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THE AMENDMENT OF UKRAINIAN ELECTORAL LAW AND THE PRINCIPLE OF ALTERNATION IN POWER (PARLIAMENTARY ELECTION IN 2012)

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ABSTRACT: The objective of this article is to attempt to analyse the new regulations in The Law of the Ukraine in Elections of People's Deputies of Ukraine of November 17, 2011 in the context of the guarantee of compliance with the principle of alternation in power. The authors ask questions is the answer to the following question: To what extent do the new regulations in electoral law guarantee the principle of alternation in power and to what extent do they contribute to the monopoly of the ruling party. Considering the research problem presented in the introduction it is necessary to state that, on the one hand, partial guarantee's of the principle alternation in power is a characteristic trait of the Ukrainian electoral system, while on the other hand, aspiration of the ruling party to maintain its monopoly is also fairly evident.

KEYWORDS: alternation in power, monopoly, parliamentary election, election

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INTRODUCTION

The electoral system, consisting of the overall voting rights and electoral practice, constitutes a basic research category in political science analysis. Therefore, elections are the most important event in politics. According to Derek W. Urwin, they fulfil important goals such as representativeness, political stability, conformity of the government's actions with the preferences and expectations of the majority, and a positive selection of the political elites (Urwin 1970). Stanisław Gebethner (1997: 37) points to important functions of the parliamentary elections, i.e. giving the public authorities legitimation to hold power, expressing the will of the voters, reconstructing the fullest possible image of the diversification of public opinion in parliament, and appointing a majority able to exercise power. In other words, choosing representatives, who should reflect the political and personal preferences of the voters, and who simultaneously are able to take effective political action (Michalak 2004b: 107). Appointing representatives constitutes the essence of democracy, and the imperative to hand over political power after suffering a defeat in elections is known as the principle of alternation in power. Taking into account the success in election, political regulations on conducting parliamentary election are of extreme importance. Since they determine the perspective of the alternation in power, all amendments made to the electoral law are crucial. The process of shaping the principles of appointing deputies to the Verkhovna Rada of Ukraine was initiated before the first free parliamentary election in 1994 and lasted up to the 2012 election. Nevertheless, the authors do not rule out that this process will continue[1].

Passing a new electoral law served as a starting point for further analysis of the principle of alternation in power in Ukraine as an axiom of the democratic government system. The objective of this article is to attempt to analyse of the new regulations in The Law of Ukraine on Elections of People's Deputies of

[1] The first electoral law was passed on November 18, 1993 (prior to the first parliamentary election in 1994). Following the difficulties in the application of the electoral law during the election in 1994, and most of all due to the difficulties connected with completing the composition of the Verkhovna Rada, a second (new) Law of Ukraine on Elections of People's Deputies of Ukraine was passed on September 24, 1997. It introduced majority-proportional electoral system in the parliamentary election in 1998. A subsequent law of October 18, 2001 was passed before the election in 2002. The proportional voting system was introduced by the law of March 25, 2004 and was legally binding from the election in March 2006.

Ukraine of November 17, 2011 in the context of the guarantee of compliance with the principle of alternation in power. The research material also includes relevant regulations found in the Constitution of Ukraine, the Law on Political Parties, citizens' right to associate in political parties, and relevant resolutions of the Central Election Commission of Ukraine[2]. The main research problem is the answer to the following question: To what extent do the new regulations in electoral law guarantee the principle of alternation in power and to what extent do they contribute to the monopoly of the ruling party? Analysis of the advantages and disadvantages of the plurality voting, proportional representation or any other electoral system is not the purpose of this article; however, the authors are aware that by changing the electoral system it is possible to modify the processes that occur in the political system[3].

