

**PRESIDENT ZELENSKY'S FIRST YEAR
LEADING UKRAINE**

A CASE OF DÉJÀ VU

Ryhor Nizhnikau



PRESIDENT ZELENSKY'S FIRST YEAR LEADING UKRAINE

A CASE OF DÉJÀ VU

- During his first year as President of Ukraine, Volodymyr Zelensky prioritized presidential power-building. In order to do so, he relied heavily on the old system and established practices, such as “hands-on” management and the personalization of state agencies.
- Institution-building was replaced by the targeted fine-tuning of the dominant system. Some important reforms launched by the government in autumn 2019 were later stalled and reversed. As before, the adoption and implementation of comprehensive reforms will largely depend on Western pressure and conditionality.
- The major problem is that there are multiple centres of power in the country and the president's actions only produce an illusion of control, while in reality the system is fragile and unstable.
- During the rest of his presidency, Volodymyr Zelensky will increasingly depend on oligarchs and govern through situational alliances. In exchange for their support, he may have to acquiesce to their continued dominance over the economy and the restoration of their influence in politics. Instability will intensify as his personal popularity wanes and economic and political crises deepen.



RYHOR NIZHNIKAU

Senior Research Fellow

The EU's Eastern Neighbourhood and Russia

Finnish Institute of International Affairs

ISBN 978-951-769-648-7

ISSN 1795-8059

Language editing: Lynn Nikkanen

Cover photo: Mykhailo Markiv/The Presidential Office of Ukraine

(CC BY 4.0)

PRESIDENT ZELENSKY'S FIRST YEAR LEADING UKRAINE

A CASE OF DÉJÀ VU

INTRODUCTION

The lack of a modern functioning state is a key challenge in contemporary Ukraine. Since its independence, the Ukrainian state has suffered from predatory capitalism and bad governance, which kept the state institutions weak and subordinated to private interests. This neopatrimonial system has proved to be resilient enough thus far to withstand popular revolutions, Western-driven institutional reforms, as well as power monopolization attempts by the elite groups.

Over a year ago, Volodymyr Zelensky swept through the political system and took control of key political institutions in the country. He insisted that his goal was to change the “system”. He repeatedly stressed his concern about the weakness of the state institutions, which “had been ruined”, and promised to bring new faces into politics. Besides enjoying strong public support, he gained an absolute majority in a new parliament, in which his party “Sluha Narodu” (Servant of the People) received 252 seats (it takes 226 votes to pass a law), and hand-picked the prime minister. Altogether, this offered him a unique opportunity to overhaul state institutions and push forward a comprehensive reform agenda. However, his first year in power was mired in contradictions, which raised questions about what he stands for and what it means for Ukraine’s development.

This Briefing Paper assesses the progress and looks specifically at the way in which key challenges facing the country – a dysfunctional state, lack of rule of law, and the dominance of oligarchs in the economy – are being addressed. It analyzes the methods of governance of the new leadership and underlines systemic conditions that steer choices. The paper argues that Volodymyr Zelensky is following in the footsteps of his predecessors, using the momentum to accumulate power and govern through the well-established neopatrimonial system. However, he has also repeated their mistakes and failed to comprehend the power-sharing nature of Ukraine’s political system. As he has failed to establish control over the ruling class, the extensive power grab has sparked resistance and a political backlash from various elite groups. In such conditions, oligarchs will

become a natural ally for Zelensky for the remainder of his presidency and the key to his potential re-election hopes.

EVERY PRESIDENT’S DREAM: ACCUMULATING POWER

Ukraine’s president has limited constitutional powers in the parliamentary-presidential republic. *De jure* parliament appoints the government and both have vast authority over appointments, and supervision over key regulatory and executive agencies. Yet, *de facto* Volodymyr Zelensky and the Office of the President of Ukraine (OPU) were able to significantly expand the powers of the president and imposed control over political and law enforcement institutions. In a matter of weeks, they managed to achieve more than Petro Poroshenko had achieved in several years.

President Zelensky quickly established control over key political institutions, the Cabinet of Ministers (CMU), and parliament. Zelensky and his Office fire and appoint officials, who are by law subordinated to parliament and the cabinet. Denis Shmygal’s government, appointed in March 2020, was hand-picked by the president, with the new prime minister filling only one position in his cabinet. Shmygal’s predecessor, Olexiy Honcharuk, was *de facto* fired by the president (although, technically, he submitted his resignation voluntarily) despite having one year’s parliamentary immunity.

