



Policy Proposals to Regulate the Status of the Local Council Members

(Policy Paper)

Authors:

Kateryna Handzyuk, Serhiy Nikitenko

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Abstract

The local elections in Ukraine conducted in October 2015 under a new law caused a number of problems and quite distorted the representation balance. In addition, the innovations introduced by the Law on the Status of Local Council Members into the council members recall procedure and mechanism based on the people's initiative instigated tensions and conflicts on the ground. By analysing the modern Ukrainian practices, the authors propose the way out of the current complicated situation through amendment of the legislation and development of efficient instruments to regulate the representation problem with one of the proposals being assignment of each local council member to a certain constituency and making them accountable to its voters.



Table of Contents

Agency for Legislative Initiatives.....	1
Анотація.....	1
Abstract.....	1
INTRODUCTION.....	3
I. LOCAL ELECTIONS LAW AND THE REPRESENTATION PROBLEM	3
1. The Problem of a Constituency in View of the Current Local Elections Law	3
2. Existing Practices	5
Conclusions and Proposals.....	6
1. Problem Statement and Analysis of the Current Legislation	7
2. Experience of Other Countries with the Imperative Mandate.....	10
3. Practical Application of the Law in Ukraine.....	13
4. Judicial Appeal Against the TEC Decisions, Actions, or Omission of Action in the Recall Process.....	15
Conclusions and Proposals.....	16
III. ANALYSIS OF STAKEHOLDERS AND THEIR INFLUENCE ON THE PROBLEM	18
CONCLUSIONS AND RECOMMENDATIONS.....	21
BIBLIOGRAPHY	22



Abbreviations:

SVR – State Voter Register
CEC – Central Election Commission
TEC – Territorial Election Commission

INTRODUCTION

The need to amend the legislation regulating the status of the local council members has been repeatedly discussed in Ukraine. In a better case scenario, however, this would result only in cosmetic changes to the legislative basis, in particular the Law on the Status of Local Council Members.

The principles and the foundation, however, would remain unmodified, while the election, civil service, anticorruption and other legislation has been changing.

Analysing the Law, we have picked up its sorest points which should be changed through a balanced approach, since certain incoherence within the Law causes a tension, especially as concerns the issue of representation in the light of the 2015 amendments to the Local Elections Law and the revocation of the local council members on the people's initiatives.

In our opinion, settlement of these matters in combination with other amendments that need to be made to the Law will make it possible to balance and to regulate the problem of the status of the local council members.

I. LOCAL ELECTIONS LAW AND THE REPRESENTATION PROBLEM

1. The Problem of a Constituency in View of the Current Local Elections Law

When the new version of the Local Elections Law was approved before the scheduled 2015 elections, there were a lot of political discussions and debates, in particular around the electoral system for the local, rayon, and oblast councils.

At that time, the proposed arrangement was referred to as “the proportional system with open lists”, even though the lists were not really lists and not quite open. The authors of this idea defined it as the “British-German” system, while it is far from being anything similar to the systems used in the countries concerned, as it is rather a tracing copy of the system applied in certain Russian local elections.

According to the current Law, elections to the village councils are based on the majority system. For this purpose, the territory of each village council is divided into constituencies. One constituency elects one council member, i.e. the number of constituencies equals the number



of members in the council. To become a village council member, it is enough to get more votes than other candidates in the constituency.

The October 2015 elections to the oblast, rayon, city district, and city councils, however, were conducted under an absolutely new system, never used in Ukraine before. It also has proved to be the most complicated arrangement of all that have ever existed in the country, which is the reason why it generated new problems and aggravated the ones inherited from the previous systems.

Experts believe that the new Law undermined the trust to the proportional representation elections as such. Thus, in relation to the city, rayon, and oblast councils, the Law recognises only the candidates nominated by political parties and rejects self-nominees.

Political parties approve an election list composed of the first candidate being its leader, who automatically gets into the council if their party wins any mandates, and other candidates assigned to or nominated by certain territorial constituencies in the relevant oblast, rayon or city.

According to the Law, the territory of the city, rayon, and oblast councils is divided into a number of constituencies matching the number of members in the relevant council. Political parties assign candidates from their list to various constituencies having a possibility to attribute from 0 to 1 candidate to each constituency. This means that in some cases no specific candidate would be assigned to certain constituencies, in which case voters could vote for “the party in general”.

Consequently, each constituency has its own ballot paper. The voter may choose only one option: vote for the political party and the leader of the list if no specific candidate is assigned to their constituency or for the party and, automatically, for the leader together with the candidate nominated for the constituency.

Accordingly, each vote in any case covers a party and the leader, as well as, concurrently, the candidate assigned to a certain constituency from the same party.

Upon voting, the elections results are established by the election commissions. The first stage defines the political parties that will get into the relevant council and will be able to form its composition with their members. For this, all votes received by each party in all constituencies, independently of whether any candidates were assigned there, are put together and then the percentage taken by each party is defined.