SHAPING THE PARTY SYSTEM IN UKRAINE

Political parties are not the strongest actors in the Ukrainian political landscape. It is caused by many factors, including the significant role played by the president, oligarchization of the political system, as well as an instability of the party system and external influences. The process of the development of the party system in Ukraine occurred in the years 1988–1989 (Гарань 1993: 12–27). Formally, it was only on June 16, 1992 that the Verkhovna Rada of Ukraine passed the Law on Association of Citizens, introducing two categories of associations, i.e. public organizations and political parties[4]. It was replaced with the new Law on Civil Associations of March 22, 2012, which defines a political party as an association of citizens, supporters of some national program

[2] The authors do not analyze the electoral law of the Autonomous Republic of Crimea due to a party system that is different from the one in Ukraine. Crimean parties do not aspire to gain influence outside the autonomy, while most Ukrainian parties do not function on the territory of the autonomy.

[3] Interpretations of the changes of the party system are presented, among others, in: Michalak (2004b: 15–24).

[4] The Law on Association of Citizens was amended fifteen times: in 1993, 1998, 1999, 2000, 2001, 2003 (twice), 2005 (twice), 2006, 2008, 2009, 2010 (twice) and in 2012. It is important to note that important changes were introduced in 2001 and in September 2005. The amendment of 2001 in Art. 12 (1) gave specific requirements as to the name of an association of citizens, i.e. that is should consist of two parts: a common name (party, congress, movement) and an individual name. Next, the amendment of September 2005 included Art. 15 and determined precise dates in which an association

of social development whose main goal is to participate in the elaboration of sate policy, formation of authorities, local and territorial self-government and representation to their bodies (art. 2 the Law on Civil Associations). However, it entered into force only on January 1, 2013.

The Law on Political Parties of April 5, 2001 defines political parties as registered according to the law voluntary association of citizens – supporters of some state program of public development – that aims at the promotion of formation and expression of the political will of the citizens and participates in elections and other political measures (art. 2 the Law on Political Parties). Meanwhile, a civil association is an association of persons to protect the rights and freedoms as specified by the Ukrainian law (Art. 3).

After 1991, the party system in Ukraine underwent evolution caused by frequent amendments to the electoral law. Therefore, the debate on the future of the party system took place over almost several dozen years. Due to the fact that several electoral systems functioned in Ukraine, from those characteristic for socialist states to a mixed system in a parallel version (proportional-majority), during the debates the issues connected with consolidation of the Ukrainian system were brought up. "Choosing an election formula (i.e. rules or sets of rules which determine the way votes in the election shall be converted into mandates in constituencies and which candidates can be elected) usually also determines the shape of other elements of the electoral procedure, so that decision determines the character of the entire electoral system" (Michalak 2008: 44–45). In the period from August to December 1991, there were substantial changes in the Ukrainian political situation, i.e. a declaration of independence was made and a ban on the Communist Party of Ukraine was imposed based on the results of a referendum. Passing a Law on Association of Citizens in 1992 is considered to be the basis of the process of institutionalization of both the entire party system and parties themselves (Мороко 2012: 232–242). The first Law on Election of the People's Deputies of Ukraine of November 18, 1993 to a large extent hindered the involvement of a party in the election process; the electoral law used in the 1994 election was disadvantageous for "weak" political parties, since it implemented a high electoral threshold. In order to obtain a mandate, a candidate needed to obtain an absolute majority

of citizens should be registered. Other amendments did not bring significant changes to the content of the law, since they concerned exclusively changes in the provisions of cross-reference in the Ukrainian law.

of votes with 50% attendance. In such a situation, that occurred during the entire second term of office of the Verkhovna Rada of Ukraine, some seats in the parliament remained empty[5].