In autumn 2019, parliament’s role was reduced to rubber-stamping the draft laws prepared by the OPU. Before the Sluha Narodu faction *de facto* split into different interest groups in early 2020, parliament was not supposed to write or discuss laws, but expected to approve them in a stealthy manner. The OPU established mechanisms of external control over the faction members and directed their voting and law-making. Zelensky’s advisor and later a deputy, Nikita Poturaev, infamously called his colleagues from Sluha Narodu “political nobodies” who depend on the president and are expected to fulfil his instructions. As a consequence, the position of the parliamentary commissions on draft laws and appointments are

often disregarded. The OPU even exercises direct control over the parliamentary staff and officially pays the head a salary.

State executive agencies and key independent regulatory agencies have been *de facto* in the presidential vertical of power. The president commands and instructs officials who are not legally subordinated to him. He gives direct orders to the CMU, which is unconstitutional. The prime minister and the government report to the president rather than to parliament. Ex-Prime Minister Olexiy Honcharuk regularly briefed the OPU on how the CMU was fulfilling the assigned tasks.¹ Denis Shmygal stressed that his government would fulfil the tasks allocated by the president. The independence of the National Bank is in question as its leadership, in its own words, came under “systemic political pressure” from Zelensky and his team. The head of the National Bank, Yakov Smolyi, resigned in the middle of his seven-year term under direct pressure from Zelensky.

The informal control over political institutions allowed President Zelensky to expand his influence over the security and law enforcement agencies. According to the law, the president has authority over the appointment of the general prosecutor and the head of the State Security Service (SBU). The OPU attempted to expand its control over other key law enforcement bodies, including anti-corruption agencies. The law on the State Bureau of Investigations (SBI) was changed in the president’s favour.² Since the SBI was re-booted in December 2019 and its head illegally fired, it has been chaired by presidential appointees in violation of the law, which requires the director to be appointed by a special commission.

President Zelensky directly attacked the anti-corruption institutions, created with significant difficulties under Western pressure, claiming that there are too many of them. Before the outbreak of the Covid-19 pandemic, the ground was prepared for putting close subordinates in charge of the National Anti-Corruption Bureau (NABU) and the Special Anti-Corruption Prosecutor’s Office (SAP). The new draft law on NABU, intended to place the appointment of the director in the hands of the president, was criticized as unconstitutional. In May 2020, the general prosecutor launched an investigation into SAP and pledged to fire its head. The attempt to place the National Guard under the president’s control was only stopped by the

influential and longest-serving Minister of the Interior in Ukraine’s independent history, Arsen Avakov.

HANDS-ON GOVERNANCE AND ELITE MANAGEMENT

The concentration of informal power in the Office of the President undermined formal institution-building, contradicting the logic of relying on formal rules and impersonal state organizations. Instead, the personalization and politicization of agencies took place to facilitate presidential “hands-on management”.

Key appointments prioritize close and loyal people over a rule-based selection of professionals. Zelensky’s former associates from Studio “Kvartal 95”, a production company he co-owned, relatives and friends run the country. Former “Kvartal 95” employees include the current head of the OPU, Andriy Yermak, his first deputy Serhiy Trofimov and deputy Yuriy Kostyuk. A friend and co-owner of “Kvartal 95”, Sergey Shefir is the First Assistant to the President and a crucial confidant. The head of the SBU is Ivan Bakanov, a childhood friend and lawyer at “Kvartal 95”. The Committee of Voters calculated that over 30 representatives of “Kvartal 95” and their associates were appointed to top positions.³

The reliance on informal networks not only leads to the personalization and politicization of agencies but distorts checks and balances within. Key agencies act as mini-verticals of power, which respond to presidential commands. The head of an agency brings their own cadres along with them. As an interim director of the SBI, Iryna Venediktova put her cronies into deputy director positions in violation of the law.⁴ When she was appointed general prosecutor, one of her own confidants – Oleksandr Sokolov – replaced her.⁵ As a consequence, it comes as no surprise that professionals who insist on maintaining decision-making autonomy are extensively purged from government positions.

