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POWER STRUCTURES AND NORMATIVE ENVIRONMENT: LIMITS TO THE RULE OF LAW AND THE EU'S NORMATIVE POWER IN UKRAINE

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ABSTRACT

This paper explores the nexus between efforts of the European Union in promotion of the rule of law in Ukraine and the domestic factors limiting the successful introduction and consolidation of this democratic norm. By moving beyond legalistic understanding of the rule of law and highlighting the political and cultural nature of reform, it examines the domestic root causes and outlines the power structures and existing norms as understudied, yet crucial building stones for the successful implementation of the rule of law. Firstly, it argues that incomplete consolidation of democratic institutions resulting in predominance of power vertical and alternative power structures of oligarchic clans undermine the authority of the rule of law. Secondly, it highlights the role of normative friction between the rule of law and domestic normative environment in Ukraine, influenced by the Soviet legacy and neo-patrimonial values. This has broad implications not only for understanding the limits of progress in the rule of law in Ukraine, but also of the efforts of external actors, such as the EU, to advance the rule-of law reform in this region.

Keywords: Rule of law; Ukraine; power structures; norms; European Union

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INTRODUCTION

For almost two decades, the EU has endeavoured to support the development of core democratic norms in Ukraine. The history and the scope of relations with the EU, from both political and economic perspective, as well as the foreign orientation of Ukraine towards Europe have provided the EU with strategic leverage over the domestic political development in Ukraine (Kuzio, 2001). The scope for the EU's normative pressure has been increasing – the EU has incorporated democratic norms, including the rule of law, among the main principles of the European Neighbourhood Policy (2004), the EU-Ukraine Action Plan (2005), the Visa Liberalisation Action Plan (2007) and the Association Agreement (2014). It has cooperated with other international institutions (especially the Council of Europe, OSCE, USAID) in promoting the rule of law via diplomatic, financial or political means.

Nevertheless, it has been only partly able to trigger actual compliance of Ukrainian authorities with the rule of law. The protracted democratic transition led to mixed results – while many key rule-of-law institutions were established and laws adopted, the effective implementation has been lagging behind, leaving malign deficiencies in numerous domains of Ukrainian state, society and economy. This paper seeks to understand this divide by looking at the domestic structural factors influencing the effective implementation of the rule of law. It adopts the *end-based* definition of the rule of law that shifts beyond legalistic and institution-based analysis focused on attributes of relevant rule-of-law institutions (such as effective judiciary, well-trained lawyers, non-corrupt police). This move is underpinned by the realisation that the institution-based understanding of the rule of law limits the conceptual space for treating it as a fundamentally *cultural* or *political* problem (Kleinfeld, 2012). The end-based definition concentrates on the ends the rule of law brings to the society, namely the government bound by and ruled by law, equality before the law, establishment of law and order, efficient and predictable application of justice, and protection of human rights (Kleinfeld, 2005). This allows adopting a more comprehensive perspective on the development of the rule of law, integrating the power structures and socio-cultural realities as essential building blocks of effective rule of law.

The paper is informed mainly by the literature on norm diffusion, rule of law promotion and Ukraine's democratisation (Burlyuk, 2015; Checkel, 1997, 1999; Kleinfeld 2005, 2012; Natorski, 2013). It relies on data from global indexes,

national public opinion polls, surveys and includes interviews with experts on Ukrainian democratic reforms conducted by the author in Kiev during August 2016.

PROTRACTED DEMOCRATIC TRANSITION IN UKRAINE: SETTING THE SCENE

Among the countries of the Eastern Partnership (EaP), Ukraine has been considered the test case for the success of EU's democracy promotion beyond its borders. The European integration has been among Ukraine's top foreign policy priorities consistently since the late 1990s, despite changes in the political leadership in the country. The EU was perceived not only a source of Ukraine's modernisation and economic prosperity, but it was equally a natural 'civilizational' choice for the emerging post-soviet country, exemplified by the narrative of 'return to Europe' based on extensive mutual historical and cultural relations. From the EaP countries, Ukraine was the first to sign the Partnership and Cooperation Agreement (PCA) with the EU in 1994. In 1998, Ukraine expressed the intention to become a member of the EU (Balfour, 2011), started negotiations on Association Agreement (AA) with the EU in 2007 and the visa liberalisation dialogue in 2008. Especially during Viktor Yushchenko's presidency after the Orange revolution (2005–2010), Ukraine has achieved significant progress in the democratic performance, showing comparatively better results than other former soviet countries (Freedom House, 2016).

