

Sergiy Taran

Informal Federalism as a Mechanism of Separatism Neutralization in Ukraine

Federalism is often discussed as a way for moderating the interregional relations in Ukraine – the country that exhibits long-standing economic, cultural, and political dissimilarities amongst its different territorial segments. The discussion is enhanced by the Russian–Ukrainian conflict over Crimea and territories of Donbas region. Russian officials frequently suggest that the conflict is a “civil war” and federalism can serve as a “solution” to this “internal war”.¹ Therefore, federalism is perceived not only as a way for moderating the interregional relations but also as a tool to force Ukraine to accept Russian scenario of changes of political system. That is why it is very difficult for any Ukrainian political government to discuss even prospect for federalism implementation as it can be interpreted as a concession to Russia. Meanwhile, since independence Ukraine has formed some elements of so-called “informal federalism” – the order where a formally unitary state informally delegates some authorities to regional units. The unofficial transformation of power from central to local government is not unique for Ukraine.

The federalism is applied as powerful tool for moderation of regionalism in many countries. It could displace sharp political conflicts from national to local level. It can also lead to additional divisions within the regional groups or encourage interregional political coalitions.

However, the implementing of federalism could lead to serious political losses for the central government, which take over political responsibility for the federal system implementing in the country. In particular, the dominant title group could accuse a central government of disintegrating of the country.² Moreover, federalism also could strengthen regional patriotism, which, in turn, could threaten the integrity of the state.

In order to avoid the negative effects of the direct implementing of federalism, the central government of a formally unitary state can delegate significant *informal*

¹ К. Затулин, *Признание ДНР и ЛНР – крайний вариант. Но он существует*, <https://riafan.ru/1096032-konstantin-zatulin-priznanie-dnr-i-lnr-krainii-variant-no-on-sushestvuet> [access: 7.11.2018].

² D. Horowitz, *Ethnic Groups in Conflict*, Berkeley & Los Angeles 1985, p. 76.

powers to regional administrative units; therefore, such a state de facto becomes a *federation*. In addition, the government could also implement an *asymmetric federalism* when one or more regional units receive disproportionately high powers compared to other administrative units. In this way, the government tends to meet the requirements of regions where there are latent separatist moods.

There are plenty research projects describing mechanisms that allow harmonizing of interregional relations with the usage of “informal federalism”. The various aspects of “informal federalism” were particularly analyzed by D. Lake, D. Horowitz, E. Walker, P. Sahlins, W. Riker and S. Wilkinson.

The study of P. Sahlins who analyzed the regional identity of Serdania – the land on the border area between France and Spain could be a perfect example how the regions use selective non-enforcement of laws adopted by the central government. According to P. Sahlins, Serdania’s local government during a long time has chosen which laws it should comply with (French or Spanish) and which ones shouldn’t. Thereby Serdania’s local government was manipulating the interests of the central government in own favor and, at the same time, avoiding rigid political confrontations.³

The study of S. Wilkinson⁴ is another example of such a selective enforcement of laws by regional governments. He found that despite the mainstream politics of the central government of India, its regional governments have own policies in the humanitarian sphere that are different from the policies of the central government. This is particularly true with respect to language policies. Thereby they selectively enforce the decisions adopted by the central government.

The issue of classical federalism is not accepted by the Ukrainian society. It’s confirmed by recent polls of public opinion. For instance, according to the Razumkov Center research (*Identity of citizens in the new conditions*),⁵ over 80% of Ukrainian doesn’t want to have autonomy within their oblasts of living. By the way, this view is typical for all oblasts of Ukraine. Instead, majority of residents throughout the country (over 51%) supports the idea of *decentralization* (i.e. additional empowerment of local governments for solving direct problems) (see Fig. 1).

Therefore, based on theories about the existence of *informal federalism* in states with developed regionalism, we can assume that in Ukraine there is a hidden de facto federalism – informal political autonomy of some Ukrainian oblasts, whose inhabitants satisfy their political, economic and cultural needs within autonomy, and therefore do not have reasons for harsh political conflicts. Based on this, the central Ukrainian authorities may informally delegate some of the powers to those regions where there are the acutest threats to the negative development of regionalism.

