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DELEGATIVE DEMOCRACY: CONCEPTS AND UKRAINIAN REALITIES

This paper is devoted to clarifying the essence of the political regime that emerged in Ukraine as a result of the 2019 presidential and parliamentary elections. The author concludes that the current political regime in Ukraine is a classic example of delegative democracy, as it emerged as a result free, competitive and transparent elections, but after the election all state power was concentrated in the hands of the president, with significant violations of generally accepted standards of democratic of governance and norms and procedures of Ukrainian legislation. He emphasizes that the value of the concept of delegative democracy lies in the fact that it illustrates one of the contradictions in the democratic development of many countries that lack democratic traditions – the contradiction between the electoral legitimacy of government and generally accepted standards of democratic governance. Delegative democracies are by its nature the populist regimes, the emergence of which is caused by the belief of citizens in improving their lives under the leadership of a charismatic person. It is noted that delegative regime as a result of growing public dissatisfaction with both its domestic and foreign policies are democracy has three development trends: 1) comparable endurance; 2) the transformation to autocracy; 3) the removal of the president from power as a result of subsequent elections or mass protests. The author believes that all these alternatives can theoretically be inherent in the current regime of delegative democracy in

Ukraine, but the endurance is the least likely of them. The transformation of delegative democracy into autocracy or the elimination of the Zelensky regime as a result of growing public dissatisfaction with both its domestic and foreign policies are more likely.

Key words: *democracy, delegative democracy, defective democracies, balance of power, system of checks and balances, Ukraine.*

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ДЕЛЕГАТИВНА ДЕМОКРАТІЯ: КОНЦЕПЦІЇ ТА УКРАЇНСЬКІ РЕАЛІЇ

З'ясовується сутність політичного режиму, який виник в Україні внаслідок президентських та парламентських виборів 2019 року. Робиться висновок, що сучасний політичний режим в Україні є класичним прикладом делегативної демократії, оскільки, він виник в результаті вільних, конкурентних та прозорих виборів, проте після виборів уся державна влада була сконцентрована в руках президента, що відбулося з суттєвими порушеннями як загально визнаних стандартів демократичного врядування, так і норм та процедур українського законодавства. Наголошується, що цінність концепції делегативної демократії полягає в тому, що ця концепція унаочнює одну із суперечностей демократичного розвитку багатьох країн, які позбавлені демократичних традицій, – суперечність між електоральною легітимацією урядової влади та загально визнаними стандартами демократичного врядування. За своєю природою делегативні демократії є популістськими режимами, появу яких спричиняє віра громадян в покращання свого життя за керівництва харизматичного лідера. Відмічається, що делегативні демократії мають три тенденції розвитку: 1) порівнянну витривалість; 2) трансформацію до автократії; 3) усунення президента від влади внаслідок наступних виборів або масових протестних акцій. Стверджується, що всі ці альтернативи теоретично можуть бути притаманні сучасному режиму делегативної демократії в Україні, але тривалість є найменш імовірною з них. Більш імовірними є трансформація делегативної демократії в автократію або усунення режиму Зеленського внаслідок зростання суспільного незадоволення як його внутрішньою політикою, так і зовнішньою.

Ключові слова: демократія, делегативна демократія, дефектні демократії, баланс влади, система стримувань та противаги, Україна.

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ДЕЛЕГАТИВНАЯ ДЕМОКРАТИЯ: КОНЦЕПЦИИ И УКРАИНСКИЕ РЕАЛИИ

Выясняется сущность политического режима, который возник в Украине вследствие президентских и парламентских выборов 2019 года. Делается вывод, что современный политический режим в Украине является классическим примером делегативной демократии, поскольку он возник в результате свободных, конкурентных и прозрачных выборов, однако после выборов вся государственная власть была сконцентрирована в руках президента, что произошло с существенными нарушениями как общепризнанных стандартов демократического правления, так и норм и процедур украинского законодательства. Отмечается, что ценность концепции делегативной демократии заключается в том, что эта концепция раскрывает одно из противоречий демократического развития многих стран,