However, initial hopes for Ukraine as a regional frontrunner have been undermined by two-fold deterioration of democracy. Firstly, under president Kuchma (1994–2004), who consolidated his power excessively in the last years of his rule. High expectations of the subsequent Orange revolution, which brought the end of his authoritarian rule and a turn back to democracy were, however, thwarted after Viktor Yanukovich got the presidential power in 2010 and resumed authoritarian tendencies again. Thus, despite positive signs of developments and two democratic openings (2004, 2014), Ukraine's European ambitions have not been translated into the clear-cut and sustainable progress towards democracy (Popescu, 2015; Wolczuk, 2004; Wolczuk, 2009). The integration based on '*declarative Europeanisation*' has remained limited to foreign policy statements, and did not bring concrete structural changes into domestic politics (Wolczuk, 2004). Even reform efforts reinvigorated after the Revolution of Dignity have

received criticism for being limited to the legal changes and neglecting the effective implementation that would lead to real transformation.

The current state of affairs in Ukraine indeed does not show fundamental progress in the rule of law. Various international global rankings coincidentally observe low standards of compliance with the rule of law practices. Ukraine occupied 78th place globally in the Rule of Law index in 2016, displaying weak results especially in the constraints on government powers, absence of corruption, regulatory enforcement, and civil and criminal justice (WJP, 2016). According to the Nations in Transit, the state of judicial framework and independence has constantly deteriorated from 2006 and the corruption has predominated on the highest political level (Shusko and Prystayko, 2015). In 2015, Transparency International ranked Ukraine on 130th place among 168 countries evaluated in Corruption perception index (TI, 2015). Deficiencies in the rule of law are reported also on the national level by Ukrainian citizens who display extremely low levels of trust towards public institutions, especially to the law enforcement institutions. According to the opinion poll from 2015, 71% of Ukrainians do not trust the judiciary, and 81% do not trust the courts (CPLR, 2015). The majority of Ukrainians identify the following negative phenomena in the courts: corruption (94%), judges dependent on politicians (80.5%) and oligarchs (80%), adoption of imposed judgements (77%), mutual cover-up in the justice system (73%), low level of morality in the majority of judges (66%), lack of clarity and transparency of judicial processes for the ordinary citizens (52%), and complicated nature of judicial system (50.5%) (*Ibid.*)

Improving the rule of law has been one of the main demands of the Revolution of Dignity and many Ukrainians consider corruption the biggest threat to national security (Bychenko, 2015). Still, it seems to be one of the most resistant among the democratic norms in Ukraine. The changes are under way formally (for example, a complex anti-corruption package was adopted in 2015, constitutional amendment regarding the judiciary in 2016), the actual compliance, however, remains poor. Burlyuk (2015) identifies two paradoxes in the rule of law in Ukraine: *the façade arrangement paradox* indicating the shallowness of the reform despite existing constitutional and legal provisions and *the Brownian motion paradox*, describing the numerous steps taken for the reform, without much substantial progress. While the laws and institutions are a necessary condition, they are not sufficient for the actual compliance with the rule of law in Ukraine.

PARADIGM SHIFT IN STUDYING THE RULE OF LAW IN UKRAINE: THEORETICAL PERSPECTIVE

The rule of law in Ukraine has been trapped between two gaps: on the one hand, the gap between efforts of external actors to promote the rule of law and lack of results on the ground; on the other, the divide between formal legal and institutional compliance and lack of effective implementation. In order to explain these phenomena, the sociological and neo-institutionalist approaches underline that it is power and culture, not (only) laws and institutions, that form the roots of a state guided by the principle of the rule of law (Burlyuk, 2015; Kleinfeld, 2012; Natorski, 2013). This bears two implications for the understanding of the development of the rule of law.