The rest of the key positions are increasingly distributed as political quotas and are exchanged as pay-backs for support. As a part of this process, the procedures for selection and appointment to the top positions in the state bureaucracy have often been violated. On April 22, the CMU used the pandemic to introduce

1 <https://www.pravda.com.ua/news/2020/01/15/7237493/>

2 <https://zakon.rada.gov.ua/laws/show/305-20+n13>

3 <http://www.cvu.org.ua/nodes/view/type-news/slug:za-rik-na-der-zhavnykh-posadakh-opynylysia-ponad-30-kvartalivtsiv-i-ikh-znaiomykh>

4 <https://www.pravda.com.ua/rus/news/2020/01/1/7236372/>

5 https://lb.ua/society/2020/03/17/452802_i_o_direktora_gbr_stal_aleksandr.html

a special selection procedure to make interim appointments without opening a competitive selection process.⁶ For example, on April 25 the formal competition for the positions of the head of customs and the head of the tax authorities was announced, on April 26 it was cancelled, and on April 27 new interim heads were introduced.

Furthermore, informal control over law enforcement facilitates the prosecution of opponents under dubious charges. A number of criminal investigations against political opponents and former allies were launched. Tapes leaked in autumn 2019 revealed that the SBI had taken direct orders from the OPU on opening and closing criminal investigations. Ex-general prosecutor Ruslan Ryaboshapka resigned due to his unwillingness to sanction the prosecution of former President Petro Poroshenko. However, his successor followed orders.

Besides Poroshenko, who is being investigated in over a dozen criminal cases, a number of his allies, including former interim President Oleksandr Turchynov, are under investigation. Moreover, former Zelensky associates found themselves under investigation, including Ryaboshapka, Honcharuk, and Maksym Nefyodov, ex-head of the Customs Service.

BAD GOVERNANCE AND STALLED REFORMS

Institution-building, which aims at the eradication of informality, directly contradicts the logic of the neopatrimonial system, the *de facto* concentration of power and governance through corruption, informal ties and loyal cadres. As a result, comprehensive reforms, which were introduced after 2014, have not been fully implemented or have even been reversed. The president, who promoted the legislative change in the so-called “turbo-regime” in autumn 2019, is now directly requesting that reforms should be slowed down. For instance, in his address to parliament in March 2020, Zelensky questioned the necessity of the health reform, stating: “So, the main question is where are we hurrying now? Where are we ‘rushing to’?”

The reforms, which were launched and championed by his own administration, are backsliding. The re-organization of the toxic General Prosecutor’s Office is being pulled back. The reform-minded leadership was fired and the new general prosecutor,

Iryna Venediktova, is trying to reverse the changes. The previously fired prosecutors, who did not pass competency and integrity checks, have returned to their jobs. Representatives of international organizations and civil society were expelled from the reform process.⁷

The reform process is continuing largely thanks to pressure from international donors and civil society. Two key reforms, which were passed and have not yet been completely reversed, were adopted only under IMF pressure, which made the land reform that allows people to sell and purchase land, and the new banking legislation, also known as the “Anti-Kolomoiskiy Law”, its key pre-conditions for providing financial assistance. However, parliament delayed the adoption of the latter for more than half a year, until the pandemic hit the Ukrainian economy. Only on May 13 did the Ukrainian parliament finally approve the necessary legislation, which forbids the return of nationalized banks to former owners. The land reform law, in turn, was passed in a significantly altered form which, according to some critics, including former Minister of Economy Timofey Milovanov, turned it into an imitation of reform.

Naturally, bad governance persists. The Covid-19 pandemic illustrates the depth of the problem. President Zelensky twice changed the ministers of health in the space of just three weeks in March, and formed eight different executive commissions to fight the virus.⁸ In March, he also tasked eight oligarchs with coordinating efforts to tackle the pandemic in different regions. He showed a lack of understanding and knowledge of the key issues, publicly using fake information by announcing on May 4, for instance, that 50,000 medical jobs would be scrapped due to the health reform.⁹

The new Minister of Health demonstrated a lack of knowledge about the working mechanisms of the ongoing medical reform and lobbied for its removal in the middle of the crisis. He blocked key appointments and suspended medical procurement via the official mechanism. Corruption flourished at the peak of the pandemic. Despite the ban on the export of medical equipment, 800 tons were exported by mid-March. The Minister of Health was accused of corruption on non-transparent medical tenders.

