

Ukraine: sovereign decentralisation or federalism without sovereignty?

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A key element of Russia's policy towards the new government of Ukraine concerns demands for a constitutional reform that would transform the country from a unitary into a federal state in a way that would considerably privilege the eastern and southern regions. Such a change to Ukraine's administrative system would enable Moscow to put pressure on Ukraine's central government via the regions. In order to achieve its objectives, Russia has been pressuring Kyiv to establish a constitutional assembly in a form that would guarantee the endorsement of solutions dictated by Russia. In other words, Russia has been demanding, in what is practically an ultimatum, that Ukraine give up one of the fundamental sovereign rights of a state, the right to freely determine its system of government.

Transforming Ukraine into a federal state is an unacceptable idea, primarily because the intention behind Russia's demands is to undermine Ukraine's sovereignty, both through the content of the proposed changes and the way in which they are to be implemented. However, keeping in place the current, centralist model of state governance is not a feasible alternative. Ukraine will have to grant its regions broad self-governance powers, including the power to hold local referendums, and to transfer a considerable portion of the prerogatives currently held by the state to the local self-governments, along with adequate financial resources. That is because decentralisation along these lines is the only way forward towards a modern democracy in Ukraine.

Russia's policy has forced Kyiv to undertake legislative work on constitutional reform as a matter of urgency, rather than waiting until a new parliament is elected in which the new, post-Maidan balance of political power will be reflected, as political logic would require. The first draft of the constitutional amendments (of which no details are known at this stage) is to be presented in mid-May, and is expected to come into force in early autumn. However, whether these plans can be put into practice depends on further developments in the eastern part of Ukraine, because (among other reasons) if a state of emergency is introduced, the constitutional amendment process will have to be suspended.

“Federal Ukraine” according to Moscow

If implemented, the Russian proposal, as formulated most comprehensively in a statement¹ by the Russian Ministry of Foreign Affairs issued

on 17 March, would permanently paralyse the Ukrainian state, deprive it of sovereignty, imprison it neutralised within Russia's exclusive sphere of influence, with its neutrality formally guaranteed at the international level. Moscow demands that the *Verkhovna Rada* (parliament) of Ukraine establish “without delay a constitu-

¹ www.mid.ru/brp_4nsf/newsline/49766426493B6E9644257C9E0036B79A, accessed on 3 April 2014.

tional assembly in which all regions of Ukraine will be equally represented". That assembly would be tasked with formulating and unanimously endorsing a new draft constitution, which would then be put to a referendum. The proposal ignores the norms enshrined in the current constitution of Ukraine with regard to the constitutional amendment procedure. If Kyiv went in that direction, it would undermine the legitimacy of the new constitution as having been adopted in violation of the laws in force.

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The conditions that the new constitution should meet in Moscow's view reveal what kind of state model Moscow is advocating for Ukraine, also in its approach towards the United States and the European Union. According to the Russian concept, Ukraine should be a "democratic federal state" whose regions (it is unclear if that means the *oblasts* in their current administrative borders) will "be independent and directly elect their legislative and executive authorities, and possess broad prerogatives reflecting the cultural and historical specificity of each of them with regard to the economy and finance, the social sphere, language, education and external interregional relations". The new constitution is also expected to establish Russian as the second state language of Ukraine.

The Russian concept does not envisage granting the regions any powers in the domains of defence or foreign policy, but it does give them the right to develop "external interregional relations", which presumably means maintaining foreign contacts without consultation with the central government. Moscow hopes that if it

manages to impose such solutions on Ukraine, it will be able to control Kyiv's policy via the eastern regions or, more likely, make Ukraine incapable of pursuing any policy.

Adopting such a constitution would mean transforming the state into a loose conglomerate of federal regions, which would be unable to pursue any coherent economic or social policy, or even cultural and educational policy (for instance, patriotic education). Meanwhile, the regions equipped with legislative powers (rather than just self-governance powers) would not have to reckon with the central authorities. Those supported by Moscow would certainly refuse to do so (this is indeed the objective of the solution proposed by Russia). On the other hand, the reform would not guarantee self-governance within the regions themselves. On the contrary, it would be conducive to a consolidation of the current bureaucratic centralism. Even considering such a project should be out of the question in a situation in which it is not an expression of the aspirations of the local communities and elites, but is instead dictated by a neighbouring state.

The Russian Foreign Minister Sergei Lavrov said on 4 April (while responding to plans to extend the preparatory work on constitutional reform) that Russia would not be satisfied with "cosmetic changes" to the constitution of Ukraine. This means that the objective of Russia's policy is not to impose specific changes on Kyiv, but rather to make it appoint a constitutional assembly to which Moscow can dictate its solutions, and thus show the world that Ukraine is giving up its sovereignty, and that its problems should henceforth be treated as internal affairs of the Russian Federation.