³ S. Sahlins, *State Formation and National Identity in the Catalan Borderlands Since the Seventeenth Century*, in: *Border identities: Nation and State at international frontiers*, eds. T. Wilson, H. Donnan, Cambridge 1998, passim.

⁴ S. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India*, Cambridge 2006.

⁵ *Identity of citizens in new conditions: state, trends, real features*, Razumkov Center, 2016, p. 104.

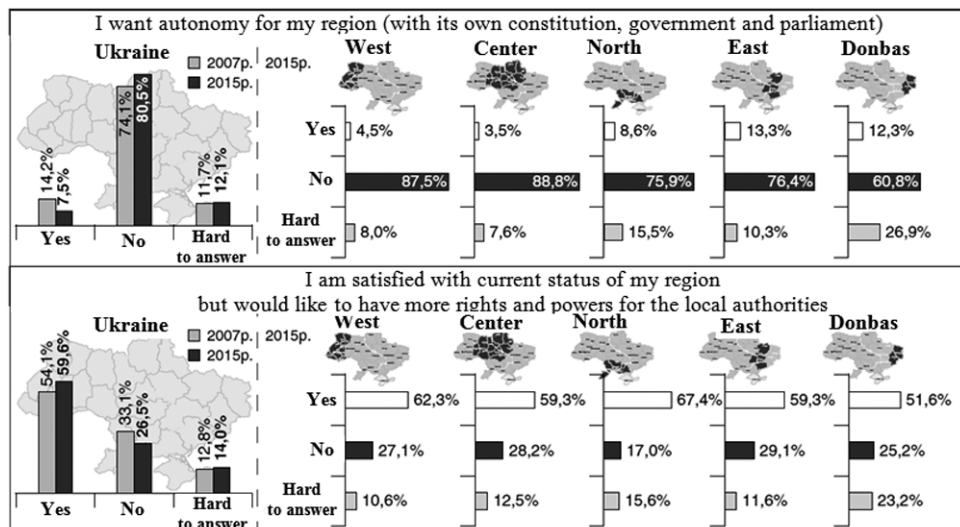


Figure 1. Attitude to federalism in different regions of Ukraine

Source: *Identity of citizens in new conditions: state, trends, real features*, Razumkov Center, 2016, p. 104.

In addition to the fact that certain Ukrainian oblasts can receive more informal powers, the practical mechanism of implementation of de facto federalism lies in selective enforcement of laws at the regional level (within some of the oblasts). Thus, the central government can deliberately not react to the facts of non-enforcement of those laws the topics of which are sensitive to the representatives of certain regional.

The evidence of such selective law enforcement is the use of the single official state language (Ukrainian) in different oblasts of the country. Since the beginning of the independence the use of the state language has remained uneven across the country. Even after Revolution of Dignity (end of 2013 – beginning of 2014) the situation hasn't fundamentally changed. According to the *State of the Ukrainian language in 2014–2015 years*⁶ analytical review (it was made by “Prostir Svobody” public movement; literally – Space of Freedom), *increasing the share* of pupils who are using Ukrainian language for education (which is formally obligatory) in 2014/15 academic year (from 81.8 to 90.8%) is connecting only with specific of statistics technique, which do not take into account the schools in the occupied territories. Instead, *number of pupils* who are using Ukrainian language in education increased only by tenths of a percent. Currently, less than 82% of pupils in Eastern-Ukrainian oblasts are using the state language for education (in particular, in Dnipropetrovsk oblast – 81%; Kharkiv oblast – 74%; Odessa oblast – 70%). At the same time, in Donetsk oblast this figure is much lower (only 59%).

⁶ *The state of the Ukrainian language in 2014–2015*, <http://dobrovol.org/article/334/> [access: 7.11.2018].

The law “On Principles of the State Language Policy” is another evidence of uneven distribution of the state language. It was approved by pro-Russian oriented majority in Parliament of Ukraine in 2012 on the initiative of the “Party of Regions”. According to it, any language can get the official regional status if more than 10% of population of this region uses this language for everyday communication.

