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DECENTRALIZATION AND LOCAL ELECTIONS: ANOTHER HUGE CHALLENGE FOR UKRAINE

It is our pleasure to present the third piece of the digest "Prism.UA" This time we focus on two very sensitive domestic issues in Ukraine. The decentralisation reform and the local election process are closely interconnected and therefore legitimately share the space in this publication.

Local elections which are currently underway in Ukraine cause some concerns inside the country and within the international community. Against the backdrop of the necessity to reset the local governance level formed back in 2010 under Yanukovich, there are still some problems to be seriously addressed.

The electoral system adopted by the Verkhovna Rada of Ukraine is far from being ideal in terms of participatory democracy and is highly criticised by experts. Another concern is the real authority of the regional and local councils. Taking into consideration that the decentralisation reform is in full sway it is very likely that the mandate resulting from the upcoming elections will be contracted to two years. Iuliia Serbina, expert of the international project "Ukrainian Peace-Building School", argues that despite all the shortcomings of this electoral process, there are opportunities for new political forces to prepare for the national elections and full-scale participation in political life once the decentralisation is in process.

The decentralisation reform is one of the crucial aspects of the future of the democratisation process

in Ukraine as it has to transform all the systems of relations between authorities and Ukrainian citizens at the grassroots level. This multifaceted process affects many areas: education, healthcare, social and cultural sphere, housing, communal services, construction, administrative services, budget, taxation, law enforcement, land, forest, and water management, electoral process, self-organisation of population, etc.

Dramatic events that accompanied the voting concerning decentralisation amendments to the Constitution of Ukraine clearly indicate that today this is one of the most controversial reforms not least due to the very sensitive question of the process of self-governance in the occupied territories of the Donbass region. At the same time this reform is central to the official agenda of Ukrainian authorities and a lot of efforts have been put to achieve a progress. You can read about the current state of play and what else has to be done in the article of Iuri Vdovenko, expert on the decentralisation process in Ukraine. According to him, among the priorities key to the actual implementation of the reform, there should be an excellent level of communication, openness, and interaction with all stakeholders and the public.

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LOCAL ELECTIONS 2015: SPECIFIC FEATURES OF THE CAMPAIGN AND RISKS FOR THE POLITICAL SYSTEM

Iuliia Serbina

Local elections in Ukraine, despite the limited powers of the councils to be elected (those powers are regulated by the Law on Local Self-Government of Ukraine), serve as an indicator

of citizens' trust in the political system as a whole and also reflect the ability of the ruling party or governmental coalition to control the political process in the country. The councils

Current local councils no longer reflected the transformation of political processes taking place in Ukraine on the post-Euromaidan wave and the emergence of new social and political movements and forces.

ected at the local elections in 2010, with their majority taken up by representatives of the then ruling Party of Regions and their allies (with the exception of some regions of Ukraine), completed the process of creating the so-called “vertical structure of power” (this is how this process was characterised by its ideologues, ignoring the principles of local self-government). Current local councils no longer reflected the transformation of political processes taking place in Ukraine on the post-Euromaidan wave and the emergence of new social and political movements and forces (volunteer organisations, public order protection organisations, new youth organisations and political parties, and also the elimination of individual parties that have a long history). The need to hold local elections simultaneously with the parliamentary elections in the autumn of 2014 was debated after the election of the President of Ukraine in May 2014; however, the argument against a simultaneous electoral process was that the new electoral law, which was supposed to overcome the shortcomings of the majoritarian component of the mixed (majoritarian-proportional) electoral system used for local elections in 2010, was not prepared yet. During 2014–2015, non-governmental experts as well as deputies elected at the early parliamentary elections in 2014 worked on the draft law on local elections. This draft law would reflect the dynamics of the processes taking place in Ukraine and overcome the shortcomings of the existing electoral system. However, an absolutely different version of the law was proposed for the parliamentary vote: it looks like a compromise between the political forces represented in the Parliament (in particular, the presidential political party Petro Poroshenko Bloc, the Batkivshchyna [Fatherland] party, and individual deputies from the Samopomich [Self-Reliance] party).

