"DICTATORSHIP OF APPLAUSE"? THE RISE OF DIRECT REPRESENTATION IN CONTEMPORARY UKRAINE

© Sophie Schmäing

M.A., Doctoral Researcher, Justus Liebig University Giessen
Karl-Glöckner-Str. 21E, D-35394 Giessen, Germany

ORCID ID: 0000-0002-1363-5190
Email: sophie.schmaeing@sowi.uni-giessen.de

Abstract: Recent years have seen much critique of referendums within public discourse as well as in scholarly debates, not least due to the high-profile Brexit referendum. In Ukraine, on the contrary, debates on improving democracy through direct democracy measures have gained pace since the presidential and parliamentary elections in 2019. Political newcomer Volodymyr Zelensky and his party Servant of the People (SP) both promoted referendums as a crucial means to reform Ukrainian democracy, notwithstanding Ukraine's lack of positive experience with referendums and the divisiveness of society on central issues. This paper explores why and how direct democracy features so prominently in SP's and the presidents' rhetoric and looks into the implications of this salience for Ukrainian democracy. Drawing on Nadia Urbinati's concept of 'direct representation' and Bernard Manin's 'audience democracy', I argue that due to the centrist stance the above-mentioned political actors took on formerly defining societal cleavages, referendums and polls became prominent tools to reach out to their heterogeneous constituency. Indeed, SP's diverse range of proposed direct democracy tools was quite innovative in the Ukrainian context, while the adoption of new legislation was inclusive and involved civil society organisations. In conclusion, although President Volodymyr Zelensky undoubtedly seems to perceive polls and referendums as a way to boost his popularity, thereby reducing the role of citizens to that of a reactive audience, the new legislation constitutes a significant qualitative change introducing possibilities of active citizen participation in political decision-making in Ukraine.

Keywords: Ukraine; referendum; direct representation; populism; audience democracy; Volodymyr Zelensky; Servant of the People

1. Introduction[1]

Recent years saw much critique of referendums within public discourse as well as scholarly debates. Some scholars saw the high-profile Brexit referendum as proof that referendums are inherently populist and divisive in nature (Offe, 2017). In Ukraine, on the contrary, the idea to let the people have a say on certain issues through a popular vote has gained momentum since the presidential and parliamentary elections in 2019. Political newcomer Volodymyr Zelensky, who won the presidential election with unprecedented support of 73 percent of the electorate, had promoted direct democracy measures as a crucial means to deepen Ukrainian democracy during his election campaign. Observers interpreted Zelensky's penchant for referendums as part of his populist behaviour (Hosa and Wilson, 2019). On one occasion, a political opponent described his decision-making processes as overly reactive to public opinion, which would lead Zelensky, a former comedian, to establish a "dictatorship of applause" (Pekar, 2019). However, changes in the political landscape since 2019 and the attempts to reform political institutions cannot be reduced to the president's actions. Reconstruction of the political system with more avenues for citizen participation featured just as prominently in the election programme of the president's Servant of the People (SP) party. In addition, a group of civil society organisations joined the attempts to adopt new legislation on referendums in Ukraine.

This increased interest in referendums might come as a surprise given Ukraine's prior (in)experience with nationwide popular voting processes. The contested illegitimate referendum in Crimea conducted in March 2014 by the Russian Federation during the annexation of Crimea is brought up frequently as a threatening example in recent debates on referendums in Ukraine (Podolian, 2015). To date, the 1991 vote on Ukrainian independence remains the only popular vote that is remembered fondly. In contrast, the 2004 referendum was an unsuccessful attempt at power consolidation by then President Leonid Kuchma (Drabczuk, 2018: 311). Furthermore, in 2012, the then President Victor Yanukovych passed new controversial referendum legislation that mirrored his regime's authoritarian tendencies (Simon, 2013). In 2018, the determined actions of a coalition of civil society organisations finally lead to the abolition of this law by the constitutional court, creating a legal loophole on referendums in Ukraine (BBC, 2018). Beyond this link between authoritarian behaviour, referendums and the absence of legislation since 2018, the division of society on central issues concerning the country's future does not seem, at first glance, conducive to the promotion of the use of binary votes. Tellingly, post-Maidan president Petro Poroshenko repeatedly promised to hold a referendum

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on Ukraine's possible NATO accession yet never conducted it (Radio Free Europe, 29 February 2019; Arosev, 2017; Ukrainska Pravda, 2015).

Hence, the question arises as to how the use of referendums and other direct democracy measures became so prominent in the discourse of the current Ukrainian president's camp and his party SP, how it translated into practice and, more broadly, what are the implications for the Ukrainian democracy. The main argument this paper puts forward is that Volodymyr Zelensky's and SP's election campaign marked a distinct shift from an emphasis on identity-based issues towards a vision of a new direct relationship between the electorate and the political representatives. This direct relationship, characterised by an emphasis on referendums and measures aimed at increasing the oversight over representatives, was triggered by an apparent lack of shared ideological-political thinking between the party members and the president. By emphasizing their goal to fundamentally reform the political institutions, Zelensky and SP successfully exploited the Ukrainians' extreme distrust of those same institutions based, amongst other factors, on widespread experiences of elite corruption (Whitmore, 2019). Yet, as the post-election phase shows, the promotion of direct democracy proved more than a clever election trick. In an inclusive process that involved a range of civil society organisations, SP adopted and improved quite innovative legislation on referendums that created new opportunities for citizens to have their say in political decision-making processes.

