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The conception, nature and barriers in the decentralisation of power and citizen empowerment in Ukraine

This article considers the role of Poland in reforming the self-government in Ukraine. It describes proposals for reform, as well as barriers which occur or may occur while making an effort to decentralize power in this country. The author makes an attempt to identify differences between the situation in Ukraine and Poland during the process of reformation of the self-government.

Key words: decentralisation of power, self-government, citizen empowerment, formal and legal factors, factors of mentality, social capital, extent of socialisation of authority, representative democracy, deliberative democracy, direct democracy

Introduction

In 1991 Ukraine regained independence. The country is the direct successor of the Ukrainian Republic of Soviets. From that moment, as an independent country, Ukraine continues to face an uncertain future regarding the choice between two fundamental geopolitical orientations: pro-European and pro-Russian. There are upheavals and political tensions following in Ukraine, which exemplify this dilemma and divide Ukrainian society. Some of them ended with the changes of the particular geopolitical orientation. The first spectacular upheaval, called “the Orange Revolution”, took place at the turn of 2004 and 2005. The direct reason was questioning the credibility of the election for the President pro-Russian candidate, Viktor Yanukovich. The second round of the presidential election was repeated. Viktor Yushchenko won and Yulia Tymoshenko became the Prime Minister. However, an alliance of two oppositional pro-European leaders soon ended with

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a conflict between them. Yushchenko and Tymoshenko began to accuse each other of cooperation with the pro-Russian forces and corruption. Successive political crises allowed Viktor Yanukovich to regain power, firstly as the Prime Minister, then as the President. In 2013 Euromaidan began, which ended with Yanukovich escaping to Russia. The direct reason for the conflict was the postponed signing of the Association Agreement with the European Union by President Yanukovich. As a result, power was seized by pro-Western forces. Petro Poroshenko became the President. Arseniy Yatsenyuk became the Prime Minister. In 2014, the Association Agreement was signed by the EU, but armed conflicts take place between supporters of the new power and pro-Russian separatists. Russia provides the silent military support and annexes Crimea.

This description of Ukraine politics since 1991 proves a continued lack of political and social stability. It is not known, as it was highlighted above, what kind of political settlement will be reached in the future. The situation is complicated by the migration crisis in Europe.

Decentralisation of power as a condition of civil society

Despite the situation outlined above, the pro-European president and the government wish to conduct Ukraine to European community. However, to achieve this purpose, civil society institutions must function well. Decentralisation of power is fundamental for the development of that civil society, thereby enhancing the process of democratisation (Banat 2015: 34–41; Bar-Przybyła 2015: 42–58; Pac 2015: 48–58). The significance of this issue is the fact that, decentralization of power is the constitutional principle in the Polish political and administrative system, enshrined in the Poland's Constitution. Since the Polish solutions for local government are a good model or example for the Ukrainian solutions they are worth a brief description.

The Article 15, paragraph 1 of the Basic Law provides that “Ustrój terytorialny Rzeczypospolitej Polskiej zapewnia decentralizację władzy publicznej” (The territorial system of the Republic of Poland provides decentralization of public power). Currently, the principle of decentralization of power is implemented in Poland through a three-tier administrative division – gmina (commune), powiat (district) and województwo (voivodeship). This division has been valid since 1999 and was introduced by the Law of 24 July 1998, which established a basic three tier division of administration. The different levels are independent. The function of the three-tier local self-government in Poland shows the legitimacy of decentralisation in accordance with the principle of subsidiarity, which postulates that the higher level authorities implement only those tasks which can not be realized by the lower level authorities (Piasecki 2009: 154–174; Karnaś 2006: 140–142). Certainly, the practice of the three-tier local self-government in Poland has also shown some shortcomings and deficiencies. Over the last sixteen years,

some criticism has been raised about the functioning of self-government on the district level. First of all, critics questioned the existence and functioning of the self-government on the district level. The criticism referred to small, limited financial means of districts. Maintenance costs of the district administration do not justify, according to some critics, the existence of local self-government. Some of the tasks could successfully be taken over by the communal authority, and other parts by the self-government on the voivodeship level (Janik). Some suggested uniting districts, which would strengthen this level of government in terms of finance and competence. Despite the criticism, it seems that the Polish solutions regarding self-government can be an example for other countries, which are at the beginning of the road of democratic transformation. This applies to Ukraine, which, unfortunately, at the moment is afflicted by the conflict with Russia and internal conflict, dividing the country into pro-Russian and pro-European.

