

# ON THE BORDERLINE OF WESTERN DEMOCRACY & EASTERN DESPOTISM

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## **INTRODUCTION**

The political, social and economic situation in Ukraine is currently in the focus of the international community, while stability, peace and prosperity of the country, undoubtedly, pillars the stability of the whole Eastern European region. Decentralization, which presumes economic, political and administrative strength of the local communities, is viewed as a key necessity in the current turbulent situation. Local self-governance, which has deep roots in Ukraine, due to Magdeburg's Right applicable to more than 400 of its cities and towns in the XIV-XVII centuries, should become the cornerstone of the current renaissance of the country.

This paper presents the historical context of the current political system of Ukraine, argues the form and the means of decentralization applicable in the Ukrainian context, as well as presents a view on the current constitutional process in the country.

## **HISTORICAL CONTEXT OF THE CURRENT POLITICAL SYSTEM OF UKRAINE**

Contemporary Ukraine as a sovereign independent state has undergone a long and bloody way of transformations and development. Its current political system is not only the result of the centuries-long strive of the Ukrainian people, but also the complex geopolitical confrontation of eastern and western powers and ideologies.



The first chance for reestablishment of modern Ukraine on its ethnical territories appeared with the fall of Russian and Austro-Hungarian Empires after World War I when Ukrainian People's Republic and Western Ukrainian People's Republic had arisen. By the Unification Act of 1919 these republics were united in the common state, which, contrary to strict jurisdiction of local authorities to central executive bodies, were common for political systems of Russian Empire, from the very beginning proclaimed the principles of decentralization and stood for the democratic development of the country.

As a country which was among the main victims of the World War I and seeking for international recognition as an a newly arisen state, unified Ukrainian People's Republic sent its common delegation to the Paris Peace Conference in 1919, which was about to raise the Ukrainian question on the international level. However, due to increasing threat of the Bolshevik Russia and deep concern about Ukrainian-Polish war, the Ukrainian delegation was not allowed officially to Paris Peace Conference, which actually meant the legalization of the split of Ukrainian territory between several countries. The border between the two parts of the Ukrainian territory can be considered as a margin of the geopolitical division between East and West.

Due to a paradox situation, the territory of Ukraine was finally formally considered as a unity on international level in the Molotov-Ribbentrop Pact in 1939 at the threshold of the World War II. The non-aggression act between Nazi-Germany and the Soviet Union, containing a secret protocol defining the "spheres of interest" of both totalitarian states, defined that after the annexation of Poland by Germany, its eastern parts, inhabited by ethnical Ukrainians, should become a part of the Ukrainian Soviet Socialistic Republic.

However, the outcome of World War II and the fall of Nazi regime in Germany in 1945 resulted in much further intervention of soviet ideology and political power into Eastern and Northern Europe and the beginning of the so called Cold War. The Berlin Wall, build in 1961, was the final symbolic clash between the two



worlds, putting not only Ukraine, but also other European countries like Lithuania, Latvia, Estonia, Belarus, Poland, Czechoslovakia, Hungary, and Bulgaria on socialistic rails.

The fall of the Berlin Wall and the crash of the Soviet Union in 1991 pushed this line back to the borders of Ukraine, initially defined by the Molotov-Ribbentrop Act. The European integration of Poland and the Baltic States changed the geopolitical mapping of Europe, bringing democratic values further to the east. Although internationally recognized as a sovereign independent state, Ukraine has remained unofficially the "sphere of interest" of the Russian Federation, the successor of the Soviet Union.

The Ukrainian Orange Revolution of 2004 and the Revolution of Dignity of 2013-2014 have showed the protest of Ukrainian people against eastern despotism and defined the pro-European democratic choice of Ukraine.

The Current situation in Donbas, the annexation of Crimea and the continuing war with the Russian Federation is the logical and predictable continuation of the promotion of European values and democratic principles to the east. The borderline which was located at the River Zbruch in 1919 as a result of difficult century long transformational processes, advanced hundreds of kilometers to the east to the frontline of the current Ukrainian-Russian war. It is obvious, that without the western European influence this progress would not be possible.