Subsequent debates on the future of the Ukrainian party system contributed to the implementation of a mixed system in a parallel version that was used in the elections in 1998 and 2002[6]. "The process of consolidation of the Ukrainian political landscape was also visible, i.e. larger blocs or coalitions and large political parties with a relativly stable electorate were being formed" (Waleszczak, Stępień 2007: 120). The situation of political instability in the country and the changeability of laws governing the functioning of the state, contributed to a decision that during the period of conflict between the president and the parliament, using a mixed system is a viable solution. Following constitutional reform in 2004, political parties were given the status of main entities in the election process. Ukrainian Members of Parliament started to identify with particular political parties, so that their preferences reflected the interests of a given party. Moreover, the lowering of the position of the head of state in the Ukraine mainly contributed to establishing a proportional system that made the Ukrainian party system similar to the European model (Sokół 2007: 483–510). The law passed in 2011 reinstated the principles of electoral law that were in the Ukraine before 2005. The electoral threshold was increased from 3% to 5% and electoral blocs were not included as entities in the election process. It is necessary to emphasize that a characteristic trait of the Ukrainian party system is the migration of party elites (party leaders) from one party to another (Конончук, Ярош 2010: 37–40).

The evolution of the party system occurred simultaneously to the transformation of the political system of the state; relations between the executive and legislative branch had a significant contribution in this. A lack of long-standing traditions and experience in the field of regulation of electoral law contributed to extending the process of seeking original solutions, which in consequence became a problem of balancing between plurality voting and proportional representation. An attempt to break the stalemate was the introduction of the proportional system in 2005, as an antidote to the weakness of the previous system. However, using similar solutions during election to the Verkhovna Rada of

[5] In the election in 1990 two versions of the majority systems were used; in the first round it was the absolute majority, while in the second – relative majority. The election in 1994 adhered to the rule of relative majority.

[6] This period was characterized by the creation of electoral blocs, such as Yulia Tymoshenko's or Nataliya Vitrenko's in order to attract the voters using a popular name.

Ukraine in 2012, raises a question whether models which worked in the realities of the late 1990s may indeed perform well fifteen years later (Michalak 2012: 94–112).

THE ALTERNATION IN POWER AND MAINTAINING THE MONOPOLY OF THE RULING PARTY

Solving the research problem necessarily requires deliberations on the theoretical categories. The authors of this article accepted two variables, treated as antinomic ideal types: the principle of alternation in power and the category of monopoly of the ruling party. According to the authors, the principle of the alternation in power consists in the imperative of surrendering power in the result of an election defeat by a political party or a coalition. Therefore, the principle of alternation in power that occurs during elections to parliament is an important factor in the crystallization of democratic institutions (Wojnicki 2011: 116). The monopoly of the ruling party, however, consists in maintaining power for at least three successive terms of office. Additionally, implementing amendments to the electoral law enhances the impression that the ruling party is trying to assure the continuity of maintaining power.

In literature there is a division of alternation into democratic and undemocratic; yet, according to the authors of this article, such a division disturbs the theoretical perception of this category[7]. Since it is possible to define alternation in power only through an institutionalised manner of changing the ruling elites, i.e. through elections; if the change in power takes place in any other manner, for example as a result of a coup, it is impossible to speak of alternation in power. It should also be emphasized that the alternation in power will occur only when there are at least two political parties or party blocs (coalitions) that compete against each other, while presenting different political programmes, and citizens grant mandate to rule to a particular party (Bankowicz 2006: 43). In the democratic system, the principle of alternation in power is linked with the functioning of political opposition, since this points to the strategy of competing for power (see: Machelski 1999: 39–54; Machelski 2001a; Machelski 2001b; Zwierzchowski 2000).

[7] Tomasz Wieciech (2010: 312) differentiates democratic alternation from non-democratic alternation, which is an erroneous assumption according to the authors of this article.

The practice of alternation in power caused that three models of alternation in power started to be distinguished: wholesale, partial, and non-alternation[8]. This approach seems to be essentially right, since it introduces a fundamental division between effecting a total and partial change in power. The authors of this article have reservations about the third model, non-alternation, since Peter Mair does not specify in what way one should interpret a situation, where there is no alternation in power for a longer period of time and whether, for example, a situation, when a party wins an election two times in a row should be treated as a monopoly or consolidation of the party system. According to the authors, such a situation creates conditions for consolidation of the party system and the crystallization of the position of the ruling party in the state; however, subsequent wins of that party create a risk of forming a monopoly of the ruling party.