The present state, proposals for amendments and the main barriers of reform in Ukraine

It should be stressed that currently, Ukrainian locally elected councils operate at a few administrative levels: “oblasti” (equivalent of the Polish voivodeship), “regions” (equivalent of Polish districts) and “societies” (equivalent of communes). However, these grass-roots elected councils do not have their own executive apparatuses, which is one of several basic barriers of the development of self-government in Ukraine. Marcin Świącicki², a coordinator of a special expert group for local government reform in Ukraine, explains this by paying attention to the extreme fragmentation of local self-government units³. This fragmentation reduces executive power of these units. As Świącicki reports, Volodymyr Groysman, the Deputy Prime Minister of Ukraine and the Minister of Regional Development in the government of Arseniy Yatsenyuk, came to Poland in March of this year. He asked then President of Poland, Bronislaw Komorowski, and the Polish government for help in carrying out the reform of local government (Świącicki). It is worth noting, along with Świącicki, that Groysman was previously very popular, elected repeatedly the mayor of Vinnitsa. During the last elections he reached 80% approval. Groysman agreed to become the minister of development, provided that he was able to implement the reform of decentralisation. According to Świącicki, the Deputy Prime Minister Groysman considers Polish administrative reform to be the most successful (Świącicki). Some other vital barriers of decentralisation of power in Ukraine were also indicated, including the financial constraints of the

² Marcin Świącicki – former mayor of Warsaw (1994–1999), Member of Polish Parliament of Civic Platform party, the Minister of Foreign Economic Relations in the government of Tadeusz Mazowiecki.

³ At the level of councils, there are over 12.000, including sometimes even a few hundred residents. In Poland there are 2.500 communes. Source: (Świącicki).

authorities elected locally. As a matter of fact, they are dependent on higher-level authorities, and above all on the central authorities. Świącicki writes that... every year oblasti (regions) and regions (districts) must negotiate their budgets with the government in Kiev, and thus, local self-government units of the lowest level must negotiate with the regions (Świącicki). It is worth noting that this is the major component of the criticism of Polish districts. In addition to financial dependence, the Ukrainian local self-governments do not have the communal property. Another barrier is that general provisions are too vague and do not unambiguously delegate the competences for the particular levels of government (Świącicki). Pro-European Ukrainian government itself (in power since February 2014 and referred to as “Kamikaze Cabinet”), inherited a very unstable political situation with the background of military aggression from Russia, a high level of corruption in the public space, and the Soviet model of governance. One of the features of the system of centralisation of power includes finance and manual control of its transfer (Groysman 2015).

The current system of local government contradicts the mentioned principle of subsidiarity (subsidiarity), proper for the development of civil society but incompatible with Article. 4 par. 3 of the European Charter of Local Self-Government that reads as follows: “Generalnie odpowiedzialność za sprawy publiczne powinny ponosić przede wszystkim te organy władzy, które znajdują się najbliżej obywateli. Powierzając te funkcje innemu organowi władzy, należy uwzględnić zakres i charakter zadania oraz wymogi efektywności i gospodarności” (*European Charter of Local Self-government*). (In general, the responsibility for public affairs should be borne primarily by those authorities which are closest to the citizens. By assigning this task to another authority, one should take into account the extent and nature of the task and principles of effectiveness and economy).

Taking into account the abovementioned barriers, reforms should focus on the following spheres: 1) the financing of local self-government, 2) the creation of executive apparatus of local authority, 3) reasonable and precise division of duties, in accordance with the above cited principle of subsidiarity, which should also lead to a reasonable regional division (administrative) by reducing the excessive fragmentation of local self-government units. It is worth analysing both the assumptions of the reform of Polish experts and intentions of the Ukrainian government.

It should be emphasized that Polish experiences influence the proposed Polish solutions. Above all, these solutions should be based on the principle of subsidiarity invoked above, according to the European Charter of Local Self-Government. The deficiency in hierarchical connection between the different levels of local self-government, the precise separation of duties competences of those levels by:

- a) Local Self-Government Acts indicating particular competences in general,
- b) Competence Acts, which would determine in detail the competences of individual authorities (Świącicki).

