

Zelensky's Ukraine: the mechanisms of power are failing

Sławomir Matuszak

President Volodymyr Zelensky gained full power under a year and a half ago, but it is already becoming increasingly difficult for him to implement his declared political goals. This is due to the increasingly weak control he wields over his own Servant of the People party, his incompetent choice of collaborators and, more broadly, his lack of a comprehensive vision of reforms. Since the government reshuffle in March 2020, Zelensky has abandoned his plan to carry out a comprehensive reconstruction of Ukraine's political elite by replacing its main figures with untainted 'new faces'. This is what he had promised to his voters. However, he has failed to find an effective mechanism for selecting suitable candidates for key positions, which negatively affects the process of reforms being implemented. Servant of the People *de facto* losing its parliamentary majority, which had previously enabled it to independently enact laws, forces this party's representatives to constantly strive to reach agreements with other parliamentary groups and groups of influence. This is yet another factor undermining the effectiveness of actions carried out by the Ukrainian leadership. Moreover, there are constantly more indications that corruption is being tolerated and there has been a return to the direct control of law enforcement bodies. This, in turn, reinforces the feeling that in his governance style and practice, 'anti-system' Zelensky is increasingly resembling his 'pro-system' predecessors. Although he continues to be a popular politician, his level of support has constantly been on the wane and the prospects for his presidency bringing a breakthrough in Ukraine's modernisation process are becoming increasingly illusory.

The President's Office – the centre of political ideas

In Ukraine's current political system, the President's Office is its most important centre of power. Until February 2020, it had been headed by Andriy Bohdan, who succeeded in establishing an efficient decision-making mechanism in which parliament, due to its single party majority held by the presidential party Servant of the People, passed bills prepared by the President's Office at an extremely fast pace. This resulted in several important reforms being passed.¹ However, due to interpersonal

¹ For more on the assessment of President Zelensky's first year in office, his achievements and failures see T. Iwański, S. Matuszak, K. Nieczydor, P. Żochowski, 'Neither a miracle nor a disaster – President Zelensky's first year in office', *OSW Commentary*, no. 334, 20 May 2020, www.osw.waw.pl.



conflicts within the ruling camp, Andriy Bohdan was replaced by Andriy Yermak.² Although Yermak has a completely different personality (he is less conflict-prone compared with his predecessor), he proved to be much less effective. Just as with the president's top aide Serhiy Shefir, Yermak lacked political experience. Alongside the president, these two officials are responsible for making all the decisions of key importance to Ukraine.

Yermak's policy was completely different from Bohdan's. He halted the personnel reshuffle which involved appointing 'new faces'

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to key posts. He decided that filling these posts with reliable professionals would be more effective. However, the main problem he faced was difficulty in finding the appropriate candidates. On the one hand, this was due to the fact that, following the March 2020 resignation of the Oleksiy Honcharuk-led government, some reformers ceased to support Zelensky (this government was largely composed of representatives of pro-Western expert groups). On the other hand, Zelensky's team had no confidence in individuals who had held high-ranking posts during Petro Poroshenko's presidency. In this situation, lacking their own strong base, Zelensky and his team decided to recruit professionals who had been active before the Revolution of Dignity. One important example involves the August 2020 appointment of Oleh Tatarov as Deputy Head of the President's Office responsible for supervising the law enforcement agencies. This decision sparked major controversy due to the fact that Tatarov is considered a close collaborator of Andriy Portnov, the disgraced deputy head of the president's administration under Viktor Yanukovich, who was also responsible for persecuting Euromaidan activists. For these reasons, in 2014 Tatarov was dismissed from the Interior Ministry, where he had worked for 15 years. The details of his appointment have not been revealed, however the fact that he has received it proves that both Zelensky and Yermak have no qualms about hiring people with a tarnished reputation.³

