

Under the veneer of decentralisation. Ukraine's modernisation efforts stall due to lack of local government reform

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President Viktor Yanukovich and his Party of Regions have been repeating the pledge to decentralise power in Ukraine and to give local government a greater decision-making role ever since the party appeared on the Ukrainian political scene. The implementation of this reform is crucial both for the economic recovery of Ukraine's regions and the overall modernisation efforts of the Ukrainian state. At present relations between central government and the regions are regulated by Soviet-era legislation that fails to address the modern-day challenges facing Ukraine. The political elite in the country, including the opposition, appear to have reached consensus on the importance of the decentralisation reform. The first attempts to implement changes in this area were made in the late 1990s, followed by a comprehensive reform programme developed between 2007 and 2009 by Yulia Tymoshenko's government. In 2012, the Constitutional Assembly under the President of Ukraine appointed a team of experts who drafted a document detailing the reform of local government and the territorial organisation of power¹. The document envisages the implementation of what effectively are two major reforms: (1) an administrative-territorial reform, which would help consolidate the fragmented administrative structure, creating larger and more economically self-sufficient administrative units, and (2) local government reform, focusing on creating clearly defined powers for local authorities with a view to securing government funding for specific tasks delegated from central government. Nonetheless, despite these measures, and in spite of the rhetoric coming from President Yanukovich and other members of the Party of Regions, it seems unlikely that the reform will be implemented in the foreseeable future. A series of concrete political decisions taken by the president over the past three years indicate that Yanukovich has not abandoned his plan to build a highly centralised political system. This in turn limits the capacity to govern of local authorities and further restricts the sources of funding for Ukraine's regions. This apparent resistance to change stems from the fact that by implementing the proposed reforms, the president and his political allies would be forced to relinquish much of their control over the political processes taking place in the country and would have to free up the distribution of budgetary resources between Kyiv and the regions. The implementation of the reform within the specified timeframe (i.e. by 2015) is also unlikely due to the upcoming presidential election and the deteriorating economic situation in Ukraine. Without a comprehensive reform of local government, however, Ukraine will be unable to undertake effective modernisation measures, which are key for the socio-economic development of the country's regions.

¹ Концепція реформи місцевого самоврядування та територіальної організації влади в Україні, <http://civil-rada.in.ua/?p=477>

Ukraine's current administrative division and self-governance

The administrative geography of Ukraine was formalised between 1917 and 1960, and has remained unaltered to the present day. The current system is not suited to a market economy and fails to address the challenges posed by economic and demographic factors such as emigration or internal migration to cities from rural areas or towns built around large factories².

Under the 1996 Constitution, Ukraine is a unitary state³. The principle of local governance, introduced by Article 140 of the Constitution, defines local governance as "the right of the residents of a single village, or a voluntarily formed community (*hromada*) of several villages, a city district or a whole city – to govern on issues of local importance, within the limits set by the Constitution and the laws of Ukraine."⁴

According to the Constitution, the powers of governance lie with a community in the manner prescribed by law, both directly or through local councils. Article 133 of the Constitution specifies a three-tier administrative-territorial division of Ukraine into:

- 24 counties (oblasts), including two cities with special status (Kyiv and Sevastopol), and the Autonomous Republic of Crimea;

² Experts suggest that between 10 and 15 villages and towns are abandoned in Ukraine every year; 80% of the rural population are pensioners, and the number of people living in rural areas dropped by 2.5 million between 1991 and 2011. Disparities are also seen in the size and population of territorial units of the same level and their fragmentation – 46% of Ukrainian villages and towns have a population of less than 1,000 people, and in most of them local councils lack the support of executive bodies. See for example a report by the ZIK News Agency Україні щороку зникають сіл 10-15, <http://zik.ua/ua/news/2012/06/21/355078> and <http://civil-rada.in.ua/?p=477>

³ The formation of and changes to administrative and territorial divisions in Ukraine are still regulated under the provisions of a decree issued on 12 September 1981 by the Supreme Council of the Ukrainian Soviet Socialist Republic.

⁴ The functions of local authorities in the cities of Kyiv and Sevastopol are regulated under different provisions.

- 490 districts (raions), including smaller towns and boroughs of major cities;
- 12,000 *silradas* (or village councils, which include an average of three administrative units – a town or a village).

Ukraine's local government units consist of village councils, town councils and city councils and are run by *holovas* (or heads of local councils). The councillors and heads of councils are elected by popular vote.

