

# Political Turmoil in the Northwestern Black Sea Rim

Ukraine, Moldova, and Transnistria

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We are witnessing the third wave of constitutional readjustment after the collapse of communism in post-Soviet Eurasia. Following the establishment of founding constitutional regimes in the early 1990s, the second wave occurred in the first half of the 2000s and derived from the malfunctions of the “patronal-presidential” systems (to use political scientist Henry Hale’s term) that had more or less been capable of running these countries in the first years of their existence. The second wave, often taking the form of hasty “revolutions,” in some cases produced what might be considered even more authoritarian regimes than before (Kyrgyzstan and Georgia); other readjustments proved to be half-minded (Transnistria) or produced unworkable political systems (Moldova and Ukraine). This memo focuses on three countries in the northwestern Black Sea Rim (Ukraine, Moldova, and, between them, the unrecognized state of Transnistria) and assesses their struggle to overcome the negative outcomes of the second wave (Ukraine’s Orange Revolution in 2004, Moldova’s shift to a parliamentary regime in 2000, and Transnistria’s de facto cohabitation after 2005).

## **Ukraine: The Collapse of the Orange Coalition and a Constitutional Deadlock**

In 2002, then-president Leonid Kuchma began to think it was inevitable that his former prime minister Viktor Yushchenko would be victorious in the 2004 presidential election. He thus tried, unsuccessfully, to limit presidential powers by changing Ukraine’s constitution and in so doing neutralize a Yushchenko victory. During the Orange Revolution, such a constitutional amendment was in fact realized as a consequence of compromise between Orange and anti-Orange blocs. The

president was practically excluded from the process of appointing the prime minister but continued to wield considerable power in the state administration by, for example, appointing governors and proposing candidates for the posts of defense and foreign ministers.

These changes to the constitution, however, did not clarify the relationship between the president and prime minister. Before the Orange Revolution, Ukrainian presidents appointed strong figures to the premiership when they faced serious economic crises and replaced them with obedient practitioners once the crisis had largely been overcome. In this way, potential presidential aspirants occupied the premiership for 76 months total before the 2004 election, while “greyer” figures obedient to the president served for 77 months. The 2004 constitutional amendment politicized the premiership by making it the president’s rival *ex-officio*. Of the 57 months from the Orange Revolution to December 2009, presidential rivals Yulia Tymoshenko and Viktor Yanukovich occupied the premiership for 48 months, leaving only 11 months to a technocrat, Yuri Yekhanurov, obedient to the president.

In 2008, Yushchenko sought to undo this new balance between president and prime minister. He proposed to introduce a completely new constitution, something that required a popular referendum. For Yushchenko, this was a far more promising mechanism for reform than seeking a resistant parliament’s approval for specific amendments. The Council of Europe’s constitutional advisory Venice Commission, however, was extremely critical of Yushchenko’s attempt to resolve political conflict through a plebiscite.

The bipolar party configuration that arose in Ukraine after the Orange Revolution did not last long. From 2005 to 2009, governments collapsed and attempts to form cabinets failed not because of competition between Orange and anti-Orange blocs but because of “betrayals” within the blocs. This “de-ideologized” feature of Ukrainian politics may have enabled leaders to compromise in even the harshest of conflicts. As a result, however, the Orange parties lost their ideational attractiveness, one reason for Yanukovich’s victory in the 2010 presidential election.

Still, it is striking that the East-West regional divide so visible in the 2004 presidential election gave way to a more conservative/progressive divide in 2010, reminiscent of Ukraine’s first presidential election of 1991. Targeting the unprivileged strata of society, Yanukovich underscored that goods were cheaper and living standards higher during his premiership (2006-07) than under Tymoshenko’s. Tymoshenko, in her turn, appealed to younger, more educated, and politically active members of the population. Tymoshenko’s electorate did not even appear to expect from her what it did five years before: a young intellectual who volunteered as captain of a self-defense guard during the Orange Revolution now supported Tymoshenko because “she is stronger than Yanukovich. Yulia Vladimirovna, like Putin, will establish order in Ukraine.”