The government – the enforcer of the President's will

The line-up of the Denys Shmyhal government has *de facto* confirmed the failure of the experiment involving appointing non-politically aligned professionals to key posts, as had been seen in the make-up of the previous government headed by Honcharuk.⁴ In addition, it has failed to bring about any empowerment of the council of ministers as an important governing body to not only implement but also shape sector-specific policies. Just as with his predecessor, the prime minister exercises a purely symbolic function which involves carrying out the orders from the President's Office. His weak position is confirmed by the fact that, ten months after he took office, polls showed that 25% of the respondents did not know who he was⁵, and by the fact that a mere 12 out of 166 bills (i.e. 7%) which his government submitted to parliament were passed.⁶ The only individual enjoying political independence in the line-up of the Shmyhal cabinet is Interior Minister Arsen Avakov.

Another apt illustration of the faults of the personnel policy pursued by Zelensky's team is the personnel reshuffle in several key government posts, including the minister of Finance and minister of Health (since March 2020 new ministers have taken these two posts). Another example involves the appointment of Serhiy Shkarlet as minister of Education and Science. In June 2020, the government

² T. Iwański, K. Nieczypor, 'Zmiana na stanowisku szefa Biura Prezydenta Ukrainy', OSW, 11 February 2020, www.osw.waw.pl.

³ Earlier media reports suggested that, among the candidates for high-ranking posts were: Valeriy Khoroshkovsky, former head of the SBU under Yanukovich, and Serhiy Tihipko, former deputy prime minister in the Mykola Azarov-led government.

⁴ T. Iwański, K. Nieczypor, 'Denys Shmyhal is the new Prime Minister of Ukraine', OSW, 5 March 2020, www.osw.waw.pl.

⁵ 'Суспільно-політичні настрої населення (16-20 грудня)', Рейтинг, 23 December 2020, www.ratinggroup.ua.

⁶ 'Рада ухвалила лише 7% законопроектів уряду Шмигала – КВУ', Укрінформ, 30 November 2020, www.ukrinform.ua.

appointed him as acting minister for three months. However the Verkhovna Rada's Committee on Education, Science and Innovations failed to approve his candidacy and no vote on his appointment was held in parliament. Ukraine's academic community has accused Shkarlet of plagiarising fragments of other works in several of his academic papers.

The staffing problems are not limited to ministerial jobs. They also relate to other posts and seem to be among the weakest points of Zelensky's rule. One example is

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the State Customs Service (SCS), considered one of Ukraine's most corrupt institutions. In July 2019, Zelensky appointed Maksym Nefodov as its head. At that time, Nefodov, a well-known reformer, was deputy minister of Economic Development and the main proponent of the implementation of a public procurement system known as ProZorro – an electronic platform to ensure the transparency of public tenders. Nefodov initiated a reform process at the SCS including a personnel review, which triggered a series of attacks launched on him in the media. This was followed by his dismissal under the pretext of insufficient revenue transferred by the customs service to the state budget. In the nine months following that, the head of the SCS has been replaced four times and the institution's reform has been halted. The case of Nefodov is an apt illustration of the policy of abandoning the practice of hiring independent experts who have their own vision of their duties. In addition, it explains the insufficient level of staffing of public administration posts. Ambitious individuals with a career in business are unwilling to accept a job in the government fearing that their role might be reduced to carrying out orders from the President's Office and that the criteria to evaluate their work might be non-transparent. They fear that after several months of work they might be dismissed under the pretext of insufficient achievements.

The Verkhovna Rada – a 'jammed voting machine'...