Only the political parties that have been able to overcome the 5%-threshold in the city/rayon/district in general may get into the council.



The percentage of votes received by each winning party defines the number of seats in the council that they will be able to fill with their candidates. For this purpose, the concept of the “election quota” has been introduced.

The election quota means the number of votes received by the political parties that have overcome the election barrier divided by the number of seats in the relevant council. Thereupon, the territorial election commission (**TEC**) looks into which particular candidates, representatives of political parties, assigned to specific constituencies will actually become members of council. This means that within each winning party each candidate is sorted out by the level of the voter support at the constituency. The mandate provision order is defined by the percentage of votes acquired by each candidate in their constituency. As a result, it may happen that the mandate will be received by the candidates who gave their party the smallest number of votes, but due to low turnout of voters in their constituency their result was higher percentagewise. Such electoral system may also result in no representatives at all in some constituencies, or two and more candidates may get into the council from one constituency, as it has happened in Kherson where three members of the city council are assigned to the same constituency (UKROP, Batkivshchyna, BPP (Block of Petro Poroshenko) [8].

In such a way there is a certain problem with this electoral system: a candidate that has taken the third or even the fourth place may become a member of the council, while somebody who has won the first place in their constituency, even if their party has overcome the barrier, may not get into the council at all. This concerns as a rule the parties that take first places in the multi-seat constituency.

Members of the councils themselves, according to the Law, are considered to be elected in the multi-seat constituency, but report for the annual work in the one-seat ones, where they are elected. It is also there where they normally work with voters, considering that they represent the interests of the residents of such constituency. As a result, the representation principle is violated.

2. Existing Practices

In the context of the above it should be noted that free democratic elections, as the highest form of the expression of the will of the people, are supposed to ensure direct implementation of the people’s political will in the public authority structures. Free expression of the will of the people is the starting point for the legitimisation of the state mechanism and formation of the representative democracy. It is also the basis of the people’s representative mandate. In accordance with Article 141(1) of the Ukrainian Constitution, the citizens elect not local councils but their members. This means that the local election system should ensure personal voting for each specific



council member.

Ukraine already faced a similar problem in 2006 when local elections were conducted based on the political party system. It is then that the system of deputies and constituencies, which both council members and voters had been accustomed to, started disappearing.

Here it is important to remember that the legal nature of the representative mandate is conditioned by the nature and the purpose of the people's representation through the local self-governance bodies. It is characterised by certain principles, as well as mutual relations between the representative and the territorial community. At the same time, the local council members are supposed to play the main role in the establishment of the people's representation principles in the public authority system [1].

It is clear that the situation generated by the recent elections does not directly violate the citizens' rights and does not destabilise the democratic system, but it does create the crisis of representation.

For example, many councils have so called "deputies' funds" reserved in the local budget "for the constituencies". These are the resources used by their managers for various facilities in "their constituencies". Absence of a representative in certain constituencies distorted the balance of funds distribution, and in Mykolayiv, for instance, such funds did not reach 10 out of 54 constituencies.

Local councils find different ways out of this situation. Some of the councils cancelled decisions on such funds, while others made no decisions on them. The dominant majority of the councils, however, amended their rules of procedure and assigned members to the relevant constituencies. Thus, Korosten Town Council took the relevant action at the second plenary sitting of its first session having supported the decision on Assignment of the 8th Town Council Members Elected in the Multi-seat Constituency to the Korosten Town Constituencies and Approval of the Citizens' Reception Schedule (**Annex 1**) (**ПРОПОНУЮ ВИДАЛИТИ ЦЕ РЕЧЕННЯ**).

Conclusions and Proposals

Based on the examination of the practical side of the Law and based on the developments and recommendations of the Committee working group, the following proposals can be made:

1. Art. 2 of the Law on the Status of the Local Council Members should be supplemented with the following Paragraph 2: "Not later than at the second session, on the decision of the relevant council/ on the decision of the local organisations of political parties on whose lists they were elected, council members, members of the city, city district, rayon and oblast councils elected in the multi-seat constituencies shall be assigned to the relevant territorial constituencies. Such



decision shall be taken without delay and not later than in 1 working day it shall be published in the official publications, on the official Internet websites, on the information stands or brought to the attention of the voters in the relevant territorial constituency in any other way”.

2. All other articles should use the concept of the “**relevant territorial constituency**” represented by a council member.

II. LOCAL COUNCIL MEMBER REVOCATION: RULES AND PRACTICE

1. Problem Statement and Analysis of the Current Legislation

On 25 October 2015, local elections were held in Ukraine whereby the Ukrainian citizens could choose local council members and city/village mayors.

Later, to improve the representation of the interests in the relevant territorial communities and to ensure proper public control by the multi-seat constituency voters, the Local Elections Law introduced or rather improved the mechanism for recalling the individuals elected to the local self-governance bodies based on the general, equal, and direct suffrage through secret voting.