Firstly, the underlying premise of the rule of law is essentially about limiting the power of the state, while it is the government itself who must take the necessary measures (Kleinfeld, 2012). It therefore challenges the power of the powerful and touches upon the established power structures within the state and business. According to one interviewee, substituting the rule of man by the rule of law means the '*need to change the entire power structure of the country*'¹, which inevitably meets opposition and obstruction from political and economic elites. Carothers (1998) claims that the main obstacles to the rule of law are not technical or financial, but rather political and human, pointing to the fundamental problem of leaders who refuse to be ruled by the law. Similarly, Kleinfeld (2012) asserts that the failing institutions are not the cause of rule-of-law deficiencies, but rather symptoms of a power structure that does not support the rule of law.

Secondly, the rule of law is largely a question of norms and culture, which determine the relation between the state and the society and between citizens themselves. It is argued that '*transformation and systemic change is something that is only to a limited extent a matter of law-making*' (Elster et al, 1998: 18). By contrast, it is cultural patterns, identities, legacies, and practices entrenched in the '*habits of the hearts*' and '*frames of mind*' of masses and elites that need to be changed (*ibid.*). Mueller (2010) suggests that the tension between practices and institutions is a starting point to understand the transformation of post-communist countries. Every country has specific socio-cultural and state-society relations determining

1 Interview with an UNDP official, Kyiv, 22 August 2016.

the 'adoption environment' or 'domestic structure' for the rule of law (Checkel 1997; 1999). Börzel and Risse (2000) therefore assert that in order to understand the compliance with a norm, it is necessary to understand the potential normative or cognitive misfit between European and domestic norms in a third country.

Besides the scholarship on the norm promotion and rule of law promotion, interviewed practitioners from the field also mention the centrality of power and norms in understanding the rule of law in Ukraine. The next section therefore proposes a framework to study these two factors and briefly presents examples of domestic obstacles to the implementation of the rule of law in Ukraine at the level of power structures and social norms.

POWER STRUCTURES: POWER VERTICAL THROUGH INSUFFICIENTLY CONSOLIDATED INSTITUTIONS

The rule of law might be effectively implemented only when 'the powerful' accept limits on their power and submit to equality under the law (Kleinfeld, 2012: 93). As highlighted by Miklos (2016), current reforms in Ukraine are '*not a technical, but rather a political problem*' requiring the leadership, ownership and effective communication of the government. The determination of the political leaders can make a difference, as demonstrated by different patterns and outcomes of anti-corruption efforts in Georgia and Ukraine (Kupatadze, 2011). However, the political will needs to be complemented by studying deeper, long-lasting power structures that determine leaders' behaviour and attitude to reforms. Therefore, the research of formal but also informal institutions is necessary to find out where and how the power structures are entrenched.

With regards to formal political institutions, the crucial precondition for the effective rule of law is the consolidation of political institutions in both vertical and horizontal dimension so that the rules and laws can operate; and an effective system of checks and balances ensuring accountability of the state institutions. While the vertical consolidation enables all decisions to take place under accepted rules, horizontal consolidation guarantees that every decision is made within specific domains of action, without interference from other domains (Elster et al., 1998). In the first place, the acceptance of the rules of the game in the vertical dimension suggests that the decision-makers and political stakeholders are capable of self-control and agree to perform their duties according to rules

defining their position (for instance, according to the scope of rights and obligations of the president established by the constitution). Secondly, it means that in case of non-compliance, the actors are prepared to accept the rules of a higher authority such as the courts (*Ibid*). The horizontal dimension as a second criterion for the consolidated democratic institutions requires the separation of power into institutional spheres capable of performing their functions, independent of each other and free from the dictate from agents from other spheres (*Ibid*). In a similar vein, Kleinfeld (2012) highlights the need of structures of accountability that serve to check and balance different power sources both horizontally and vertically. While the horizontal limits relate to the division of power among state institutions, her understanding of vertical dimension relates to the question how power is distributed between the state and the society, and what checks and balances operate outside the state power (citizens, media, or culture). Given these preconditions, three criteria are established to evaluate the 'adoption environment' for the rule of law in Ukraine: (1) Division of power and structure of checks and balances, (2) Acceptance of rules by state institutions (3) Vertical checks and balances.²