The article first establishes a conceptual framework, discussing the link between representative democracy, populism and referendums. In particular, I refer to Nadia Urbinati's concept of 'direct representation' that provides a political theorist's perspective on populism. Aiming to unpack the importance of the political configuration in which politicians keen on referendums operate, I discuss the applicability of the concept of 'audience democracy' proposed by Bernard Manin to the Ukrainian case. In the empirical part, I first flesh out the argument that the 2019 elections meant a shift from identity-based positioning of parties towards an inclusive and unifying rhetoric. Instead of mobilising identities, SP and Zelensky proposed referendums and other measures as a means to mobilise their constituencies. In depicting this shift, the article also illuminates how SP and Zelensky justified their promotion of referendums. The article then traces the legislative changes made regarding referendums and MPs' activities, and critically discusses Zelensky's controversial conduct of a nationwide poll in October 2020.

2. Referendums and Representative Democracy

In the academic literature as well as public discourse, referendums are usually understood as a form of direct democracy. As such, they are being conceptually juxtaposed to the representative political system,

because they are seen as an expression of the direct, unmediated "will of the people". Yet it is also a thoroughly studied fact that politicians regularly call for referendums on certain issues for a variety of reasons, thus using them in their parliamentary activities (Gherghina, 2019; Morel, 2001; Rahat, 2009; Setälä and Schiller, 2009). To account for this contradiction between understanding referendums as a direct democracy tool and their actual embeddedness in the political environment, El-Wakil and MacKay have recently proposed a systemic approach to referendums. They argue that the direct democracy approach falls short of capturing the procedural complexities of popular voting processes. These processes, whether initiated by the government or citizens, are always part of broader dynamics within the representative institutions and mediated by diverse political actors. Consequently, it is not enough to eliminate conceptually the role of political institutions in referendum processes or reduce them to disruptive or manipulative abuse of referendums by politicians. Instead, Walik and MacKay's systemic approach accounts for different institutional designs and interrelations with the broader political system (el-Wakil and McKay, 2020). As another proponent of the systemic approach has argued, taking into account institutional and procedural aspects also outmanoeuvres fundamental objections to referendums as inherently divisive and reduced to binary choices (van Crombrugge, 2021). While these features may apply to certain popular voting processes, they are always informed and shaped by the broader political interactions and cannot be reduced to the mere vote. That is, a systemic view of referendums also makes it possible to go beyond hastily characterising them as serving manipulative ends (although this might indeed be the case under certain circumstances) or escalating pre-existing divides because it turns the attention to the processes through which the vote is achieved.

2.1 The Concept of Direct Representation and the Direct Democracy Toolkit

If we take into account that popular voting is part of the broader political structures, why do politicians actually promote referendums? The link between populist policies and the promotion of referendums has received significant scholarly attention within populism studies. Empirical research reveals that populist parties often refer to referendums in their rhetoric of representing a unified 'popular will' (Mudde and Kaltwasser, 2017: 81). This will is often opposed to the political establishment these parties position themselves against. Findings show that populist parties also deliver on their claims for direct democracy once they are in office (Mudde, 2007). While the general appeal of referendums for populist forces is well-documented, non-populist parties likewise call for referendums or rely on polls for their political decisions (Offe, 2017: 17). Lars Brummel has found that between 2000

and 2017, right-wing and left-wing populist parties used and supported referendums more often than other parties. His analysis, however, also reveals that justifications for the use of referendums differ between the right, which stresses the argument of giving power to the people, and the left, which puts more emphasis on their commitment to democratic ideals (Brummel, 2020). There is thus no distinct and unified populist way of using and defending referendums. Some authors, such as Jan Werner Müller, who likewise points to the difficulty of differentiating between populist and non-populist uses of referendums given the dependence of today's political systems on the polling industry, use a contextual explanation. Accordingly, Müller argues that populists can be identified by their anti-pluralist stance (Muller, 2016: 2–3).

From the perspective of a political theorist, Nadia Urbinati takes a fresh and comprehensive view on "what populism does, especially concerning representative democracy, instead of discussing whether it is a 'thin ideology', a strategy, a style, a mentality" (Urbinati, 2019: 7). Although embracing the notion of populism herself, she positions herself against polemic and normative views and argues instead for focusing on the representative process. In doing so, Urbinati, of course, replicates those insights from populism studies that the anti-political establishment populist parties embrace, yet she integrates these findings into a framework of broader transformations of representative democracy. Her concept is therefore helpful in grasping the processes that unfold when political representatives increasingly embrace different modes of referendums.

