

HOW CAN UKRAINE BREAK OUT OF THE INSTITUTIONAL TRAP?¹

Ineffective institutional equilibrium exacerbated by the February 2014 revolution and the Russian aggression brought Ukraine to the state of near systemic collapse. With the existing set of leaders and institutions Ukraine could hardly reform itself. In order to survive, Ukraine needs stronger ties to the Western institution than current EU-Ukraine's Association Agreement could provide.

Keywords: *institutional trap, systemic vulnerability, hybrid regime, Ukraine, European Union, U.S.A.*

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ЯК УКРАЇНІ ВИСЛИЗНУТИ З ІНСТИТУЦІЙНОЇ ПАСТКИ?

Неефективна інституційна рівновага (інституційна пастка) сформувалася в Україні ще у 90-их рр. ХХ ст. У цих умовах революція 2014 р. і російська агресія штовхнули країну до стану майже системного краху. З чинною сукупністю еліт та інституцій, Україна навряд чи зможе реформувати себе сама. Для того щоб вижити, Україні потрібні тісніші зв'язки з Західними інститутами, ніж ті, які передбачені Угодою про Асоціацію з ЄС.

Ключові слова: *інституційна пастка, системна уразливість, гібридний режим, Україна, ЄС, США.*

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КАК УКРАИНЕ ВЫЙТИ ИЗ ИНСТИТУЦИОНАЛЬНОЙ ЛОВУШКИ?

Неэффективное институциональное равновесие (институциональная ловушка) сформировалось в Украине еще в 90-ых гг. ХХ в. В этих условиях революция 2014 г. и российская агрессия толкнули страну к состоянию почти системного краха. С существующей совокупностью элит и институтов, Украина вряд ли сможет реформировать себя сама. Для того чтобы выжить Украине нужны более тесные связи с западными институтами, чем те, которые предусмотрены Соглашением об Ассоциации с ЕС.

Ключевые слова: *институциональная ловушка, системная уязвимость, гибридный режим, Украина, ЕС, США.*

Although elections and two mass protests (of 2004 and 2014) brought about changes of people in power, the essence of the Ukrainian regime remains unchanged. Beginning in mid 90th Ukraine's Freedom House democratization index has always been within the range of one point (4.00 – 4.97, measured on the scale from 1 to 7), which corresponds to the «transitional government or hybrid regime» category. While Baltic and East European states democratized and most of Eurasian states digressed to authoritarianism, Ukraine appears to be at the crossroads again. Most Ukrainians, a large part of Ukraine's elite and many in the West want it to join the club of democracies. On the other side, however, are Ukrainian populists, rent-seekers and aggressive Putin's regime. Which side prevails, depends not only on Ukraine, but also on the will of external players.

One way to explain the Ukraine's impasse with reforms is to apply the concept of institutional trap [1]. Institutional trap is a set of inefficient yet stable institutions that none of the major players is interested to change. In case of Ukraine, informal deals, clientelism and corruption prevented elites from developing shared rules of the game. The precedence of «political expediency» over the formal decision-making procedures has led to the systematic violation of the rule of law. The decline of the rule of law contributed to the inefficient institutional equilibrium in which informal rules set the trend behavior for political players. Once established (in the mid 1990s) this set of institutions inhibited the growth of a full-fledged market, functional democracy, effective state and integrated nation. Incomplete reforms in each of these areas indicate that Ukraine faces a syndrome of problems that reinforce each other. In other words, Ukraine finds itself in systemic institutional trap [2].

Ukraine facing the systemic vulnerability.

It has been almost three years since the 2014 revolution brought another set of leaders into power. The new president and the parliament declared encompassing reform program, however, as the implementation is slowing down, the confidence in the new leadership is melting away [3]. What are the chances that Ukraine succeeds in moving forward and what are the potential threats?

It is well documented in the developmental literature that the change of the country's trajectory could occur in result of severe internal or external shock, when the ruling

group is facing the threat of losing power or even physical existence. The theory of «systemic vulnerability» posits that «developmental states will only emerge when political leaders [...] simultaneously staring down the barrels of three different guns: (1) the credible threat that any deterioration in the living standards of popular sectors could trigger unmanageable mass unrest; (2) the heightened need for foreign exchange and war materiel induced by national insecurity; and (3) the hard budget constraints imposed by a scarcity of easy revenue sources» [4, p. 328].

Unless political leaders are confronted by all three constraints at the same time, they could find a way to stay in power without major institutional upgrade. Though the theory was developed on the examples of South Korea, Taiwan and Singapore, it makes sense for the post-Soviet states as well.

Unfinished revolution, Russian aggression and deep economic decline indicate that since the end of 2013 Ukrainian leaders have been facing all three conditions of «systemic vulnerability». The experience of the three South Asian states, the Baltic States and especially Georgia suggests that under similar constraints elite should initiate the total reset of the system. Though Ukrainian leaders began an ambitious reform program the question, however, remains whether this attempt succeeds or repeats the fate of partial reforms.

Missing links: effective state and bureaucracy.

