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INSIDE UKRAINE

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The International Center for Policy Studies (ICPS) restores issuing analytic paper «Inside Ukraine», the last issue of which was prepared in September 2010.

The aim of the publication is to provide objective information on current political events in Ukraine and thorough analysis of major tendencies in domestic politics. Such analysis will assist in setting priorities in the process of implementing reforms in Ukraine and in evaluating quality of state decisions from the viewpoint of their impact and sustainability. Special attention is paid to evaluation of political competition in Ukraine and ability of key political players to address challenges.

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1. The Government Policy

The anti-terrorist operation has not yielded desired results despite considerable military resources employed. The President-elect Petro Poroshenko is to analyze the reasons behind the inefficiency of the anti-terrorist operation and develop the mechanism for stabilization of the situation in Donbass. Singular well-coordinated strikes against terrorists must be combined with attempts to initiate a dialogue with local militia groups. “Divide and rule” policy as well as stick and carrot approach to different groups of separatists will allow Ukrainian authorities to impose their scenario of events in Donbass.

During his presidential campaign Poroshenko failed to provide his own vision of a much needed constitutional reform. In the meantime, the Verkhovna Rada of Ukraine tried hard to curtail the president’s powers by establishing a provisional parliamentary committee to elaborate constitutional changes and speeding up their consideration. The constitutional reform cannot be done in a hurry as it requires public discussion and engagement of all stakeholders into the process. Otherwise, Ukraine will experience another Maidan.

1.1. Why is anti-terrorist operation inefficient?

Stabilization of the situation in Donbass is a top-priority for the new President in Ukraine. The way the anti-terrorist operation is conducted requires changes. Though the anti-terrorist operation has been in place for almost two months, with the Ukrainian army, law enforcement forces and Security Service of Ukraine being involved, its achievements are modest.

The main reasons for the inefficiency of the anti-terrorist operation is the inability of Ukrainian authorities to take preventive steps, lack of initiative from Ukrainian military personnel, poor coordination and waste of time.

Ukrainian militants could have gained control over the East of Ukraine at the initial stage of the separatist movement when only a few subversive groups from Crimea and Russia were deployed to Ukraine’s eastern regions. Since Ukrainian army failed to secure control over Ukraine’s East, terrorists managed to concentrate a great number of gunmen in two eastern regions as well as to gain the support of local population.

Though in April eastern regional elites could influence the situation in the East, now these levers are lost. At first, the regional elites supported separatists as they hoped to play this card in their negotiations with Kyiv. Now when separatists are running a destabilization spree in Ukraine’s East, local business elites themselves became a target for separatists’ attacks.

Another reason for the operation inefficiency is that the Ukrainian military command is too bureaucratic and unfit for military actions. Operational data needed for decision-making is processed at many levels, which increases the chance of them being leaked. Furthermore, the majority of chief commanders are afraid of taking responsibility for decisions, which slows down the anti-terrorist operation.

Besides, there is a lack of coordination between different military units. It became clear when the Ukrainian military base in Luhansk was attacked by separatists. This military base fought separatists for several days and did not receive any support from other military units.

Another aspect that adds to the inefficiency of the anti-terrorist

A major reason for the ATO inefficiency is inability of the government to take preemptive steps

Ukrainian military command is unfit for military actions

operation is that the Ukrainian-Russian border remains open. The length of the border in Luhansk and Donetsk regions is more than 1050 km, a large part of which is not demarcated. In March, with the financial assistance of Head of Donetsk State Administration, Serhiy Taruta, the defensive ditch was constructed along the border with Russia. Yet such measures are inefficient.

Ukrainian-Russian border is open to gunmen groups

The majority of gunmen make their way to Ukraine through official checkpoints. They either attack the border guard or bribe them to pass. In order to prevent violent break-in of armed separatists, border guards need to be reinforced and their technical equipment improved. As regards bribery at border checkpoints, border guards should face legal prosecution for taking bribes. The same approach should be applied to their chiefs that do nothing to counter corruption and state treason in the units. Closing of borders with Russia will localize terrorists and diminish their influence in the region.