Urbinati defines the use of popular voting processes by political leaders as a process of 'direct representation'. As she admits, this notion seems contradictory and partially confusing at first sight. She describes direct representation as a relationship between representatives and the people where intermediation either by the media or by parties is absent. In this constellation, visible popular approval is a core element for the leader who constantly needs to hear the people's reactions to his or her proposals and public appearances. This direct link with the people is created by referendums and polls but often also through direct communication on the Internet (Urbinati, 2019: 160–162). Direct representation is therefore a practice through which leaders speak directly for and to the people without political intermediaries like parties or traditional mass media (Urbinati, 2019: 8). Does this mean that through direct representation leaders become more responsive to their electorate due to the constant need to react to public opinion? Urbinati argues that the use of referendums in a populist configuration does not embrace the ideal of direct democracy since it is the leaders who propose the issues to be decided on. In her view, direct representation is not identical to direct democracy, even though it actively promotes and draws on tools typically identified with it (Ibid.: 162). In the final analysis, Urbinati does not fully keep her promise to look at what populism does, because she presupposes

a certain kind of referendum process without providing empirical evidence or a consistent theoretical argument. Ultimately, as the systemic approach to referendums suggests, popular vote processes can only be analysed in the specific political environment in which they are implemented. With this in mind, making such a broad claim about all referendums initiated by populist forces is a simplification.

More convincingly, Urbinati points to the crucial importance of transparency in a political configuration characterised by the use of direct representation. As has been argued, the permanent need for approval calls for permanent checking of public opinion. With the people taking the role of observers, transparency and the close monitoring of every step taken by the leader comes to the fore. The people thereby gain a negative rather than a positive power, performing a watchdog function that is close to surveillance. Urbinati links this argument to John Keane's concept of 'Monitory Democracy' (Urbinati, 2019: 180–181). As I will show in the case of Ukraine, the watchdog role of citizens and increased control over leaders is made very explicit in the form of strict legislation constraining parliamentary but also presidential actions.

In her book, Urbinati exemplifies her concept of direct representation by looking at Podemos in Spain and the M5 movement in Italy. Unlike these cases, Ukraine is not a fully-fledged democracy. It is often defined as a hybrid regime that embraces some features of democracy such as regular free and fair elections, but also some aspects of authoritarianism (Way, 2015). Most importantly, oligarchic groups crucially influence Ukrainian political institutions (Pleines, 2016), and the levels of (perceived) corruption are exceptionally high (Whitmore, 2019). Another defining feature of the Ukrainian political system is its continuously weak party structures (Fedorenko et al., 2016). However, the processes Urbinati describes are not limited to western Democracies. Mudde and Kaltwasser (Mudde and Kaltwasser, 2017) argue that populism is a democratic form of rule, yet one that deviates from the liberal concept of democracy that includes the rule of law, protection of minorities, and checks and balances.

Furthermore, Körösényi's (Körösényi, 2019) work on contemporary Hungary suggests that attempts to make use of direct representation are not limited to fully-fledged democracies. Körösyeni builds on Max Webers's concept of plebiscitary leader democracy, yet the processes he describes fit well into Urbinati's concept of direct representation. According to Körösyeni, Hungarian president Victor Orbán frequently uses referendums and national consultations to circumvent intermediary institutions and create a direct link to his electorate (Körösényi, 2019: 290–291). Replacing the parliament, the president, whom Körösenyi describes as charismatic, becomes the quintessential representative of a unified people. Yet, this type of top-down representation also creates the necessity to consult the voters. These instruments of consultation are primarily constructed to reinforce Orbán's

authoritarian legitimation, but at the same time they tend to introduce elements of responsiveness (Körösényi, 2019: 290–292). Körösenyi's description thus closely corresponds to Urbinati's concept, suggesting that direct representation is not limited to a certain regime type.

2.2 Transformations of Representative Democracies

The central question is why this form of representation appears in a given political configuration. In consistence with proposing a concept focused on processes within representative democracies, Urbinati seeks to derive the emergences of populist and plebiscite practices from the logics of transformations within political systems. She describes the increased use of aggregative forms of voting as a result of the decline of party democracy but also transformations in the public political sphere (Urbinati, 2019: 169–171). To this end, Urbinati builds on Bernard Manin classic work on representative democracy that I will turn to next.

In his monograph on representative democracy, Bernard Manin (Manin, 1997) explores the emergence of so-called 'audience democracies'. Against the background of weakening ties to political parties, he observes that voters do not make their voting decisions based on electoral programmes, but choose their favourite political personality. Taking into account the increasing role of the media in the public sphere at the time of his writing, Manin makes an even more crucial observation that the voters' role shifts from an active expression of preferences to a reactive role of responding to what the political representative is offering, hence to the role of the audience. The audience may control their representatives by approving or rejecting what they offer, yet cannot set the agenda themselves. Due to the weak role of parties, audience democracy lacks stable cleavages, the constituencies are accordingly fluid and their choices less predictable, leading to an increasingly important role of opinion polls and surveys in monitoring public opinion, as Manin convincingly argues (Manin, 1997: 219–230). Urbinati adds the observation that contemporary populist parties have less visible organisational structures, often refraining from setting up local headquarters and instead adopting members in a more fluid fashion. She describes the new media as fundamentally changing political communication (Urbinati, 2020: 174). Hence, in a political configuration without clearly defined cleavages and well-defined party structures, it seems more likely that political leaders will try to directly represent their constituencies by relying on the popular vote and polls.