лишенных демократических традиций, – противоречие между электоральной легитимацией правительственной власти и общепризнанными стандартами демократического правления. По своей природе делегативные демократии являются популистскими режимами, появление которых вызывает вера граждан в улучшение своей жизни при руководстве харизматического лидера. Отмечается, что делегативные демократии имеют три тенденции развития: 1) сравнительную долговечность; 2) трансформацию к автократии; 3) устранение демократии в Украине, но долговечность является наименее вероятной из них. Более президента от власти в результате следующих выборов или массовых протестных акций. Утверждается, что все эти альтернативы теоретически могут быть присущи современному режиму делегативной вероятными являются трансформация делегативной демократии в автократию или устранение режима Зеленского вследствие роста общественного недовольства как его внутренней политикой, так и внешней.

Ключевые слова: демократия, делегативная демократия, дефектные демократии, баланс власти, система сдержек та противовесов, Украина.

The leading trend in the political development of the current world is the transition to democracy, the minimum criterion of which is the formation of governmental authority through free, competitive and general elections. All countries with such a criteria are defined as electoral democracies. In 1974, there were 39 electoral democracies in the world (27.5% of the total) (Diamond 1996: 26, tab. 1). In early 2018, their number increased to 116 (59.5%) (Freedom in the World 2018: 1228). However, the spread of electoral democracies was not accompanied by the same rate of increase in the number of liberal ones. The latter are characterized by the complete or almost complete realization of all fundamental civil liberties and political rights and their reliable protection. A large number of new democracies have significant deviations from the standards of democratic governance inherent in the old liberal democracies of the West. Various forms of deviations have been considered in «Democracies with Adjectives» by David Collier and Steven Levitsky (Collier & Levitsky 1997: 437-442).

One form of deviation is delegative democracy. The concept of delegative democracy was proposed by Argentine political scientist Guillermo O'Donnell (O'Donnell 1994) and then refined by German political scientists Wolfgang Merkel, Aurel Croissant, Hans-Jurgen Pugle and Peter Thiery. The concept of delegative democracy is relevant for analyzing the realities of Ukraine's current political development. **The aim** of this paper is to find out how far the concept of delegative democracy can be applied to the political regime in Ukraine that emerged from the 2019 presidential elections.

O'Donnell's concept of delegative democracy. The notion of delegative democracy was introduced by O'Donnell's to

characterize the functioning of electoral regimes in a number of Latin American countries with a presidential form of government. O'Donnell, defining the essence of delegative democracy, points out: «Delegative democracies are grounded on one basic premise: he who wins a presidential election is enabled to govern the country as he sees fit, and to the extent that existing power relations allow, for the term to which he has been elected» (O'Donnell 1994: 61). In a delegative democracy, «... the President is the embodiment of the nation and the main custodian of the national interest, which it is incumbent upon him to define» (O'Donnell 1994: 61).

O'Donnell opposes delegative democracies and representative ones. Both of these types involve delegation and representation, but power is dispersed between different political institutions (parliament, government, courts, parties, pressure groups) in representative democracy, whereas it is concentrated in the presidential institute in delegative one. O'Donnell discloses the shortcomings of delegative democracies:

- «... the president and his most trusted advisors are the alpha and the omega of politics». (O'Donnell 1994: 60);

- «... the president isolates himself from most political institutions and organized interests, and bears sole responsibility for the successes and failures of 'his' policies» (O'Donnell 1994: 61).

- «The place of well-functioning institutions is taken by other nonformalized but strongly operative practices – clientelism, patrimonialism, and corruption» (O'Donnell 1994: 59);

- «...[the] resistance – be it from congress, political parties, interest groups, or crowds in the streets – has to be ignored» (O'Donnell 1994: 61).

However, the main drawback of delegative democracies is that «their institutional weaknesses and erratic patterns of policy making, are more prone to interruption and breakdown than representative democracies» (O'Donnell 1994: 67).