The elections were conducted under a new arrangement which was supposed to become an intermediary stage between the majoritarian system and the system of open lists when candidates were running in the majoritarian constituencies, with a rating list formed afterwards in the multi-seat constituency combining all polling stations of the community.

An interesting thing about the introduction of the imperative mandate in Ukraine is that its mechanism failed to be established at the legislative level for the members of parliament, while there have been repeated attempts to make local council members dependent on the political party leadership starting with 2007.

According to the Law, one year after the elections, the voters get the right to recall local council members who have failed to justify the voters’ trust in accordance with the procedure established by the Law on the Status of Local Council Members.

The following are the grounds to recall a local council member upon the people’s initiative:

- breach of the Constitution or laws of Ukraine established by the court;
- more than half council plenary sittings or sittings of a permanent commission unattended, failure to fulfil the member’s duties in the constituency without serious reasons; if a member has not attended more than half of the council plenary meetings or sittings of a permanent commissions, of which they are a member, if they fail to fulfil the council or its bodies' decisions



- and instructions without serious reasons, the council may also address the voters with a proposal to recall such a member in accordance with the procedure established by law;
- incompliance of the member's practical activities with the main principles and provisions of their election programme, failure to fulfil the obligation to report to the voters and to hold meetings with them.

The latter reason, however logic it may be, cannot be applied, as none of the local council members in Ukraine have an election programme, as Art. 38 of the Law does not mention it at all among the obligatory documents.

The recall proposal can be submitted by the citizens of Ukraine, who, according to the Law, are the voters of the relevant constituency, but not earlier than one year after the member concerned acquires their powers. The relevant decision should be approved at the voter meeting dedicated to the member's revocation.

Currently, the Law on the Status of the Local Council Members contains many contradicting norms that create political conflicts all over the country, destabilising the situation in the local councils and contradicting the principles of democracy, when the personal composition of a local council is formed not at the elections, but already afterwards on the decision of the political party entities and TECs, rather than voters. The TEC also checks the observance of Articles 38-40 of this Law if a local council member is recalled on the people's initiative. In particular, it verifies the correctness of the signature lists formalisation and the number of signatures in accordance with Art. 40(1) of the Law. Together with the State Voter Register (**SVR**) administration bodies, it verifies the validity of the information on the citizens contained in the signature lists, while with involvement of the law-enforcement bodies, it selectively checks their signatures (no less than 10% of the total number). The above suggests that nobody verifies whether the reason of the member's recall is true, since neither the TEC, nor anybody else checks compliance with Art. 37 of the Law "The Grounds of the Member's Revocation on the People's Initiative", as only requirements of Articles 38-40 are verified.

To recall a member of the local council on the people's initiative, a certain number of voters should support submission of the recall proposal, in particular:

- 1) 30 voters for a village council member;
- 2) 100 voters for a town council member;
- 3) 300 voters for a city council member and a member of a city district council;
- 4) 150 voters for a rayon council member;
- 5) 400 voters for a member of an oblast council, as well as Kyiv and Sevastopol city councils.

Not later than two days before the above voter meeting, its date, venue and time should be announced through the regional and/or local mass media. The media is guaranteed to have



unobstructed access to such meeting.

In practice, however, this means that the information on the meeting may never make it to the media, as the Law envisages no obligatory publication, only an announcement.

If the voter meeting decides to submit a recall proposal, an initiative group is established to collect the voters' signatures in the relevant constituency to support the revocation. The group is composed of the voters from the constituency concerned.

The voter meeting cannot take place on the premises of the public authorities, local self-governance bodies, at the places where salaries, pensions, assistance, stipends, other social payments, and charity are provided.

It is, however, impossible to follow the above procedure spontaneously. Due to a considerable organisational effort, it *a priori* can be implemented only by big organised groups. The attempts to apply this norms in different Ukrainian cities (Dnipro, Kamyanske, Svatove, Kherson) show that the meetings are held in secrecy, at the premises with no free access, e.g. at enterprises where one can get only with a pass. Both voters and journalists' rights are violated during the conduct of such meetings.

As a matter of fact, the whole procedure is dependent more on the TEC, than on the initiative groups. The commission may sabotage the groups or, vice versa, help them, which puts the TEC members into a dominant position.

Within three days after the voter meeting where a decision is made to submit the recall proposal, the initiative group official representative should notify the relevant TEC about the meeting that has taken place. The notification should be accompanied with the minutes of the meeting containing the voters' recall statement, the gist of the discussion, the decision to submit the recall proposal, and the initiative group personal composition.

The voters supporting the recall proposal should themselves write their name, patronymic, and surname, birth date and year, the Ukrainian citizen passport (temporary ID) series and number, and residence address on the signature lists, adding also the current date and their signature.