Political forces on the eve of local elections:
Brief view

During the year preceding the local elections of 2015, the party system of Ukraine underwent some transformation. A number of political movements that grew from volunteer organisations engaged in matters related to displaced persons, aid to the Ukrainian army, and volunteer battalions were registered as political parties. A movement that had engaged in civic educational activities during Euromaidan (the Syla Lyudey [the Power of People] Party) also intensified their activities. However, the majority of the newly formed political forces do not have sufficient resources to win local elections because of low awareness among voters and limited time resources to build such awareness. Ukrop (the Ukrainian Association of Patriots), representing the political positions of the Privat Business Group, stands out significantly from

the newly formed political forces. Thanks to the availability of financial and media resources (nation-wide 1+1 TV channel and regional mass media in the Dnipropetrovsk Oblast), the party pursues an aggressive campaigning style, trying to occupy the niche of moderately right-wing voters disillusioned with the effectiveness of the policies of Ukrainian President Petro Poroshenko and using local elections to raise problems, the solution of which is not within the competence of local councils (in particular, the country’s transition to a contracted army). Given the role of the Privat Group in preserving the integrity of the country and preventing the spread of separatism in the spring of 2014, as well as its contribution to the development of volunteer battalions, Ukrop has a very good chance of receiving mandates in local councils in those areas that represent a certain “buffer zone” that separates regions of conflict from the rest of the country (its base Dnipropetrovsk Oblast as well as the Kharkiv, Zaporizhia, Poltava, Kherson, Mykolayiv, and Odesa Oblasts).

The right-wing and centrist niche in the local elections are presented by the presidential party Petro Poroshenko Bloc (Solidarity) and the Batkivshchyna Party (which remains the party with the longest election history and ideology in the current electoral cycle). For Batkivshchyna, the local elections provide a chance to increase voter confidence in its leader Yulia Tymoshenko after her defeat in the presidential election of 2014.

The transformed Party of Regions, which served as the base for a number of parties supported by the protest electorate of the southern and eastern regions, has a very good chance of getting seats on local councils. The Opposition Bloc is the leading party within this segment; the activities of the Vidrodzhennya (Revival) party are somewhat smaller in scope (however, in a city as big as Dnipropetrovsk the party has a chance of its candidate proceeding at least to the second round of the mayoral elections).

In western regions of Ukraine, the Samopomich (Self-Reliance) party led by the the Mayor of Lviv, Andrii Sadovyi, is very likely to get a majority.

The election campaign of Samopomich is also largely focused on solving nationwide Ukrainian problems. The Svoboda (Freedom) political party, which had a majority of seats in the local councils of Western Ukraine, has lost significant ground due to the low efficiency of its members in solving local issues.

The so-called regional parties occupy a separate niche. Their purpose is to retain their place in policy by the virtue of some regional leaders who have influence in certain districts and oblasts

Despite the existing public demand for the renewal of elites and probable sporadic success stories of new candidates, most voters will support the ruling party (Petro Poroshenko Bloc (Solidarity), Batkivshchyna, and Ukrop.

(the Nash Kray [Our Land] party led by Anton Kisse, whose campaign is not limited to the Odesa Oblast, despite the fact that initially the emphasis was on the participation of national minorities in the political life of the region and country). The Dovyryay Delam (Trust Deeds) political party is led by the Mayor of Odessa, Gennady Truhanov, and was created for the purpose of publicly showing separation from the Party of Regions, whose faction in Odesa City Council had been headed by Truhanov.

Specific features of the 2015 local election and risks for the political system

These are the first elections of authorities in the post-Euromaidan period. It should be noted that the political context in which the elections will be held is, to a certain extent, dictated by the occupation of Crimea and armed conflict in the Donbass. The impossibility of holding elections in the occupied territories controlled by separatists Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR) as well as in Crimea rules out the principle of universal suffrage. Elections to local councils in the liberated territories of the Donetsk and Luhansk Oblasts also require additional security assurance measures. It is quite difficult today to envisage the possibility of holding elections in the occupied territories of the Donetsk and Luhansk Oblasts as presented in the draft of Morell Plan published in the media (*The elements of a temporary law on local elections in some districts of the Donetsk and Luhansk Oblasts* developed by the political subgroup of the trilateral Contact Group). Consideration should be given to the fact that, in violation of this paragraph of the Minsk Agreements, local council elections were announced to be held at the territory of DPR and LPR on October 18. However, the decision of separatist leaders to postpone local elections to 2016 shows that local elections at the occupied territories are rather the matter of a broader negotiation process.