With its 246 MPs, the Servant of the People parliamentary group (SP) continues to formally hold a parliamentary majority that enables it to enact laws independently. Despite this, following Bohdan's dismissal, Yermak was unable to muster the votes of the ruling party's MPs as effectively as Bohdan had done. These votes were necessary for specific bills to be passed. As a consequence, the mechanism of ongoing state reforms repeatedly failed. For example, during the Verkhovna Rada's spring session (February–July 2020) the SP was increasingly frequently forced to seek support from other political camps: mainly the Confidence parliamentary group controlled by agricultural market oligarch Andriy Verevsky, the For the Future parliamentary group controlled by Ihor Kolomoysky, and non-aligned MPs. As regards the two most important laws (the act on the land market and the banking law), President Zelensky's personal involvement was necessary – he called on MPs to vote in favour of the two bills. During the autumn session (August–December 2020), the problems became further aggravated – in a mere four out of 583 voting sessions the number of votes cast by the SP was the minimum required for the law to be passed (226 out of 450). This proves that the Servant of the People's outright majority has *de facto* ceased to exist. As a consequence, in order to boost its ability to steer the SP parliamentary group, the President's Office is forced to use illegal instruments to mobilise the MPs. These instruments are: “the stick”, i.e. threats that investigations might be launched against individual MPs; and “the carrot” in the form of increased informal financial bonuses paid out in return for taking part in the vote.

Just as his predecessor did, in order to gain a majority Zelensky is building ad hoc coalitions with other parties and various groups of influence inside his own camp. However, the practice of reaching such

agreements with the 'old' parties reduces the prospects for implementing major reforms, increases the role of parliament and reduces the importance of the President's Office as the decision-making centre. In recent months, the importance of the Verkhovna Rada has increased significantly and the presidential camp knows that it cannot openly ignore the stance of the MPs the way it did last year. In addition, this is tantamount to a gradual increase in the importance of Dmytro Razumkov, Chairman of the Verkhovna Rada, who is the only ruling camp politician enjoying a high level of support. In December 2020, for the first time, in some polls his approval rating was higher than that of the president. In addition, Razumkov was negatively assessed by a considerably smaller number of respondents than Zelensky. In most voting sessions, Razumkov was loyal to Zelensky. However, in recent weeks he has increasingly begun to show independence. This was particularly evident during the crisis over the verdict of the Constitutional Court issued in October 2020.⁷ Razumkov put forward an alternative bill to the one submitted by the president. There are many indications that a section of the SP parliamentary group (as many as around 50 MPs) views him as their leader.⁸ Although Razumkov is clearly striving to build his own political position and is sometimes acting against the president, it seems too early to expect an open conflict between these two politicians which would lead to a rift in the SP parliamentary group.

...and the increased role of oligarchs

The President's Office's diminishing control of the SP parliamentary group has boosted the influence of oligarchic groups within it. At present, this influence is stronger than during President Zelensky's first year in office. Aside from the 'Razumkov group', a group centred around Ihor Kolomoysky seems to be forming (around 20–40 MPs from the SP parliamentary group and around 15 from the For the Future parliamentary group). Another group that is frequently mentioned in this context is the group centred around Ilya Pavluk. It has no more than 40 MPs and in its voting practice its representatives tend to favour the interests of Rinat Akhmetov. This oligarch also controls several MPs elected in single-member districts and several others representing other parties, including Batkivshchyna. Although it is difficult to assess which oligarch is the most influential in the Ukrainian parliament, it seems that oligarchs are generally able to block any of the Verkhovna Rada's decisions which are unfavourable to them, rather than push through solutions which would be favourable to them. This type of struggle between various groups of influence is additionally undermining the effectiveness of parliamentary work.

One example of the destructive rivalry between Akhmetov and Kolomoysky involves their attempts to impact the appointment of the Energy minister. From April to November 2020, Olha Buslavets,

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considered a collaborator of Akhmetov, served as acting minister of Energy. However, Akhmetov was unable to secure a sufficient number of votes to have her appointed minister. In December 2020, Ms Buslavets was dismissed and Yuri Vitrenko, a former executive director of Naftogaz (a candidate approved by Kolomoysky) sought to be appointed as Energy minister. However, he garnered only 186 votes at the Verkhovna Rada, including a mere 153 votes cast by the SP parliamentary group. The vote on his appointment was all the more important because President Zelensky had become

⁷ P. Żochowski, 'Ukraine: a Constitutional Court verdict ignites a political crisis', OSW, 30 October 2020, www.osw.waw.pl.