A closer look at the situation in Ukraine and the elite's inconsistent response to the «systemic vulnerability» suggest that the requisite condition of development – effective institutions are currently missing in Ukraine. Above all, these are modern state and rational, in Weber's sense bureaucracy. During the first decade of independence, Ukraine has evolved from a quasi-state into the quasi-modern state [5, pp. 80-111]. Predatory elite's behavior, most visible under Yanukovich, has not strengthened, but strangled the state. Of the six Weberian components of bureaucratic (rational) state organization [6, pp. 269-272], Ukraine has only three: written guidelines prescribing performance criteria, division of labor and authority, and hierarchical organization. Three others, however, those forming the basis – compliance with the formal rules, meritocracy and salary based compensation exist only on paper. A number of contradictory internal instructions make the

compliance with rules hardly possible. The principle of merit based selection is subverted by quota based clientelistic appointments [7]. Low wages in the civil service are compensated by the «corruption tax». By and large the high degree of personalization of Ukrainian politics makes it distant from the rational bureaucratic model. Thus «captured» by several clans and completely seized by the Yanukovich's «family» the state lost the monopoly on violence and control over the territory after the government had changed in February 2014.

From vulnerability to near systemic collapse.

The «systemic vulnerability» theory posits that the acute geopolitical and fiscal constraints urge the elite to create a «broad coalition». «Broad coalitions are best constructed and sustained with side payments to popular sectors; but the provision of such payments is rendered difficult by security threats, which siphon revenues into the defense sector, and by resource limitations, which impose hard budget constraints. Systemic vulnerability, thus makes the reconciliation of coalitional, geopolitical, and fiscal constraints a matter of ruling elites' political survival» [4, p. 331].

Sustaining broad coalition requires the ability to export high value-added goods, what is impossible without major institutional upgrade. But the upgrade requires viable institutional base and this is what Ukraine lacks the most. Under current constraints the very first challenge for politicians and society is to restore the administrative capacity of the state without increasing the president's powers. Numerous studies demonstrate that strong presidencies have a negative impact on economic growth and consequentially democratization. Though imperfect the dual executive system in Ukraine proves more conducive for political openness and competition than the single executive system.

Building a broad coalition in practical terms means opening access to economic and political activities. Establishing the rule of law, curbing corruption, creating a business-friendly environment as well as succeeding in forming fair electoral, public prosecution and court system had to be the first step towards bridging the gap between the government and society.

Under virtually non-existent state the reaction of Ukrainian elites to the challenges of «systemic vulnerability» was twofold. First,

they choose to rely on narrow instead of building a broad coalition, and second they sought to adapt to the external players. The result was deepening the gap between the government and society and the complete loss of initiative in countering Russian aggression. The absence of the viable institutional base as well as dependence on external players – two variables that currently set Ukraine apart from the above mentioned states.

Though the West is interested in solving «the Ukraine crisis», both the U.S. and the EU still look at Ukraine as the instrument in developing their new Russian policies. No wonder that after Ukrainian authorities put the question of Ukraine's survival onto the Western shoulders, the West (and Russia) demanded concessions in implementing Minsk II agreements (e.i. granting the Donbas a special status in Ukraine's constitution). Meanwhile the effectiveness of the parliament in developing the legislative base for reforms remains poor. This implies that the Ukrainian leaders are trying to solve the question of political survival by relying on the narrow coalition and by adapting to the external players.

This analysis offers three preliminary conclusions. First, the changes within the system, at least in the short run, do not necessarily lead to a change of the system. Even experiencing acute coalitional, fiscal and geopolitical constraints the Ukrainian leaders have chosen adapting the system to internal and external pressures (by announcing reforms) but not resetting it. The reset would be possible if Ukraine has had viable institutions in place (the state and bureaucracy) and the revolution produced a genuine renewal of the elite. Currently, both conditions are absent. Though the new government is the youngest of all existing governments and the parliament was renewed by more than 60 percent, the president and the prime-minister are both counting on the old practices (informal deals and clientelism) and people (oligarchs). Thus, to expect the current government to succeed in implementing reforms would be naïve. Some reforms, like creating a patrol police, have been successfully started, but it is doubtful it will be implemented in full. Partial reforms have never led to the change of the system. As the Soviet case inform, partial reforms contributed to the decline of the old system and to its subsequent collapse.