Taking into consideration all mentioned above, there cannot be any doubt that the solution for solving the difficult socio-political situation in Donbas is not in the military or diplomatic sphere, but in further promotion of democratic values and European social standards to the east.

The Ukrainian-Russian war united the people of Ukraine in their perception of the Ukrainian state and strengthened their national identity. Only the economic and social success of the country can reunite the Ukrainian territorial integrity and give victory to the western democracy in the region.

It is nowadays obvious that, although Donbas and Crimea are inseparable parts of the unitary Ukraine and should always be considered a part of Ukrainian territory, and taking into consideration the complexity of Minsk processes, Ukraine is not able to take full control of the temporary occupied territories and the work of public authorities there. The policy of Ukrainian state should, therefore, consist in temporary political, economical and military isolation of the temporary occupied territories for the sake of strengthening economic and political stability of the country. At the same time the Ukrainian population that remains at temporary occupied territories should receive consistent and continuing humanitarian aid from the Ukrainian government.

Economic and political stability of the country can be achieved only through building strong public management institutions, fighting against corruption, improving citizens' quality of life and bringing European social standards. All this is inseparable from building strong local communities, which is achievable through decentralization reform.

### **CURRENT STATE OF LOCAL SELF-GOVERNANCE IN UKRAINE**

The Revolution of Dignity accelerated the total reload of power in the country, which resulted in early presidential and parliamentary elections in 2014. The majority of the new convocation of the Verkhovna Rada of Ukraine declared decentralization as a key priority of state development for the next years, which was documented in the Coalition Agreement.

In two years a number of very important steps were taken in reforming local self-governance, which built the ground for the independence, prosperity and political strength of the local communities, which are marked by the number of important laws passed, including State Law "On voluntary amalgamation of local communities", "On cooperation of local communities", amendments to budget and tax codes, laws on increasing competence of local self-government in the sphere of public services, etc.

The major hindrance on the way to stable development of local communities has for many years been their fragmentation. In 2013 there were almost 30 thousand administrative territorial units in Ukraine, including more than 29 thousand rural localities, administered by over 12 thousand local governments. Over 50 % of localities had less than one thousand inhabitants, which made them highly depressive and subsidized.<sup>1</sup> The majority of resources were used for maintenance of administrative staff.

The Law "On voluntary amalgamation of local communities" is the first step for solving this complex problem by means of amalgamation, introduction ubiquity of local governments and transition to new mechanisms for intergovernmental budgetary relations.

According to data of National Council on Reforms<sup>2</sup> from 1.1.2016, almost 800 villages, towns and cities have already amalgamated, creating 159 united communities. According to the resolution of the Central Election Commission, these communities elected local authorities (deputies, mayors and heads) at the local elections in Ukraine in October 2015. Despite considerable progress in this sphere it remains an urgent matter to motivate local communities to further amalgamation and overcoming social resistance, associated with lack of information and natural opposition to change.

The amendments to budget and taxation codes, adopted by the Parliament of Ukraine in 2014, are the real mechanisms for motivating the amalgamation of communities. It consists in change towards direct relations between local and state budgets for amalgamated communities. The amendments also include increasing the number of local taxes, by taking over 100 % transfer fee for administrative services, 100 % of the state fee, 10 % corporate income tax, 80 % of environmental tax instead of 35 %, introduction of excise tax on retail realization of excisable goods (beer, alcoholic beverages, tobacco, petroleum products, etc.) at a rate of 5 % of the cost of goods sold, collection of property tax from commercial (non-residential) property and tax on cars with large engine capacity.

All these reforms contribute to building economic and political stability of the country in the nearest future, creating new social relations in the society, enhancing the efficiency and capacities of local governments.