The fact that Ukraine has 1.5 million internally displaced persons, whose right to participate in the vote is in no way reflected in the Law on Local Elections, is a direct consequence of the occupation of Crimea and parts of the Donetsk and Luhansk Oblasts. Despite the availability of the draft law developed by community experts, which would allow displaced persons to realise the active right to vote, it can be predicted that it will not be adopted before the elections to be held on October 25.

Innovations of the Law on Local Elections of Ukraine

In implementing the recommendations of international institutions (OSCE/ODIHR; the

Council of Europe) regarding the strengthening of the electoral process in Ukraine, the authors of the Law on Local Elections of Ukraine took into consideration only the issue of gender quotas. The law provides for a quota of at least 30% of one gender in the electoral list. At the same time, no sanctions for ignoring this principle are provided for (yet, some political forces have already filed statements of claim in the court with the Central Election Commission, which permitted the registration of political parties that ignored the compliance with the quota, acting as the defendant).

The law reflects the political will regarding the return of the occupied territories because it lays down the procedure for holding elections in the Autonomous Republic of Crimea. In addition, the law is aligned with the package of the decommunisation laws adopted in April 2015: Local organisations of political parties, which have their registration certificate liquidated because of their activities aimed at propaganda of totalitarian or Nazi past, are not allowed to participate in local elections. Accordingly, the Communist Party will not participate in local elections. At the same time, this fact does not prevent those deputies who represent this political force on the local councils of the current convocation to stand in the lists of other political forces.

The Law on Local Elections establishes three types of electoral systems: the majority system of absolute majority in the elections of mayors in those cities where the number of voters exceeds 90,000 people; the majority system of simple majority – for those settlements where the number of voters is less than 90,000 people. Up until 2015 elections in the large cities of Ukraine were mostly won by candidates with considerable financial, media, or administrative resource. While they often gained 20–30% of the votes, today there is a high probability of a second round of voting in elections of mayors, since the use of such resources does not guarantee victory in the first round. The probability of a second round of voting in mayoral elections is especially high in those cities where two or more candidates with impressive resources stand for such posts. In particular, it is almost certain that there will be a second round of voting in the mayoral elections in Odesa, Kiev, Kharkiv, and Dnipropetrovsk.

The mixed proportional system, which the Ukrainian legislator publicly calls “the system of open lists”, rather demonstrates the features of the proportional system. It should be noted (and it is also stated in the OSCE/ODIHR needs assessment mission report) that this system has nothing in common with open lists. In accordance with the law, a party is entitled to

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nominate zero to four candidates in a district. In this case the ballot paper will contain the name of the leader of the list, who is offered to voters for electing. If other candidates (whom the party might not nominate in a particular district) gain more votes than their competitors, but the party they represent fails to overcome the electoral threshold, the candidate will not be deemed to have been elected. Since the new version of the law eliminates the principle of self-nomination at elections to district, city, and oblast councils, it significantly limits the possibility to exercise passive suffrage and makes candidates heavily dependent on party affiliation.

Raising the election barrier from 3% to 5% makes it almost impossible for political forces created during the post-Euromaidan transformations to succeed in the elections. Despite the fact that a few initiatives of the civil society have undergone institutionalisation and were registered in the Ministry of Justice of Ukraine as political parties and could win seats in local councils if they pursue active election campaigns (the Syla Lyudey Party and the Democratic Alliance), such political parties are prevented from entering local councils by the raising of the electoral barrier, the impossibility of self-nomination, and the lack of financial resources for putting down the deposit and conducting the election campaign.

Certain norms of the Law on Local Elections implicitly contribute to the introduction of the “imperative mandate”. In particular, they provide for the possibility to deprive a deputy of his mandate by a decision of the party if, within a year after the election, signatures of voters [demanding so] are collected in the district in a number not less than the number of votes cast for the candidate.