Second, from the broader perspective Ukraine is experiencing three processes:

unfinished revolution, a decline of the weak post-soviet state, and the birth of a political nation. The February 2014 revolution is unfinished as the new leadership is poorly delivering (justice is not restored, living conditions are worsening, war is not terminated). Revolution and the Russian aggression precipitated the decline of the quasi-modern state, but stimulated the national integrity and civic activism. While the state is sick, the society is well and alive [8, p. 27]. This leads to the third conclusion. With the existing set of leaders and institutions Ukraine cannot reform itself. The real driver of reforms is civil society, but the civic activist cannot implement reform. They can pressure for and control of the government who is in charge for implementing reforms. In order to start moving forward Ukraine needs stronger ties to the viable institutions and structures that under current constraints only the West can provide. But the West is facing a dilemma: it wants to freeze the conflict in the Donbas and it wants to see Ukraine becoming a normal country. Reaching the first goal may contradict with reaching the second one. Partial support, like partial reforms brings poor results. If the current approach to Ukraine prevails, the conflict will sooner or later be frozen and Ukraine be kept afloat, meaning it will be partially reformed, but still hybrid. Considering the weak support for authorities and the growing frustration from the ineffective reform strategy, the process, however, may slip out of control and Ukraine could embark into the new wave of chaos. In order to prevent this scenario and help the Ukrainian society to reset the system the US and the EU must anchor Ukraine to its institutions and structures.

What can the West do?

Having committed a series of mistakes in relations with Yanukovich and Putin, the West, particularly the EU should act in concert in several directions.

1. Adopting a new Eastern Partnership policy (EaP) with countries that have signed association agreements (AA) and deep and comprehensive free trade agreements (DCFTA) with the EU is an urgent task [9]. DCFTA is not enough as its implementation was already compromised under the Russian pressure. It is now critical to make no more delays with coming it into the effect.

Anchoring Ukraine to the European institutions can solve three problems: reform, democracy and peace. This is what the

Western strategic interest is in Ukraine. Currently, this view is not shared by all Western politicians and experts, but it is up to all those wishing Ukraine a success that this view prevails.

2. Considering the strained EU's situation, provoked by 'Brexit' and by the migration crisis, it would be naïve to expect any breakthrough in promising a membership perspective to the EaP countries. The former conditionality policy is no longer relevant as well, at least in relation to Ukraine, whereas the former is facing the existential threat from Russia. Now Ukraine alone is paying the highest prize for countering Russian aggression. If Ukraine fails, the cost of responding to both hard and soft security threats to the West will rise dramatically. Sure enough, the latest challenges within the EU will hardly bring the issue of the EU enlargement back on the table in the next decade. The EU should develop a clear policy toward Ukraine, focusing on curbing corruption, governance and institution building [10]. Building on the emerging allegiance to European values in Ukraine the EU must utilize its 'Transformative power' to help Ukraine becoming a modern state. The success in reforming Ukraine can attract Foreign Direct Investments (FDI) into the country [11]. The prospects of FDI inflow will press the Ukrainian authorities to reduce the state interference into the businesses of enterprises and make the property rights more secure. This, in turn, as A. Aslund argues, could allow Ukraine to become a part of the European supply chain and stimulate economic growth [12, p. 50].

3. To recognize that the real driving force of reform in Ukraine is not the government, but the public. Hence, there is a need for a comprehensive support of Ukrainian civil society in developing, promoting and implementing reforms. The formula should be: «Double support for the grassroots initiatives and a double pressure on the Ukrainian authorities in the process of reforms implementation».

4. The US, the IMF and the EU must develop a rescue plan for Ukraine. This plan should abandon «more for more» approach and prioritize long term institution building over short term financial stabilization. Though Ukraine has restructured its debt to private owners by \$15 bln. for the next four years, it needs a long term grants program instead of new loans.

5. To abandon the instrumental view of Ukraine in relations with Russia. The Russian aggression in Ukraine has been typically called «the Ukraine crisis», though without direct interference and covert Russian operations in Eastern Ukraine the war on the Ukraine's east would be hardly possible. Since the beginning of the war, the West has worked on «freezing» it by being primarily concerned with the Russia's reaction. The Western part of the signatories of the Budapest memorandum (The U.S., U.K. and France) failed to provide any evident 'security assurances' to Ukraine and failed to recognize Russia a party to the conflict in Ukraine. The result was traumatic to Ukraine as it had to accept asymmetric concessions to Russia.

6. Considering the possible reproaching of the Trump's administration with Russia the West (primarily the EU) has to uphold a uniform position in maintaining Russia's sanctions and to prevent the split in this question. Easing the sanctions may ignite a new wave of Putin's adventurism that will ultimately destroy the postwar international order.

7. Finally, the US – Ukraine strategic partnership should be filled with appropriate substance. Most part of the US congress and many experts [13] are calling for new bilateral engagement with Ukraine. This engagement should not be based on promoting any particular leader/s or party, but on advancing good solutions to Ukraine's problems. In this regard the US (and EU) should engage with Ukrainian civil society to make its voice supported and heard by Ukrainian authorities.

Institutional «binding» of Ukraine to the West will fill the institutional vacuum, enhance the normative power of the constitution and thus, strengthen the administrative capacity of Ukrainian state. Elites survival in this case will be insured by the fulfillment of agreements and by compliance with the rules of the democratic political game. The rule of law will be, thus, strengthened what facilitates the transition from state of hybridity to the path of sustainable development. If the West, however, continues to consider Ukraine as a tool in containing Russia, the conflict in the East will sooner or later be frozen, Ukraine will be kept «alive», but remain in under modernized state. The only source of change in this case will be the society again.

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