Collection of signatures begins on the day following the one when the TEC is notified of the establishment of the initiative group and lasts for (1) ten days for the recall of a village/town council member; (2) twenty days for the of a rayon, city, and city district council member, and (3) thirty days for a member of the oblast, Kyiv, and Sevastopol city councils.



The Law establishes a formula to calculate the necessary minimum number of signatures. To support the proposal to recall a local council member elected in a multi-seat constituency, the number of the signatures collected in such multi-seat constituency should be more than the election quota defined in the multi-seat constituency during the local council elections in accordance with the Local Elections Law and not less than the number of votes submitted for the local political party entity in the relevant territorial constituency at the local elections resulting in the election of the local council member concerned.

For example, to recall a Kherson City Council member, 1285 signatures need to be collected.

After the signatures are collected, the completed signature lists shall be put together by the initiative group official representative, sewn together, and signed by the official representative and not less than three initiative group members with indication of the number of the signatures collected. Not later than the next day, the signature lists together with the minutes of the meeting held by the voters that have set up the initiative group should be passed over to the relevant TEC. Not later than the next day after getting the signature lists and the voter meeting minutes, the TEC chair or, in the chair's absence, deputy chair (if both are absent, the secretary) should call a commission meeting to arrange the verification of the materials received.

At this meeting, the TEC verifies the compliance with Articles 38-40 of the Law, the correctness of the signature lists formalisation and the number of the signatures in accordance with Art. 40(1) of the Law. As mentioned above, the TEC involves the State Voter Register administration bodies to verify the validity of the citizen information contained in the signature lists, while the law-enforcement bodies are engaged to do the selective verification of the signatures (no less than 10% of the total number) [4].

2. Experience of Other Countries with the Imperative Mandate

The imperative mandate practice comes from the Roman law and is based on the delegation by voters of specific tasks (orders) to the elected deputies. Accordingly, should such deputies fail to fulfil the tasks assigned, the voters get the right of their early revocation. In the European countries, this approach is seen as undemocratic, since the early recall of the local council members is considered to be one of the forms of the imperative mandate. In the modern liberal democracies, the representative mandate is looked at through the prism of the entire nation's sovereignty. Deputies represent all people, and not just certain voters, which explains why the imperative mandate is regarded as to a large extent undemocratic, being practically absent in the EU Member States.

In Europe, the revocation right is established at the national level only in Germany where Länder



governments may recall their Bundesrat members. Otherwise, the recall mechanism is seen as an American institute and is mainly applied at the local level, in particular in 18 US States and in some Canadian provinces.

At the local level in the European countries, the revocation procedure is used only in some Swiss cantons (Bern, Solothurn, Ticino, Thurgau, Uri, Schaffhausen). Thus, Art. 27 of the Uri cantonal constitution establishes the right of the public initiative to the early termination of the public authority powers. While the Bern cantonal constitution (Art. 57) enables the citizens to initiate early elections to the local authority. In Europe, Switzerland is considered as the country which inspired the notion of recall. This institution is unknown at federal level, but, in some cantons, a number of citizens may ask for the recall of the cantonal government and/or Parliament, or even of any cantonal or municipal elected authority. However, in practice, this institution can be considered as obsolete.

Since the local self-governance development remains to be one of the top priorities of the EU policy and in view of the generally negative attitude to any forms of the imperative mandate (in particular, the early recall mechanism), in the European countries the issue of the local self-governance responsibility and accountability is resolved, firstly, through introduction of the efficient local democracy mechanisms, and, secondly, through improvement of the local election system. Development of local democracy is a key focus of the local and regional self-governance reform in the EU. The main form of the community direct participation in the solution of the local affairs is the local referendum, with the right thereto enshrined, among other, in Art. 38 of the European Charter of Local Self-Government, as well as in Art. 2 of its Additional Protocol according to which the state should secure the establishment of the “procedures for involving people which may include consultative processes, local referendums and petitions».

Note: "In some German federal lands, people were rather often employing the recall mechanism in relation to burgomasters by conducting local referenda. Most actively, this was done in Brandenburg, where 16 burgomasters were recalled this way in the period from 1995 to 2006".

In some countries, the citizen meetings may, under certain circumstances, replace the local representative body (Portugal, Germany). Other forms of direct citizen participation include public initiatives or the citizen right to submit directly their own proposals for the consideration of the local council, as well as public self-organisation bodies as microcommunities aiming to solve certain issues. Such forms of the people's direct participation in the local affairs are mainly also present in the Ukrainian legal field. The Constitution of Ukraine "provides broad opportunities for the public participation in the operation of the authorities, institutions, promotes considerable



accountability to the people" (<http://www.niss.gov.ua/articles/1897/>) [6]

Analysis of the European local election systems suggests that there is no one most widespread model. Each country selects the model that suits best the level, powers, and the political tasks of the local councils. "In Europe, formation of the representative bodies is the issue of the political expedience... the election system should achieve the aims that are set by the developers" [7].