Delegative democracy in the concept of defective democracies. The notion of delegative democracy has been further developed in the concept of defective democracies. This concept was represented in Merkel and Croissant's article «Formal Institutions and Informal Rules in Defective Democracies», where the authors defined defective democracies as «systems of governance characterized by the existence of a meaningful and effective electoral regime that governs access to power (free, secret, equal and general elections), but they have significant functional limitations on institutions that provide political participation and protection of basic political rights and civil liberties, as well as ineffective horizontal control of democratically legitimate authorities» (Merkel & Croissant 2000: 6fff). Merkel and Croissant initially identified three types of defective democracies: exclusive democracy (Exklusive Demokratie), democracy with enclaves (Demokratie mit Enklaven) and illiberal democracy (Illiberale Demokratie). But soon, Croissant and Teri in the article «Defective and Other Democracies» divided illiberal democracy into two subtypes: antiliberal and delegative (Croissant und Thiery 2000/2001: 28-29). Finally, Merkel, Croissant and Puhle distinguished delegative democracy into a separate type of delegative democracies in their papers of the mid-2000s. (Merkel 2004: 50; Croissant 2004: 165, Puhle 2005: 12-13).

Although this term was borrowed from O'Donnell, it has taken a different connotation within the concept of defective democracies. Croissant and Terry note: «While O'Donnell's notion of 'delegation' characterizes the relationship between voters and the President ('vertical delegation'), our use of this term is directed at relations between three actors: government, parliament, and the judiciary ('horizontal delegation')» (Croissant und Thiery 2000/2001: 28fff). Merkel believes that the main drawback of delegative democracies is: «The checks and balances that functioning democracies need in order to maintain a balanced political representation are undermined» (Merkel 2004: 50). The authors of the concept of defective democracies consider the main disadvantages of delegative democracy to be the following:

- «Governments, usually led by charismatic presidents, circumvent parliament, influence the judiciary, damage the principle of legality, undermine checks and balances, and shift the equilibrium of the balance of power unilaterally in favour of the (presidential) executive» (Merkel 2004: 50);

- «Governments circumvent the parliament, have an extra constitutional impact on the judiciary, shift the balance of power in their favor and equip themselves with one of the people unauthorized power» (Croissant und Thiery 2000/2001: 28);

- «In most cases the executive dominates the legislative power and/or governs by decree. In addition, usually the courts of law are not independent and lack effective power» (Puhle 2005: 12).

Extrapolation of the concept of delegative democracy to the current situation in Ukraine. The current political regime in Ukraine is to be regarded as a classic case of delegative democracy. This regime can be considered a democracy, as it arose from the 2009 presidential elections, which were recognized by the Ukrainian and international public as free and competitive. According to the election results, comedian and showman Volodymyr Zelensky was elected President of Ukraine. He received 73.22% of the votes in the second round (in the first round – 30.24 %). However, post-election democracy in Ukraine should qualify as delegative, as all state power under Zelensky presidency was very quickly concentrated in the hands of the newly elected president. At the same time, both generally accepted standards of democratic governance and norms and procedures of Ukrainian legislation were significantly violated, as evidenced by the following facts.

First, from the very beginning of his presidency, Zelensky began appointing persons to important government positions with significant violations of the law. Thus, on May 21, 2019, he appointed the Chief of the General Staff of the Armed Forces of Ukraine, which took place without the submission of the Minister of Defense, as required by paragraph 9 «Regulations on the General Staff of the Armed Forces of Ukraine». The next day, the incumbent chairman of the Servant of the People party was appointed deputy head of the Security Service of Ukraine (SBU), while Article 6 of the Law on the Security Service of Ukraine prohibits SBU employees from membership in political parties. In the first hundred days of Zelensky presidency alone, 42 such violations were recorded. Moreover, the

main motive for the appointments was not professional qualities and work experience, but friendly relations with the President.