The adoption of the law by the Verkhovna Rada caused a diametrically opposite reactions of the inhabitants of Eastern and Western oblasts of the country (see Fig. 2). So, regional councils of Lviv, Ivano-Frankivsk, Ternopil, Rivne and Khmelnytsky, as well as city councils of Lutsk and Mukachevo (all mentioned above are within the Western macroregion) were against the law; on the contrary, the regional councils of Lugansk and Kharkiv, as well as the head of the Parliament of the Autonomous Republic of Crimea and the city councils of Donetsk and Sevastopol, supported this law.

Although in June 1996 the Constitution of Ukraine proclaimed the Ukrainian language as the only state language, in July 2012 the Parliament of Ukraine adopted the Law “On the Principles of the State Language Policy”, which de facto gave an opportunity for local authorities to provide regional status for another languages. The main condition for obtaining this status – the number of speakers of such language should be at least 10% of the population of this region.⁷ The Law stipulates that in the region where the regional language was proclaimed its use is obligatory for local authorities, associations of citizens, as well as institutions, organizations and enterprises. Although, the law provided for such an opportunity for 18 languages, the main goal of the law was to give the regional status to the Russian language. As a result, the adoption of the law caused completely different reaction in the regions, divided them into two poles (see Fig. 2).

Guided by this law, the number of Eastern oblasts gave regional status for Russian language as soon as it was approved. It should be emphasized that this law has not been changed or abolished up to the beginning of 2018⁸ (although after the Revolution of Dignity – 2014 – this issue has repeatedly been discussed in socio-political discourse). This may additionally indicate the importance of this law in harmonization of interregional in Ukraine. Because, de facto, this law established the mechanism of informal federalism: when some regions gain certain opportunities to conduct their own humanitarian policy, despite the preservation of a unitary governance of the country.

Another evidence of the informal federalism in Ukraine is the existence of unequal economic relations between the central government and the regions. The key mechanism illustrating such relations is the creation of free economic zones in various regions of Ukraine, due to which the laws that contradicted the national legislation and, in fact, established elements of federalism in the field of economics, were intro-

⁷ *Про засади державної мовної політики*, <http://zakon2.rada.gov.ua/laws/show/5029-17> [access: 7.11.2018].

⁸ In February 2018, the Constitutional Court found this law unconstitutional, thereby abolishing it.



Figure 2. Regional differences in attitude to the law “On Principles of the State Language Policy”

Source: Закон України «Про засади державної мовної політики», [uk.wikipedia.org/wiki/ Закон_України_«Про_засади_державної_мовної_політики»#cite_note-86](http://uk.wikipedia.org/wiki/Закон_України_«Про_засади_державної_мовної_політики»#cite_note-86) [access: 7.11.2018].

duced within some regions. In particular, in October 1992, the Parliament of Ukraine adopted the law “On General Principles for the Establishment and Functioning of Special (Free) Economic Zones”. Although during the first six years of its operation only one “special economic zone” (SEZ) (within the Autonomous Republic of Crimea) was created, while a real “boom” of their creation has begun only since 1998. So, during the next four years in Ukraine have been created 11 SEZ: “Azov” (Donetsk oblast), “Donetsk” (Donetsk oblast), “Zakarpattia” (Zakarpattia oblast), “Inter-port Kovel” (Volyn oblast), “Kurortopolis Truskavets” (Lviv oblast), “Mykolaiv” (Mykolaiv oblast), “Porto Franco Odesa” (Odesa oblast), “The port of Crimea” (Autonomous Republic of Crimea), “Reni” (Odesa oblast), “Slavutych” (Kyiv oblast) and “Yavoriv” (Lviv oblast).⁹ Then the government also has also begun to create “territories of priority development” (TPD). In general, SEZs and TPDs were created within 12 oblasts of Ukraine (see Fig. 3) and spread to an area of 6360 thousand hectares (or 10.5% of the territory of Ukraine).