Military mobilization is rather chaotic

Military and law enforcement units from all over Ukraine are sent to the East to participate in the anti-terrorist operation. The general mobilization of the population is rather chaotic with conscripts being sent to the battlefield after a short training. A large concentration of poorly trained and ill-equipped Ukrainian soldiers becomes an easy target for separatists and causes great losses for the Ukrainian military. At the same time the use of specially trained mobile groups which will make singular well-coordinated strikes against separatists proved to be more effective.

Another problem is separatists using local civilians as human shields. Ukrainian forces have not yet learned how to counter this tactics.

At first local population assisted separatists either for ideological reasons or for money. When real military actions started, with terrorists seizing residential areas to make them into battle positions, local support for their actions diminished. In addition, the military units consisting of the so-called volunteers from the Caucasus regions of the Russian Federation have stepped in the stage. It contributed to the tensions in the region and showed the local population that the Donetsk separatism is a phenomenon imported from Russia with support of the Kremlin.

Ukrainian government should draw part of local population to their side

Ukrainian government needs to learn how to use the stick and carrot approach while dealing with the situation in the East. The government needs to fight separatists and subversive groups while attempting to draw the local population and some militia groups to its side.

1.2. Constitutional changes are needed to “reset” the state

It is expected that the new President will actively participate in the development of amendments to the Constitution. The system of state authorities in Ukraine requires a complete reset. Ensuring the independence of the judicial authority, the changes in the role of the prosecutor's office, the division of powers between the central and regional authorities, the relationship in the triangle President-Parliament-Prime Minister – all these issues should be fixed by the Constitution.

Currently the Constitution of 2004 is in effect in Ukraine. However, its adoption in the times of the Orange Maidan was held in violation of the established procedure. The regulations of the 2004 Constitution also led to the confrontation between the Prime Minister and the President that lasted for several years and resulted in lost opportunities to reform the country. This time the new edition of the Constitution should be prepared in a transparent way, involving all stakeholders and in compliance with the

The 2004 Constitution requires revision

procedure.

Having the appropriate methodology, the development of constitutional reform will take a longer time but will have a socially legitimate result. First of all, it is essential to identify the problems that necessitated the amendments to the Constitution, and to summarize them in an official document such as a «Green Book» of constitutional reform. This document should undergo public discussion.

Alternatively, a positive idea is to change a format of the Constitutional Assembly, whose members will be delegated from the regions based on direct elections. Such delegates might be professional lawyers who are trusted in respective regions and will be obliged not to be engaged in political activities after the assembly finishes its work. The main provisions of the new Constitution should be considered at the nationwide referendum. After developing the concept of the constitutional reform, the Parliament can start working on the text of the Constitution.

In contrast to the described methodology, the constitutional process has been very chaotic throughout the last three months and was mainly determined by the desire of the current Parliament to curtail the powers of the future president. The public was not informed about the proposed changes. The process was hastened due to the desire to pass the Constitutional Amendments to the Venice Commission before the second round of the presidential election. In this case a new President would have to recognize the fact that the basic text already exists. Although the changes to the Constitution have been submitted to the Venice Commission, it was reported that Oleksander Turchynov withdrew the request. Valery Karpuntsov, a member of the temporary special commission from UDAR party, said that the proposed project is not a result of the commission teamwork, but was written personally by its chairman Ruslan Kniazevych.

It is expected that Petro Poroshenko as the guarantor of the Constitution will take the situation regarding the drafting of the constitutional amendments under his personal control. His election program contained only general promises of decentralization, judicial reform and the preservation of presidential powers, as they were according to the Constitution of 2004. However, he has not presented his own policy of constitutional reform. Poroshenko's responsible attitude to the constitutional process will directly influence his efficiency in the office.

1.3. MPs' vision of constitutional reform

The draft amendments to the Constitution, offered by MPs, generally outline their vision of the constitutional reform. The emphasis is made on reducing the President's role and increasing the powers of the Parliament, while such important parts of the Constitution as «Prosecution», «Judicial authority» and «Local Government» have undergone only “facelift” changes.