One of the problems in modern democracies, from the point of view of parliamentary stability and fidelity to voters' choices is the practice of elected representatives abandoning parties in whose lists they were elected.

Switching party (or "crossing the floor" in the Westminster tradition terminology) is not an uncommon practice. In Italy, estimations for 1996- 2001 indicate that 10% of the Chamber of Deputies changed sides. In the Russian Duma, between 1993 and 1995, 31% of MPs switched sides and 40% of the Czech Parliament changed party in the period 1992-1996. What seems particular of the European scene is that party switching has not derived in constitutional or legal mechanisms for controlling it.

The only example can be found in Croatia, where the Croatian Democratic Union (**CDU**) proposed in 2001 to introduce an amendment in the Constitution which would return seats to parties if the incumbent MP switched party. It was thought that some 20 MPs of the CDU itself were planning to abandon the party. The amendment was not carried through and, additionally, the constitutional court argued that termination of mandate of representatives of minorities because of an alleged failure to comply with their mandate was unconstitutional since the Constitution (Article 74.1) prohibited imperative mandate.

In Spain, cases of floor crossing at the local level were widespread in the first decades of democracy. To prevent the damaging effects, thirteen parties seating in the national parliament signed the so-called Pacto antitrasfugismo (Pact against floor crossing) in 1998. The pact was renewed again in 2000 and 2006, in this later occasion sixteen parties signed it. Parties signing the pact commit themselves not to collaborate with representatives who cross the floor in the creation, maintenance or change of government majorities in any public body.

Parties also committed themselves to reform all rules of procedure in local corporations for impeding that representatives who cross the floor may obtain in this way extra resources (for instance, by creating a new political grouping within local corporations and claiming the associated resources). Two bodies administer the pact and review the cases: the Follow-up Committee (made up of representatives from all parties) and the Committee of Independent Experts.



3. Practical Application of the Law in Ukraine

The Law describes the procedure in detail, but in the Ukrainian realities, in view of the gaps in legislation and legal collisions, the recall process ends.

On 26 January, the Central Election Commission (CEC) addressed to the Parliamentary Committee for State Building, Regional Policy, and Local Self-Governance (Resolution No. 13) with the summary of the problems related to the application of the revocation provisions of the Law on the Status of the Local Council Members, as well as called on the Committee to begin developing legislative amendments.

The CEC drew the MPs' attention to the legal vagueness around the method used by the TECs to check the citizen information contained in the signature lists, in particular with involvement of the SVR administration bodies.

Art. 32(2) of the Constitution prohibits collection, storage, use, and dissemination of confidential information about a person without their consent, except for the cases determined by law and only in the interests of national security, economic welfare, and human rights.

According to Art. 41(2) of the Law, the TEC, with engagement of the Register administration bodies, verifies the validity of the citizen information contained in the signature lists to support the recall proposal. This article, however, does not enable the Register administration bodies to use the voters' personal data stored in the SVR database. No method is also set for the TEC to involve the Register administration bodies into the above verification.

It should also be taken into account that the legal and organisational principles of the Register administration are regulated by the Law of Ukraine on the State Voter Register (the Register Law). Its Art. 2(2) sets that the Register database, its any part, or a copy of the Register or its part, the Register personal data can be used only for the aims envisaged by Art. 26 of the Register Law the list of which is exhaustive.

According to Art. 26(1.4) and (2) of the above Law, during the preparation to elections and referenda, the Register personal data can be used only to check the validity of the information on the voters who signed the signature lists to support the conduct of an all-Ukrainian referendum, as well as the information provided to the relevant election commissions on the candidates, attorneys and authorised representatives, referendum initiative group members, and candidates to the commission members.

Instead, Art. 26 does not envisage the use of the Register database to check the validity of the



citizen information contained in the signature lists to support the revocation proposal.

As a matter of fact, the above Resolution was the CEC's response to the request received from the Dnipro City voters and the TEC members, but it halted the procedure in all other cities.

In Kherson, the TEC invented its own signature verification method without the Register data and the law-enforcement bodies, but the procedure was stopped by the court.

This means that the revocation norms are not observed. The Law on the Status of the Local Council Members contains a number of provisions which, even though not yet applied in practice, can be used to exercise political pressure on the council members. Art. 86 of the Local Elections Law sets that the order of the candidates in the political party' election list (excluding the candidate who is not assigned to a territorial constituency) is defined by the order of the decreasing share of the votes submitted for the relevant political party at the territorial constituencies to which candidates have been assigned from the total number of votes submitted for all political parties in such constituencies. If a few candidates get the same percentage, they are located in the order of decreased number of votes given in a territorial constituency for the political party and for the relevant candidate. In reality, this means that the party leadership is deprived of the possibility to influence the outcome in terms of who is going to become a council member. In all cases when the “people’s initiative” procedure has been launched in Ukraine, it was done on the initiative of the political party wishing to adjust the personal composition of their factions in the local councils.