⁹ *Економічні провали незалежної України: пільги та преференції*, http://voxukraine.org/longreads/poor-country/index_ua.html#rec7935982 [access: 7.11.2018].

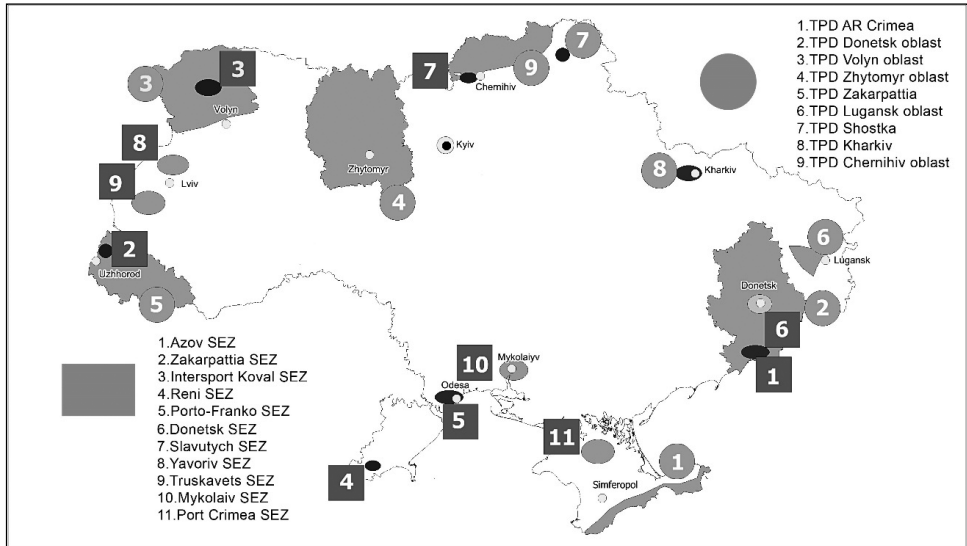


Figure 3. Regional localization of the special economic zones and the territories of priority development

Source: *Економічні провали незалежної України: пільги та преференції*, http://voxukraine.org/longreads/poor-country/index_ua.html#rec7935982 [access: 7.11.2018].

According to the law “On General Principles of Creation and Functioning of Special (Free) Economic Zones”, such zones were created for attracting foreign investments and creating conditions for acceleration of socio-economic development of the country. Although in practice, their activities, as a rule, did not meet the stated goals. According to Ukrainian scientists Valery Heyets and Volodymyr Semynozhenko,¹⁰ during the whole period of SEZs and TPDs operation it was not succeeded to reach even 50% of the level of expected indicators such as: attraction of investments (in particular, it was expected more than 17,1 billion dollars USA; however, only 2.1 billion dollars USA were received, or 12.2% of planned figures); creating new ones and preserving existing jobs (it were really created 137.7 thousand jobs, when 387.4 thousand were planned, or 35.5% of the planned). In general, the volume of investments in enterprises of such special zones was UAH 9.8 billion, with the amount of tax privileges granted at UAH 8.4 billion. Most investments were attracted in Donbas (53.7% of the total), however, according to the scientists, only about 15% of them has foreign origin; the rest are the funds connected with reinvesting the profits of Ukrainian entrepreneurs.¹¹

The weak effect of SEZs and TPDs operating on the state’s economy is illustrated below. As we could see in figure 4, the tax privileges that were granted to SEZs

¹⁰ В. Гасць, В. Семиноженко, *Спеціальні економічні зони: «чорні діри» чи точки економічного зростання?*, https://dt.ua/ECONOMICS/spetsialni_ekonomichni_zoni_chorni_diri_chi_tochki_ekonomichnogo_zrostannya.html [access: 7.11.2018].

¹¹ Ibidem.

is exceeded budget revenues from them by 1.7 times, while only a half among Ukrainian's SEZs had the positive balance between tax privileges and budget revenues.

