

Old scenarios for new local elections

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The process of preparing and holding local elections is clear – for now. On January 17, 2002, the parliament approved the law «On Making Changes to the Law of Ukraine «On Elections of Deputies of Local Councils and Village, Town, City Chairmen». The changes were supported by 327 MPs out of 406 registered in the assembly. Generally, the changes are of cosmetic nature and are meant to make the local election law comply with the general election law. For instance, previously the local election law (approved on January 14, 1998) envisaged that local election commissions must receive lists of eligible voters no later than 45 days before the polling date. Meanwhile, according to the general election law (approved on October 18, 2001), this term is 30 days. Therefore, one of the changes made on January 17 is reduction the period, specified by the local election law, to 30 days. Similarly, the polling stations' workday is reduced from 7:00-22:00 to 8:00-20:00. The ballots can be received only by voters who present an identification document certifying the holder's statehood. Should a voter be unable to come to the polling station for a good reason, the local election commission, following the voter's written request, allows no less than three members of the commission to organize the voting procedure at the voter's place.

Apart from these slight changes, the recent voting in the parliament did not bring anything new to the local election system. The general conclusion of the heated debate over the format of local election was keeping them as close as possible to the system used during the previous local election in March 1998. The majoritarian system was preserved, notwithstanding the mixed system, adopted for the general elections. In fact, the MPs were not too enthusiastic in pushing for change...

As of January 1, 2002, Ukraine was divided into 490 districts, 448 cities (including 170 cities of national, republican and regional subordination), 121 boroughs, 894 towns and 28,739 villages. There are 10,763 elected representatives of all levels.

According to paragraph 30 of Article 85 of the Constitution of Ukraine, the authority of the parliament includes «calling regular and extra elections of local self-governance officials». Hence, the issue of the date of local elections was settled on October 4, 2001, when the parliament approved, by 375 votes, the resolution «On Calling Regular Elections of Deputies of Local Councils and Village, Town and City Chairmen in 2002», specifying that the local elections would take place simultaneously with the general parliamentary elections on March 31, 2002. That was the end of the discussion about a possibility to postpone the local elections till the autumn of 2002. Meanwhile, the system of local elections was unclear, as the new bill, expected to align the local elections with the mixed general election system and approved in the first reading in the summer of 2001, was stuck in the parliament. Moreover, the president repeatedly announced he would not sign the local election law that would contain even some elements of a proportional system.

The parliament got back to the issue of local elections only on November 15, 2001, and approved the concept of the local election bill that was seen as the set of guidelines for preparing the bill for the second reading. The concept emphasized introduction of a mixed system to local elections and provided that deputies to village councils would be elected through a majoritarian system in one or several multi-mandate constituencies. Deputies of town councils, as well as deputies of district councils, and town, village and city chairmen were to be elected through a majoritarian system in single-mandate constituencies. Deputies of city councils in regional centers and major cities of the Crimea were to be held in accordance with the mixed system: 50% of the deputies were to be elected through the proportional system in a multi-mandate constituency, while other 50% of the deputies were to be elected through the majoritarian system.

The next step towards introducing a mixed local election system was made on December 13, 2001, when 250 MPs out of 397 registered in the assembly voted in favor of the bill. Only 3 MPs voted against it.

According to the newly-approved law, local deputies were to be elected through a majoritarian system, but deputies of city councils of major cities (of regional subordination and of the republican subordination in the Crimea), and borough councils in major cities, would be elected through a mixed, majoritarian-proportional system.

The law also specified that regular local elections should be called no later than 100 days before the polling day, and the start of the local election process should be formally announced by territorial election commissions at least 90 days before the polling day.

Furthermore, the law envisaged mandatory inclusion to territorial election commission of representatives of local organizations of political parties and blocks that had passed the 4%-threshold in the previous elections, while representatives of other parties were to be selected for inclusion in the commissions by casting lots.

It could be predicted without risk that the president would refuse to sign the law. The president was opposed to the introduction of a mixed local election system, let alone the contradictory provision of formation of territorial election commissions of representatives of political parties that had passed the barrier in the previous elections. He made similar objections of the parliamentary election law.

However, while the law was still not settled, the preparations for local elections began. On January 7, 2002, the Central Election Commission (CEC) approved a local election plan, as the law required it to finalize the decision about the size of local elected bodies, and the decision to form territorial election commissions, by January 14. De facto, the CEC set the terms based on the current local election law that required on the parliament to decide on the number of local representatives no later than 75 days before the polling day.

January seems to be a difficult month for the CEC: according to the plan, election districts (constituencies) were to be formed by January 19. Local election constituencies were to be formed within the same terms – no later than 70 days before the election day. The same terms were specified for political parties to submit applications for inclusion of their representatives to the regional election commissions. No later than January 24 the councils or their executive committees had to formally decide on establishment of regional election commissions. The nomination of candidates was to take place from January 30 to February 13, and self-nomination was extended to February 18. Registration of candidates was scheduled to take place on February 3-28.

