

The referendum law – a threat to Ukrainian democracy

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On 27 November, President Viktor Yanukovych signed a bill on national referendums, which allows laws to be made without any involvement by parliament. There is no provision for the parliament to take part in either the preparation of the referendum or the implementation of its results. To have a referendum called, it will be enough for an organising committee to gather three million signatures; the referendum's results will be valid regardless of the turnout, and will come into force directly (the President cannot refuse to sign legislation which has been approved in a referendum). Referendums can be used to enact and repeal laws, and to adopt a new constitution (although the current revision of the constitution preserves the existing parliamentary procedure). Projects for such laws (including the constitution) will be presented by organising committees. Referendums may also be used to resolve political issues, such as consent to the free buying and selling of agricultural land, the status of the Russian language, or the concepts and terms of international cooperation.

Commentary

- The new referendum act significantly changes the constitutional system of Ukraine, limiting the role of parliament in favour of the executive and extra-constitutional structures, and introducing a new procedure for making laws. The act also subjugates the principle of representative democracy to that of direct democracy, for example in stating that a referendum is 'a way for Ukrainian citizens to take decisions of national importance'. It is expected that the law will be challenged in the Constitutional Court, although it is doubtful whether the Court will rule it to be incompatible with the provisions of the Basic Law.
- The motive behind this law is to create a political tool, rather than to use a referendum for any particular purpose. However, the availability of such a tool will encourage its use to strengthen the current system of power.
- The opposition has attacked the project, pointing out that political parties (that is, the opposition parties) will thus be deprived of influence on the organisation of referendums; and claiming that the main reason for the law's adoption is the intention to have the president elected by popular vote, instead of by parliament (with regard to Yanukovych's poor chances of being re-elected in a general election). However, the latter view does not seem to be well justified, and government officials have repeatedly rejected the idea.

- Because of the requirements concerning the collection of signatures to hold a referendum (three million signatures are necessary, which must come from no fewer than two-thirds of Ukraine's regions, with not less than 100,000 signatures from each), it would be extremely difficult for the opposition to organise the calling of a referendum.
- Indeed, the passage of referendum law as described has already reduced democratic standards in Ukraine, and will contribute to the strengthening of the authoritarian and populist tendencies in its government. The plan moves Ukraine away from the solutions adopted in the EU's member states. The possible introduction via referendums of important legislation, not to mention a new constitution, will be a significant obstacle in the process of rapprochement between Ukraine and the European Union.