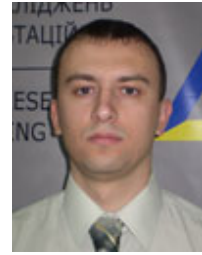


Pitfalls for the forthcoming re-elections

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- On June 16, 2007, Kyiv Administrative Court of Appeal refused the Party of Industrialists and Entrepreneurs in claim regarding a decision by Pechersk Court of May 11, thus admitting its legality. The decision cancels the Act of the Central Electoral Commission that prohibited the "Our Ukraine" Block to nullify its electoral list for the elections of May 26, 2006. It also obliges the Central Electoral Commission to re-consider the nullification of "Our Ukraine" Block's electoral list and approve a decision according to the current legislation.

A decision of the Central Electoral Commission may be positive or negative. The Law on Amendments to the Law on Parliament Elections from June 1, 2007 completely cancels an opportunity for a block/party to nullify its electoral list. But the Law contains contradictory formulation: it becomes valid on the date of issuance, but comes into action in 60 days after its issuance. What the Central Electoral Commission should take as a guide, either the Law on Parliament Elections without or with amendments, is not clear. However, it is clear that decision of the Central Electoral Commission under such circumstances will be entirely political. And the Commission itself, although it must have been completely technical, has been created on the political basis, of the people inexperienced in nationwide organisation of elections but representing political forces: 8 members of the Central Electoral Commission represent the coalition and 7 together with a Head -- the opposition.

Besides, the legality of the Presidential Act Scheduling Pre-term Elections to the Verkhovna Rada from June 5, 2007 remains dubious. The Constitution asserts that the Verkhovna Rada is authorised if two thirds of its constitutional membership are elected. At the same time, the President has the right to dissolve the Verkhovna Rada earlier if plenary sittings cannot be undertaken during 30 days of its session. In other words, on June 15, the Verkhovna Rada became unauthorised after a leave of more than a third of its deputies. Then, 30 days have to elapse when its sittings will not take place. And only on July 15, 2007, the President would have a full right to dissolve it and schedule pre-term elections.

This explains why 55 deputies rendered a claim to the Constitutional Court on constitutionality of the above-mentioned Presidential Act. However, unlikely that the Constitutional Court will be able to adopt some decision shortly since it has been also created on political basis representing different political forces. Due to acuteness of the confrontation it didn't adopt decisions concerning two previous Presidential Acts on the Verkhovna Rada's dissolution. Therefore, there is no reason to expect it takes a decision with regard to the third. And unclear status of three judges being discharged by the President but still acting adds piquancy to the situation. The third Act and lack of a Constitutional Court's operative response lay a delayed-action mine. Elections may be held but the Constitutional Court afterwards will keep substantive premises to admit the third Act on the Verkhovna Rada's dissolution illegal, and thus pre-term elections as illegitimate.

Currently, the pre-term elections' destiny depends on two bodies: the Central Electoral Commission and the Constitutional Court that must have been created on professional technical basis but appeared politically biased. It would be desirable to have more detailed requirements on professional experience, education and specialisation of nominees to the posts of constitutional judges and members of the Central Electoral Commission in the respective Laws.