Blended constitutional powers

To ensure the division of powers in the democratic state, the judiciary and legislature should be independent and able to exercise effective checks on the government. In this light, the incomplete division of power and the strong presidency in Ukraine³ seem to be inherently problematic for the establishment of the democratic norms, including the rule of law (D'Anieri, 2006). It affects not only the independence of institutional domains, but also distorts the rules according to which they operate. Vast powers of the president in the presidential

- 2 These dimensions are covered complexly by the Rule of Law index by the World Justice Project. In factor 'Constrains on Government powers', it evaluates the extent that government powers are (1) limited by the legislature, (2) limited by the judiciary, (3) limited by independent auditing and review, (4) sanctioned for misconduct of its officials, (5) subjected to non-governmental checks and whether (6) transition of power is subject to the law (WJP, 2016a).
- 3 Even though the academic literature does not make a definitive statement about the benefits of presidential or parliamentary system for democracy (Averchuk, 2016), Aslund (2009) argues that all post-communist countries that kept the presidential system actually turned into authoritarian regimes (with the exception of Georgia) (see also Myerson, Roland & Mylovanov, 2016).

system, which has been in place for the most of the time since Ukraine's independence, have been misused during the last years of Kuchma's presidency (1994–2004) as well as during Yanukovich's rule (2010–2013). Rising authoritarian rule resulted in restrictions of institutional checks and balances, especially the judiciary and law-enforcement agencies necessary for safeguarding fundamental freedoms and the rule of law. Additionally, even though Ukraine currently has a mixed parliamentary-presidential system, the confounding of powers between the Prime Minister and the President creates many opportunities of political infighting and causes unclear accountability (Myerson et al, 2016). This was exemplary during the presidency of Viktor Yushchenko in the Orange period, whose rule did not bring expected results due to power struggles with Prime Minister Yulia Tymoshenko. Therefore, unless the division between competences of the president and the government within the executive branch is clear, the system is prone to intra-executive conflict and competition, which hampers the potential of reform processes.

The rule of law vs. rule of patrons

The second problem of Ukrainian politics, which poses obstacles to consolidation of the rule of law, is the so-called 'oligarchisation of power'. This designates conditions where instead of predictable political agenda, the domestic political life is *de facto* dominated by oligarchs and their interests. The powerful financial-political groups exercise strong influence on politics and economy in the country through their links with the business, political parties that they own, judges, or media holdings. This enables them to advocate for private interests and to become an integral part of the power system (Minakov, 2016). In a situation of close interconnection of politics with the business, oligarchs create an alternative system of accountability for the relevant actors (be it government and legislature officials, judges, police or military service), meaning that the constitutional rules (of law) are bypassed and substituted by the rule of the 'patrons'. So far, the oligarchic pacts have strongly undermined Ukraine's ability to deliver the genuine reforms by creating informal arrangements distorting the work of the formal institutions and by monopolistic appropriation of public, political, and economic functions. The 'oligarchic neo-patrimonial system' (Fisun, 2012) has broad economic roots and consequences. Nurtured by the institutional setup after the

fall of communism, it has allowed the former Soviet-era elite to extract considerable rent-seeking benefits by controlling the executive agencies of the state (Wolczuk, 2004). The oligarchs are considered as primary veto players who prefer preserving the status quo or conceding only to changes for their own benefit (Burlyuk, 2015), as the effective implementation of the rule of law and the reform of judiciary and prosecutor office would directly threaten their business and rent extraction (Lough & Solonenko, 2016).⁴ This leads to absence of political will of ruling political and business elites to support legal and practical progress in the rule of law.