7 <https://bit.ly/3c73Xg7>

8 <https://texty.org.ua/articles/100872/ne-sklalosa-7-najbilshyh-prokoliv-vlady-zelenskoho-u-borotbi-z-koronavirusom/>

9 <https://www.president.gov.ua/en/news/volodimir-zelenskij-vimagaye-nevidkladno-usunuti-pomilki-v-m-60985>

6 <https://texty.org.ua/fragments/101060/pid-chas-karantynu-oholosyly-mazhe-800-konkursiv-na-derzhavnu-sluzhbu-za-specialnoyu-proceduroyu/>



Volodymyr Zelensky has built his presidency around his personal popularity, but his public trustworthiness is steadily waning. It might provoke detrimental populist measures. *Source: The Presidential Office of Ukraine (CC BY 4.0)*

In this situation, the West is not seen as an ally. Zelensky directly accuses the West of mistreatment and demands to be treated “as a powerful, equal player”. He looked for potential ways to avoid relying on the IMF until the pandemic hit the economy. He also maintained that Ukraine should not rely on foreign professionals: “We do not question the transparency or efficiency of foreigners, or their contribution to the fight against corruption. No. It’s just a matter of justice and our sense of subjectivity.”

POWER COLOSSUS WITH FEET OF CLAY

President Zelensky and the OPU faced several political defeats. They failed to expand their control into the regions, which mobilized and united local power-holders to withstand Kyiv’s pressure. The OPU also failed to replace Vitali Klitschko as mayor of Kyiv. It launched criminal investigations against Klitschko’s associates, threatened to call snap local elections as well as pass a new law on the capital to limit the power of the elected mayor. In May 2020, the Association of Cities of Ukraine called for President Zelensky to stop putting pressure on local elected officials through criminal

investigations and to put an end to the war against local self-governance.¹⁰

Several attempts to reverse the decentralization reform were made, including direct attacks on local authorities and the withdrawal of some funds from local budgets during the pandemic. The draft amendments to the Constitution were withdrawn twice after protests by the international community as they included the president’s right to remove elected mayors and terminate the powers of self-governing bodies. A number of mayors accused official Kyiv of reversing decentralization. In June 2020, the heads of five regional parliaments criticized the draft law on local governance for unclear division of powers and resources between region, rayon (district) and hromada (commune), as well as between elected representatives and presidential appointees.¹¹ Zelensky could not contain his irritation, accusing the recalcitrant local authorities of separatism: “Mayors cannot be against the president, against the power vertical. It is against the state. It is pure separatism, which they cover up with decentralization.”

¹⁰ https://censor.net.ua/news/3194836/accotsiatsiya_gorodov_obratilas_k_zelenskomu_otnositelno_prekrascheniya_bezosnovatelного_davleniya_na

¹¹ https://lb.ua/blog/oleksandr_ganushchyn/459945_detsentralizatsiya_pospihom_chi.html

The judiciary is also showing that the OPU outreach is limited. The Constitutional Court disqualified a number of laws and amendments to the Constitution, which aimed at formally increasing presidential power at the expense of parliament and other executive bodies. A number of these initiatives were found to be unconstitutional and a violation of the existing system of checks and balances between the legislative, executive and judicial branches.

Most importantly, Zelensky has not been able to effectively subordinate or unite Ukraine's fragmented elite and keep his own allies under control. Arsen Avakov is allied with Zelensky, but acts autonomously and maintains full independence. The political battle over the "Anti-Kolomoysky" law within Sluha Narodu or Zelensky's inability to convince his parliamentary faction to vote for key laws, including for the Cabinet's programme on two occasions, showed that the regime's control over parliament has waned. The ruling party has split into five interest groups and no longer depends on the president's instructions. In order to pass laws, Zelensky has turned to the votes of his parliamentary opponents, including pro-Russian and oligarchic forces.

THE RETURN OF THE OLIGARCHS

By spring 2020, oligarchs had turned into a crucial element of the Zelensky system. Their importance is currently three-fold. First, the president has a weak team, which lacks the competence, credibility and knowledge to govern. In May 2020, one of the leaders of Sluha Narodu, David Arahamia, openly stated that the new faces did not understand "complex systems" and that the government was looking for experienced managers. The purges of non-partisan reformers from the government and the prosecution of Petro Poroshenko and his former government officials mean that Zelensky has to rely on cadres from pro-Russian groupings, and figures from the entourage of former President Viktor Yanukovych as well as from oligarchic orbits.

Second, oligarchs maintain unparalleled economic and political resources, which may either destabilize the regime or help with re-election. The political conflict with Igor Kolomoysky over Privatbank in winter-spring 2020 illustrated that Volodymyr Zelensky's power vertical is weak and unstable. Kolomoysky's supporters in parliament, government business and

the media empire weakened Zelensky's team and contributed to the demise of the Honcharuk government. He blocked and delayed the adoption of laws, attacked his public image and planted protesters in the streets. In the meantime, Arsen Avakov has expanded his control within the new government and turned into a powerful veto player.