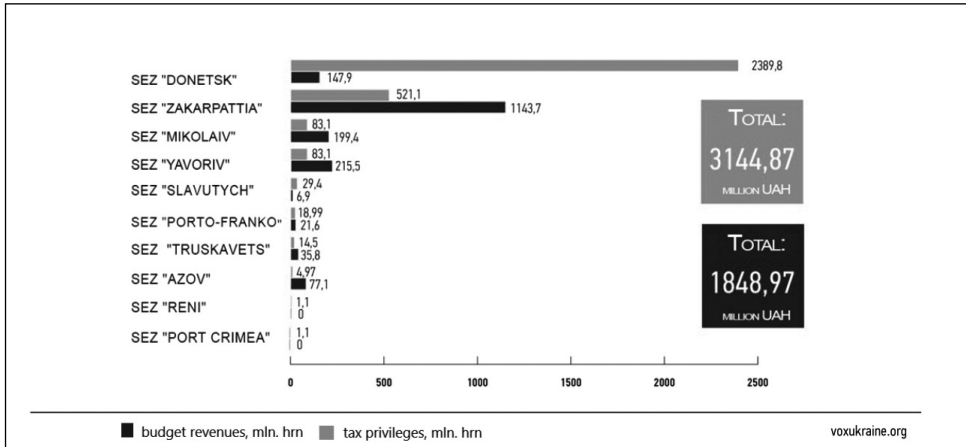


Figure 4. Economic effect from SEZs operation

Source: *Економічні провали незалежної України: пільги та преференції*, http://voxukraine.org/longreads/poor-country/index_ua.html#rec7935982 [access: 7.11.2018].

The similar tendency was also typical for TPDs. As we could see in figure 5, the tax privileges that were granted to TPDs is exceeded budget revenues from them by 1.2 times, while less than a half among them had the positive balance between tax privileges and budget revenues.

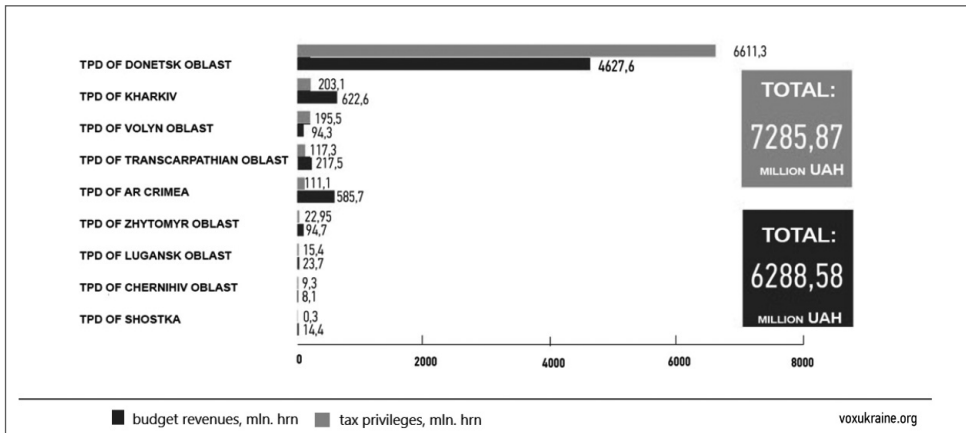


Figure 5. Economic effect from TPDs operation

Source: *Економічні провали незалежної України: пільги та преференції*, http://voxukraine.org/longreads/poor-country/index_ua.html#rec7935982 [access: 7.11.2018].

The economic inefficiency of free economic zones in Ukraine is also confirmed by international organizations. In particular, representatives of the largest creditor of Ukraine (the International Monetary Fund) are convinced that free economic zones are used only for the purpose of avoiding taxes by certain companies in certain territories, which does not lead to general economic growth, but leads to significant losses in the budget.¹² In addition, according to analysts of the International Monetary Fund, SEZs were actively used for tax evasion and smuggling goods. “Tax holidays, which are common for economic zones, create powerful incentives for taxed enterprises for entering into economic ties with those who do not pay taxes within the SEZs in order to transfer their taxes to the latter through mechanisms for transfer pricing”, – said in the IMF study.¹³

The political motivation of the functioning of economic zones is also pointed by experts. In particular, Wian Y. Makohon points to the desire to use free economic zones and territories of priority development not only as a way of attracting investments but also as an instrument for solving social problems of depressed regions. He also describes the low control of their activities from the state authorities.¹⁴ Finally, all above mentioned factors forced the government in 2005, under the pressure of the IMF, to completely abandon the use of free economic zones and territories of priority development.