A crucial issue is the review and analysis of laws regulating the actions and rights of authority, in order to clarify the responsibilities of the particular levels of gov-

ernment. The Ukrainian side introduced proposals for the division of competences to Polish experts. However, they require some clarification (year 2015), taking into account the Ukrainian peculiarity and respecting the legal separation of the competences of different levels of local self-government. Therefore, the said clarification should be made by Ukrainians themselves (Świącicki). For example, according to Świącicki, "(...) w pracach na reformę samorządową w Polsce dokonano przeglądu około stu ustaw branżowych i każdy artykuł, który mówi że władza coś wykonuje, wydaje decyzję, opinię lub odwołanie, przygotowuje program, deleguje uprawnienie, powołuje kogoś etc., każda taka czynność władzy jest ściśle przypisana gminie, powiatowi, województwu lub władzom państwowym". [(...) in the work on the reform of local self-government in Poland, there was a review performed of about a hundred trade laws and every article which says that the authority does something, makes a decision, opinion or revocation, prepares a program, delegates right, appoints somebody and so on, each act of authority is strictly assigned to the commune, district, voivodship or state authorities.] (Świącicki). On the other hand, the Deputy Prime Minister Groysman underlines that the following policy areas require reforming: housing and utilities infrastructure with particular emphasis on saving on energy, deregulation in the area of construction and space planning, and public services. A general reform of state services and actions is needed, including the introduction of e-administration, which is important in the Internet age (Groysman).

A great challenge will be to create transparent administrative procedures, which can also help in the fight against corruption. It can be assumed that, similarly to other post-Soviet countries, there exists a specific culture of "arranging"⁴ based on informal cooperation networks, unclear corrupt business relationships and nepotism in public institutions.

The case for the discussion is also division of the existing administrative field apparatus subject to the central authority between the particular planned levels of local self-government. The problem to be solved is how much of this apparatus should be left for the central government. The proposal was even made, offering complete elimination of regional administration subordinate to the government. Generally, it is supposed that the only form of supervision under the local government by the central authority will be surveillance under the legality of local self-government actions. This solution works in Poland, where only at the level of voivodeships occurs on the one hand the province governor, as the head of the government administration in the voivodeship, and the representative of the Prime Minister. On the other hand, self-government operates in the form of Sejmik (regional council) of voivodeship as the legislature and the board of the voivodeship, headed by the Speaker, as the executive. In Ukraine, are proposals that central administration reached the level of regions (the equivalent of districts) (Świącicki).

⁴ In fact this word does not fully refer what in this context mean polish word „załatwianie”. It is untranslatable.

In the fight against these pathological phenomena free media, both professional and social, helps greatly. Unfortunately, the state of freedom of speech is seriously worrisome. A similar opinion was expressed in an interview for the American agency Associated Press with the OSCE representative on Freedom of the Media Dunja Mijatović (unknown, *OBWE: decyzja Kijowa...*). It should be pointed out that Ukraine is on the non-governmental organization Freedom House's list of countries in which Internet freedom is more restricted every year, as it showed by researches of non-governmental organisation Freedom House (unknown, *Ukraina znalazła się na liście...*). Undoubtedly, the main factor, apart from the whole mental and institutional legacy, inherited from the communist block, is the conflict with Russia. The organization Freedom House in its ranking classified Ukraine as a partly free country (unknown, *Ukraina znalazła się na liście...*).

Yet another issue of fundamental importance is financial independence, which Poland relatively achieved ("relatively" due to reservations regarding, in particular, financial possibilities of districts) for example tax CIT, PIT, commercial charges, property transfer tax, financial penalties (Święcicki). Other sources of income are subsidies (eg. education) and grants. All of these income instruments are to be introduced in Ukraine, as in Poland by introducing complicated algorithms and rules for obtaining funds from these sources. Because of this, the income of local self-governments will be predictable and relatively stable. It is conducive to stabilize the management of self-government unit, as it benefits the development and strengthening position in the administrative managerial system. Solutions relating to local government finances must guarantee the appropriate balance between the levels of local government.

Polish experts, including Professor Wojciech Misiąg, former deputy finance minister, counsel of the Supreme Chamber of Control, together with Ukrainian partners took appropriate analyses and simulations in this regard. The goal of the works is to achieve optimum distribution of finances, so that individual local governments at all levels were self-sufficient and fairly divided. As Święcicki writes "(...) It will require huge simulation, which is a big challenge for the whole team" (Święcicki).