Local councils at county and district level do not have executive powers. This function is

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performed by the regional offices of state administration (*Raionna* or *Oblasna derzhavna administratsiya*), which operate at the level of counties, districts, and in the cities of Kyiv and Sevastopol. Their heads are appointed by, and report to, the president, although they are directly monitored by local authorities (councils) on how they execute the powers given to them by the councils under Ukrainian law, a council has the power to hold a vote of no confidence in the regional office of the head of the state administration, but the president is bound by the outcome of the vote only if the vote is carried by a two-thirds majority.

The flaws of the current local government system

Despite the constitutional and statutory provisions mentioned above, serious inefficiencies have been observed in the functioning the executive branch of Ukraine's local government. According to the Local Government Act

of 21 May 1997, elected local government bodies (i.e. local councils at all levels) have the right to appoint their executive bodies. In reality, however, local government executive bodies at county and district levels are not appointed, most likely due to the fact that the law does not impose such an obligation and does not define their prerogatives. Although in principle local authorities enjoy extensive powers under Ukrainian law, in practice their capacity to govern is restricted by other laws, especially those regulating the provision of funding, which make it impossible for the councils to carry out their duties. As a result, **the role of local councils in governing local communities in Ukraine is marginal.** The notable exceptions are the

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Ukrainian cities, where city councils work together with local executive bodies headed by a mayor. This continues to be the case despite the fact that in 1997 Ukraine ratified the European Charter of Local Self-Government and committed itself to further reforming its local government and extending its powers. Most of these declarations, however, have still not been implemented. This includes the subsidiarity principle⁵, which is crucial for cooperation between the various levels of local government. The dominant feature of the relationship between the capital (the centre) and the regions

⁵ The principle of subsidiarity states that each level of government ought to perform only those tasks that cannot be performed effectively at a more immediate or local level.

– despite their statutory basis – is **the weakness of local authorities when compared to state administration agencies at the county and district level.** The lack of executive bodies working alongside county and district councils means that key decisions, especially financial ones, are made by state administration officers, who report directly to the President of Ukraine rather than to local residents⁶. As a result, the council are unable to enforce the adopted decisions. Another factor weakening the position of local authorities in their dealings with state administration was the **decision to strip councils of their powers to manage land outside residential areas.** These powers have been transferred to local representatives of the state administration. Meanwhile, a law passed in October 2012 has transferred the powers to manage arable land from regional government offices and *silradas* to the State Agency for Land Resources. So far, however, the process of marking administrative boundaries of urban and rural settlements has not been completed, making it difficult to identify exactly which areas come under the management of the Agency. Another problem is the **division of public property between the different levels of local government** – villages, towns, cities, districts and counties, as well as the existence of multiple territorial units within, for example, a single city (i.e. towns within a city, with districts inside them), which leads to confusion over the powers of the respective authorities.

The opaque relationship between the two types of authorities in the regions (local and central) is further compounded by the fact that effective cooperation often depends on informal relations between local authorities and state administration officials. The quality of local governance is also negatively affected by party conflicts, which directly impact the rela-

⁶ Local budgets are developed and approved by the councils, but the responsibility for their implementation lies with local representatives of the state administration.

tions between state administration representatives at the county and district level (mostly representing the interests of the ruling Party of Regions) and local authorities (councils), in which opposition parties hold a majority. This stalls cooperation at the regional level and prevents the implementation of specific tasks and, more broadly, slows down the development of Ukraine's regions.

Local government in Ukraine is characterised by a lack of financial self-sufficiency. This also limits regional development⁷. Revenues from local taxes and fees are low, and local authority budgets (except for those of major cities) are heavily dependent on state subsidies. State subsidies account for over 70% of the budgets in almost half of the country's local government units at present⁸, and the state administration representatives in the regions have the decisive influence on their spending. The distribution of funding from the state budget to local authorities is also highly ineffective, especially in times of economic downturn. At present, just as during the 2009 economic crisis, the amount of funding reaching local budgets is lower than the level originally set in the state budget, and the missing money is often used by central government to "patch holes" in the state's finances.