While the CEC acted in accordance with the current law, the situation with local election gradually approached a legal crisis. At the beginning of January 2002, the issue of the order of local elections was still high on the agenda. It was still unclear whether the local election law, approved in December 2001, would be signed, which left a number of questions about the beginning and the course of the campaign unanswered. The delay threatened to disrupt the campaign. It was also unclear whether it made sense to adopt radical changes when the elections were already in process.

On January 8, 2002, it was announced that President Kuchma refused to sign the law. The letter, sent to the parliament, argued that the concept of local elections, proposed in the law, «does not meet the foundations of local self-governance, determined by the Constitution of Ukraine; does not ensure formation of local self-governance bodies that will function effectively in the interests of citizens», which would create challenges to capacity of local election bodies. The president also argued that he had taken into account «numerous appeals to the President of Ukraine, the Cabinet of Ministers, from regional, district, village, town and city councils with a request not to sign the law in order to hold the elections in accordance with the current law» (Interfax-Ukraine, January 8, 2002). Hence, the CEC was left with the local election law of January 14, 1998.

Theoretically, the parliament had a chance to insist on its new law, but the president's refusal to show understanding was guaranteed.

According to Deputy Chairman of the parliamentary Commission for State Building and Local Self-governance Yuri Kliuchkovsky, the time, needed to approve «the optimal version of the law, was lost», and «life has shown that the committee and the parliament will not succeed in «pushing» the version of a mixed local election system» (Interfax-Ukraine, January 8, 2002). The chance that the parliament would manage to pull 300 votes needed to override the veto were very slim indeed. The start of the election campaign resulted in practical paralysis of any ability to search for compromise.

On January 10, 2002, as it was predicted, the parliament failed to override the president's veto. Only 235 MP out of 405 registered in the assembly supported overriding the veto, too short of the necessary 300 votes. Commenting on the voting results, Speaker Ivan Plushch noted that they «added soberness to those political forces that had thought they had been close to overriding the veto» (Interfax-Ukraine, January 10, 2002).

The adoption of changes to the local election law virtually repeated the circumstances of the adoption of the local election law in 1998. Then, on January 10, 1998, President Kuchma returned the local election law to the parliament unsigned and proposed it should be reviewed. The president's objections were caused by the provisions for introduction of a majoritarian-proportional system of electing deputies to city councils of Kyiv, Sevastopol, the administrative center of the Crimean Autonomy, and regional centers of Ukraine. According to permanent representative of the President of Ukraine in the parliament Roman Bezsmertnyi, the new norm was seen as

«infringement on rights of citizens who belong to other territorial communities» for «self-governance bodies are created for the purpose of fulfillment of social and economic rights of citizens, but not political [rights]». Therefore, according to Bezsmertnyi, «there are reasons even to object to participation of political forces in formation of self-governance bodies», since their establishment «has a different goal then, say, establishment of a representative law-making body» (UNIAN, January 10, 2002). Then, the logic of rejection of a mixed system for local elections remains reflected in the president's recent objections to a similar idea. It is unclear, however, how it is possible to pursue only «economic» or purely «social» rights of citizens without taking into account any political factors. Meanwhile, Article 2 of the law «On Political Parties» defines political parties as a legally registered «voluntary association of citizens – supporters of a certain national program of social development that aims at contributing to formation and representation of political will of the citizens, takes part in elections and other political events».

Hence, the introduction of changes on January 14, 1998, confirmed that local elections were based on the majoritarian principle only.

On January 10, 2002, Speaker Pliushch, in fact, finalized the debate over legal regulation of local elections. He announced that local elections would be held in accordance with the 1998 local election law that did not contradict the parliamentary election law. The Speaker also said a new law that would radically change the election procedure should not be approved so shortly before the polling date.

According to the law, the size of a deputy corps of a local council depends on the number of population in relevant administrative-territorial units: 10-20 deputies in villages and towns with up to 5 thousand residents; 15-25 deputies in towns with 5 –50 thousand residents; 25-50 deputies in cities with 50-5000 thousand residents, and 50-75 deputies in cities with more than 500 thousand residents.

While the election law remains unchanged, it is necessary to ensure that the violations that occurred during the 1998 campaign are not brought to this one. In 1998, over 500 violations of the law were registered during the election race. 20 officials were charged with criminal offence, 43 criminal cases were initiated. The complaints about violations during the campaign were reviewed by courts. One of the most common violations reported by experts of the Congress of Local and Regional Governments of Europe, was biased approach to formation of local election commissions. Such violations were registered in Lviv, Transcarpathian, Mykolayiv, Luhansk, Zhytomyr, Sumy and Odessa regions.

Today we continue to observe trends that are not based on someone's «evil will» but on the law. For instance, according to the Political Ukraine Portal, (www.polit.com.ua, January 16, 2002), a civil servant was elected as chairman of a local election commission in the Cherkasy region, as «the current local election law does not forbid that». According to the Political Ukraine, «it is not difficult to guess who he will be playing for, given the civil servant's dependence as a subordinate to his politicized bosses who are either [members or advocates] of the «ZaEdU» or supporters of the united social democratic ideas». It is likely that such circumstances will have a substantial impact on campaigning from the very beginning of the election race. The loop-holes in the local law may make the elections too far from the declared «transparency».