Apart from guarantying the self-government funding it is important to provide appropriate communal facilities i.e. roads, accommodation, educational and medical service facilities. The Ukrainian government understands this. The crucial issue is the self-governments' fragmentation and the gromads in particular (12 thousand). It prevents the rational wealth distribution that would be directed to and then managed by the Ukrainian self-governments. The solution according to Święcicki is two readymade resolutions i.e. concerning voluntary basic entities combination and the other concerning their cooperation. Two hundred entities are proposed instead of today's forty-two. Number of oblasti (counties) is to remain more or less the same (Święcicki).

To sum up, the changes that the Ukrainian government plans to introduce include: government reform and authority decentralization (the government ought to serve its people) through self-government reform supported on three levels, corruption elimination, clear procedures in the public space and e-administration, and licence services deregulation (Groysman). Such profound changes including overall self-government reform cannot be introduced without change in the constitution. According to Marcin Świącicki the change is necessary. Therefore the Polish experts prompts based on Polish experience, constitution included. However, according to Świącicki, introduction of such strategy was impossible. In Poland 'every level is a communion of citizens' including community, county and voivodeship (Świącicki). The Ukrainian authorities state that oblast is not to be defined, as a 'communion of citizens' and that should implicate a referendum. Why there is so much worry about the referendum at the level of oblasti? It is connected to the concerns of the Ukrainian constitutionalists and the people of Ukraine regarding national integrity. According to Świącicki the referendum exclusivity to oblasti only record does not seem to reassure and not voting for 'separation or own foreign polices' (Świącicki) Therefore work on constitutional oblasti definition records were proceeded to consider oblasti as a gromad community and not as community of citizens. Such approach should prevent referendum at any level in any case. The solution, however, shortens the citizen activity in Ukraine. It discards the instruments of direct democracy in oblasti. Another weakness of the reform is the necessity of the representative of each gromada community. And it results in the increase of the oblasti board members. And it results in the fact that each gromada would include at least one representative. In Poland, the 'voivodship sejmik counts 51 members in total and oblasti would count 150 members' (Świącicki).

The construction of the citizen institution at the local level, where effective, possessing its own real integrity self-government element seems indispensable requires constitutional changes. Good resolution projects, European Council positive assessment, political resolution support of western countries and technological and financial support from EU, USA, Canada and Japan at the same time are insufficient (Groysman). At present there is not sufficient 2/3 of the votes to change the Ukrainian constitution. The vice Prime Minister Vladymyr Groysman draws attention to the members forming the Ukrainian parliament (Wierchowa Rada) that it does not arise the hope to simple and fast changes in the legislation reforming self-government. The Prime Minister enlists the following threats connected to the self-government reform:

- The legislative changes concerning government decentralization delay and service deregulation by Wierchowa Rada;
- The reform lack of influence on the society and the targeted group. Disturbed view of the reforms in the eastern part of the country – through the prism of federalism;

- Fear and social lack of trustworthiness in reforms. Worries – ‘will it be worse’;
- Insufficient institutional ability to planning, managing, coordinating and monitoring all the reform processes (Groysman).

Considering the system transformation in the post communist countries, it is worth to state that mental factors play an important role⁵. The institutional and legal surroundings do not guarantee a successful self-government reform. Besides, the barriers mentioned above are the direct consequences of mentality. Mental change is a longer process than the state changes. Finishing both processes guarantees change.

Mental factors and social capital as a citizen empowerment

Properly operating self-government requires that people are real functioning citizens, in which they are not only aware of their laws respected by the government, but also participating actively for the ‘common good’. Citizenship society influences political decisions on regular basis that are subjected to public control. It is said that developed democracy on the local level occurs when the local authorities are highly social. Sherry Arnstein suggested the following classification. They are as follows:

- non-participation in which ‘the authorities does not share the power with a society, but direct them’ and their actions bear manipulative and therapeutic features (authority as a “good, caring” father);
- tokenism, in which ‘the authorities apparently listen to the society, but develop their own objectives’ and inform the society about their decisions, sometimes counselling and seeking their support;
- citizen power (delegating power), in which ‘society participate in power and has real impact on what happens’ and so the actual power control takes place, power delegation and partnership in power and solving problems (Kazior, Jarzębska 2004: 8; Arnstein 1969: 216–224). Considering the points above, democratic criteria⁶ suggested by Robert Dahl are not applicable to fully estimate citizenship empowerment awareness including the

⁵ By mentality the author means believes, attitudes and group role models arising from values and the reality interpreted them.