Undoubtedly, all of the above-mentioned concepts are ideal types that seldom appear in a pure form in the real world. Still, three features of those concepts can be identified to serve as a point of departure for the analysis of the Ukrainian configuration. First, weak, fluid political party structures, absence of clearly defined cleavages, and the rise of the media and internet communication all contribute

to the appearance of what Manin calls "audience democracy". Second, in such a political configuration leaders often try to create a direct link to their constituency through referendums, polls and other tools of 'direct representation'. Thirdly, and crucially, the concepts of 'audience democracy' and 'direct representation' promote distinct claims concerning citizens' roles in these configurations. Manin describes the role of citizens as that of an audience. Accordingly, citizens do not actively voice their preferences, but reactively respond to what political representatives offer them. The metaphor of the "dictatorship of applause" (Pekar, 2019), neatly illustrates Manin's concept. Urbinati argues that transparency and citizens' role as watchdogs are of major importance. In the Ukrainian context, transparency appears to be even more important given the widespread corruption and low trust in political institutions. Urbinati admits that scholars have argued that populist policies have a potential to mobilise citizens through popular voting, but partially rejects this view. Her argument is that, in the process of direct representation, referendums are often subject to the approval of the leader (Urbinati, 2019: 160–162). Hence, the tension described by both concepts is between active citizens and reactive citizens. This tension has to be kept in mind when analysing real practices.

3. Zelensky's Presidential Campaign: From Identity Politics to Direct Representation

The Ukrainian presidential elections in April 2019 were considered an outstanding event by many observers. Political newcomer and well-known comedian Volodymyr Zelensky soundly defeated incumbent Petro Poroshenko with 73 percent of the votes in the second round. Political analyst Volodymyr Fesenko dubbed the election of the political novice an 'electoral Maidan' that in his view mirrored the Ukrainians' continuing strife for radical political change (Schreck, 2019). While the level of support was impressive in itself – and unprecedented for Ukraine – Zelensky's victory was even more remarkable in the light of the broad mobilisation of voters in almost all Ukrainian regions he accomplished.

For many years, Ukrainian politics was dominated by sharp regional divides between the southern and eastern regions voting for parties that promote closer ties with Russia on the one hand, and the western and central regions supporting closer ties with the West on the other. Apart from diverging geopolitical orientations, language preferences and interpretations of history had further divided the two electorates, as did varying preferences for the level of state intervention into the economy (Herron, 2014). The identity cleavage was certainly most visible in the political sphere and politicians actively exploited it by using essentialist binary terms such as 'pro-western' or 'pro-soviet'. As has been argued, this language has partially substituted for absent

debates on ideological differences and political visions (Minakov, 2011). The Euromaidan movement in 2014 fuelled the hope of overcoming these divides, and the pro-Western parties identifying themselves with the Euromaidan won the early elections in 2014. Hence, newly-elected president Petro Poroshenko was backed by a pro-European majority in parliament, which marked a significant change in Ukraine's political landscape. However, the Opposition Bloc, advocating stronger ties with Russia, won the majority in several southern and eastern regions, thus sustaining the regional differences (Shevel, 2015). The election of oligarch Petro Poroshenko amounted to the continuation of a political system, against which the Maidan had risen in 2013–14 (Rohozinska and Shpak, 2019). Five years later, support for Poroshenko had dropped considerably, and opinion polls showed that Ukrainians were frustrated with the slow implementation of reforms and the continuing political corruption (Rohozinska and Shpak, 2019).

While incumbent Poroshenko built his 2019 election campaign on the identity-based slogan "Army, Language, Faith", Zelensky relied on inclusive rhetoric that aimed to overcome linguistic, ethnic and geopolitical divides. He employed anti-elitist rhetoric and at the same time continuously tried to appeal to 'the people'. In his election programme, he juxtaposed the "people of Ukraine" to the "political pensioners" who, as he put it, fluctuated through different political parties and political positions since the Ukrainian independence (Zelensky, 2019). The composition of Zelensky's election programme around the two axes of direct democracy and measures to control political representatives is aptly demonstrated in the following quote of Dmytro Razumkov who headed Zelensky's election campaign:

> "Volodymyr Zelensky's programme is one of the few that included the citizens of Ukraine in the drafting process, who voiced their proposals, their visions of the development of the state. There is a lot of criticism about this, but, by and large, everything is correct. This is not Zelensky's personal programme, but the country's programme. The key aspects of it are people's power and the removal of immunity. We forget that in the Constitution of Ukraine, the people are the only bearer of power. In order to listen to them, it is necessary to introduce instruments of direct democracy, for example, referendums" (Poskannaya, 2019).