As to the Parliament, it is proposed to abolish the imperative mandate under which the power of the MP is terminated if he resigned from his faction or does not enter a faction after being elected. The decision to dissolve an MP is taken by the Parliament.

The President can early dissolve the Parliament only provided that within 60 days after the resignation of the Cabinet new members of the government were not appointed. Other proposed options include the right of the President to dissolve the Parliament in case the plenary sessions do not

Key provisions of a new Constitution should undergo public discussion

Poroshenko has not presented his policy of constitutional reform

MPs want to diminish the President's role, while increasing Parliament's powers

start within 30 days or due to the address of the parliamentary majority. This approach makes it almost impossible for the President to dissolve the Parliament. Even the 2004 Constitution included three dissolution options.

Compared to the Constitution of 2004, the President loses the right to nominate the Minister on Foreign Minister and the Minister on Defence. During the times of Viktor Yushchenko these two ministers, appointed by the President, could not operate effectively in the government. They actually were in opposition to the rest of the Cabinet. Thus, the proposed innovation may have a positive outcome. If the idea is supported, the President will be able to appoint only the Prosecutor-General, the Chairman of the Security Service of Ukraine, the Chairman of the National Bank, the Head of the Foreign Intelligence Department and the Head of the State Bureau of Investigation.

MPs propose to simplify the procedure of President impeachment, which, according to the Constitution of 2004, was practically impossible to implement. Under the new project, the issue of impeachment might be initiated by one third of the Parliament, thereafter the temporary commission investigates the case and the parliamentary majority decides on charges against the President and sends the materials to the Constitutional Court. After the conclusion of the Court the decision on the impeachment of the President might be taken by two thirds of the Parliament.

At local level, the executive power is provided by heads of state representations that are appointed by the President on the proposal of the government. The task of state representations is to control and supervise the implementation of the Constitution, the legitimacy, the law order and the adherence to human rights. They also coordinate the activities of local authorities and public inspections at the local level.

It is proposed that supervision over adherence to human rights should not be among prosecutors' functions and that the Prosecutor-General should be elected for seven years, not five. Another variant offers to exclude "Prosecution" chapter from the Constitution.

As for the changes in judicial system, a judge cannot be arrested without consent of Higher Council of Justice. This institution may also dismiss the judge. Appointment of judges to administrative positions and their dismissal are done by majority of the respective court. Major principles of judicial system are proposed to include automatic distribution of cases among judges and consideration of cases within reasonable time period. The authors do not specify what period they define as reasonable.

Assembly of Ukrainian judges is the highest body of judicial self-government. This body appoints a third of Constitutional Court, five members of Higher Council of Justice, heads of State Court Administration and National School of Judges. The changes do not explain what authority State Court Administration will have.

It is proposed to decrease number of members in Higher Council of Justice down to 18: President, Parliament and Assembly of judges appoint 5 members each, while other three are head of Constitutional Court, head of Supreme Court and Minister of Justice.

As for administrative units, three-level system is offered: regions, districts and communities. Local authorities will be entitled to receive a part of national taxes. One of the projects envisages a clear description of local self-government rights, including the right to hold local referenda and define official languages in the region. However, in a major project of constitutional amendments MPs preferred general wording in this section.

President may lose the possibility to dissolve the Parliament

MPs propose to simplify the procedure of President impeachment

Higher Council of Justice will continue playing a key role in judicial system

MPs preferred general wording in the section on local self-government

2. Economic Situation

Russia continues assimilating Crimea and eliminating Ukrainian businesses from the peninsula.

Settlement of gas dispute between Ukraine and Russia is postponed. Meanwhile Ukrainian government emphasizes the need to increase domestic gas extraction and makes first steps to meet the requirements of the Third energy package.

2.1. Russia secures a grip on Crimea

Since June 1, 2014 hryvnia has become a foreign currency in Crimea. After this date the exchange is done according to the exchange rate of a specific bank. Settlements between legal entities and between individual entrepreneurs are made in cash according to the Russian legislation. Earlier simultaneous circulation of Russian ruble and Ukrainian hryvnia was allowed till January 1, 2016. People who received their salaries in hryvnia are among those who will suffer the most from this decision. Besides, such an unexpected and drastic ban on hryvnia circulation will complicate the situation with the clients of Ukrainian banks. It will be possible to repay the loans in the bank branches on the territory of mainland Ukraine.