Ukraine's attempts at decentralisation

Under its constitution, Ukraine is a unitary state (Article 2) which comprises the Autonomous Republic of Crimea as "an inseparable constituent part of Ukraine" (Article 134). At the same time Ukraine is internally a very diverse

country, despite which it is governed in an extremely centralised way². With the exception of the cities, local self-governments in the *raions* (counties) and *oblasts* have no executive powers or sources of financing (their entire budgets come from the central budget), while the *hromadas* (rural communes) are too organisationally and economically weak to carry out any serious tasks³. On the other hand, due to the economic disproportions between the regions, Ukraine cannot give up on the redistribution of national income, and consequently, needs a strong central government.

The existing archaic administrative system has been increasingly impeding the country's social and economic development. Thorough changes to Ukraine's system of government (including corrections to its administrative divisions) have been planned on several occasions but never went beyond the study phase. Introducing regional self-governance at the *raion* and *oblast* level is an urgent necessity, both in view of the political situation, and because the current way of financing the regions makes it impossible for them to start the necessary modernisation projects. New regulations on the relations between the central government and the regions, and of the rights of self-governing (regional) communities, must thus be part of the constitutional amendment. The process of including them, however, is being impeded by the pressure from the Russian Federation, which has been advocating 'federalisation' while in fact trying to impose solutions that will not lead to decentralisation, but instead make Ukraine an even more dysfunctional state.

The Ukrainian leadership is aware of the imperfections of the current constitution and the

need to proceed with deep decentralisation, which is also what the people in all regions want. Were it not for the external pressure, such a project would be prepared in due course, despite opposition from both the bureaucrats and the nationalists (who see self-governance as a threat to the symbolic unity of the state).

However, as Russia has taken advantage of the autonomous nature of Crimea to justify separating it from Ukraine, and has been stirring a rebellion in the eastern and southern regions of Ukraine under federalist and pro-Russian slogans, Kyiv has been forced to work in haste, its actions verging on improvisation. The draft constitutional amendment was initially expected to have already been presented in mid-April, but this deadline has been postponed until mid-May, which shows on the one hand that the Ukrainian leadership is aware of the scale of difficulty involved, and on the other that it wants to stand up to Russian pressure.

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Kyiv is not considering appointing a constitutional assembly, primarily because that would mean yielding to Russia's dictates, but also because the Ukrainian constitution does not provide for the creation of any such body, and it is unclear on what basis and according to what principles it should be established and then act. The task of preparing the constitutional amendment has been assigned to an extraordinary parliamentary committee.

In statements about future reforms, the politicians in Kyiv have been emphasising that in any case, Ukraine will remain a unitary state, while admitting that it is necessary to considerably extend the powers of the regional governments.

² The internal diversity of unity of Ukraine is discussed at length in Tadeusz A. Olszański, 'Unity stronger than divisions. Ukraine's internal diversity', *Point of View*, OSW, 7 March 2014, <http://www.osw.waw.pl/en/publikacje/point-view/2014-03-07/unity-stronger-divisions-ukraines-internal-diversity>

³ For a discussion of the way Ukraine's regional governments are organised, see T. Iwański, P. Żochowski, 'Under the veneer of decentralisation...', *op. cit.*

The leaks so far suggest that the projected constitutional amendment will aim to abolish the *oblast* and *raion* state administrations and re-establish the executive committees of the local and regional councils (assemblies). Moreover, it will hand over all or most of the competences currently held by the above-mentioned regional and local administration (along with their bureaucratic apparatus) to the executive committees. It is unclear whether the heads of such committees (who at the oblast level are commonly referred to as governors) will be elected in general elections (like city mayors) or by the councils.

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In order to ensure adequate co-ordination of state policies at the regional level (officially, to guarantee respect for the rule of law), the posts of prefects will be established in the *oblasts* and *raions*, with prerogatives which are yet to be decided. The powers of the *oblast*-level delegations of state ministries will also probably be extended (through legal bills, but not in the constitution). The local elites, including the bureaucratic class, have long been demanding the dismantling of the local and regional administrations and the appointment of councils to govern the *oblasts* and *raions*. The idea of electing ‘heads’ of regions is also very popular among the people (and is backed by Russia). However, such changes are of secondary importance compared to the new division of powers between the centre and the regions (the government and the executive committees), especially with regard to the definition of the committees’ own and assigned tasks and the ways of financing them. Another important problem concerns regulating

the powers of *oblasts*, *raions* and cities in the domain of international co-operation in such a way as not to infringe on the state’s exclusive powers in foreign and defence policy. Some of these issues should be regulated within specific legal bills (for example, the education system, healthcare, etc.), and not in the constitution. However, until they are comprehensively regulated, the constitutional amendment will remain merely a provisional leap forward to gain time.

The debate about the question of decentralisation has so far remained at the level of general directives or mere slogans, rather than specific solutions. Some have been calling for ‘federalisation’ without specifying what that should mean, while others have been advocating “unitary decentralisation”, but again without providing any details. There is general agreement that the current system of government has to be changed, but there is no such agreement about what the new model should be.

What kind of decentralisation does Ukraine need?