As the constitutional amendments of 2004 introduced a mixed “premier-presidential” regime, Tymoshenko was able to temporarily retain the premiership after her electoral defeat. However, as Yushchenko has repeatedly demonstrated, a premier-presidential regime does not mean that the president is a passive conveyor of parliamentary will who plays little role in cabinet formation (or destruction). Yanukovich repeated his predecessor Yushchenko’s tactics by splitting Tymoshenko’s camp: parliamentary chairman Volodymyr Lytvyn’s pivotal group

and even some members of Yushchenko's Our Ukraine party withdrew support from Tymoshenko. The Ukrainian parliament subsequently passed a motion of no confidence in the Tymoshenko government, and a new coalition composed of the Party of Regions, the Communists, and the Lytvyn Bloc took shape, with parliament confirming Mykola Azarov as the new prime minister.

At the same time, Yanukovich did not intend to repeat Yushchenko's failures. First, he appointed as prime minister the technocrat Azarov, someone who would never become his rival. Second, after his election, Yanukovich openly initiated the formation of the cabinet, showing no respect for the premier-presidential principles of the Ukrainian constitution. In February, he tactfully unveiled his own preferred prime ministerial candidates and, in the end, virtually appointed the new cabinet members. While Yushchenko may have tried to return to Ukraine's 1996 constitution through his aborted "constitutional reform" of 2008, Yanukovich returned Ukraine *de facto* to the more centralized "president-parliamentary" republic that existed before 2004.

### **Moldova: A Slovakian Syndrome**

As a result of protracted confrontation in 1998-2000 between President Petru Lucinschi and the Moldovan parliament, an anti-Lucinschi alliance of the Party of Communists of the Republic of Moldova (PCRM) and right-centrists amended the constitution to turn Moldova into a parliamentary republic in 2000. However, PCRM leader Vladimir Voronin and other parliamentarians were hesitant to make the president a figurehead like the German president, and they left untouched the competences of the popularly elected president, such as veto power and the right to dissolve parliament. Moldova's politicians agreed, however, that parliament should not elect such a strong president by simple majority, and so the constitution was amended to mandate that the president be elected by more than three-fifths (61) of deputies. Since then, Moldova has constantly suffered from the "Slovakian syndrome," the inability of parliament to form a two-thirds majority to elect a president. The only exception to this was the first parliamentary election after the changes, held in 2001, when the PCRM won a decisive majority of 71 seats.

In the 2005 elections, the PCRM could only win 56 seats, but 11 deputies of the Christian Democratic People's Party (CDPP), who had been the PCRM's stern opponents, suddenly decided to vote for Voronin. The CDPP did not participate in the cabinet but otherwise operated practically as the PCRM's ally from 2005 to 2009. As a result, by the 2009 elections the CDPP had lost its traditional identity and electorate, who shifted to the Liberal Party, another right-wing, pan-Romanian party. Also, the CDCC was unsuccessful in reconciling the Communists' "Moldovanist" position with its own pan-Romanian one, and thus spoiled its relations with its patron, Romania.

On the eve of the April 2009 elections, four parties opposed the "Red-Orange dictatorship": the Liberal and Liberal Democratic Parties from the right-centrist spectrum and the Democratic and Our Moldova parties from the leftist spectrum. The electoral campaign was harsh; in April, the pro-opposition newspaper *Moldavskie vedomosti* published a voluminous article "exposing" Yuri Rosca, the CDPP leader, as a KGB agent since 1985, and "revealing" that in 1992 the Russian Ministry of Security (the successor organ to the KGB, soon reorganized as the FSB) ordered him to agitate in extremely pan-Romanian fashion to give Transnistria a pretext for separatism. The

newspaper also accused Rosca of embezzling a huge sum of money that the Romanian diaspora in the United States had donated to support the case of Ilie Ilascu, a pan-Romanian activist sentenced to death in Transnistria at the time, and to help Ilascu's family.

The opposition predicted massive fraud by the Communists. After voting day, the Central Electoral Committee announced that the PCRM had gotten 50 percent of the vote and 60 parliamentary seats. Two days later, furious rioters broke into the parliamentary and presidential buildings, burning the former and ravaging the latter (the differing levels of damage gave the opposition a reason to argue that the riot was organized by Voronin himself). The PCRM accused Romania of using schoolteachers, who allegedly mobilized students to join the meetings and demonstrations. According to the Communists, this is why Voronin could not resort to coercion. Voronin deported Romanian diplomats for their alleged involvement in the turmoil, and Romanian-Moldovan relations, tense throughout Voronin's presidency, reached a new low. Voronin also accused Tiraspol and Moscow of involvement in a conspiracy to overthrow him. In turn, the opposition attributed the turmoil to Voronin's secret police, which used it as justification for repressive measures to impose the dubious electoral results on the nation. In an interview, however, a Liberal Democratic leader admitted that the scale of fraud in April was not significant and Voronin's guards could neither have foreseen nor been ready for such fervent protest by Moldovan youth against "negligible falsification."