## **THE CONTEXT OF CURRENT CONSTITUTIONAL PROCESS IN UKRAINE**

It is obvious, that decentralization as a new mode of political and social organization of power in the country requires the introduction of numerous amendments to the Constitution. At the same time the conditions and manner in which these amendments are currently introduced in Ukraine raise great concerns and threats to the democracy in Ukraine.

The Constitution which in a democratic state is the treaty concluded not by the politicians but by the people of the country, defines the basis of social relations in the society, acceptable by the majority of its population. Since any amendment to the Constitution will have an enormous effect on every single citizen of the country, this process requires broad and open consultation with the society. The introduction of amendments to the Constitution of Ukraine in a secretive and non-transparent manner, excluding citizens from general discussion of the process, evokes great concerns about the validity of such a process.

Sociological surveys, conducted by International Republican Institute<sup>3</sup> in Ukraine, clearly show that only 6 % of the population are aware of the content of the amendments introduced by the President of Ukraine, 65 % find their awareness of the constitutional process very low or low and almost 1/5 of the people have not heard about the amendments to the constitution. The survey also revealed that only 12 % of the citizens believe the amendments to the Constitution will change the situation for better, contrary to 15 % who believe they will change the situation for worse. At the same time the majority believes that the introduced amendments



will not result in any changes. This shows the low involvement of the population in the process, which, therefore, can be viewed as not democratic.

There also exist deep concerns about the legal procedure of introduction of the amendments. According to the Coalition Agreement, signed by five parties of the coalition, the draft of the amendments to the Constitution was to be developed by the temporary special commission, established by the Parliament. But although the members of the commission were about to introduce their proposals, the first draft of the amendments on decentralization was developed without including these proposals, and exclusively by the secretariat of the commission, which was not authorized to do so. As a result, the amendments summated by the Head of the Verkhovna Rada of Ukraine to the Venice Commission included substantial divergences from the original amendments, devised by the temporary commission.

Afterwards, the text of the amendments was changed four more times, so that in the end the variant introduced by the President did not even include the proposals of the parliamentary factions of the coalition. The voting for the amendments also included great procedural violations. In particular, the draft law was not properly discussed as required by the Rules of the Procedure. Moreover, the Member of Parliament (MP) who was appointed to the position in the executive body, voted for the amendments. According to Article 81 Paragraph 5 of the Constitution of Ukraine the powers of the Members of Parliament of Ukraine are terminated if circumstances which lead to violation of the requirements of the incompatibility of the deputy mandate with other activities are not resolved within 20 days from the date of their appearance. Such circumstances are defined in Article 3 of the Law of Ukraine "About status of the People's Deputy of Ukraine",<sup>4</sup> which states that any Member of Parliament has no right to be the member of the Cabinet of Ministers or the head of the central executive body. While the voting took place later than 20 days from the appointment, the law was abused.

Currently, Ukraine is in state of undeclared war with the Russian Federation. The Constitution of Ukraine (Article 157) prohibits the changes of the Constitution in the state of war, while in these conditions the state cannot guarantee the insurance of human rights on the occupied territories and is vulnerable. The facts of Russian aggression are recognized on both national and international levels. Moreover, in view of the articles of Minsk Agreement, the aggression of the neighboring country can be regarded as a direct attempt to impose certain amendments to the Constitution of Ukraine which are of benefit for this country.

Taking into account all said above, it is obvious that the constitutional process in Ukraine can scarcely be called democratic and transparent, which undermines its enormous influence on the society.

### **THE CURRENT AMENDMENTS VS POSITION OF "SAMOPOMICH" UNION**

The amendments to the Constitution define the new balance of powers between the executive branch of Government and local governance, as well as the roles and powers of President, Cabinet of Ministers and Parliament with regard to local governance.

The amendments offered by the President and adopted in the first reading by the Verkhovna Rada of Ukraine introduce the position of executive branch Prefect, who according to Article 118 is appointed and dismissed by the President on the recommendation of the Cabinet of Ministers.