State vs. civil society

Another factor explaining the viability of the rule-of-law reform in the domestic environment is the extent to which the Ukrainian state allows for vertical control of its actions by the non-state actors, such as the civil society and media. This is determined by the broader setting of state-society relations and the nature of the regime – the more liberal it is, the more the role of elites is constrained, and the more space there is for societal pressure and advocacy (Checkel, 1997). Contrarily, the authoritarian regime allows significantly smaller room for the society to control and keep the respective institutions accountable; the decision about compliance to the norm rests entirely within the elite and its power interest (Checkel, 1997, 1999; Schimmelfennig et al, 2006). Ukraine has gone through both types of regimes and their gradations – while very much constrained during the rule of Kuchma and Yanukovych, the civil society enjoyed more freedom under president Yushchenko. Since the Revolution of Dignity, the Ukrainian civil society has consolidated yet again and represents a strong ‘norm-entrepreneur’ favouring democratic norms such as transparency, accountability and the rule of law. Similarly, the media became more active in displaying the corruption practices of public officials and links between politics and oligarchs (Lough & Solonenko, 2016). The civil society and media thus constitute a potentially strong watchdog of state institutions. During two democratic openings in Ukraine – the

4 Despite the fact that the assets of the wealthiest oligarchs decreased significantly from 2014 to 2015 due to the conflict with Russia and economic crisis, the oligarchic system has not been completely dismantled and still controls the economy and main television channels in the country (Jarabik & Bila, 2015).

Orange revolution in 2004 and the Revolution of Dignity in 2013, the civil society actors played the role of a spokesperson of popular demands to establish the rule of law and accountability of political leaders. Current joint efforts of experts and non-governmental organisations keep the government and the parliament accountable in adopting and implementation of the judicial and anti-corruption reforms.⁵ However, there are limits to what the civil society is able to reach even in formally liberal regimes, as the openness of the political elite for reform depends on the potential consequences of compliance with the rule of law. The more it threatens the integrity and security of the state and undermines its power and legitimacy, the more it will be reluctant to allow its effective implementation (cf. Schimmelfennig et al., 2006: 59).

Ukraine's constitutional system, blended constitutional powers and oligarchised institutions present substantial challenges for the development of the rule of law. The horizontal independence and control between institutions is largely missing and distorted by dominance of the executive, while many domains of political life are subjected to rule of oligarchs, instead of rule of law. This creates space for lawlessness and corruption and sustains informal arrangements. Windows of opportunity to increase pressure by reform-oriented civil actors and media are therefore vital to counter these practices and to create a solid source of public oversight of government's actions.

CENTRALITY OF NORMS AND CULTURE: IS THERE A DEMAND FOR THE RULE OF LAW IN UKRAINE?

The role of norms and culture has not been the mainstream in the scholarship on promotion of democracy or the rule of law in Ukraine. Some studies, however, highlight the importance of existing normative frames that significantly affect the success of rule of law (Burlyuk, 2015, Kleinfeld, 2012, Natorski, 2013). The underlying argument is that if persisting social norms undermine the rule of law, they will negatively affect its actual implementation. Contrarily, *'when social norms work to support the rule of law, they buttress institutions, laws, and the power structure'* (Kleinfeld, 2012: 99). This involves cultural norms and habits in all social strata, but

5 See, for example the work of Reanimation Package of Reforms www.rpr.org.ua.

especially among political and business elites, civil servants, and legal professionals, as some interviewees also pointed out. Several factors play a key role in determining Ukraine's 'normative playground': (1) the Soviet legacy, (2) neo-patrimonial rules, (3) rent-seeking behaviour and (4) popular attitudes and generally low trust towards state institutions.