Perceiving the principle of alternation in power through the prism of the electoral system and the party system is proposed by André Kaiser, Matthias Lehnert, Bernhard Miller and Ulrich Sieberer. However, the authors emphasize that the degree of interconnectedness between the electoral system and the party system that has a direct influence on the principle of alternation in power is extremely difficult to recognize, since the party system is a resultant of the electoral system (Kaiser, Lehnert, Miller, Sieberer 2002: 317–318). This type of generalization does not provide the authors of this article with substantial information in the examined matter, moreover, it creates the premises to put forward a thesis on clearly distinguishable connections between the electoral system and the party system. Following Bartłomiej Michalak's (2007: 142) train of thought, it is necessary to emphasize that democracy should be considered in procedural categories; however, its „democraticness" is decided by the way electoral decisions are made. From the point of view of the researched matter, the following is an extremely important statement: democracy last as long as the losers in election rivalry remain convinced that they stand a chance to win in the future, which causes that the strategy of "waiting out" is more attractive than an open rebellion against an election defeat (Przeworski 2010: 115–144).

[8] A complete alternation in power consists in, for example, that a ruling party or coalition is completely replaced by a new political force. Most frequently, such an alternation occurs in the states where there is a dispersed party system (e.g. Poland). However, the most frequent form of alternation is partial alternation, i.e. that due to elections at least one party remains in the government (e.g. Germany, the Netherlands). A lack of alteration in power may occur in the systems where the ruling party remains in power for an extended period of time (e.g. Japan1955–1993, India 1952–1977, Sweden 1936–1976, France 1958–1981). See: Mair (1997).

Analysing those deliberation concerning the ways alternation in power is perceived, considering their advantages and disadvantages, the authors adopted their own approach to the understanding of the principle of alternation in power and the monopoly of the ruling party. Therefore, it is necessary to clarify that these categories should be understood in the context of an institutionalised manner of changing the ruling elites, rejecting undemocratic methods, where this change may occur wholesale (new players come to power) or partially (only a part of the ruling elite is changed). It is also important to emphasize that although the ideal type of principle of alternation in power and the monopoly of the ruling party are the two extremes of a continuum, a subsequent victory of a ruling party (in democratic elections) in one occasion may indicate consolidation of the party system, while in another it may point to the monopoly of that party in a given state.

ANALYSIS OF RELEVANT REGULATIONS IN THE ELECTORAL LAW TO THE VERKHOVNA RADA OF UKRAINE IN THE CONTEXT OF THE RESEARCH MATTER

The electoral law was passed by the Verkhovna Rada of Ukraine on November 17, 2011 under the name of The Law Of Ukraine on Election of the People's Deputies of Ukraine (Закон України 2012b). The law distinguishes four types of parliamentary elections, i.e. regular, pre-term, repeat or by-elections (Art. 15 (1))[9]. Election held on October 28, 2012 was a regular election due to the end of a five-year term of office of the Verkhovna Rada of Ukraine. The new electoral law recognizes as the electoral subjects: the political parties that have nominated MP candidates, voters, the Central Election Commission, as well as other election commissions (i.e. district and regional), MP candidates, official

[9] Regular elections are held after the end of the fifth year of term of office. Pre-term elections are set by the President of Ukraine in the 60-days following the day of publication of the decision on the termination of term of office of the Verkhovna Rada of Ukraine (Art. 77 of the Constitution of Ukraine). Repeat elections are held when in a single-mandate election district election was declared invalid, when there was no candidate registered in a given district, and when there was only one candidate and the candidate got less than one half of the votes of the voters who took part in elections. By-elections are set by the Central Election Commission in the case when in a given single-mandate district there is an early termination of the powers of an MP elected in that district. Moreover, it is impossible to hold repeat elections and by-elections during the last year of term of office of the Verkhovna Rada of Ukraine.

observers of parties, MP candidates, and non-governmental organizations (Art. 12). Furthermore, the law prohibits creating electoral blocs (merging parties for election purposes), which is a completely new regulation, since in the previous regulations there was no such restriction. Electoral blocs and political parties were treated equally. In the term 2007–2012 the only party which was an electoral bloc was simultaneously the largest opposition party. Thus, one may assume that the ruling party, by removing the regulation on the possibility of entering into blocs, tried to prevent it from running for elections, or to lead to a schism inside the party during the formation of a new political party. Certainly, this regulation had a negative influence on assuring the principle of alternation in power.