Central bank of Russia continues removing Ukrainian banks from Crimea, having forbidden other ten institutions. "Nadra" bank, which belongs to Dmytro Firtash, is the only Ukrainian bank which still remains in Crimea. Total exposure of Crimean clients towards Ukrainian banks makes up UAH 20 bln., according to "Crimean banking union".

Russia plans to create special economic zone in Crimea for the next 50 years, which also may have negative consequences for the peninsula residents. Creation of the zone will be accompanied with simplified procedure of land alienation to construct transportation, infrastructure, commercial, public, social and other objects. It means that the law will entitle the Russian government to seize any lands from the owners. It is expected that the lands of Crimean Tatars in Crimean South will be among the first to be seized as in many cases they do not have original documents on land assignment. Taking into account specific nature of Russian legislation and the practice of special economic zone in Sochi, chances to protect one's land or at least to receive some compensation will be meager.

In its turn, Ukraine's government cancelled subsidies for energy supply to the peninsula. As a result, electricity prices for Crimean residents may double. Energy for domestic use will be supplied according to the industrial rates. In case the price is not paid, the Ukrainian government allowed the energy system operator to limit or even cut off electricity supply to Crimea. The situation is aggravated with a general level of exposure for the energy on the peninsula. As of early May, total exposure of consumers towards "DTEK Crymenergo" (one of two operators which supply energy to the peninsula) made up UAH 700 mln.

Crimea was never self-sufficient in energy supplies. Nowadays it depends on electricity supplies from mainland Ukraine by 75-90%. In order to prevent negative outcome of the energy prices, Russia elaborated several schemes how to provide Crimea with electricity. The options include routing of underwater cables and construction of power transmission lines from Taman peninsula across the Kerch Strait. Both options require money and time. Their implementation may take years. Nowadays the Russian

Russia accelerates transition of Crimea to ruble

The Kremlin continues removing Ukrainian banks from the peninsula

Moscow will create a special economic zone in Crimea for 50 years

Crimea depends on electricity supplies from mainland Ukraine by 75-90%

authorities face a dilemma whether to compensate the differences in prices to the peninsula residents; if yes, in what form should this compensation come and where to get the funds needed.

2.2. Situation in energy sector

Gas talks between Ukraine, Russia and the EU are ongoing. Till June 9, Russia has postponed its plans to cut off gas supplies to Ukraine. A transition to advance payments for Russian gas is also delayed.

Ukraine has sent pre-arbitration claim to the Russian Federation. Kyiv focuses on a number of problems: price, volumes of gas, take or pay principle and the procedure for settlement of gas disputes between “Naftogaz Ukrainy” and “Gazprom”. Ukraine demands market approach and rejects paying “political price” for gas.

Negotiation process may be delayed by Russia on purpose. Moscow is in a difficult situation, especially in terms of international positioning.

In the parliamentary address Arseniy Yatseniuk stated that for the last five years there were no investments in domestic gas extraction. In terms of urgent energy reforms PM confirmed the intention to create two public joint-stock companies “Cross-country gas pipelines of Ukraine” and “Underground gas storage facilities of Ukraine” on the basis of single gas transport system of Ukraine.

Creation of these companies is a requirement of the Third energy package, Energy Charter and membership in the Energy Community. “Cross-country gas pipelines of Ukraine” will deal with transportation of gas through pipelines, while “Underground gas storage facilities of Ukraine” will operate accumulation and distribution of gas from Ukrainian underground gas storage facilities. Such a division will make Ukrainian energy sector more attractive for the investors as well as it will create conditions for development of the sector.

The EU is eager to help Ukraine to receive market price for Russian gas, at the same time decreasing European dependence on external suppliers. New routes for gas supplies as well as renewable energy sources are among the potential options. Currently the EU has 30-day volume of gas in case of shortage.