The only so far case of a local council member revocation, which was made famous all over the country by the media, though without details, is rather demonstrative in terms of the legislative gaps. On 29 January 2017, the recall procedure was started in the town of Kamyanske (former Dniprodzerzhynsk) against four council members: Yuriy Lytvynenko (BPP), Andriy Ivchenko, Oleh Nahorni, and Volodymyr Babenko (non-affiliated). The initiative groups were meeting either in secret or with scandals and fights. The procedure was the same as in Kherson or in Dnipro.

On 21 February, the commission started working on the documents and signature lists. The signatures were verified without involvement of the law-enforcement authorities or the State Register administration bodies. On 27 February, the TEC had a meeting to consider termination of the recall procedure because the signature lists were not provided within the established deadlines. Thus, the procedure was stopped against three of four council members, but continued against Yuriy Lytvynenko.

On 17 March, having considered the recall request made by the Kamyanka town election commission in relation to Mr Lytvynenko, the 12th unscheduled congress of the “BPP 21



“Solidarity” (10th stage) (the BPP local entity) voted in favour of the recall and informed the commission accordingly on 18 March.

On 29 March, the Zavodskyi District Court of Dniprodzerzhynsk considered Lytvynenko’s request to secure his administrative claims against the Kamyanka town election commission to recognise unlawful and to invalidate Commission Resolution No. 7 of 19 March 2017 on the early termination of his local council mandate due to the recall by voters (**the Resolution**). To secure his claims, the claimant requested the court to suspend the above resolution before the court decision in his case comes into legal force.

Upon consideration of the arguments and evidence presented, the court decided to satisfy the claims based on Art. 117(1) of the Code of Administrative Justice with the motivation that the legality of the Resolution can be considered only during the court proceedings, while the defendant’s actions and decisions to terminate the claimant’s powers and to recognise the next candidate on the party list as elected may not only complicate, but also make impossible the enforcement of the probable court decision in the case.

Thus, the court stopped the validity of the Resolution (Annex 3).

But two days later, on 31 March, the Kamyanka Town Council held its 15th scheduled session. At the beginning, the floor was given to the Kamyanka Town Election Committee Chair Anatoliy Moskovchuk who informed that due to the termination of Mr Lytvynenko’s powers as a council member because of his recall by voters, the election commission decided to recognise the next candidate on the BPP Solidarity party list, Anton Husyev, to be elected to the council, whereupon Mr Husyev was presented with the deputy’s ID, badge, and electronic voting card.

As we can see, the process is going on, and it is rather difficult to foresee the outcome.

4. Judicial Appeal Against the TEC Decisions, Actions or Omission of Action in the Recall Process

One of the Ukrainian cities, Kherson, already has the judicial practice of appeal against the TEC decisions, actions, or omission of action in case of the local council members recall on the people’s initiative, different both from Dnipro and from Kamyanka. Here the procedure followed a similar scenario, but the court issued an order to secure the claims earlier. Currently, there are a number of court decisions in the case on the recall of the Kherson City Council members described in more detail below.

In February 2017, a member of the Kherson City Council, Yevhen Nazaryan, launched his appeal



with the local court against the actions and omission of action by the Kherson City Election Commission (Annex 8). The member claimed that the commission's actions were unlawful, as on 19 February it verified the compliance with Articles 38-40 of the Law on the Status of the Local Council Members and the signature lists to support the proposal to recall Mr Nazaryan from the Kherson City Council and summarised the results of the signatures collection recorded in the protocol. Mr Nazaryan claimed that the commission had acted with gross violation of the current legislation.

In particular, according to the Claimant, the commission did not involve the SVR administration bodies and the police into the signatures verification process, making it impossible to establish whether the signatures had been collected from the multi-seat constituency voters, since availability of the passport, in the Claimant's opinion, does not testify the fact that the person is a voter in the multi-seat constituency.

In addition, Mr Nazaryan stated that the commission had not checked whether the participants of the voter meeting, which decided to set up the recall initiative group, had been the voters of the one-seat or the multi-seat constituency.

Upon having studied the evidence and listened to the litigants, the court decided to satisfy Mr Nazaryan's claims and recognised unlawful the Kherson City Election Commission's actions as to the approval of the verification of compliance with Articles 38-40 of the Law of Ukraine on the Status of Local Council Members and the recall signature lists, as well as the protocol summarising the results of the signature collection (Annex 9). The same decision was made in relation to the Kherson City Council member Larysa Leonova (Annex 10).

Thus, the court actually confirmed that it was impossible to apply the Law, as is argued above.

Because of such gaps in the Law and legal uncertainty as to the application of its provisions, the Central Election Commission issued Resolution No. 13, whereby it addressed the Parliamentary Committee for State Development and Local Self-Governance with a request to provide explanations on the application of such legal provisions, as well as to draft relevant amendments to the legislative acts. The practical necessity to get the above explanations and the urgency of the issue is evidenced also by the requests received by the CEC from the SVR administration bodies, TECs, and voters.