Increasing restrictions on self-government

The gradual loss of powers by local authorities in Ukraine has been noticed not only by experts from outside the government, but also by senior state officials. Over the past two years, Parlia-

ment has passed more than twenty laws that have transferred a range of powers from local councils to central government. As a result of these changes, county and district councils have, for example, lost control of the endorsement of spatial planning applications, and no longer have the power to take part in shaping local projects, including investment ones, funded through the Regional Development Fund⁹. Cen-

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tral government also scrapped a licence fee for individuals selling goods at markets and bazaars, which used to generate over half the revenue for local authorities, while a local road tax (payable by vehicle owners), which formed another important source of income for the councils, has been replaced by excise duty on fuel, which feeds the state budget. The new State Budget Code (which sets out the rules of the Ukrainian budget system, including its structure, its legal basis, and the relationship between local and state budgets) has not provided local authorities with additional sources of income, but has increased the number of services they need to provide. In addition to this, the Code allows central government to move funding from one local authority to another during the financial year¹⁰.

⁷ According to Stepan Neshyk, deputy head of Vinnytsia County Council, the average annual budget of the local councils across the county in 2012 was about €50,000. Half the budget was raised locally, the other half came from state subsidies. Up to 98% of this amount was swallowed up by the salaries and energy bills of public sector services. This left just €1,000 for road repairs and other projects for the whole year, <http://www.viche.info/journal/3360/>

⁸ Концепція реформи місцевого самоврядування..., *op. cit.*

⁹ The Regional Development Fund was established in January 2012 to help finance investment programmes and projects in the Ukrainian regions. The Fund's 2013 budget has been set at about \$430 million. Although many people support the creation of the Fund, the manner in which it has been operating has been criticised by experts. See, for example, the opinion of Kyiv's Civil Society Institute, <http://www.csi.org.ua/www/?p=2454>

¹⁰ Levitsky O., *Бюджетна децентралізація по-українськи: забрати і поділити*, <http://economics.unian.net/ukr/detail/127941>

Consequently, the central authorities have increased their control over financial flows in the country, have delegated new duties to the local level without offering extra funding to enable councils to deal with their new responsibilities. In effect, they have been deprived of financial self-sufficiency. One striking example of the efforts to weaken local government in Ukraine was the political conflict over control of the city of Kyiv. Following protracted political wrangling with Kyiv's mayor, Leonid Chernovetsky, elect-

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ed in 2008, the Verkhovna Rada adopted a series of amendments to the Law on the Capital of Ukraine in 2010¹¹. Until then, the functions of the city mayor and the Head of the City State Administration had been held by one person – the elected mayor. The amendments to the Act have separated these two functions and the executive powers of the mayor of Kyiv have been drastically reduced. In June 2012, Chernovetsky resigned. Due to low public support for the Party of Regions in Kyiv, the date for a new mayoral election in the capital has not yet been announced. Meanwhile, full power in the city have been handed over to Oleksandr Popov (closely linked to the president's milieu), appointed in November 2010 by Viktor Yanukovich for the post of the Head of the City State Administration. As a result, the person currently in charge of the capital, who takes all the key decisions and controls the city's finances, is not an elected official.

¹¹ The Law on the Capital of Ukraine – the hero city of Kiev <http://zakon4.rada.gov.ua/laws/show/2500-17>

Political reasons for the lack of local government reform

Ukrainian president, Viktor Yanukovich has often stated that the authorities in Kyiv see the decentralisation reform as a priority issue¹². The pledge to decentralise power in Ukraine has also been recorded in official state documents of strategic importance¹³. In reality, however, very little has been done to implement change in this area, and some observers have noted that the government has recently moved backwards on the issue. One of the recent decisions suggesting that this might indeed be the case has been the move by President Yanukovich's administration to abandon the plans for local government reform developed by the previous cabinet¹⁴.

There are a number of reasons why the reform is still to be implemented, including both financial and political reasons. The reluctance to transfer additional powers to local authorities and to increase their budgets stems from Kyiv's fear of losing direct control over the political processes taking place in the Ukrainian regions. The current funding distribution model provides the politicians in Kyiv with more influence over how funds are allocated and how they are spent. In practice, this model creates the perfect conditions for the abuse of power and corruption since politicians are able to transfer subsidies and grants to particular local government bodies in exchange for personal favours. The system can also be abused by offering greater subsidies to those parts of the country

¹² See the statements made by President Yanukovich, available on his official web pages, <http://www.president.gov.ua/news/25730.html>, <http://www.president.gov.ua/news/25571.html>, <http://www.president.gov.ua/news/25902.html>

¹³ See, for example, *Модернізація – наш стратегічний вибір*, http://www.president.gov.ua/docs/Poslannya_sborka.pdf

¹⁴ See, for example, Ткачук А., *Про взаємзв'язок реформи державної регіональної політики та політики з децентралізації влади*, <http://www.csi.org.ua/www/?p=2633>

where the Party of Regions has the most supporters, or where the money can be used to win new voters. This was the case in 2010-2011, when more than half of state subsidies (over €300 million) were received by Ukraine's richest counties: Donetsk, Luhansk, Kyiv, and the Kyiv metropolitan area¹⁵.

