, the signature of the Association Agreement was planned again. However, a week before the Summit, Ukrainian authorities announced the suspension of the preparatory process leading to the signing of the said agreement.

The argument given for this was the fear of worsening economic relations with Russia and the need to reconsider the offer proposed by the European Union. The European Union, in turn, took a strong position that the signing of the agreement was not possible without a "solution" to the case of Yulia Tymoshenko.

The Ukrainian Parliament did not pass, however, a law under which Tymoshenko could, while prisoner, go abroad for treatment of her health problem. Eventually, the European Union moved away from the basic principle of bilateral cooperation “*more for more*” and dropped the demands for freeing of Yulia Tymoshenko.

Opinions on the results of the summit of the Eastern Partnership are divided. On the one hand, many analysts emphasized that the European Union went to great lengths on the matter of the association agreement with Ukraine. Some others argue that the EU’s offer to Ukraine was inadequate.

Conclusion

First of all, it is worthwhile noticing that European Neighbourhood Policy entails several dimensions. The Arab Spring demonstrated that some of the EU member states were most interested in improving the situation in the region with which they have traditional ties. In fact, from the very beginning of the Eastern dimension of the ENP, there has been a sort of rivalry between the countries supporting the southern and eastern policy of the EU. Discussions about the role of the various dimensions of the ENP has been intensified with the economic crisis in Europe and the upheavals in the North African countries. There were even some proposals to move some funds from the Eastern to Southern dimension of ENP.

It is also worth noting, that the European Union does not speak with a single and strong voice on Ukraine. As many proponents of signing of the Association Agreement believe, the return of Ukraine to the east will mean nothing but a failure of the European Union’s eastern policy. But Ukraine as a country is politically and economically unstable. There is a potential related to Ukraine of destabilizing the larger international regime in Europe. In the context of the present divisions in the European Union relating to the current crisis, considering the situation in Ukraine only in terms of political interest of the EU seems to be a complex issue.

An example of that could be seen at the moment of suspension of the signature of the Association Agreement and the agreement on free trade area. The European Union made their decision on signing the agreements dependent upon the following conditions: the holding of democratic elections, dropping of repressions and progress in reforms. In view of the failure by Ukraine to fulfil the indicated conditions divergent concepts of further action emerged in the European Union.

On the one hand, it was considered that the European Union should be consistent, so that if Ukraine were unable to meet the conditions, in particular to improve the protection of human rights, no further steps should be taken. On the other hand, supporters of the signing of the agreements, starting from a pragmatic point of view, argued that the agreements would bring Ukraine closer to the EU (and away from Russia) and that would be a foundation for the implementation of reforms in Ukraine.

It seems that the European Union took sufficient efforts on its part to conclude the Association Agreement. However, the rejection of the Association Agreement sparked a popular movement that occupied the Maidan Square in Kiev in autumn 2013. On 30 November 2013, after the police forces attacked protesters on Maidan, the anti-government protests escalated. Some experts pointed out that in the second phase, the protests changed their character from the pro-European to anti-government, and Maidan became the only center of political action in Ukraine.

Russian strategic objective is the integration of Ukraine into the Eurasian Customs Union. This policy is in conflict with the interests of the European Union, and apparently, Ukraine as well. But let us stress that the European Union is not ready for an unconditional relationship. One of the fundamental conditions that the European Union put to Ukraine is to improve the protection of human rights. In the analyzed period, Ukraine did not improve human rights protection system to any significant degree.

The European Court on Human Rights, in cases of Lutsenko and Tymoshenko, clearly pointed out the serious weaknesses of the Ukrainian justice system, including the fundamental rights of the citizen, whose observance is one of the essential elements of the functioning of a modern democratic state.

Admittedly, on 7 April 2013, President Viktor Yanukovych pardoned Yuri Lutsenko. On the other hand, just before the announcement of the judgment of the Court in the case of the former Prime Minister Tymoshenko, the presidential commission on pardons ruled out the possibility of a pardon for Yulia Tymoshenko. The pardoning of Yuri Lutsenko was seen rather as a move designed to improve the image of Ukraine than honest desire to improve human rights.

In the context of the events that took place at Kiev's Maidan, special attention needs to be paid to the law, which was stipulated by Ukrainian Parliament on fourteen January 2014. This regulations significantly reduced the basic civil rights. According to its provisions, legal responsibility was stepped up for participating in illegal demonstrations and for disseminating of "extremist content", penalties for setting up tents in protest were also increased. Moreover, penalties were introduced for drivers who moved on the roads in columns with more than five vehicles. With regard to the activities of NGOs, the laws passed stipulated that any organization funded from abroad was required to add to its official name and published materials the phrase "organization filling functions of an agent of a foreign state". There was no doubt that the adopted rules fundamentally undermined the democratic system, making it a mere façade. The adopted law was targeted directly against the civic society.

It seems that the European Union should respond decisively to arbitrary violations of human rights in Ukraine. Pro-Western Ukrainians expect strong support from the EU, especially when it comes to Crimea. The annexation of the Crimean Peninsula in March 2014 may resemble the darkest scenarios from the history of Europe.

There is a justified question how it is possible that in the international system of today, with elaborate international law, a part of a sovereign state is taken over by another state. A following question is whether international community may set and enforce limits to such illegal and dangerous actions. The current situation in Ukraine is unpredictable.