Additional evidence of the existence of the practice of applying special economic preferences in relation to certain regions may be sectoral tax incentives. In particular, in July 1999, the Parliament, on the proposal of the Government, adopted the law “On conducting an economic experiment at the enterprises of the mining and smelting complex of Ukraine”. The experiment had to continue from July 1, 1999 to January 1, 2002, and introduced significant tax incentives for mining and smelting enterprises, the absolute majority of which were located in the East of Ukraine. In particular, within the experiment for such enterprises, the tax rate was reduced from 30% to 9%; at the same time the environmental tax rate was reduced by 70%. The fact that in 2003 the World Bank demanded to reduce the amount of industry privileges by at least 55% compared to January 1 (as a condition for granting loans to the Government of Ukraine) could indicate the political motivation of such experiment implementing. Eventually, the Ukrainian government had to abandon this experiment.

To conclude, the federalism is applied as powerful tool for moderation of regionalism in many countries. It could displace political conflicts from national to local level. It can also create additional divisions within the regional groups moderating potential conflicts between regional elites and central government. However, the implementing of federalism can be problematic for the central government as it

¹² Розділ “Україна”, Пункт “Регіональна економіка 2008”, <http://www.imf.org> [access: 7.11.2018].

¹³ *Економічні провали незалежної України: пільги та преференції*, [http:// voxukraine.org/longreads/poor-country/index_ua.html#rec7935982](http://voxukraine.org/longreads/poor-country/index_ua.html#rec7935982) [access: 7.11.2018].

¹⁴ Ю. Макогон, *Нові форми організації територій із особливим податковим режимом*, <http://old.niss.gov.ua/monitor/January2010/05.htm> [access: 7.11.2018].

may be accused in the “encouraging” separatism. In order to avoid the negative effects of federalism implementation, the central government of a formally unitary state can delegate significant informal powers to the regions, that is, to apply the mechanism of informal federalism.

Ukraine is the country that exhibits evidences of informal federalism in at least three areas. The first area is humanitarian policy and, in particular, language policies where the central government carry out selective law enforcement of the use of the single official state language (Ukrainian) in different oblasts of the country. Asymmetric economic relations between the central government and regions point to the second area where elements of informal federalism exist. It resulted in creation of free economic zones in various regions of Ukraine, due to which the local laws contradict the national legislation. Also, it can be observed in sectoral tax incentives related to concrete oblasts and regions. Thus, the practice of informal federalism, although deepening the existing regional differences, can contribute to separatism neutralization without transforming political system from unitary system of government to federal system.

Abstract

The article describes the practice of informal federalism in Ukraine – the phenomenon based on the informal delegation of some rights from central authorities in a formally unitary country to separate regions of the country. The aim of such delegation is to avoid possible conflicts between the central and regional authorities. In Ukraine, informal federalism particularly manifests itself in language and economic policy.

Keywords: federalism, Ukraine, regionalism, language, free economic zones.

Nieformalny federalizm jako mechanizm neutralizacji separatyzmu na Ukrainie

Streszczenie

W artykule przedstawiono praktykę nieformalnego federalizmu na Ukrainie – zjawisko polegające na tym, że władza centralna w formalnie unitarnym kraju nieformalnie deleguje część praw oddzielnym regionom kraju. Celem takiego delegowania jest unikanie możliwych konfliktów między władzą centralną a regionalną. Na Ukrainie nieformalny federalizm przejawia się w szczególności w polityce językowej i ekonomicznej.

Słowa kluczowe: federalizm, Ukraina, regionalizm, język, strefa ekonomiczna.