The procedure of the formation of election commissions, in accordance with which the subjects of the nomination have the possibility to withdraw their candidacies at any time, endanger the presence of a quorum for making decisions on the day of election.

Media continue to reflect the viewpoints of their owners. A significant innovation is the fact that the legislator has obliged the media to publish data of sociological surveys with indication of the customer, the date of the survey, the exact wording of the questions, and the time and venue of the survey, which reduces the possibilities of “shaping sociology”.

A significant drawback endangering the observance of the principle of universal suffrage is the lack of effective practices of the application of sanctions for violation of the electoral legislation. In particular, since, according to the

Ministry of Internal Affairs of Ukraine, from the official start of the electoral process (5–25 September) 25 criminal cases concerning the violation of electoral rights of citizens have already been instituted. This, however, does not guarantee their completion, transfer to court, and rendering of a judicial decision. In Ukraine, courts of different levels and of different territorial jurisdiction often take radically different decisions in similar cases. Following the results of the parliamentary elections held in 2014, the Ministry of Internal Affairs instituted more than 450 criminal proceedings, of which 242 have been completed.

Instead of conclusions

Given the complexity of the combination of different electoral systems in different local authorities within the framework of one electoral process as well as the frequency of elections in Ukraine, it is possible to predict a reduced turnout of voters in the forthcoming local elections. A decrease in the level of citizens’ trust in elections as an institution can be predicted with a high degree of probability. Following this trend, reinforced by the passivity of the political culture in small settlements, there is a high probability that representatives of political forces who secured the majority in local councils in 2010 will strengthen their positions. Despite the existing public demand for the renewal of elites and probable sporadic success stories of new candidates, most voters will support the ruling party (Petro Poroshenko Bloc (Solidarity), Batkivshchyna, and Ukrop. In those oblasts where regional parties are active, they can be expected to gain seats in district councils. As to oblast and city councils, the likelihood of overcoming the 5% barrier is not uniform. The Opposition Bloc will take a separate position and will have to be reckoned with by the ruling party when making decisions. At the same time, taking into account the serious debate within the parliamentary coalition, the local elections for some of the biggest political forces are not so much a chance of gaining votes in local councils as the possibility to retain electoral dividends in the event of early parliamentary elections.

It is obvious that elections as a democratic institution in Ukraine need substantial reforms and strengthening of democratic practices for transition to participatory democracy. Despite all the shortcomings of the adopted law there are opportunities for new political forces to prepare for the national elections and full-scale participation in political life can be used. Considering the decentralisation reform and the process of local communities association the next two years elections in newly formed communities will be held. This process may

help the local leaders to implement initiatives leading to the necessary changes.

The strengthening of democratic institutions requires from Ukraine to respect its international obligations in civic and political rights. In particular, as in every post-conflict society, the protection and promotion of the

rights of internally displaced people need special attention.

The role of state and local authorities in their readiness to consider recommendations of non-governmental experts remains extremely important.

DECENTRALISATION IN UKRAINE: QUO VADIS?

Yuri Vdovenko

The decentralisation reform is one of the most comprehensive reforms in Ukraine. It consists not only of the reformation of the territorial organisation of power and the devolution of authority and resources to local self-governments. The changes affect almost all areas of public life: education, healthcare, social and cultural sphere, housing, communal services, construction, administrative services, budget, taxation, law enforcement, land, forest, and water management, electoral process, self-organisation of population, etc.

The choice of a decentralisation model for Ukraine can be seen as a worldview choice because it symbolises the rejection of the “Asian” form of government with a conditional Sultan with unity of command in favour of a European democracy based on the European Charter of Local Self-Government. The system of state governance that has formed in Ukraine over the years of independence is a “mix” of the remnants of the Soviet system, Anglo-Saxon and continental models with elements of the Iberian one and is characterised by the inefficiency of most state institutions. The first attempts of the reform in Ukraine date back to 1998. However, the turning point in the transition from a centralised to a decentralised system was the Revolution of Dignity when it became apparent that concentration of power in the same hands poses a real threat to the existence of the independent state.