Conclusions and Proposals

In view of the above problem, we see that to regulate the status of the local council member and to ensure equal representation in the new version of the Law, the following changes should be



made:

1. In Para 3 of Art. 37(1) of the Law on the Status of the Local Council Members, the phrase “incompliance of the local council member’s practical activities with the provisions of their election programme” should be removed, as Art. 38 of the Local Elections Law envisages no election programmes for the local election candidates.
2. Instead, Art. 37(1)(1) (Grounds for the Voters to Recall a Local Council Member Elected Thereby) should be presented in the following wording: “if upon acquisition of their powers, the local council member violates the provisions of the Constitution and laws of Ukraine related to the fulfilment of the member’s powers as established by the court”.
3. Art. 38(3) of the Law on the Status of the Local Council Members shall envisage an obligatory publication of information in the regional and/or local media on the date, venue, and time of the recall initiative group meeting. Otherwise, the meeting announcement should be published on the relevant local council official website. As an option, this part may establish an obligatory requirement for the initiative group to notify the relevant council and executive bodies that it is going to launch the recall procedure, while the council should be obliged to publish the recall procedure announcement on its website.
4. Art. 28(2) (on the initiative group meeting) should be supplemented with the following requirement: “The decision is considered to be adopted if two thirds of the voters present at the meeting vote in its favour.”.
5. The TECs’ political influence should be minimised in all possible ways. For this purpose, they should be deprived of the right to verify the signatures collected. This process should be attributed to the State Voter Register administration bodies. There is also a need to specify the law-enforcement body to be involved and its involvement method for checking 10% of the collected signatures.
6. The SVR Law and the National Police Law should be amended to establish the obligation and to define the procedure for checking the validity of the citizen information contained in the signature lists to support the recall proposal on the people’s initiative and the selective verification of the voter signatures by the State Register administration bodies and the National Police. For this purpose, SVR Law Art. 26(1) should be worded as follows: "While preparing to the presidential, parliamentary, and local elections, including elections to the Verkhovna Rada of the Autonomous Republic of Crimea, as well as the national and



local referenda **and when considering revocation of a local council member on the people's initiative**, the Register personal data can be used only for: "... **verification of the validity of the information on the voters who participate in the voter meetings where the proposal to recall a local council member on the people's initiative and the voters who put their signatures in the signature lists to support the recall proposal...**" Art. 29(3) of the Law should also be supplemented with provisions authorising the election commission to request the Register administration bodies to provide information on the "participants of the voter meeting where a proposal to recall a local council member on the people's initiative has been approved and on the voters who put their signatures on the signature lists to support the recall proposal".

7. In view of the amendment proposals to Art. 2 of the Law on the Status of the Local Council Members, the Law should set that the local council members can be recalled by the voters of the territorial community where such member has been elected / to which such member is assigned, and not the voters of the entire multi-seat constituency. The necessary number of voters should be established at the level of the election quota +1 voter.

III. ANALYSIS OF STAKEHOLDERS AND THEIR INFLUENCE ON THE PROBLEM

For the purposes hereof, the stakeholders are conventionally divided into three groups: local council members, mayors, and political party leadership. This will make it possible to compare and to analyse the vision of the problem by the interested groups and the possible solutions.

Being the actual subjects of the process, the local council members mainly do not support the idea of the imperative mandate introduced in the form beneficial for the political parties. They also consider the political parties' right to recall their local council member to be undemocratic. None of the surveyed member has supported this idea, while there are almost no those who would be against the recall possibility on the people's initiative, though there are objections as to the recall procedure.

Local council members are practically unanimous in stating that the recall right should be given exclusively to the residents of the territorial constituency where the member concerned has been elected. This has been mentioned by all surveyed city council members (8 persons) and almost all oblast council members (4 out of 6). Answering to the question about the problems related to the settlement of the local council member status, the majority of the respondents pointed out to the territorial constituency as the most problematic aspect calling for the need to amend the legislation.

A member of the Kryvyi Rih Town Council, Andriy Nemchenko ("Force of the People"), stresses



the necessity to develop an efficient mechanism for recall not only on the people's initiative, but also by the political parties. This idea, however, is not supported by other surveyed local council members.

The political party leadership has a different opinion on the settlement of the local council member status. There issues raised herein are also in their focus.

Among the political parties, *Batkivshchyna* has been most actively dealing with the recall of local council members. From the very beginning, the party headquarters issued a statement that the recall procedure is entirely legal and fully operational which sounded like a call on its local offices to get ready to the recall of their council members.

At the beginning of January 2017, the political party entities received clear guidelines on the recall procedure (Annex 2). The document describes in detail the procedures, but quite diplomatically makes no mentioning of the signatures verification. MP Yuriy Odarchenko considers that it is possible to recall members even under the current Law, however, there should also be an additional possibility for the political parties to be able to recall their members. *Batkivshchyna* calls on its colleagues to support the bill making it possible to take a mandate away from the local council member excluded from their faction.