The Soviet legacy

Firstly, the implementation of the rule of law is undermined by the persisting Soviet legacy. The communist doctrine and authority distorted the law into a tool for the state power, and subverted the legal profession in favour of the soviet rule. This has led to misunderstanding of the concept of the rule of law by legal practitioners – Burlyuk (2015) argues that the shortcomings of introducing and consolidating the rule of law in Ukraine are due to incomprehension of the concept by legal elites in Ukraine, who still adhere to the rule *by* law rather to the rule *of* law. Besides the Soviet indoctrination of the legal system, the absence of proper legal education also deforms the practice of legal specialists (Fedorchuk, 2007; OSCE, 2009). According to one interviewee, the very narrow and positivistic teaching of law in Ukrainian universities neglects the complex knowledge and understanding of the law based on independent and critical thinking and global standards of work with sources.⁶ Moreover, it is the problem of mentality and low political culture that does not foster independence and morality of legal experts. The lack of professional lawyers' standards plays important role in insufficient professional and moral equipment of Ukrainian lawyers, causing weak sense of independence and accountability (USAID, 2016).

Neo-patrimonialism

The impartiality and accountability of the judicial domain is especially problematic area of the rule-of-law reform in Ukraine. Natorski (2013) argues that judicial development needs to be understood comprehensively, with regard to the sociological roots of clientelism that has traditionally characterised the

6 Interview with USAID official, Kyiv, 16 August 2016.

judiciary in Ukraine. The political clientelism of the Soviet political system has laid foundations for modern neo-patrimonial structures in independent Ukraine. Neo-patrimonial rule⁷ is considered to be one of the organizing principles of the political system in Ukraine, in which informal institutions and relations dominate over formal ones (Fisun, 2012 and 2015; Stewart, 2013). The patrimonial system is founded on the client-patron ties, personal loyalty, and clan membership, while the aim of political competition and participation is to capture positions in the government and the state apparatus to control and extract sources of rents. This affects the formation and work of political parties, appointments to public offices, and the structuring of relations among political actors and businesses at the national and regional level. Fisun (2015) therefore characterises Ukraine as a “*neo-patrimonial democracy*”, in which multiple patron-client oligarchic networks compete through formal electoral mechanisms, but their primary driver is still rent-seeking and rent-extracting.

Rent-seeking behaviour

The rent-seeking behaviour is one of the prevailing norms among the political and business elite, which determines the rules of the game and obstructs the progress in transparent and fair competition. These practices have in fact helped to create the wealth of major oligarchs in the 1990's and a large informal economy, which forms around 40% of Ukraine's GDP (UNIAN, 2016). Disrupting this system by thorough application of the rule of law bringing transparency, fair competition and criminal liability for wrong-doings would mean disruption of well-established patron-client networks and endanger their wealth and vested interests.⁸ Apart from manipulation of the rules of the market and the monopolisation, the corruption is one of most evident manifestation of rent-seeking behaviour. It has affected every part of Ukraine's economy, state and

7 For original conceptualisation of (neo)patrimonialism see Max Weber (1978) *Economy and Society: An Outline of Interpretive Sociology* and Shmuel N. Eisenstadt (1973) *Traditional Patrimonialism and Modern Neopatrimonialism*.

8 An example of blocking the reform could be the system of e-declarations of assets of public officials that was supposed to be launched in mid-August 2016. However, as this would constitute an 'atomic bomb' (as put by one interviewee) for many officials, the launch was postponed several times and technically blocked. In Verkhovna Rada, there were several proposals to curb the effective implementation of the system. For details see Sukhov, 2016.

society. The corrupt practices have constituted the 'normal' between citizens, in citizens' relation to the state and it has even determined the rules by which the state has been run. Ukraine's political system is therefore best described as state capture (De Waal, 2015), or, an oligopoly.⁹