⁸ Д. Баркар, 'Разумков став конкурентом Зеленського чи його спадкоємцем?', Радіо Свобода, 12 November 2020, www.radiosvoboda.org.

personally involved in supporting Vitrenko, which is further proof that the president's influence on his own party is dwindling.

The law enforcement bodies – back to direct control

One of the most important slogans President Zelensky and the Servant of the People used during their electoral campaigns promised an effective fight against corruption. This also included the promise that prison sentences without conditional suspension would be pronounced in corruption cases. In the first months of Zelensky's rule, Ukrainians were hoping for a breakthrough. A reform of the General Prosecutor's Office was launched, including a personnel review, efforts were made to ensure the smooth operation of the High Anti-Corruption Court of Ukraine and the operational capability of the National Anti-Corruption Bureau of Ukraine (NABU) was increased. However, in several important areas connected with the judiciary and the law enforcement bodies, no genuine attempts were made to improve the situation, which *de facto* contributed to the former corrupt mechanisms becoming set in place. This refers in particular to the Security Service of Ukraine (SBU), whose scope of powers seems to have been reduced to counter-intelligence measures. A Financial Investigation Service, to be supervised by the Ministry of Finance, was supposed to be established, but thus far this has not happened. This service is intended to take over investigations into economic crimes from the SBU and the Interior Ministry. In addition, no reform of the court system has been launched.

The experiment involving a reform of the prosecutor's office lasted no more than several months. In March 2020, Ruslan Riaboshapka was dismissed from the office of

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Prosecutor General. He was replaced with Iryna Venediktova, an individual who is not interested in implementing changes and is susceptible to 'suggestions' from the President's Office. One of her first decisions involved reinstating a section of prosecutors who had been dismissed as part of reforms launched by Riaboshapka. In addition, the practice used by Zelensky's predecessors, involving sabotaging the investigations (in particular those carried out by NABU) against prominent representatives of the political and business elite, was resumed. The most widely known investigations of this type include the so-called Rotterdam+ formula case,⁹ which resulted in the state treasury losing US\$1.4 billion. The main beneficiary of this formula's application was Ukraine's richest man Rinat Akhmetov. Other well-known cases included the investigation against former executives of PrivatBank (which until 2016 had belonged to Ihor Kolomoysky and later was nationalised) and the extradition of Oleh Bakhmatiuk (an oligarch accused of siphoning off US\$49 million from VAB Bank). The money was a stabilisation loan offered by the National Bank of Ukraine.¹⁰ The prosecutor's office blocking the investigations is helped by the fact that since August 2020 the post of the head of the Special Anti-Corruption Prosecutor's Office (SAP) has been vacant. The SAP was established to draw up indictments on the basis of evidence compiled and provided by NABU. The SAP's acting head Maksym Hryshchuk is required to seek Iryna Venediktova's approval for all of his decisions, and the competition to fill the post of SAP head has repeatedly been postponed and will likely be held in mid-2021.

⁹ The formula introduced in 2016 involved increasing the price of coal used to produce energy by tying it to the API-2 index (the price of coal at the Port of Rotterdam). The company DTEK, controlled by Akhmetov, is the main producer of energy from coal.

¹⁰ 'Екстрадиція Бахматюка: НАБУ розцінило дії Офісу генпрокурора як спробу саботажу', *Економічна правда*, 10 December 2020, www.epravda.com.ua.