Second, Zelensky concentrated in his hands both the executive and the legislature. In his inaugural address, he announced the dissolution of parliament and the holding of extraordinary parliamentary elections. He explained this decision by the absence of a parliamentary majority in the Verkhovna Rada, although there were no signs of parliamentary incapacity. At the same time, he urged the government to resign, although this is the prerogative of Parliament, in accordance with the Constitution of Ukraine. The dispute between the President and the Parliament was referred to the Constitutional Court of Ukraine, which made a very legally dubious decision - this conflict must be resolved by the people through early parliamentary elections, as it is impossible to reliably prove both that there is no parliamentary majority in the Verkhovna Rada and that it exists. As a result of extraordinary parliamentary elections, the overwhelming majority of parliamentary seats (254 out of 424) were won by the presidential the Servant of the People party. The Servant of the People party, having won an absolute majority of seats in parliament, seized the entire leadership of the Verkhovna Rada – the positions of its chairman and first deputy chairman, as well as the heads of 19 of the 23 parliamentary committees. The one-party majority formed a new government. Andreas Umland, reflecting on the situation in Ukraine after the 2019 parliamentary elections, notes: «The result of the Ukrainian election was the concentration of all executive and mostly legislative power in the hands of one party» (Umland 2019). However, the Servant of the People party, which was formed on the eve of the 2019 presidential election, had neither a clear organizational structure, nor ideological principles, nor a stable circle of supporters. The amorphous nature of the Servant of the People party meant that every decision to form a government was made by the President. Bankova forced its majority to vote in favor of the bills that many parliamentarians never saw (How Zelensky concentrates power 2019).

Third, Zelensky, concentrating the executive and the legislature in his hands, prematurely dissolved the Central Election Commission (CEC) with the help of a pocket parliamentary majority. Despite the fact that the CEC was established on October 6, 2018 by the previous Verkhovna Rada (according to the law «On the Central Election Commission», the term of office of its members is 7 years) and it held the

presidential and parliamentary elections of 2019, which according to domestic and foreign observers and experts in the field of electoral law were the most honest and transparent in the history of Ukrainian elections, the Verkhovna Rada adopted a resolution on the initiative of the President on early termination of the CEC on September 13, 2019. On October 4, a new CEC was approved, with the nominee of the Servant of the People party as its chairman and secretary, as well as 12 members out of 17.

Fourth, the independence of the judiciary was threatened under Zelensky's presidency. On August 29, 2019, the President submitted to the Verkhovna Rada as an urgent draft law «On Amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' and Some Laws of Ukraine on the Functioning of Judicial Governance», which provided for the reduction of the Supreme Court from 200 to 100 judges, changes in the rules of selection of members of the High Qualification Commission of Judges of Ukraine and a complete reset of this agency. Despite serious remarks on this bill by the President of the Supreme Court of Ukraine, leaders of the Council of Europe and the EU Delegation to Ukraine, lack of opinion of the Venice Commission, resistance of 4 factions of the Verkhovna Rada, it was adopted on October 16 by 236 votes. Secretary General of the Council of Europe Marija Pejčinović Burić, characterizing the shortcomings of this law, stated that it «puts forward changes that could have significant implications for the independence of the judicial system. In particular, it affects the status and competencies of judges, as well as relating procedures» (Council of Europe criticizes judicial reform 2019).

Fifth, the threat to press freedom has also been restored under Zelensky's presidency. On January 2020, Ukrainian Minister of Culture Volodymyr Borodyansky submitted to parliament a draft law on disinformation, which was supported by President Zelensky. The bill wants to introduce civil and criminal liability for offenders (with punishments ranging from very high fines to imprisonment of up to 7 years) and the creation of a new bodies: an «information ombudsman» who would be responsible for both checking and removing fake news and «Association of professional journalists of Ukraine», whose will be eligible for state protection services. This initiative has already raised numerous criticisms from Ukrainian and European journalists and citizens, who immediately accused the government of wanting to violate the right to

freedom of speech and freedom of the press. Media experts fear real interference by governmental bodies in journalistic activities, with a consequent restriction of freedom of expression. The National Union of Journalists of Ukraine warns that the law would legalize state interference in the journalistic profession and limits the rights of media workers. The UN monitoring mission was also outraged by the Ukrainian authorities, as the new bill does not meet the international standards on human rights in the slightest and is a threat that could lead to self-censorship and, in the most serious cases, to persecution of journalists «for doing their job» (Bettiol 2020).