⁶ They are as follows:

- a) Control over government decisions about policy is constitutionally vested in officials elected by citizens;
- b) Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon;
- c) All mature citizens may participate in the elections;
- d) Virtually all mature citizens may run for office;
- e) Citizens have right to express themselves without danger of punishment on political matters broadly defined;

local level, because they mainly focus on institutional and formal part of the citizenship policy and not real policies instead. To estimate citizenship empowerment (also at the local level) more useful proves to be authorities citizens model reflecting its real relationship and the influence of the latter on decision-making process or authorities settlements (Fig. 1).

In Poland in the public space appeared a phenomenon of citizen budget in the self-government where citizens decide how to spend part of the public money. Referendum as an instrument of direct democracy is used fairly rarely, in particular circumstances, and the public counselling announcement given by self-government in crucial matters, but not controversial that does not arouse excitement, do not often arouse interest. A good example of such action is discussing housing policy. In one of the mazowieckie county towns, a few people discussed housing policy with the mayor of the town. It is a good example of self-government citizen empowerment not fully understood in Poland that Ukraine wish to follow. Poland still experiences the ongoing system transformation, although it has already finished its state transformation (self-government state reform 17 years ago).

There is three-factor interaction: proper legal and formal tools, authorities and citizen attitude, which result, not only formally and legally, mostly from mental factors. It is worth to underline that substituting representative democracy with direct democracy seems utopian. It means to increase local society involvement 'on regular basis' and to increase real participation in the decision making process. And it results in the increase of the deliberative procedure participation and is directly decisive. Today in Poland the level of the voting involvement to representative offices is unsatisfactory and trust in politicians is relatively low. The trust is formed by social capital⁷, which determines the formation and development of citizenship society. Professor Janusz Czapliński emphasises 'social capital constitutes the essence of the citizen society and definitely effectively developing society' (Czapiński, Panek 2009: 207). Democratic system or citizen society requires its members' activity at various levels of social encouragement – from active to passive attendance in voting for government offices or referendum participation through consulting decisions concerning public space or membership in a list of non-governmental organisations and involvement in social entrepreneurships or initiatives based on the bottom-up approach at the local self-govern level.

f) Citizens have right to seek out alternative and independent sources of information from other citizens and these alternative sources are effectively protected by law.

The citizens have right to form relatively independent associations or organisations, including independent political parties and interest groups, taken from: (Dahl 1995: 324–325).

⁷ After: 1) Bourdieu: "social capital is the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition. In other words this is a sum of capitals and knowledge, which such net would mobilize" (Frieske 2004: 28); 2) Putnam: "social capital refers to (...) social networks and the norms of reciprocity and trustworthiness that arise from them that increase social ability to proceed the coordinated actions" (Frieske 2004: 61).