Voronin eventually compromised by dissolving parliament in mid-June and ordering repeat parliamentary elections, which took place at the end of July. The vote for the PCRM declined five percentage points, leaving it with only 48 of 101 seats. The anti-communist bloc gained 51 percent of the vote, with 53 seats. The Communist leaders, however, did not admit they were defeated in either round of elections. After all, no party in Europe could gain 45 percent of the vote alone, especially during the global economic crisis. The opposition created a coalition named the Alliance for European Integration (AEI) and the leader of the Liberal Party, Mihai Ghimpu, became parliamentary speaker. Since neither the PCRM nor the AEI had a two-thirds majority, necessary for parliament to elect a president, Ghimpu became acting president.

This constitutional abnormality led public opinion to support a return to the pre-2000 semi-presidential regime that featured a popularly elected president, a sentiment which Moldovan politicians and jurists long shared. An opposing proposal was to lower the requirement for parliament to select a president from three-fifths of seats to a simple majority of 51 deputies. This proposal, however, seeks to make the president a figurehead and would have to be accompanied by a more thorough overhaul of the constitution. Another issue is whether a constitutional amendment could prevent parliament's pending dissolution, something mandated by its two-time failure to elect a president last year.

Unexpectedly, Moldovan leaders have tried to repeat Yushchenko's failed 2008 attempt at "constitutional reform." In February 2010, the Venice Commission advised Moldova to limit changes only to the provision concerning election of the president and only by parliamentary procedure (i.e., without a referendum), just as it had advised Ukraine in 2008. In March, AEI leaders reached a consensus that Moldova should return to a semi-presidential regime with a popularly elected president, but they proposed to change the constitution completely, thereby evading the current

constitutional requirement to carry out such reforms through parliamentary approval. If this constitutional change is realized by June 16, 2010, however, the present parliament would not need to be disbanded. This is a clear “gift” to attract Communist and left-flank deputies of the AEI, whose defeat in repeat parliamentary elections is foreseen.

It has been a curious thing to see Ghimpu, the apparent leader of the Euro-integration movement in Moldova, defiantly proclaiming that what the Venice Commission says is just a recommendation, not an obligation. He seems to have expected a positive reaction by the Venice Commission (or at least to overcome a negative reaction), something that Yushchenko failed to achieve two years ago. Possibly, this is because 70 percent of the Moldovan population, tired of constant political disorder, support a return to semi-presidentialism, while Yushchenko’s attempt to re-strengthen the presidency did not enjoy public support. In 2000, Lucinschi could not exploit his comparative popularity vis-a-vis “parliamentary oligarchs” because the 1994 constitution did not allow change by referendum. This provision continues to be effective, but Ghimpu apparently expects events to take a different course.

## **Transnistria: The Constitutional Crisis**

Transnistria is the only unrecognized state in the post-Soviet space in which the same leader who came to power at the beginning of the 1990s (Igor Smirnov) still rules. Except for the rejection of Samvel Babayan’s “military dictatorship” in Nagorno Karabakh, which was followed by the attempted assassination of the president in 2000, past governments in Nagorno Karabakh, Abkhazia, and South Ossetia have all surrendered peacefully through elections. Smirnov’s everlasting administration and his family’s privileged status in Transnistria are a serious discredit to the *de facto* state. In fact, Transnistria is one of only two regimes in the former Soviet Union to choose a full presidential regime (the other is Turkmenistan). Smirnov directly controls Transnistria’s cabinet of ministers. Already in 2006, Russia interpreted this practice as facilitating a clientelist distribution of resources and requested that Smirnov introduce the post of prime minister as a condition for financial support for a referendum confirming Transnistrians’ desire to associate with Russia on a Puerto Rican model. Pressed by Russia, Smirnov introduced a commission for constitutional reform and harmonization of legislation with Russia. As was the case with other promises to Russia, however, the commission remained inactive for three years.

