



Those who support the idea of such referendum are free to carry it out if they wish to do so and have the money.

President Of Ukraine L Kuchma, Interfax-Ukraine, 10 April 2001.

Ukraine, certainly, is no Switzerland, where referendums are held every six months and on almost any occasion, be it construction of a bridge or change in state system of authority. In ten years of independence Ukrainians have only twice went to the ballot boxes to participate in a referendum - saying 'yes' to Ukraine's independence in December 1991 and voting for introduction of amendments to the Constitution of Ukraine in April 2000.

Today we are on the verge of another attempt to find out our citizens' opinion a) whether President of Ukraine L. Kuchma should voluntarily resign from office and b) whether we want a model of state authority to be established in Ukraine which provides for the people, through elected representatives, participating in formation of the Cabinet of Ministers and exercising control over its activity. As is known, the political elite met the news of the referendum organised by the 'Batkivschyna' party led by Y. Tymoshenko with mixed feelings and scepticism. And what do Ukrainians think? What are the prospects of the referendum actually taking place? We will try to give answers to these and some other questions in this article.

The article utilises the results of the opinion poll held by Olexander Razumkov Ukrainian centre of economic and political studies (RUCEPS) on May 14-28, 2001, with 2017 respondents over eighteen in all regions of Ukraine surveyed.

Is there ground for scepticism?

There are at least three basic factors that the sceptical view held today by the political elite, experts and journalist of the idea of the referendum is based on.

Firstly, and it is acknowledged by the organisers of the referendum, the referendum will have no legal but only political consequences. According to the Constitutional Court's decision of March 27, 2001, 'declaring a no-confidence in a constitutional body of authority does not itself serve as a basis for early cessation of this authority.' As is known the presidential term runs out in 2004. And even the referendum question is worded in such a way that it precisely provides for a letter of resignation written by the head of state under the pressure of political circumstances, i.e. it has no legal effect. Many of those who know the President personally have great difficulty picturing him voluntarily leaving the office. Those few close to Mr Kuchma say that at the height of the 'tape gate' the President was ready to make such a step, and it was them who stopped the head of state from taking such a decision.

Secondly, many are convinced that even if the referendum does take place the results will be falsified due to the notorious administrative factor. The organisers [of the referendum] are unlikely to neutralise it - their access to the mass media is limited even today. Moreover, the recent discontinuance of anti-UESU [United Energy Systems of Ukraine, corporation earlier headed by Tymoshenko] TV pieces, only goes to show that, perhaps, new better, higher quality material is on the way. And there is hardly any doubt that financial flows directed to the organisation of the referendum will be kept under close scrutiny by the corresponding authorities.

Thirdly, even today there is an opinion that the defeat at the referendum will simply 'bury' the opposition politically along with the idea of the President's early cessation of authority. That is why some members of National Salvation Forum and public salvation committee 'For Truth' dismissed Mrs Tymoshenko's idea of holding a referendum as insufficiently considered and somewhat premature.

Consistency in organising the referendum so far was displayed by Yulia Tymoshenko and her 'Batkivschyna', Anatolii Matviyenko and 'Sobor', Serhii Holovatyi, Oles Donyi. They were joined by the Ukrainian Social Democratic Party, Social Democratic Party of Ukraine, Ukrainian Republican party, Patriotic Party of Ukraine, Indigent People Shield party and others. Parallel referendum headquarters were set up by the Socialist Party of Ukraine headed by Olexander Moroz. Mrs Tymoshenko claimed that as many as 70 political parties and public organizations came forward in support of the referendum, however, these are likely to be virtual rather than real structures. Opposing the referendum are the 30 parties, members of the President of Ukraine's Political Council, with the rest assuming either neutral or wait-and-see positions. Thus, the stage is set and principal arguments are well publicised.

So, what do our citizens think about this? First of all, if referendum were held today, it would take place. According to RUCEPS sociological survey, 84.6 per cent of Ukrainian would go to the ballot boxes. In compliance with Article 41 of Ukraine's Law 'On all-Ukrainian and local referendums', referendum is declared to have taken place if more than 50 per cent of the registered voters had voted (two thirds in particular cases). Secondly, its results would be bad news for the head of state and his supporters. 62.6 per cent (of those who are ready to take part in the referendum) would support the demand for Mr Kuchma's voluntary resignation with 37.4 per cent voting against it. That same law states that a resolution is considered adopted if it was voted for by more than a half of the voters who took part in referendum.

It would seem that the prospects are great, sceptics are disgraced and the opposition should start making arrangements for celebration party. However, making any one-dimensional conclusions and forecasts today may prove to be a tad too early. It is unclear whether the referendum will be held at all (against a background of such forecasts) and whether the opposition will manage to neutralise the impact of administrative resource during the referendum.

Let us go one year back. According to the data of the sociological survey carried out by RUCEPS in 2000 prior to the referendum on introducing amendments to the Constitution of Ukraine, 77.7 per cent of respondent were intending to take part in voting. At the time, the population did not support forming of the two-chamber parliament in Ukraine: only 45 per cent of respondents answered 'yes'. Similar results were published by other sociological services.