The ongoing decentralisation reform is a Ukrainian product based on the European experience. Since the beginning of its implementation, the Polish model has served as the basis. As a consequence, the basic idea is a substantial expansion of the powers of territorial communities. It is at the community level where the provision of high-quality and accessible administrative and social services, establishment of institutions of democracy, satisfaction of interests of citizens, and coordination of interests of state and local governments should be ensured.

This approach, among other things, has

also allowed to protect the country against centrifugal tendencies, because it eliminated the idea of federalisation promoted by some anti-Ukrainian forces. The decentralisation reform has high chances of implementing a balanced system of public administration. However, it is also associated with considerable risks because it may significantly increase the level of local debt and corruption, as well as lead to financial vulnerability.

A common vision of the reform is presented in the official document – the “Concept of the Reform of Local Self-Government and Territorial Organisation of Power in Ukraine”, which was approved more than a year ago (on 1 April 2014). The first draft of the Concept was developed by the Ministry of Regional Development as early as in 2011 and received a generally positive opinion, including that of the Centre of Expertise for Local Government Reform under the Council of Europe and Directorate General of Democracy and Political Affairs. The action plan provides for amendments to the Constitution, development of a number of legislative acts, adjustment of the system of administrative-territorial structure and its modelling, and public awareness efforts. As of today, around 10 legislative acts have been adopted by the Verkhovna Rada of Ukraine in the fulfilment of the tasks of the Concept. Certain steps for fiscal and tax decentralisation have been taken. The Law on Voluntary Consolidation of Territorial Communities and the Law on Cooperation of Territorial Communities have been adopted. Oblast administrations, with the support of informal offices of reforms set up in each oblast, have developed the Perspective Plans of Territories of the United Communities (as of today, only 2 oblasts have not yet approved them). The process of unification of communities is actually taking place.

Also, the Law on the Fundamentals of State Regional Policy was adopted, which resulted in the involvement of European regional development mechanisms in Ukraine. The law

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that granted local self-governments the right to independently determine their urban planning policy entered into force on 1 September. In addition, the new Law on Local Elections was adopted. A number of laws on decentralisation of authority and the regulation of land relations are next on the agenda. Four draft laws, which will allow decentralising the provision of basic administrative services, have passed the first reading; the draft law on municipal guard has been developed.

On the other hand, citizens and local authorities have significant expectations, which do not coincide to a great extent with the official document. Neither in society nor in political circles is there consensus regarding support for the model being implemented and the underlying draft laws of the reform have still not been submitted for public discussion. Consequently, stakeholders often lack an understanding of both the logic of process and specific implementation tasks.

The progress of the reform is evaluated differently. The National Council of Reforms considers that the level of the implementation of tasks within the framework of the reform reaches 55% (notably, this is one of the highest rates in comparison with other reforms). One of the recent opinion surveys conducted by the IRI (International Republican Institute) confirms general support for the reform by the majority of Ukrainians; however, 67% believe that central government should devolve more rights to the local level. However, only 3% of Ukrainians are satisfied with the current pace of reforms, while 40% of respondents think that no changes are made and 32% are dissatisfied with their slow progress.

The end of the summer was marked in Ukraine with heightened interest in decentralisation reform. This was due to the fact that it was undergoing a “next stage” associated with voting by the Parliament for amending the Constitution. The main innovations offered by the draft law include the introduction of the “Institution of the Prefects”, granting the President the right to dissolve local councils, and the possibility of a special procedure of local self-government in certain districts of Donetsk and Luhansk Oblasts.

The events that occurred on the day of voting inside and near the Parliament will long remain the object of investigations.

At the first reading held on 31 August, 265 of 368 deputies of the Verkhovna Rada voted for the adoption of the draft law on amendments to the Constitution regarding decentralisation. The adoption of this draft law was ensured,

among others, by the votes of the parliament members who were directly associated with the former government (the Opposition Bloc, Vidrodzhennya [Revival], Volya Narodu [the Will of the People], and non-affiliated parliament members) and caused serious disagreement in the ruling coalition.