According to Article 119, the functions of the Prefect are the supervision of compliance with the laws and the Constitution by the local self government authorities, co-ordination and supervision over local bodies of central executive authorities and administrative functions (enforcement of state programs). These functions do not broaden the responsibilities of local self-governance, as declared by the decentralization reform.

Moreover, according to the current draft law, the Prefect is granted with the power to suspend decisions of self-government authorities for the reasons of their inconsistency with the Constitution or laws of Ukraine (Article 144). On a similar note, if the head of hromada, hromada council, rayon or oblast council adopts an act inconsistent with the Constitution of Ukraine, which poses a threat to the sovereignty of the state, territorial integrity or threat to the national security, the President of Ukraine obtains the power to suspend the powers of elected bodies and to appoint a temporary State Governor. While the law does not include the mechanisms of protection for local governance and does not define the terms in which the President can execute his power, this can pose a direct threat to independence of local self-governance.

Moreover, the draft amendments suggest excluding from the Constitution of Ukraine the provision according to which the rights of local self-government are protected in court, which contradicts Article 11 of the European Charter of Local Self-Government which states that "local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation".<sup>5</sup> In most of developed democracies, the acts of local self-government can be suspended only by the court.

The amendments under consideration put the extensive amount of power to the President which is not applicable in a parliamentary-presidential form of government.

With regard to this, the position of "Samopomich" Union faction and the deputy speaker of the Parliament of Ukraine, Ms. Oksana Syroyid, is to split the power provided by the draft law to the President between the President and the Cabinet of Ministers and to define the exact terms for all procedural aspects. As a result, the suggested balance of powers can be formulated as follows:

- The President of Ukraine shall suspend the respective act and simultaneously bring the matter before the Constitutional Court

of Ukraine and temporarily terminate powers of the head of hromada, as well as the composition of hromada council, rayon and oblast councils respectively.

- The Prime Minister of Ukraine shall appoint a temporary state official within ten days from the moment of temporary termination of powers of the head of hromada, and the composition of hromada, rayon and oblast councils.
- The Constitutional Court of Ukraine shall consider this request of the President of Ukraine without delay and shall deliver its decision on compliance of normative act of the head of hromada, hromada councils, rayon and oblast councils with the Constitution of Ukraine no later than thirty days from the day of such a request. According to Article 59 of the Law of Ukraine "On local governance in Ukraine", the local councils issue normative acts in the form of decrees.

### **POSITION ON THE SPECIAL ORDER OF LOCAL SELF-GOVERNMENT IN CERTAIN DISTRICTS OF DONETSK AND LUHANSK REGIONS**

The transitional provisions of the current amendments, adopted in the first reading by the Verkhovna Rada of Ukraine define in section XV, clause 18 that: "Special features of exercise of local self-government in certain districts of Donetsk and Luhansk oblasts shall be set forth by specific law."<sup>6</sup>

There is no legal basis for providing special order to Donetsk and Luhansk oblast. The only reason for introducing this article into the Constitution is the adherence to Minsk Agreement. At the same time the Constitution cannot be adjusted to the current war conditions, while this is a social agreement which is to be constructed for the time of peace. Introducing special order of local self-government in certain districts of Donetsk and Luhansk regions in the "text" of the Constitution will give such provisions direct effect and provide that special order of local self-government will be effective in certain districts of Donetsk and Luhansk regions prior to their liberation by Ukrainian government which is unacceptable.

The position of "Samopomich" Union is that this provision should be excluded from the text of the Constitution. The temporary occupied territories of Luhansk and Donetsk after their liberation should be provided with the general powers, accredited to all local communities of Ukraine by the reform of decentralization, which will provide their economic and political stability in the time of peace.

## **CONCLUSIONS**

Decentralization is the key priority for the social, economic and political stability of Ukraine. The unitary Ukrainian state should be strengthened by broad and overwhelming decentralization, providing equal opportunities for social growth of local communities.

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## NOTES

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