Now, compare this data to the results of the last year referendum. Attendance came up to 81.5 per cent while introduction of the two-chamber parliament was voted for by 81.8 per cent of Ukrainians. At that, more than a quarter of voters (27.8 per cent) made their choice before the day of the referendum. Clearly, such a difference between forecasts and the results of the referendum along with the indecently large numbers of people voting by post served as grounds for suspecting the use of administrative resource.

So, 62.6 per cent of respondent supporting opposition's demands today can be transformed into 49.6 per cent stating their position at the referendum demanding the President's dismissal. This is the authority's reserve, the untouchable resource just in case. Yulia Tymoshenko and her comrades have some reserves of their own, though. Out of 15.4 per cent of respondents not going to take part in the referendum, 42.5 per cent explained their decision by saying that the referendum cannot change anything, while another 15.1 per cent think that the referendum's results will be falsified anyway. It is the votes of these people that the authority and the opposition might be fighting for.

Thus, the scepticism towards the idea of holding a referendum expressed by the political elite (all too familiar with the value of the administrative resource) is quite justified. Same attitude is also expressed by part of the Ukraine's population. On the other hand, the opposition, members of which pay a great deal of attention to public opinion, now has extra incentive for conducting the referendum. Yet, is it to take place?

Possible actions of the organizers of the referendum

Work on preparation of the first stage of the referendum is now at its prime. According to the organisers' information, there were 103 initiative group meetings held at the end of May with over 27 thousand people taking part. Central Election Commission [CEC] has received registration documents from nine administrative regions.

However, referendum organisers now come across the first obstacles. CEC has decided not to register the first initiative group from Cherkassy, motivating its decision by the irregularities in paper work and conduction of the [initiative group] meeting. In view of CEC representatives, wording of the referendum question itself is a reason for denying registration as such since the Constitution of Ukraine together with acting legislation 'envisages conducting of an all-Ukrainian referendum <...> as mandatory (imperative), with the results being obligatory for consideration and taking up of the decision'. Now, the Supreme Court joins the proceedings considering an appeal to overturn CEC decision.

It is quite difficult to say which way the court is going to decide. Given the immense complexity of the question from legal point of view, it is likely that political motives will come to the fore. A few key moments should be pointed out, though.

Firstly, the Constitution of Ukraine along with the Constitutional Court's decision fix a rigidly limited set of questions that cannot be put forward on referendum: questions regarding the issues of taxation, budget, amnesty and early cessation of authority of a constitutional body.

Secondly, the Constitutional Court indeed gave CEC the right to examine the constitutionality of questions to be put on referendum. However, under the closer scrutiny of that decision it becomes apparent that CEC has such a right in part regarding orientation of the questions to 'abolition or restriction of human rights and freedoms, citizens rights and freedoms, abolition of independence, or violation of the territorial integrity of Ukraine'. The questions put forward by the referendum are hardly likely to cause such consequences.

There is no doubt that if CEC decision is overturned, referendum organizers will get a powerful positive impulse for carrying out their work while sceptical attitude of many concerned observers will be seriously undermined.

If the Supreme Court rejects the appeal to overturn CEC decision, there are several possible ways for situation to development. The opposition, through its MPs, can appeal to the Constitutional Court where decision will have to be taken due to the discrepancy of the wording to Ukraine's legislation. In this case, the Constitutional Court will close the matter altogether.

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There is a theoretical possibility of breaking through into the European legal space that is less dependent on Ukrainian political peculiarities. Ukraine ratified the Human Rights Convention July 17, 1997, thus allowing its citizens to appeal to the European Court of Human Rights with individual complaints. Decisions of this court are binding for Ukraine. It is possible that Mrs Tymoshenko will go along this route as she has already stated in *Ukrayina Moloda* newspaper. However, the road is long and full of obstacles. In September 2000, there were 1232 requests sent to the European Court by Ukrainian citizens. Out of this number seven were recognised as acceptable (1.1 per cent). The essence with another 25 requests pending inquiries on acceptability. Examination of the case usually takes between two and three years, and sometimes up to five years. There is a fear that by the time the decision is reached its actuality will be long lost. However, the possibility of the speeded up trial should not be dismissed either. We have repeatedly heard the statements about Ukraine's stability being a priority for Europe. Ukraine's internal political affairs stay centre of attention in the Parliamentary Assembly of the Council of Europe. Court's decision may play a key role here, closing the matter of Europe's attitude towards the present rule and Ukraine altogether.

Without a doubt, refusal to register the initiative groups for holding a referendum, as was repeatedly said by the initiators, will be met with actions of protest. And such actions might be supported by a significant number of people. People are ready to defend their right for referendum, or at least they say they are. According to RUCESPS survey, a third (33.1 per cent) of those who intend to answer the referendum's question in the affirmative are ready to take part in legitimate actions of protest if CEC does not register initiative groups.