There are indications that corruption is being tolerated

Although there is no information on whether President Zelensky is deriving personal benefits from corruption, he has demonstrated great leniency towards the scandals involving his collaborators. The first such indication was the March 2020 publication of recordings in which Andriy Yermak's brother offered employment, for example with the Ministry of Infrastructure and the Customs Service, in return for a specific sum of money. The president ignored the issue and argued that no one was appointed to the posts mentioned in these recordings. As a consequence, Yermak faced no consequences for his actions and in July 2020 the SBU detained the individual who allegedly had made these recordings.¹¹

An even more shocking case involved Oleh Tatarov, the Deputy Head of the President's Office, who is among the individuals covered by the investigation against former MP Maksym Mykytas (who is accused of embezzling funds earmarked for the constructions of apartments for employees of the National Guard of Ukraine). In 2017, he worked as an attorney for Mykytas and allegedly bribed an Interior Ministry employee in exchange for a counterfeit expert opinion. When Venediktova managed to thwart the procedure of Tatarov receiving a formal document stating that he is suspected of having committed a crime, she ordered NABU to transfer the case to the SBU, as result of which prosecutors from the General Prosecutor's Office withdrew their motion and Tatarov remained at liberty. The Interior Ministry became involved in the case as well. The police handed Mykytas a formal document stating that he is suspected of having committed another crime (ordering an abduction) and the court issued a warrant for his arrest, which can be viewed as an attempt on the part of the Interior Ministry to eliminate an inconvenient witness and to help Tatarov.

Just as in the case of Yermak's brother, in Tatarov's case Zelensky played down the accusations and argued that they relate to a period when Tatarov was not an employee of the President's Office. Tatarov was not suspended from his duties and was merely stripped of his powers to supervise NABU. At present, it is difficult to predict the outcome of the investigation. However, should it be transferred to the SBU, it is unlikely that any convictions will be handed down. Similarly, it is difficult to predict how the new charges brought against Mykytas will be interpreted. Despite this, they can be viewed as a clear signal from the law enforcement bodies that nobody should ever hope to receive protection from NABU in return for pleading guilty to a crime.

Outlook

In a poll published on 16 December 2020 by the Razumkov Centre, 42% of the respondents referred to Volodymyr Zelensky as "the disappointment of the year", whereas almost 20% viewed him as "the politician of the year".¹² This ambiguous approval rating is a meaningful assessment of the president's policy and of the extreme emotions this policy is evoking. President Zelensky continues to be Ukraine's most popular politician and – should a snap election be held – he would most likely win the potential run-off with any rival (although the difference in the number of votes cast for either candidate would likely be smaller than in 2019). However, his approval rating will continue to erode. In addition, it seems that Zelensky's problems with ruling the country will worsen in the coming months and any attempts to break the deadlock, for example by announcing early parliamentary elections, will be increasingly less worthwhile.

¹¹ 'СБУ затримала фігуранта "плівок Єрмака": підозрюють у шахрайстві', Українська правда, 14 July 2020, www.pravda.com.ua.

¹² *Україна-2020: невинуваті очікування, неочікувані виклики. Підсумки року у дзеркалі громадської думки (грудень 2020 р.)*, Разумков Центр, 16 December 2020, www.razumkov.org.ua.

The Servant of the People continues to top the polls (although the openly pro-Russian Opposition Platform – For Life has a similar approval rating). However, its electoral result would translate into only approximately 150 seats, which would force it to form an official coalition with European Solidarity or with Opposition Platform. Similar alliances were formed at the level of oblast councils following local elections held in October 2020. However, at the central government level both variants would be unacceptable for both a major portion of SP voters and a portion of MPs. It seems that a more likely scenario will involve another government reshuffle carried out in an attempt to start a new period in Ukraine’s politics. However, due to the problems with winning parliamentary votes, it may be impossible to secure a majority in the vote on the new government. Therefore, the most likely scenario will involve maintaining the barely effective balance of power currently in place. Reforms are likely to be implemented as a result of pressure from the West which has actively lobbied in favour of pro-market and pro-democratic changes. Kyiv pays heed to the West’s opinion mainly due to the fact that Ukraine depends on external funding. In addition, it seems that the prospects for a profound transformation of Ukraine, which was the greatest hope Ukrainian society had pinned on Zelensky’s presidency, are becoming increasingly distant.