Besides referendums, Razumkov named the lifting of the immunity of MPs, the president and the courts as a central aspect of Zelensky's programme. In a similar vein, Zelensky announced that "implementing equality and justice starts with myself" – and implemented a law on impeachment of the president (Zelensky, 2019). These elements all communicate a vision of a direct relationship with the people who gain more control over their representatives through a variety of mechanisms. Zelensky frequently mentioned the goal of introducing direct democracy during his election campaign. The following quote from an

extensive interview with the well-known journalist Dmytro Gordon is particularly telling:

> "There are a lot of things in different countries that I would like to introduce in Ukraine. Let's say I really like the standard of living in Switzerland. And I'm obsessed with referendums, which is my thing, I like it. Maybe because I'm a producer, I know how to get through to the audience: the more you talk with them, – the more you learn about the problem" (Gordon, 2018).

This quote exemplifies Zelensky's imagined role of a president-to-be acting in front of an audience. To interact with this audience, Zelensky increasingly used social media channels. Speaking about the Zelensky's all-Ukrainian programme, Razumkov refers to a short video where Zelensky called upon Ukrainians to write the election programme together with him by naming the five most important problems of the country.[2] In addition, he launched an online platform called "Lift" where citizens were prompted to send in their ideas or apply for various jobs within the government institutions.[3] These elements completed the image of an open president (and party) that aimed to remove all "power verticals" as Razumkov put it (Razumkov 2019). It is important to mention that while the proposed common writing of the election programme might appear to be a rather innocent, ridiculous or playful trick, depending on the observer's point of view, proposals such as the removal of immunity and other measures did build on long-standing discussions on how to improve Ukraine's political institutions. In his inauguration speech, Zelensky announced the dissolution of the Ukrainian parliament and early elections. He justified this step as follows:

> "The main argument for dissolving the Verkhovna Rada is an (sic) extremely low trust of Ukrainian citizens in this institution – 4%. This is an assessment of the work of the parliament and the most important argument for terminating its powers. As guarantor of the Constitution, I am obliged to guarantee the rights of Ukrainian citizens."[4]

Thus Zelensky continued to use a rhetoric that emphasised a vision of a close, trust-based relationship between citizens and their representatives. A precondition to get a place on the list of 'Servant of the People', the president's party that had only existed on paper before

2 https://www.facebook.com/404926500265591/posts/410557996369108?comment_id=398835033994780. Accessed 10 May 2021.

3 LIFT | проєкт Команди Зеленського. Accessed 10 May 2021.

4 https://www.president.gov.ua/en/news/volodimir-zelenskij-golovnim-argumentom-dlya-rozpusku-verhov-55545. Accessed 10 May 2021.

his election campaign, was that the candidate had no prior experience as a representative in the parliament. SP won 43 percent of the votes and subsequently held a single majority in the parliament. The diverse group of people that now formed the strongest parliamentary faction could be described as mirroring the broad but undefined electorate that supported Zelensky and SP. SP's party ideology, called 'centrism', resonates with Zelensky's inclusive rhetoric beyond pre-existing cleavages. As the SP webpage puts it:

> "Ukrainian centrism is a political ideology in Ukraine, which involves finding a compromise between different groups of the population, avoiding a split in the country on political, ethnic and linguistic grounds, abandoning left and right extremism and focusing on key areas of development: peace, institutions, investments, infrastructure, and people's power."[5]

Despite the centrist stance on many issues, the introduction of direct democracy and the revamping of the political system featured just as prominently in SP's election programme. In the first section titled "Cleansed, Updated and Responsible Authorities", the party called for a recall mechanism for MPs, a popular veto for citizens to reject laws, and the possibility for citizens to influence decision-making through referendums (Sluha Narodu, 2019).

Zelensky and his party achieved enormous success in both the parliamentary and presidential elections. His electorate comprises a diverse and fairly undefined population of people holding different views and values (Rohozinska and Shpak, 2019: 36–37). The same applies to SP that brought many political newcomers of different backgrounds into the parliament. As political scientist Chaisty and Whitefield have argued based on a set of opinion polls and expert surveys, SP managed to win due to its centrist position on almost all issues. For the authors, this is a highly surprising finding, seeing that the political science literature suggests that "challenger parties should compete by politicising new issues". However, "Ukraine provides evidence to the contrary" (Chaisty and Whitefield, 2020: 9). Yet, seen through the lens of the concepts of 'audience democracy' and 'direct representation', Zelensky and SP present an example. In the Ukrainian context, one would be amiss to speak of the shrinking influence of programmatic political parties as these have never been strong in Ukraine in the first place. However, instead of mobilizing long-standing identity cleavages, both communicated a vision of how to rebuild the political system. Referendums and greater control over political representatives were the central features of this vision. By employing anti-establishment rhetoric, Zelensky successfully established two super-majorities – within his

5 https://sluga-narodu.com/. Accessed 10 May 2021.

electorate and his party – exploiting the dissatisfaction of the population with the political elites and system.