Nowadays the European Commission asks Bulgaria to suspend construction of “South Stream” due to the fact that the agreements, concluded between Russia and some EU members as regards this pipeline, do not meet the requirements of the European legislation.

Ukraine demands market approach to gas pricing

Ukraine will have two separate companies on operation of gas pipelines and gas storage facilities

3. Political Competition

The first appointments of Petro Poroshenko will show his willingness to implement reforms in the sectors that he can impact directly. If basic principles of the team building rely on personal commitment and nepotism, the new President has a chance to repeat the fate of Viktor Yushchenko.

The election results show fatigue on political parties that are represented in the parliament, including the Communist Party and “Svoboda”. Such attitude creates a fertile ground for the start of new political projects that could pass to the new Parliament, especially in case the vote threshold is decreased.

3.1. Quality of President’s team will influence his capacity for reforms

Heading to the presidential inauguration that will take place on June, 7, the society is more and more interested whom Petro Poroshenko will offer leading positions in the state. According to the current Constitution, the President has a direct impact on the appointment of the Minister of Foreign Affairs, the Minister of Defence, the Head of the Security Service of Ukraine, the Prosecutor-General, the Chairman of the National Bank, the Secretary of the National Security and Defence Council, the Head of the State Affairs Department and Head of the Presidential Administration.

The quality of the mentioned appointments will demonstrate whether the new President is serious about changing the system of public administration. The implementation of reforms requires strong individuals with a political will and knowledge in which direction to implement the changes. The new President will never achieve positive results in the reorganization of the state, if he fails to create a team of adherents aimed to carry out reforms. Should the main criterion for selection be personal loyalty and nepotism, Petro Poroshenko has a chance to repeat the fate of Viktor Yushchenko. The latter became a hostage of backstage agreements and conflicts of various groups in his team, while his own rating crumbled away as the voters got disappointed about his ability to change the country.

The implementation of reforms requires strong individuals with a political will and knowledge

3.2. Need for new forces in the parliament

The high result of Petro Poroshenko, a significant support of Anatoliy Grytsenko and Oleh Lyashko, the decline of the Party of Regions and the election failure of the Communist Party and “Svoboda” shows the frustration of Ukrainians on parties that are represented in the current Parliament. The Ukrainian society is tired of “shuffling” of the same political pack when two political camps rule in turn. These political forces that are clearly linked to different geographic regions do not change the Soviet governance system and have no ideological basis in their work. Their main interest is to establish control over financial flows in the state, which cements corruption in the state.

Early parliamentary elections scheduled for autumn 2014 could be a good starting point for new political projects. Previously, the only success formula for a party at the elections was a combination of huge financial injections supported by high presence in the media. After the revolutionary events on the Maidan this formula can be changed and include constructive ideas on changes in the country, a team of individuals who are known in the society, but have an unblemished reputation, and their consistent work on

Ukrainians are disappointed with parties represented in the Parliament

bringing these ideas to the voters.

In order to receive a more representative election results, it is advisable to reduce the electoral threshold to three percent or even lower. This step would help a number of small parties to get to the parliament and will lead to the fragmentation of the political spectrum. Ukraine experienced similar processes in the 90s. Subsequently, smaller parties began to create alliances that led to the formation of two geographically limited political camps. Consolidation of political parties is a sign of evolution provided that unification is based on common ideology, but not on the voter's geographic location.

Reduction of the electoral threshold will result in reloading the system and allow the start of political evolution from scratch. Clearly, the «old» Ukrainian politicians will oppose this process because they are not interested in new competitors on their field. The system reboot can be successful only if the public ensures political responsibility of the parties when they do not fulfill their promises or enter “unnatural” alliances.

3.3. Electoral failure of the Communist Party

As a satellite of the Party of Regions, the Communist Party lost its positions after the decline of “regionals”. The Communists are not perceived as an ideological party anymore, as during the presidency of Viktor Yanukovich completely turned into “puppets” in the hands of big business.