Popular attitudes of low trust

Despite the fact that many Ukrainians reject corrupted practices of political and economic elites, one interviewee reported that these were possible thanks to a '*tacit arrangement between Ukrainian state and society pretending normalcy*' ('*we let you do you business and you will not raise energy prices and taxes*').¹⁰ These systemic shortcomings are both affected and sustained by the general attitudes to the law, apathy and scepticism towards the state in an atmosphere of mistrust rooted in the Ukrainian society. Firstly, the institutional and generalised trust in Ukraine tend to be rather low. Ukrainians display low levels of trust towards the majority of public institutions: in 2015, only 5% of Ukrainians trusted the judiciary, 8% prosecutors, 8% Verkhovna Rada, 9% the government and 19% the president (USAID, 2016).¹¹ Prior to the Revolution of Dignity, the level of trust in courts was one of the lowest in the world (16%) and the lowest among the former soviet countries (Rochelle and Loschky, 2014). The low level of confidence to public institutions is, however, partly a reflection of low level of trust among citizens themselves, as illustrated by the results of the European Social Survey (Burlyuk, 2015). As a vicious circle, low trust in the society makes people more likely to turn to informal networks and practices and rely on the personal '*F-connections*' of finance, firms, friends, families, and favourites (Dinello, 1999) in order to facilitate their economic and social transactions. If informal rules guide the socially acceptable behaviour, they undermine the rule of law (Kleinfeld, 2012). Moreover, Burlyuk (2015) argues, that the perception of law as a social regulator among Ukrainians is not obvious. For many, the desirable social norms do not coincide with the law, what questions the legitimacy of the law as such.

9 Interview with UNDP official, Kyiv, 22 August 2016.

10 Interview with UNDP official, Kyiv, 22 August 2016.

11 See also recurrent sociological polls by Razumkov Centre, <http://www.razumkov.org.ua/eng/socpolls.php> and by Gallup Polls: <http://www.gallup.com/poll/187931/ukrainians-disillusioned-leadership.aspx>

The identified factors undermining the rule-of-law reform in Ukraine are very much interwoven and mutually supportive: the Soviet legacy and predominance of other norms, such as clientelism and neo-patrimonialism, result in omnipresent corruption and nurture ambivalent attitudes towards the law and even low demand for the rule of law, which could harm existing profitable ties. They point at further need to research the complex social and cultural background and persisting everyday practices to understand the absence of the rule of law in Ukrainian political, social and economic life.

CONCLUSION: IMPLICATIONS FOR RESEARCH OF DOMESTIC REFORM AND THE POWER OF EXTERNAL ACTORS

This paper presented the paradox of the development of rule of law in Ukraine – despite external support for the rule-of-law reform, Ukraine is not a state guided by the rule of law in many domains, especially in division of powers and inter-institutional independence, effective and fair judiciary and deeply entrenched corrupted practices. It underlined two under-researched aspects complementary to institutional or legal analysis of the rule of law – the role of power and normative environment. These factors shed light both on reasons of protracted and superficial implementation of the rule of law in Ukraine by looking at less formal and visible areas of reform. This has implications for studying both the domestic developments and the role of external actors in supporting them.

The political and cultural environment, country-specific power structures and patterns of political, social and economic behaviour need to be studied more thoroughly in order to reveal the working of informal power structures and the normative domestic environment that influence the practices of implementation of the rule of law. Research about persisting practices (see Adler & Puliot, 2011) implies looking under the iceberg of the institutional structures and examining cultural and often inarticulate foundations of everyday behaviour contradicting the rule of law.

The overview of structural political and cultural factors limiting the rule-of-law reform in Ukraine bears implications also for understanding the EU's efforts to promote the rule of law. Firstly, the success of EU's actions depends on the level of understanding of domestic power structures and introduction of relevant incentives when the windows of opportunity open. Thorough knowledge of

domestic environment enables to select the right actors to work with, since the engagement of the local stakeholders is vital for a sustainable change. Secondly, the informal institutions affect the potential impact of external actors. They decrease transparency of the decision-making processes, and make it harder for external actors to understand the complexity of domestic relations. In addition, the domestic actors can instrumentally refer to a formal logic and deny the influence of particularistic interests, and thus deprive external actors of arguments in favour of reform (Stewart, 2013). Thirdly, achievements of external actors, such as the EU, are contingent on existing normative frames in the domestic environment. The 'change of minds' by bottom-up reform through engagement with the civil society, educational institutions and developing people-to-people contacts are a necessary part of a successful reform. These conclusions open space for further research of ability of the external actors to understand the complexity and specificity of the domestic environment and to adjust their strategy.

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