This rhetoric proved successful at least in the immediate aftermath of the elections. Trust in the parliament and the president are traditionally at a very low level in Ukraine even in comparison with other post-Soviet states (Haerpfer and Kizilova, 2014; Whitmore, 2019: 2). As opinion polls reveal, Zelensky and SP's appearance as political outsiders indeed resulted in a palpable rise in trust rates for both the president and the parliament. In 2019, almost 80 percent expressed their trust for the president (UNIAN, 2019d). These high trust ratings lasted only a few months, but in 2021 Zelensky's survey-based trust rating still exceeded those of his predecessors (Ukrinform, 2021a).

4. Direct Representation in Practice: Restoring the Political System?

Referendums remained a prominent issue in interviews given by SP's central figures once they took office. The motif of referendums as something antithetical to the "old elite" remains a central reference for justification, as the following quote by Oleksandr Korinenko, party chairman since 2020, aptly illustrates:

> "The people want to participate in decision-making processes that directly affect their everyday lives and their future. To take this right away from them this is the usual overt, refined cynicism of politicians, who ruled behind the scenes for decades, not taking into account the will, opinions and attitudes of the people. Today, the opponents of the referendum law are those who do not respect their own people. [...] The times when decisions could be taken in the 'family circle' restricted to a few people, endowed with power are long gone. This is not only a Ukrainian trend, but a global one."[6]

Korinenko combines his argumentation against the political establishment and oligarchs who exercise their influence behind closed doors with a depiction of referendums as something modern and global. Ruslan Stefanchuk, head of the Parliamentary Working Group on Direct Democracy, adopts a slightly different discourse. For him it is central that referendums build trust, "unite Ukrainians" and, with regard to local referendums, constitute a means through which citizens express their view on local issues so that "there would be no separatist attitudes" (Kolesnichenko, 2019; Koshkina, 2021). How were these

6 https://sluga-narodu.com/referendum/. Accessed 10 May 2021.

discourses put into practice? The following section traces the adoption of the new referendum legislation.

4.1 Closing the Legal Loophole: New Legislation on Referendums

In order to deliver on their bold promise of more direct democracy, SP and the president first had to create the necessary legal conditions. In April 2018, the Ukrainian constitutional court declared the referendum law adopted in 2012 by then President Victor Yanukovych unconstitutional (BBC, 2018). With this step, the judges finally reacted to the sharp criticism of the law by the opposition, civil society representatives, and the constitutional advisory board of the Council of Europe, the Venice Commission, immediately after its adoption in 2012 (Vovk, 2017). In spring 2014, the Coalition for a Fair Referendum, a group of parliamentarians and civil society representatives reopened the issue of the contested law by petitioning the constitutional court that finally decided to abolish the law four years later in 2018 (Pavlenko, 2019). The law adopted by the Yanukovych government allowed the possibility to amend or adopt a new constitution in a referendum without any involvement of the parliament. Crucially, it had also excluded the possibility of conducting local referendums.

The civil society organisations that had been advocating for the abolition of the controversial law became members of the Working Group on Direct Democracy that was set up in March 2020 by the First Deputy Chairperson of the Ukrainian parliament and an SP member Ruslan Stefanchuk. Amongst the organisations were the Civil Network "Opora" that has conducted election observation in Ukraine for many years, the Centre for Policy and Legal Reform and the Centre for Independent Political Research, as well as the representatives of the Reanimation Package of Reforms that grew out of the protest movement in 2013–14. Several members of the Working Group amplified the referendum issue, especially by reaching out to a wider public. The draft law was published on a website allowing for comments by other societal actors, and the Centre for Policy and Legal Reform held several meetings to discuss open questions with the interested member of the public (Ukrinform, 2020).[7] Ruslan Stefanchuk became a frequent commentator on the referendum issue in the Ukrainian media.

The draft law on national referendums was also repeatedly reviewed by the Venice Commission, which evaluated it positively and called it a major improvement in comparison with the 2012 law (Venice Commission, 2020; Venice Commissions and ODIHR, 2020). In January 2021, the new legislation was adopted by the Ukrainian parliament

7 cf. for instance: https://www.facebook.com/pg/pravo.org.ua/videos/?ref=page_internal. Accessed 10 May 2021.

(Kuteleva-Kovalenko, 2021). With its single majority in the parliament, SP did not have to rely on the opposition representatives, most of whom voted against the law. The main counterargument put forward by the opposition party "Golos" was the risk that political parties would use referendums to circumvent the parliament, especially with regard to contested questions. Yulia Tymoshenko, a prominent member of the party "Fatherland", although herself an open supporter of referendums, criticised the complicated referendum procedure (Rzheutskaya, 2021). As for the SP faction, messages where circulated that encouraged SP members to vote in favour of the law, on pain of exclusion from the faction (Solomka, 2021). This turmoil and illegitimate pressure on the MPs mirrors the importance the adoption of the law had for the president's camp and the heads of the party and faction. According to the new law, referendums concerning constitutional amendments, questions of national importance and changes to the territorial order of Ukraine can be initiated by both the Ukrainian parliament and through citizens' initiatives. Beyond initiating a referendum from 'below', the new law also embraces the possibility for citizens to repeal certain laws.[8] The 'corrective referendum', frequently used in Switzerland, is a novelty in the Ukrainian context.