Oleh Lavryk, a *Samopomich* representative, agrees with Mr Odarchenko: "Ukraine does need a mechanism for recalling deputies on people's initiative, because today politics becomes an element of money making, and not representation of local councils' interests. As soon as members step over the council threshold, they become the community land and property brokers, rather than representatives of the community concerns. Therefore, the recall mechanism is needed for sure."

He, however, also believes that there should be not just a party initiative, but a joint initiative of the citizens and the party, to avoid turning this mechanism into the party dictatorship.

MP Berezyuk from the same political party considers that today's mechanism is imperfect citing the experience of his party: "We launched the recall procedure for about 20 council members all over the country. The majority of them got stuck in the courts due to incoherence among various laws. The Law needs to be amended to simplify the recall procedure. This would make deputies think and act for the benefit of the citizens."

MP Denys Sylantiev (Oleh Lyashko Radical Party) considers the mechanism of recall on people's initiative to be a stimulation and motivation method for the local council members that would encourage them to be more diligent in fulfilling their election promises. The Radical Party also



supports the introduction of the imperative mandate both for the Parliament, and for local council. The Party is ready to vote for the relevant bill.

The former Vice Chairman of the Verkhovna Rada and now member of the Lviv Oblast Council Ruslan Koshulynskyi believes that the voters and the political parties definitely need to have the recall mechanism.

In *Svoboda*'s opinion, no recall mechanism for deputies in Ukraine, at all levels, gives the grounds to consider that the political parties bear no responsibility for, as an example, change of the member's position, vision, or their failure to fulfil the programme principles with which they ran to the relevant local self-governance body.

As it can be seen, the position of the MPs, the political party leadership and officials is absolutely different from that of the local council members, which evidences a danger of the system disbalance, caused by the attempts of the centre to dictate the local politics, without understanding the local peculiarities and realities.

The final group of the stakeholders are mayors who are interested in the recall or non-recall of the local council members no less than the latter. It is not a secret that the main reason behind the recall attempts, as it is mentioned above, is the creation of the majority at the local councils that would be supporting the mayors with involvement of certain members, which is against the wish of the political party factions and entities. Therefore, it is quite understandable that the surveyed mayors mainly consider the current situation inadmissible and do not really support the introduction of the imperative mandate or any other mechanisms that would enable the political party leadership to influence the council member.

This concerns both the cities where there have already been attempts to recall a member on the people's initiative, and those where such procedure has not yet been launched.

Oleksandr Lysenko, mayor of Sumy, considers that the voters should be able to influence the council members and have a possibility to recall them, but not with the current procedure. In Sumy, there have not yet been any recall attempts. Mr Lysenko is supported by Kherson City mayor Volodymyr Mykolayenko who believes that the broad-scale recall of the local council members is nothing more than a political game and the intimidation of the members not accountable to the political party leadership. Even though such a mechanism is needed, it is important "to understand who are the relevant member's voters and who such member should be accountable to". Both city mayors agree that the current local elections system has deprived part of the voters of a representative and that such problem should be solved at the legislative level.



CONCLUSIONS AND RECOMMENDATIONS

Based on the examination of the practical side of the Law and based on the developments and recommendations of the Committee working group, the following proposals can be made:

1. Art. 2 of the Law on the Status of the Local Council Members should be supplemented with the following Paragraph 2: “Not later than at the second session, on the decision of the relevant council/ on the decision of the local organisations of political parties on whose lists they were elected, council members, members of the city, city district, rayon and oblast councils elected in the multi-seat constituencies shall be assigned to the relevant territorial constituencies. Such decision shall be taken without delay and not later than in 1 working day it shall be published in the official publications, on the official Internet websites, on the information stands or brought to the attention of the voters in the relevant territorial constituency in any other way”.
2. All other articles should use the concept of the “**relevant territorial constituency**” represented by a council member.
3. In Para 3 of Art. 37(1) of the Law on the Status of the Local Council Members, the phrase “incompliance of the local council member’s practical activities with the provisions of their election programme” should be removed, as Art. 38 of the Local Elections Law envisages no election programmes for the local election candidates.
4. Instead, Art. 37(1)(1) (Grounds for the Voters to Recall a Local Council Member Elected Thereby) should be presented in the following wording: “if upon acquisition of their powers, the local council member violates the provisions of the Constitution and laws of Ukraine related to the fulfilment of the member’s powers as established by the court”.
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9. In view of the amendment proposals to Art. 2 of the Law on the Status of the Local Council Members, the Law should set that the local council members can be recalled by the voters of the territorial community where such member has been elected / to which such member is assigned, and not the voters of the entire multi-seat constituency. The necessary number of voters should be established at the level of the election quota +1 voter.

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