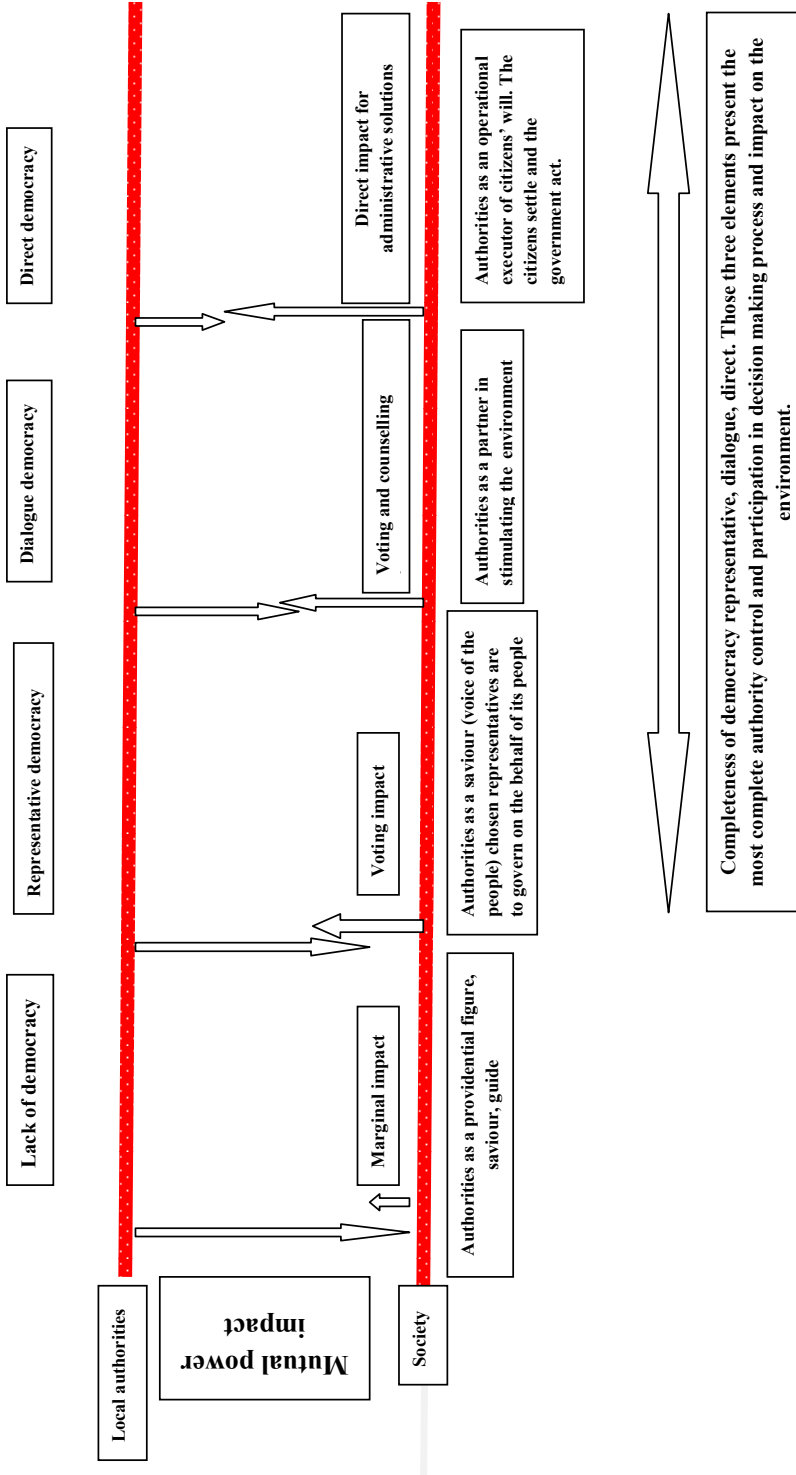


Fig. Levels of democracy in the light of the citizens' power influence on government settlements

Source: Own elaboration.

Interestingly, the 2008 research detailing the social trustworthiness level in Ukraine shows that it was higher about three points (Poland 13, Ukraine 16) (Czapiński, Sułek 2011) than in Poland despite the higher democratic involvement at the local level. The test comes from the time before Euromajdan (despite of ongoing lack of stabilisation and political tensions). Basically conflict induces the inner tension (and so increases so called bonding capital at the cost of bridging capital – intergroup) but simultaneously antagonises social groups against each other. So it presents a vital difference between Poland and Ukraine comparing the ‘starting’ point in self-governments reform.

Conclusions

Ukraine is at the preparatory stage resulting in empowerment of representative organs at the local level. It is state transformation stage. Creating citizen society or citizen empowerment is a long-lasting process. It is not certain to say that it would be at the same pace as Poland if proposed state changes were pushed. Poland was situated in different geopolitical and inner condition after 1981, and after 1989 and 1990 then is Ukraine after 2016. The European Union was different when Poland joined it in 2004 and different is the current EU situation after so called migration crisis and separatism tendencies in Europe. Comparatively, in Poland no armed conflict has arisen, pro-Russian separatism tendencies did not occur, and in the eastern Ukraine in particular. Historical dependencies, were different too. Poland belonged to the eastern block but was not one of the Soviet Republics. Therefore Russian impact on Ukraine is and was higher at the worse economical condition at the same time. Central Ukrainian authorities conduct programs improving representative democracy at the local level by creating independent, efficient local authorities decentralising the decision making process and equipping it with proper organisational, financial and treasury instrument. Poland takes a counselling role. Our experiences serve as a formation government matrix. It is in Poland’s interest for Ukraine to succeed. The arguments are clear and they do not need to be stated herein. The more democratic, stable and pro-European Ukraine, the safer Poland is geopolitically.

The next stage to increase citizen empowerment at the local level will require formation of deliberative and direct democracy. Poland already has both legal-organisational and financial instruments. Presently, despite the fundamental differences between Poland and Ukraine in terms of self-government, following the Terry Arnstein categories it is crucial to emphasize that tokenism in varying degree is observable in both countries when speaking of society empowerment.

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