The vote caused a massive outcry in the society and expert circles, dividing public opinion into polar groups ranging from full support of the actions of the authorities to accusations of treason. In all fairness, it should be noted that the protests were caused not only by the contents of the draft law, but also by the process of its development. In particular, the style of work and the level of openness of the Constitutional Commission can hardly be named among the best democratic standards.

However, the most tragic events took place outside the walls of the Verkhovna Rada, where three soldiers of the National Guard of Ukraine were killed in the clashes between protesters and the police. Minister of Internal Affairs Arsen Avakov, without waiting for the conclusions of the investigation, hot on the heels of the events, accused the Svoboda (Freedom) Party and its leader Oleh Tyahnybok of the incident. In contrast to this accusation, opinions were heard of “provocations of special services” and “the Russian trace”.

Johannes Hahn, the European Commissioner for European Neighbourhood Policy and Enlargement Negotiations, in connection with these events, expressed his hope that “after the outbreak of violence, which, unfortunately, happened, the further process will take place peacefully. Decentralisation has key importance for further democratic transformation of the country, its modernisation and improvement of public administration”.

In respect of the above, it should be noted that Ukraine is not completely independent in making these decisions, although the Constitution, as the foundation document for the existence and functioning of the state, is exclusively a matter of internal policy.

Urgent threats of the modern world do not allow acting within usual practices and set requirements for the search for and application of innovative solutions. So, the Minsk Agreements became one of the elements of the response of the global community to the aggression of the Russian Federation. Although deprived of a definite legal status, they serve as a kind of roadmap that hinder further escalation of the situation in Eastern Ukraine. The amendment of the Constitution of Ukraine by the end of 2015 was one of the points of the agreement on

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the settlement of the situation in the Donbass settled in Minsk. As a consequence, in the process of amending the Constitution, Ukraine faced threats both from the Russian Federation and pressure from European partners.

At the moment, the future progress of the decentralisation reform appears to be associated with overcoming new obstacles. In the first place, there will be an extremely problematic voting in the second reading on [the draft law on] amendments to the Constitution, which must win 300 votes in the Parliament. Only after that is adoption of key laws that would strengthen the new model of public administration possible.

On 25 October, Ukraine is to hold local elections, which makes the main political actors act quite cautiously in order not to lose their positions

at the local level, whose role will increase significantly. It should also be mentioned that 159 voluntarily united communities from 20 oblasts of Ukraine will participate in these elections. These will become a sort of “pilot” communities and will be the first to claim the benefits of decentralisation. However, a serious challenge would be the lack of a proper legislative framework of their functioning in the new reality. Meanwhile, the success of the newly established communities may become an example that will inspire other participants of the reform to implement it more actively.

And most importantly, which participants at all levels of the process should understand, the key to the actual implementation of the reform is excellent communication, openness, and interaction with all stakeholders and the public.

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The foreign policy expert network “Ukrainian prism” was launched in 2012 with an aim to participate in decision-making process and shaping of foreign policy agenda in Ukraine. The network unites more than 15 like minded people in Ukraine with strong expertise in political science, economics, diplomacy and international relations. Members of this initiative represent independent think-tanks and prominent Ukrainian academic institutions from Kiev, Odessa, Kharkiv, and Chernihiv. Since foundation the experts have issued about 30 policy papers with recommendations concerning relations with neighbouring countries, strategic partner states, and international organizations to respective Ukrainian ministries. In 2014 the Network implemented initiative “Ukrainian informational front” focused on awareness-rising campaign within foreign media about Russian aggressive action in Ukraine.

The Eastern Europe Studies Centre (EESC) is a non-governmental, non-profit organization established in 2006. General aim is to build civil society and promote democracy in Eastern Europe by monitoring and researching political, economic, and social developments in the region, and by developing qualitative analyses of them. EESC organizes conferences, seminars, and round-table discussions regarding issues relevant to civil society and democracy; it trains people in areas relevant to its mission; and it also offers consultations and recommendations to individuals and organizations cooperating with Belarus, Ukraine, Moldova, and Georgia. EESC specializes in the EU Eastern neighborhood policy.

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