Six, the repressions against political opponents resumed during Zelensky's presidency. Thirteen criminal cases against former Ukrainian President Petro Poroshenko have been opened on dubious charges. In September 2019, the State Bureau of Investigation (SBI) opened a criminal investigation against former Chairman of the Verkhovna Rada Andriy Parubiy for allegedly «interfering in the election process». In October 2019, Serhiy Pashinsky, a former deputy of the Verkhovna Rada and one of the leaders of the Revolution of Dignity, was arrested in a twice-closed criminal case. In February 2020, the State Bureau of Investigation raised suspicions of «threats to the President» to Sofia Fedina, a Member of Parliament from the European Solidarity party, and public figure Marusya Zverobiy. In April 2020, Tatiana Chornovil, a journalist and public figure, a former member of parliament, was placed under house arrest on a SBI for allegedly participating in the arson of the Party of Regions office in February 2014. On May 19, the Office of the Prosecutor General opened another criminal case against Poroshenko under the article «abuse of power or official position». The next day, Zelensky told that «Poroshenko sentence is a matter of time». These events provoked a negative reaction from the Ukrainian public and authoritative figures of the European Union, such as Donald Tusk (Makszimov 2019), Carl Bildt (Bildt 2019). On April 24, the World Congress of Ukrainians issued a statement stating: «The Ukrainian World Congress (UWC) and global Ukrainian diaspora share the concerns of the civil society due to the indications of pressure on the independence of the judicial and law enforcement authorities, attempts of persecution of political opponents and convulsion of events of the Revolution of Dignity. The UWC once again emphasizes the importance of upholding the rule of law, the

unacceptability of political justice and pressure on the judicial authorities» (Ukrainian World Congress, 2020). Adrian Karatnytsky, a senior member of the Atlantic Council, describing these events, notes: «For the first time since the last days of the Yanukovich era, Ukraine has taken a step towards tyranny» (Karatnytsky 2020).

Conclusion. The value of the concept of delegative democracy is that it illustrates one of the contradictions of democratic development that is inherent in many countries, which are devoid of democratic traditions – the contradiction between the electoral legitimacy of government and generally accepted standards of democratic governance. Delegative democracies are by its nature the populist regimes, the emergence of which is caused by the belief of citizens in improving their lives under the leadership of a charismatic person. Delegative democracies have three development trends.

The first is comparable endurance, as in Latin America, which is mostly linked to the international context (O'Donnell 1994: 67).

The second is the transformation to autocracy. Such regimes can be considered democracies as long as presidential power is based on the results of free, competitive and fair elections. However, the concentration of power entails the temptation of administrative influence in the next elections, which therefore make them not free, not competitive and not fair. This evolution was demonstrated by Russia, which was considered an electoral democracy before the 2004 presidential election (Freedom in the World 2005: 519-524).

The third is the removal of the president from power as a result of subsequent elections or mass protests. This happens when the populist government is unable to realize society's hopes for a better life, which leads to the loss of the president's charisma, delegitimization and the collapse of the regime. Both variants showed Georgia in 2003 (Rose Revolution) and 2013 (presidential elections).

All these alternatives can theoretically be inherent in the current regime of delegative democracy in Ukraine. The endurance is the least likely of these. This causes the unreality of Zelensky's election promises, the unprofessionalism of his team, the heterogeneity and internal contradictions of his socio-political support. The transformation of delegative democracy into autocracy is more likely. This is clearly evidenced by the recent negative trends, especially political repression against the opposition. The creation of a

controlled CEC raises strong doubts that the next election will be free, competitive and fair. It is no less likely that Zelensky's regime will be overthrown by growing public dissatisfaction with both his domestic and foreign policies. During the year of Zelensky's presidency, many mass protests have already taken place, among which were especially powerful: «No capitulation» on 2019, November 21 ('No capitulation' 2019) and «Stop revenge» on 2020, May 24 (Protest rally 'Stop revanche' against Zelensky's politics 2020).

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