It is possible that the authorities decide to deprive the opposition of its 'organisational core'. It is no secret that the key roles in this play belong to Mrs Tymoshenko and Mr Moroz, with Yulia Volodymyrivna [Tymoshenko] playing the organizational lead. The authority might be tempted to go down a familiar route and arrest Tymoshenko again. Prosecutor General's Office has already stated its readiness to protest the corresponding Supreme Court decision. I am afraid, however, that in this case the arrest will cause the reaction opposite of the one expected by the authority - improving Tymoshenko's [popularity] rating and, consequently, increasing the number of opposition and referendum supporters. Moreover/Besides, 28.5 per cent of respondents (intending to answer the referendum question in the affirmative) are ready to take part in legitimate actions of protest in case of repressions against the opposition leaders. Even though there is a significant difference between verbal willingness and actual participation, organisers of the referendum can [clearly] count on tangible support of their actions that will keep the regime constantly irritated and tense.

Possible actions of authority

Today the authority can choose between two main ways of action. The first way is play it big, i.e. go for the referendum. The plan has its pros and cons. The pros (in case the result of the referendum is favourable for the President) let once and for all discredit the opposition and do away with the idea of early cessation of President's authority as well as to show existent public support for his actions and shun the accusations of oppressing the opposition. Along the way showing the West that our rule is far from being afraid of democracy, - on the contrary, it vehemently supports the idea of annual referendums. Although there would still be inevitable accusations of administrative resource use, locking the mass media away from the oppositional forces etc, very few will listen.

The principal and sole minus of this way of action is that the acting President may lose the referendum. Yes, it has no legally binding consequences, but picture the might of political and moral-psychological pressure for the head of state to write a letter of resignation. According to the results of RUCESPS survey, today 40.1 per cent (of those intending to answer the referendum's question in the affirmative) say that they are ready to participate in rallies if the President does not listen to people and stays. These are all assumptions. Yet, if the demand for self-resignation is supported by over 50 per cent of voters, and this fact is officially confirmed by CEC, the protests will become very much a reality.

The second way of action for the authority is to use the administrative resource at the early stages of the preparations for the referendum. If irregularities were found in the paper work of the Cherkassy initiative group (where mayor is loyal to the organizers), finding similar discrepancies (real or invented) in other regions is going to be even easier.

The Constitution of Ukraine states that referendum on people's initiative can be proclaimed on demand of (a) at least three million Ukrainian citizens eligible to vote under conditions that (b) signatures in support of the referendum initiative were collected in at least two thirds of oblasts [regions] and (c) each of this regions was represented by at least 100 000 signatures. One might imagine how scrupulously these signatures are going to be checked, first locally, then at CEC, even though there are more than enough people willing to sign. According to RUCESPS survey data, 41 per cent of respondent (representing 15 ml) are ready to sign the registration lists. There are other ways as well. For instance, registering the first group, and dismissing the rest, 'due to objective circumstances'. By the law, there are only three months from the moment of registration of the first initiative group available for registering the signatures. In this scenario, the organisers simply won't have enough time.

The fact that according to the RUCESPS survey 72.1 per cent of those who would vote for the voluntary pre-term resignation say that they are ready as of today to volunteer to help in organizing the referendum (campaigning, gathering signatures, setting up referendum headquarters, serve as an observer in his or her constituency etc) should ring the alarm for the authority. Another alarm call - the mentioned number of respondents (72.1 per cent) would drop 14.2 per cent, if they were 'subjected to psychological pressure by representatives of the authority, law-enforcement bodies or other citizens'. In other words, many Ukrainians are afraid of taking part in organizing the referendum, i.e. in realization of their constitutional right - something that is unacceptable in a democratic country.

One more point. According to the Constitution, it is the President who proclaims all-Ukrainian referendum on people's initiative and issues an edict on its conduction. A year ago President's representatives insisted in the Constitutional Court that proclaiming referendum is not a right, but a 'constitutional duty of the President of Ukraine as a head of state and a guarantor of the Constitution of Ukraine'. What will the head of state do if all signatures are collected?

Theoretically, there is also another way of action: offering several different referendums to the nation, thus discrediting the very idea. Last year's referendum has significantly undermined the people's faith in this form of democracy already. People's Rukh Of Ukraine (for unity) has initiated its own referendum with question exactly opposite to the ones suggested by Tymoshenko. There might be similar initiatives in the near future.

Without any doubt, by playing the referendum card Mrs Tymoshenko clearly counts on increasing her political weight at the minimum, while making the head of state resign is an ideal bonus in case everything goes smoothly. The opposition now has a means of exerting pressure on the authority. A means that can keep the regime tense and exasperated, a means capable of provoking it into making hasty and impulsive moves. It is also possible that if the negotiations between the opposition and Bankova [the Presidential Administration] do take place, Tymoshenko will have an opportunity to use the referendum as a bargaining tool getting significant benefits from giving it up. However, it has to be said that in this case bargaining is very unlikely - both sides want very different things. The question is how much would they invest in their own?

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