In April 2009, under the guidance of parliamentary chairman Evgeny Shevchuk and his Innovation party, the Transnistrian parliament proposed constitutional amendments that would strengthen parliamentary control over the president, on the pretext of harmonization with Russian law. Smirnov organized furious counteroffensives. By the end of May, several deputies dropped out of the anti-Smirnov front and parliamentarians agreed to cancel the April resolution and participate in the president’s constitutional commission. In this commission, Smirnov’s clique prepared a superpresidential draft which, among other things, lacked a ban on a presidential third term.

In Nagorno Karabakh and Abkhazia, the opposition needed to overcome a similar authoritarian counteroffensive to overturn the regimes of Babayan and Vladislav Ardzinba. By contrast, the Transnistrian opposition has suffered a strange spinelessness despite its sporadic assaults on what Shevchuk calls Smirnov’s

“sultanate regime.” Since Shevchuk became parliamentary chairman in 2005, Transnistria has been in a state of constant cohabitation. Strangely, Shevchuk did not run in the 2006 presidential election, though he would have been a formidable challenger to Smirnov. During the more recent constitutional conflict, Shevchuk resigned (in August 2009) from the post of parliamentary speaker when he should have uncompromisingly resisted Smirnov’s attempt to change the constitution. Transnistrians suppose that Shevchuk’s economic base, the oligarchic corporation Sheriff, which has extensive commercial networks and gas stations throughout Transnistria, and which built the only football stadium in *de jure* Moldova where FIFA has authorized the holding of international matches, is highly dependent on Smirnov’s favor for taxation, customs, and transportation privileges.

New parliamentary speaker Anatoly Kaminsky has publicly fallen in line with the president, but in practice has indefinitely postponed a referendum to confirm the draft constitution. Smirnov has not insisted on the referendum as public opinion polls indicate that the population would not go to the polls. Instead, Kaminsky has proposed to change the constitution step by step, beginning with the introduction of a prime ministerial post. In such a way, the Transnistrian constitutional debate has returned to where it was in 2006.

## Conclusions

The constitutional processes described here exhibit transnational characteristics. First, political elites have learned from each other, as demonstrated by the frequent references of Moldovan leaders to (and, hopefully, careful analyses of) Yushchenko’s failure. Moreover, Kyivan newspapers (particularly *Dzerkalo tyzhnya/Zerkalo nedeli*) are full of insightful analyses of Moldovan and Transnistrian domestic politics, and vice versa. One of the flaws of existing studies of political transition is a lack of attention to this kind of cognitive jurisprudence, although the first task of any constitutional reformer is to survey experiences of other (often neighboring) countries. The common approach of contrasting one or another country’s experience to global standards fails to appreciate the dynamism and “participatory” nature of the international constitutional process.

Second, the onset of constitutional reform in the northwestern Black Sea Rim is a product of geopolitical stabilization of the region. The boldness of Yanukovich and Ghimpu’s constitutional proposals, not expected from their predecessors, seems to derive in part from the fact that they have quickly built normal relations not only with their Western neighbors (the European Union and, for Moldova, Romania), but also with Russia. Observers tend to ignore the fact that the Medvedev administration and the Russian right-wing (such as Konstantin Zatulin) view the pan-Romanianists (Ghimpu) and AEI as more reliable partners than the Moldovanists (Voronin). The former’s behavior is more predictable, and they are also less attached to Transnistria and more obedient to Romania, with which Russia traditionally has had amicable relations. Tiraspol also welcomed the AEI’s victory, because the existence of a pan-Romanian government in Moldova makes it easier to justify Transnistria’s independence.

AEI’s focus on internal constitutional politics has also eased relations with Transnistria in practical ways. In 2010, the custom exemption that the Voronin administration had offered to Transnistrian enterprises in 2006, in exchange for their subordination to joint border control by Moldova, Ukraine, and the EU, expired. If

Moldova began to demand that Transnistrian enterprises pay taxes and customs to the Moldovan treasury in 2010, this could have led the two countries to the brink of civil war. In December 2009, however, the chairman of Moldova's parliamentary committee on economy, budget and finance (from the Liberal Democrats/AEI) told me that Transnistrian enterprises would continue to be exempted from Moldovan taxation: "We need to solve the problems on the right bank first, and then we will think about the left."

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