Furthermore, a comprehensive decentralisation reform would require significant financial resources, which would become a substantial burden on the state coffers. The reform has also been resisted by civil servants at various levels of state administration because the proposed changes would inevitably lead to job cuts. The decision to suspend the transfer of powers from central to local government and to retain the current funding model has also been driven by Ukraine's political calendar. The implementation of the reform could upset large parts of the electorate as well as the army of civil servants based in the regions. This in turn would limit the local state administration officials' motivation either to mobilise voters and win their support in the upcoming election or to "help" the ruling party achieve the necessary results. It has also been suggested that in view of the 2015 elections, central government is likely to accumulate funds – rather than distribute them to local authorities – in order to be able to announce new social initiatives immediately prior to the election. Another obstacle for regional development in Ukraine is posed by the preference of both civil servants and politicians for a centralised state model, governed by the administrative apparatus, and the habit of ignoring elected representative bodies. Moreover, Ukraine's political discourse does not make a clear distinction between the concepts of decentralisation and federalisation. Federalisation, understood as an excessive autonomy of

¹⁵ See, for example, the report by the Kyiv-based Laboratory for Legislative Initiatives, *Донецчина, Київ й Луганщина отримують більше половини всіх субсидій і капітальних трансфертів*, http://parliament.org.ua/index.php?action=publication&id=8&ar_id=2729&ch_id=43&as=0

the regions, tends to be associated with separatism, and although these notions do from time to time appear in Galicia and Zakarpattia, there is no real threat of secession. Nonetheless, this argument has been hijacked by those politicians who oppose the transfer of additional powers to local authorities.

It is important to stress that the current government has no real interest in pressing on with the decentralisation reform, and this means that the biggest lobbyists for the reform: the Ukrainian Association of Local Councils and the Association of Ukrainian Cities, supported by local political experts, do not have enough clout to persuade the cabinet to implement the proposed changes. Consequently, although the government has drawn up a draft document detailing its approach to the reform of local government and the territorial organisation of power in Ukraine, experts do not expect more than isolated, small-scale measures, such as the creation of a legal framework for the consolidation of *silradas*. However, the full implementation of the document within the specified timeframe (2013-2015) is highly unlikely¹⁶. This approach is also visible in the steps taken by the new government to ease budget crises in many regions—they tend to be ad hoc rather than systemic measures¹⁷.

Conclusions

Despite the declarations made by President Viktor Yanukovich, who has stressed the need to strengthen the importance of Ukraine's regions in the process of governance, the actual measures undertaken by the president in the last three years have led towards an even greater

¹⁶ The implementation of the reform in the near future has been ruled out even by its supporter, parliament speaker Volodymyr Rybak, who cites the general lack of money and political instability in the country as the two main reasons for the delay.

¹⁷ See, *Арбузов буде щоденно викликати собі на килим по жертві*, 8/01/2013, <http://www.pravda.com.ua/news/2013/01/8/6981079/>

centralisation of power in Ukraine. The decision to suspend the transfer of powers from central government to local authorities, and to strip local councils of some of their existing powers and financial resources, has left Ukraine with a much more centralised system of government than before 2010. As a result, Ukraine's regions are becoming less competitive, lack regular sources of funding, and are heavily dependent on decisions taken in Kyiv. This has hampered growth and increased disparities in living standards between the regions. Nonetheless, what needs to be stressed is that local government reform in Ukraine is essential, as the current administrative structure is unable to address the

changes that occurred after the collapse of the Soviet Union. Its delay is stalling economic development in the regions and, by extension, the modernisation efforts of the whole country. The situation is compounded by the persistence of significant differences in the way state subsidies are allocated to particular regions. In light of the above, the plan for the reform of local government and the territorial organisation of power, put forward in autumn 2012, should be seen as a step in the right direction, although it would be wise to retain a degree of scepticism about the actual chances for a comprehensive implementation of the reform.

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