Third, oligarchs can compensate for the weakness of state institutions and deliver quick results, which the populist rule seeks. Consequently, President Zelensky constantly requests their support to restore conflict-hit areas in Donbas, help with reforms, supervise state agencies or fight Covid-19. As a result, oligarchs, particularly the most resourceful of them, Rinat Ahmetov, become situational allies who can offer the necessary votes in parliament to pass laws, provide reliable managers to fill the government positions, and guarantee favourable media coverage to maintain the president's personal popularity and an illusion of control.

The oligarchic support is merely transactional and their main wish is to preserve the weakness of the state so as to keep using its spoils. They receive the necessary economic preferences, key positions in the state structures, as well as regain the political influence that was challenged by the previous administration. Rinat Ahmetov, for example, is maintaining and expanding his energy monopolies. His energy company DTEK receives energy preferences from the new government, which decreed the prioritization of coal-based energy over nuclear or gas. Igor Kolomoysky, who vigorously fought the administration, in the meantime benefited from the Ukrnafta and Centrenergo companies. The state-owned company Centrenergo found itself in huge debt selling cheap energy to Kolomoysky plants, while buying expensive coal from Kolomoysky's companies. The re-opening of electricity imports from Russia turned his company Privat into one of the major suppliers. In February 2020, Naftogaz wrote off Hr 30 billion of Ukrnafta's debt. Ex-prosecutor General Ryaboshapka noted that the SBU is blocking the NABU investigation into the plundering of Privatbank by its ex-owners.

CONCLUSION: LURCHING FROM CRISIS TO CRISIS

Volodymyr Zelensky is building his presidency around his personal popularity and reliance on the neopatrimonial system. That allowed him to make quick gains,

but also made his rule highly unstable. The unreformed Ukrainian state is politically and economically crisis-prone. His popularity is unsustainable and his public trustworthiness is steadily waning, which might also provoke detrimental populist measures. Overall, his ability to govern within this system is limited by competing elite factions, which traditionally battle for power and resources, and a profound lack of knowledge and governance expertise. Covid-19 once again exemplified the depth of governance problem within the regime.

Zelensky may eventually seek re-election. His power-sharing deals with oligarchs might perpetuate the instability of his regime and make him largely incapable of pursuing the reform agenda, but may in turn, paradoxically, increase his re-election chances. Yet in the absence of reforms, the state will remain vulnerable to shocks and his re-election will depend on the ability to navigate through several crises.

First, Ukraine is slowly but steadily heading towards a political crisis. Honcharuk's cabinet had the shortest tenure in Ukraine's history. The Shmygal government is likely to be equally short-lived and is already facing resistance from parliament and key power groups, which are not happy with Akhmetov's rising influence. Parliament, and particularly the Sluha Narodu faction, are out of control. The Speaker, Dmytro Razumkov, is increasingly distancing himself from Zelensky. A defeat in the local elections this autumn might accelerate the process and even lead to a snap parliamentary election.

Second, Ukraine is anticipating an economic crisis. This year, the IMF expects GDP to fall by 7.7%, which is particularly acute due to significant external debt

repayments. Ukraine is already experiencing severe difficulties with its industrial sector and state finances, which might be aggravated by the political pressure on the National Bank to increase money emission. The IMF programme postpones rather than resolves the difficulties. If a second wave of Covid-19 causes further problems for the world economy, as some experts and the IMF predict, this will seriously affect Ukraine's resource-based economy and its oligarchs, who will demand more concessions. In any case, the drop in commodity prices, bad economic governance and populist measures will be a test for Zelensky.

Third, the societal opposition to the regime will grow. His rule is proving to be unable to live up to popular expectations. The pro-reform groups are disillusioned with the end of reforms. The patriotic-minded groups resist his anti-Ukrainian identity politics, neglect of nation-building, attacks on language and the independent Church, and the return of Yanukovich's supporters to government. The pro-Russian circles are becoming increasingly dissatisfied with his inability to end the war with Russia and fully restore bilateral ties. His populist supporters are likely to stay with him but may lose faith if energy tariffs continue to grow and new charismatic characters appear. Finally, Russia remains a significant destabilization factor, which can be re-activated at any moment.

A crisis traditionally re-opens opportunities for the West to promote its reform agenda. Ukraine's domestic political elites will have no other option but to turn to the EU and the IMF despite their unwillingness and anti-West rhetoric. The West should be prepared to seize the opportunity when it arises. /