The law did not retain the provision that only parties who have been registered 365 days prior to the voting day may nominate candidates (Article 10(2)). In theory, this provision facilitated a entering in parliamentary election's for new political parties, since there are no time constraints. According to the new regulations, as the nomination of MP candidates shall begin ninety days prior to the day of voting and shall end seventy-eight days prior to the day of voting (Art. 52(1)); previously, it was one hundred and nineteen and ninety days respectively[10]. This period was considerably shortened, almost by 40%, which undoubtedly causes that a political party must mobilize to take necessary actions to effectively nominate its candidates. In the case of a political party that is in the middle of organising its regional structures, 12 days is a extremely short period.

According to the new law, the candidate does not need to present a required number of collected signatures, but the regulation on a financial deposit increased its amount to two thousand minimum wages in the nationwide election district (Art. 56(1)), and to twelve minimum wages in a single-mandate election district (Art. 56(2))[11]. However, the financial deposit is returned if the party obtains the right to participate in the distribution of MP mandates (Art. 56(4)), while the financial deposit paid by a party that has nominated an MP candidate in a single-mandate election district is returned if the MP candidate is elected in the single-mandate election district. (Art. 56(5)). By analogy, the financial deposit paid by a self-nominated MP candidate is also returned (Art. 56(6)). In all other cases, financial deposits shall be transferred to the State Budget of Ukraine (Art.

[10] Numbers on the ballot papers are allotted to the parties by drawing lots on the basis of the Resolution of the Central Election Commission (Центральна виборча комісія 2012b).

[11] According to Art. 54 points 6 and 8, a document certifying that a financial deposit has been made is required for the registration of a candidate.

56(7)). This amount is relatively high, which may discourage and sometimes make it impossible for opposition parties to organise such an amount. However, in spite of these restrictions, the number of parties that came up with lists of candidates amounted to 45 parties in 2006, 20 parties in 2007, and 21 parties in 2012. Therefore, it is hard to agree with Wojciech Sokół that this regulation was undoubtedly implemented in order to reduce the number of electoral subjects (Sokół 2011: 73). Even if there was such a goal, it was not accomplished.

The analysis of the principles on organising and conducting an election campaign as stipulated by law, is, according to the authors of this article, necessary to settle the research problem described in the introduction, since by using the tool of an election campaign, the ruling party may effectively block communication between voters and political parties/candidates, which may contribute to maintaining power by the ruling party. Election campaigning through the mass media of all forms of ownership is conducted with due observance of the principle of equal opportunity (Art. of 71(1)). In principle, political parties pay to present their programme in the media (Art. 71(5)). The law also provided air time (free of charge) between 7 PM and 10 PM (Art. 72(2)).

The resolution of the Central Election Commission of March 23, 2012 in the Annex 1 determines air time and printed space during the election campaign funded from the state budget to prepare and conduct parliamentary election[12]. Pursuant to this regulation, air time for political parties is divided between four media: the First National Channel of the National Television Company of Ukraine – 60 minutes, the First Channel of the National Radio Company of Ukraine – 60 minutes, regional state-owned or private TV stations – 20 minutes, regional state-owned or private radio stations – 20 minutes (Art. 72 (4))[13].