With the adoption of the law, the Working Group did not complete all the proposals made with regard to the popular vote. Immediately after the adoption of the law on the national-level referendum, the group published a draft law on local referendums. At the time of writing there are also plans to adopt a recall mechanism as the next step (Ukrinform, 2021b). In conclusion, the adoption of the referendum legislation, despite some inter-factional disputes within SP, included a broad range of civil society organisations, and tried to reach out to a wider public. The new legislation embraced innovative elements and received support by the Venice Commission.

4.2 Terminating Absenteeism and Knopodastvo

The new Ukrainian Government and SP parliamentary faction concurrently worked on their promise to improve the political institutions by introducing measures that guarantee the "audience" greater control over MPs' and the president's actions. In May 2019, Volodymyr Zelensky submitted a draft law which provided for a presidential impeachment procedure (UNIAN, 2019a). In September 2019, the law was adopted by the Ukrainian parliament (UNIAN, 2019c). That same month the MPs' immunity was lifted, a decision that received support of members of all parliamentary factions (UNIAN, 2019b). In addition, the Ukrainian parliament adopted two new regulations that affected MPs' behaviour on

8 https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69060. Accessed 10 May 2021.

a daily basis: penalties for absence from parliamentary sessions, and a new electronic voting system designed to prevent MPs from using the vote button to vote instead of their absent colleagues. The latter practice has come to be called *knopodastvo*.

Absenteeism and *knopodastvo* have been discussed in the Ukrainian public for many years. The civil society organisation "Chesno" had been monitoring this issue and advocating for solutions for a long time. In July 2019, Chesno published a concise report discussing the legal initiatives that had tried to introduce a new electronic voting system in the past, speculating if SP would finally deliver on this issue. The draft law that Arseniy Yatsenyuk, Oleg Tyagynbok and Vitaliy Klychko submitted in 2014 during the Euromaidan is just one of the most prominent examples. Chesno also traced how parliamentary hopefuls from SP promised to fight *knopodastvo* (Salizhenko, 2019). Arseniy Yatsenyuk had already installed a new electronic voting system when he served as the speaker of the parliament in 2008, yet it was never put to use. In March 2021, this long overdue step was finally completed. For registered misconduct, MPs from now on had to pay a fine (Balachuk, 2021). SP was not the first faction that attempted to fight irregular voting in the parliament, but it was the first to succeed in introducing a new system.

Not all parliamentary factions welcomed the idea to introduce fines for MPs absence. Members of the "European Solidarity" and "Golos" parties called this a constraint on MPs' mandate. In any event, SP voted for amendments to the law on the status of MPs in September 2019. The amendments obliged MPs to be present in a certain number of plenary sessions or face a salary cut.[9] A report showed that after one year around 235 MPs where affected by the amendment (Kolomiyec, 2020). This record may raise doubts about the effectiveness of the amendment as regards MPs' behaviour, but the change fits into SP's narrative of overhauling the political system through greater control over political representatives.

4.3 Ruling Through Referendums and Polls?

As the previous two sections demonstrated, SP worked on putting their electoral promises involving direct democracy into practice and included major civil society actors into this process. In contrast to these inclusive and rather unambiguous actions, Volodymyr Zelensky caused some turmoil by making frequent calls for referendums once he was in office. In May 2019, Andriy Bohdan, then head of Zelensky's cabinet, announced that they would consider putting the issue of a peaceful agreement with Russia over the ongoing war in Donbas to a nationwide referendum (UNIAN, 2019a). Indeed, Volodymyr Zelensky

9 https://www.chesno.org/post/3635/. Accessed 10 May 2021.

announced ending the war with Russia-backed separatists in Donbas a top priority of his presidency. Yet, the ambiguous proposal provoked a storm of critique and the presidential administration quickly announced that there would be no referendum but instead an opinion poll would be conducted (Tadeusz Iwański and Marek Menkiszak, 2019; Ukrinform, 2019).

Without going into detail, these examples show how quickly SP and Zelensky react to both public reactions and public opinion. Once they realised that their proposal on the land reform was unpopular, they proposed that the people decide themselves. In a similar vein, they quickly withdrew the controversial proposal for a referendum on negotiations with the Russian Federation over the war in Donbas. Thus the boundaries between referendums and surveys often become blurred, raising doubts as to how serious the goal of granting decision-making power to the citizens really is. While Volodymyr Zelensky was often the initiator of controversial calls for referendums, the party and faction leaders would always rush to his aid.

This also applies to the widely criticised nationwide polls that Zelensky initiated in October 2020 with the support of his party and a dozen of alleged volunteers on the day of the local elections. Ruslan Stefanchuk, first deputy speaker of the Verkhovna Rada called the poll a 'probe for the referendum' (UNIAN, 2020). Critics dismissed this step as a pre-election trick and an attempt to mobilise support especially in the light of the bad election forecast for SP, whilst a coalition of civil society representatives addressed the president in an open letter asking him to step back from this idea (Pravo, 2020). The president announced the five questions to be asked in the poll one by one in the following days, a tactic that guaranteed considerable media attention. The poll asked voters about their opinion on life sentences for high-level corruption, the establishment of a special economic zone in Donbas, the reduction of the number of MPs in the Verkhovna Rada to 300, the legalisation of medical marijuana, and whether Ukraine needed to raise the issue of using the security guarantees defined in the Budapest memorandum to the international level (Novoye Vremya, 2020a). In a nutshell, all the questions had to do with contested issues which were debated in Ukraine at the time. Some of them, such as the idea to legalise marijuana, were interpreted as a mobilisation strategy for young voters (Gaday, 2020). Others, such as the reduction of the number of MPs and life sentence for corruption again added to the narrative of citizens' control and Zelensky's promise to fight corruption.