While Petro Symonenko announced his withdrawal from the presidential election several days before the election, his name was not removed from the ballots. His result of 1.5% votes corresponds to the overall trend of the declining support for the Communist Party. At the 2004 presidential election Petro Symonenko managed to get 4.9%, in 2010 – only 3.5%. At the parliamentary elections the fluctuations were more up-and-down: 2002 – 19.9%, 2006 – 3.6%, 2007 – 5.3%, 2012 – 13.1%.

One important reason for Symonenko's poor results at the last election is annexation of Crimea and the elections in the Donetsk and Luhansk regions. All three areas are core for the Communist Party; the population of these regions have a strong nostalgia for the Soviet Union and a pronounced pro-Russian orientation. This explains why the deployment of Russian aggression and the separatist scenario started exactly in these regions. By the way, the communists in Donbas are accused of assisting separatists and supporting them financially.

The activities of Communists in the Parliament also earn many critics. Some MPs repeatedly offered to ban the party and initiate criminal proceedings for cooperation with terrorist groups and support of Russian information war. After withdrawal of MP Oksana Kaletnyk from the parliamentary faction, the Communist Party can be deprived of the faction status. However, it will have only little impact on their activities in the Parliament, as they already ignore voting.

The CPU crisis shows that Ukraine has no strong socialist forces or left-wing parties that could focus on social problems of vulnerable society group. Taking into account the large electoral void that emerged after the collapse of the Party of Regions, the proletarian East has high demands for a new political force with a socialist orientation.

It makes sense to decrease electoral threshold in the country

Communists are not perceived as an ideological party anymore

Ukraine has no strong socialist forces or left-wing parties

3.4. Decline in “Svoboda” electoral support

The results of the presidential election demonstrated the disappointment of voters in the activities of «Svoboda» party.

During the 2012 parliamentary elections the party received unexpectedly high support – 10.5% of votes. This success was due to the demand for a radical pro-Ukrainian rhetoric as an opposition to the strong pro-Russian Party of the Regions, the appeal of «Batkivshchyna» to support «Svoboda» as their potential ally in the Parliament, and an effective election campaign.

Instead, on the presidential election Oleh Tyahnybok scored only 1.16%, not breaking the 2% threshold even in the core regions of «Svoboda» – in Lviv, Ternopil and Ivano-Frankivsk oblasts.

There are several reasons for such a sharp rating fall. Firstly, the society expected more radical actions from «Svoboda» party during the Maidan, while Oleh Tyahnybok positioned himself as a peacemaker and was actively involved in negotiations with Viktor Yanukovych.

Secondly, in Lviv, Ternopil and Ivano-Frankivsk regions this political force formed the majority of local councils for many years. Having full power at the local level, the party did not manage to provide changes in the housing sector or community development.

Thirdly, after the escape of Viktor Yanukovych «Svoboda» received a significant representation in government and regional administrations that did not match the actual level of the party support in the society. However, the party representatives did not use this opportunity to start reforms in the country, but simply headed corrupt government institutions in the form they existed during the times of Viktor Yanukovych. More and more people accuse «Svoboda» members of corruption and nepotism.

Prosecutor-General Oleh Makhnitskiy, who also represents «Svoboda», did no effort to reform his agency and did not actively monitor the investigation of crimes of the previous government against protestors. The official also paid no attention to the offenses of his fellow party members, in particularly the attack on Oleksander Panteleimonov, the head of National Television Company of Ukraine.

The decline of Oleh Tyahnybok’s support can be also explained by the radical rhetoric of other presidential candidates that, as opposed to the «Svoboda», are not represented in the government – such as Oleh Lyashko and Anatoliy Grytsenko.

Thus, in the next parliamentary elections «Svoboda» has low chances to pass to the Parliament. The only way to strengthen their own position is to unite with other right-wing parties, such as "Right Sector". Dmytro Yarosh already declared such a possibility. However, the political synergy of such coalition would have minimal effect and is unlikely to help the party to make it to the next Parliament.

2012 was an electoral triumph of “Svoboda”

Having full power at the local level, the party failed to make reforms

“Svoboda” has low chances to make it to the next Parliament