Annex 2 of the analysed resolution defines the manner of granting space in the printed media to political parties and candidates. Political parties and candidates are entitled to publish their political programmes on an equal basis, which is funded from the national budget of Ukraine allotted for parliamentary elections, in accordance with the programmes sent to the Central Election Commission (Point 1.1). Political parties publish their programmes in "Holos Ukrainy", "Uriadovyy Courier", and one of the regional newspapers; the candidates, however, publish only in regional newspapers (Point 1.2). Political parties and

[12] Appendix 1 of the Central Election Commission (Центральна виборча комісія 2012a).

[13] The order of media appearance is regulated by the Resolution of the Central Election Commission (Центральна виборча комісія 2012c).

candidates publishing their programmes in the Ukrainian language in "Holos Ukrainy", "Uriadovyy Courier", and one of the regional newspapers (Art. 73(1) of the Law). The printing order of the parties' programmes is decided by the Commission by a draw. Thus, it seems that those detailed regulations on the division of the access to mass media do not block communication of the political parties and candidates with their voters.

An important topic for the subject matters is the analysis of the manner of establishing the results of parliamentary elections (Chapter XI, Art. 80–102). The law in a detailed manner regulates the process of counting ballot papers and establishing results. This chapter also regulates a situation, when an election commission is entitled to declare the voting in an election precinct invalid on the following grounds: detection of the cases of illegal voting, destruction or damage of a ballot box, or detection in the ballot boxes ballot papers in the number exceeding by more than ten percent the number of ballot papers issued by the commission (Art.92). It is curious that spoiled ballot papers during vote counting are considered as unused (Art. 85(11)), what in the context of the analysis of the principle alternation in power, brings to mind a following question: What is the purpose of this regulation? Do such regulations in any way serve the ruling party to secure their monopoly?

FINAL CONCLUSIONS

Frequent amendments to the electoral system in Ukraine were explained by seeking adequate statutory regulations appropriate for the Ukrainian political scene. The electoral law used in the parliamentary election in 2012 and raising the electoral threshold did not bring fundamental changes to the power relations in the Verkhovna Rada of Ukraine. However, the parliamentary election led to granting political parties the status of significant entities in election rivalry, which was not visible before. In spite of limiting the activity of the opposition (the case of Y. Tymoshenko), opposition parties had real chances of winning in 2012. Therefore, according to the authors, there was a partial alternation in power during the elections in 2012 in the Ukraine.

Coming back to the deliberations on the theoretical category of the principle alternation in power and the monopoly of the ruling party, considering the research problem presented in the introduction and analysis of the Law On Election of the People's Deputies of Ukraine, it is necessary to state that, on the one hand,

partial guarantee of the principle alternation in power is a characteristic trait of the Ukrainian electoral system, while on the other hand, the aspiration of the ruling party to maintain its monopoly is also fairly evident. It gives the basis to a claim that we may treat this example as a certain type of a hybrid situated on the continuum between the two extremes. This, to a large extent, explains certain duality of changes implemented by the new law, perceived by the authors as factors aimed at introducing a monopoly of the ruling party, i.e. no longer considering election blocs (coalitions of political parties) as electoral subjects, increasing the amount of deposit required for the registration of a party's or candidate's participation in the elections, and cutting by over a half the time limit for putting forward candidates by electoral subjects from 30 days (starting from 119 ninety days prior to the day of voting and ending 78 days prior to the day of voting) to 12 days (between 90 and 79 days prior to the day of voting). However, the new law introduces amendments which might contribute to the consolidation of the party system, such as increasing the electoral threshold from 3% to 5%. Furthermore, the law does not regulate the period of party registration, which used to be 365 days prior to elections, which facilitates participation of new political parties in the elections in Ukraine.

Studying the character of changes of the Ukrainian electoral law gives rise to some problems. The approach to the Ukrainian electoral system (the case of the parliamentary election in 2012) in the context of balancing between guaranteeing the principle of alternation in power and maintaining the monopoly of the ruling party allows us to recognize the Ukrainian model as a hybrid one. This approach, on the one hand, constitutes a novelty in the research field, but on the other, merits careful evaluation, since in a situation of dynamic changes in the Ukrainian electoral system during the past years, it is very hard to make a prognosis for the future.

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