It appears that in the light of the political situation, and especially the external pressure, Kyiv will be forced to adopt solutions that have not been sufficiently thought out in legal terms in order to resolve the political conflict, rather than truly transforming the country’s system of government. The new model will presumably include some of the solutions discussed below. Given the current excessively centralised system, the most urgent task concerns granting the *oblast* councils broad competences, establishing their executive committees and establishing new rules on the relations between the councils and the executive committees on the one hand, and the local representatives of the central state administration on the other. It is also important to ensure that regional tax revenue remains in the regional budgets instead of being redistributed via the central budget,

as is the case now. The *oblast* councils should have the right to identify regional languages to be allowed alongside (but not instead of) Ukrainian in the public administration and in the operations of private entities. Further elements of self-government reform, such as the introduction of rural communes and a new regulation of the mutual relations between *raions*, cities and *oblasts*, will have to be postponed given the circumstances.

The current debate about decentralisation has not been focused on budget and similar issues, but has primarily concerned cultural, education and language policies. One of the main arguments raised in favour of decentralisation is that there exists a very large Russian minority in the eastern regions of Ukraine, and that allegedly most inhabitants of Ukraine use Russian in their daily life and therefore (*sic!*) reject the Ukrainian national identity. However, it is not clear how many Russians actually live in Ukraine today (the figures for other minorities are also unknown)⁴. Irrespective of how large or small the Russian community in eastern and southern Ukraine is, Kyiv should make sure that it enjoys the rights normally awarded to ethnic minorities by democratic states. However, that does not require federalisation, or even deep decentralisation. The Law on ethnic minorities, which has been in force since 1992, guarantees those rights; however, it would also be desirable to implement the language bill passed in 2012, which has largely remained on paper, and to grant *oblasts* and *raions* (but not communes or cities) the right to adopt auxiliary official lan-

⁴ It is not clear how large the Russian minority in Ukraine is today (and the same applies to other minorities): Kyiv has been postponing the census since 2011, and the most recent reliable data comes from 2001 and does not reflect the changes that must have taken place with the successive generations raised in independent Ukraine and educated in Ukrainian schools reaching adulthood. According to the 2001 census, 77.8% of the inhabitants of Ukraine considered themselves Ukrainians, and 17.3% identified as Russians (the other ethnic minorities accounting for the remainder). 67% of the nationals of Ukraine considered Ukrainian to be their native language, and 29% said their native language was Russian.

guages (regional languages). Likewise, it would be advisable to leave the language policy, in the domains of local media and advertising also, in the hands of regional self-governments.

On the other hand, the regions' independence in shaping their education systems must be limited by an unconditional requirement for all schools to teach Ukrainian language and literature, and the history and geography of Ukraine (with Ukrainian as the language of instruction). State-recognised schools, whether public or private, must equip pupils with a certain core of education that is uniform across the country, and that should include knowledge of the state's language. This is all the more important since the Ukrainian Russophiles (and apparently also Moscow) believe that the obligatory state-centric curriculum and the obligation to teach the state language is one of the main means, if not the single most important means, of 'forced Ukrainisation'.

It would be advisable for the projected decentralisation plan/initiative to restore the institution of the local referendum, which exists in most democratic states but was abolished in Ukraine in 2012, while safeguarding the constitutional principle that no referendums may be held on taxes, budgets and amnesties, and while restating clearly that no local referendum may be organised on matters concerning changes to the country's territory (cf. Articles 73 and 74 of the Ukrainian constitution). However, it should be possible for people to decide in local referendums on the regional affiliation of individual *raions*, the mergers of existing *oblasts* or the creation of new ones, etc. This would pave the way to a gradual removal of the numerous irrationalities and dysfunctions of Ukraine's current administrative divisions.

Neither the regions nor federal states should have any independent powers in the domains of defence or international relations, and the nationwide systems of the police (existing alongside local police organisations), prosecution and judiciary must be kept in place. The re-

gions must not have the right to independently conclude agreements with third countries, but the state should not limit their right to establish partner relations with equivalent administrative units in other countries. It might be a good thing to consider applying the experience of the Euroregions to co-operation between the border regions of Russia and Ukraine.

The solutions discussed above, as well as a deep self-governmental decentralisation (regionalisation) of the Ukrainian state, can be carried out within the framework of Ukraine's current institutional setup and territorial divisions. The possible creation of a two-chamber parliament, with the upper house representing the regions, and a new territorial and administrative division, is neither necessary nor urgent. On the other hand, the implementation of a federal system of government, which would require a thor-

ough reconstruction of the country's system of government at the central level (including the creation of a second chamber of parliament, changes to the functioning of the judiciary, etc.), would not guarantee self-governmental decentralisation. It could in effect push the current centralism downwards, leading to the creation of federal states governed in the same bureaucratic and centralist way (which is what most of the regional elites will probably seek). Transforming Ukraine into a federal state would also be a very complex and costly undertaking, which could not be implemented practically (and not merely at the level of declarations) within several months, unlike a decentralisation granting broader powers to the local self-governments. If federalisation is imposed from outside, Ukraine will lose its sovereignty and its ability to execute state authority throughout its territory.

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