The public seemed rather divided on whether the poll could be taken seriously and be seen as an honest attempt to consider public opinion. As a representative poll carried out by a polling agency showed, around 40 percent interpreted Zelensky's effort as a bona fide attempt to introduce direct democracy, while 40 percent were not convinced. The picture becomes clearer if we look at those who voted

for Sluha Narodu in the 2019 elections, 72 percent of whom expressed support for Zelensky's plan (Rating Group, 2020). In a 2020 interview, Aleksandr Korinenko, the chairman of Sluha Narodu, defended the survey, arguing that it provided evidence of the good prospects for direct democracy measures in Ukraine which were to be implemented once the relevant laws were adopted. He also stated that the poll would be helpful to implement these policies, as it would lend them popular legitimacy (Novoye Vremya, 2020b).

The poll raised very serious doubts as to how sincere Zelensky and SP were in their endeavour to introduce referendums, since not only the questions, but also their media framing confirmed the perception of a president acting in front of his audience fishing for applause. While the issues the poll dealt with all seemed to be of societal relevance and hence in need of societal deliberation, the undefined form and style in which they were presented could not help citizens make an informed decision. On a different note, Opora and the Centre for Policy and Legal reform, both members of the Parliamentary Working Group on Direct Democracy quickly publicised their doubts about the presidential poll and emphasised that it had nothing to do with a real referendum.[10] Hence, while the president may try to pay lip service to direct democracy, he does so under the scrutiny of critical observers who make sure that the distorted picture is readjusted.

5. Conclusion

Based on the findings presented in the preceding sections, can we conclude that Ukraine did indeed develop into a "Dictatorship of Applause" (Pekar 2019), with the president arbitrarily using polls and referendums to increase his popularity? This paper offers an answer more nuanced than the question itself. It pointed out that, in the light of its negative experience with referendums and division on central issues, Ukraine does not seem to be fertile ground for the promotion of referendums. Considering the changes in the Ukrainian political landscape in 2019, along with the general characteristics of the political system, namely weak parties and distrust in political representatives, it appears less surprising that Zelensky attempted to create a direct relationship with the constituency by relying on polls and promoting referendums. As the article shows, the two axes of direct relations between political representatives and the constituency – referendums and measures to control MPs' behaviour – featured prominently in the 2019 election

10 For instance at a press conference in October 2020 that is available here: https://www.facebook.com/pravo.org.ua/videos/2056464001155709/. Accessed 10 May 2021. See also: http://185.65.244.102/ua/news/20874670-vsenarodne-opituvannya-vid-prezidenta-ukrayini-narodovladdya-chi-populizm. Accessed 10 May 2021.

campaign. The 2019 elections did not eliminate pre-existing cleavages, but SP and Zelensky took a centrist stance on most issues. SP even adopted its 'radical centrism' as the main party ideology, making it even more important to rely on surveys and referendums to monitor the attitudes of their highly undefined electorate.

Indeed, in his first month in office, Volodymyr Zelensky made controversial calls for referendums, for instance on peace negotiations with Russia. While this might still qualify as a blunder of a political novice, Zelensky's nationwide poll raised doubts as to how serious his attempts to install direct democracy were. Obviously, the poll was never meant to bring substantial results, but served as an opportunity for the president to put himself in the limelight and divert attention from other issues. It was a textbook example of citizens being reduced to a *reactive* audience.

On the other hand, the Working Group on Direct Democracy adopted new legislation on referendums and is currently drafting new laws. This legislation was adopted in an inclusive manner, with broad participation of civil society organisations, and not only did it eliminate the shortcomings of the 2012 law, it introduced novel ideas such as the possibility for citizens to repeal certain laws. It opened up new possibilities for *active* participation of citizens in political decision-making. The commitment to direct democracy measures is further demonstrated by the draft law on local referendums and a recall mechanism, two tools not directly linked to the national parliament and government. It remains to be seen if and how these practices will be put into practice and contribute to long-term qualitative changes in the Ukrainian political environment. However, with the new legislation, citizens have new tools to make themselves heard. The attempt to conduct a nationwide poll parallel to the local elections in October 2020 exemplified the risk of referendum abuse by political actors. On the other hand, civil society organisations pointed out the illegal nature of the poll, therefore they may be expected to provide important oversight of direct democracy processes in Ukraine in the future. The crucial role CSOs can play in such processes is overlooked in the concepts of 'audience democracy' and 'direct representation' this paper partially relied on. Both concepts emphasise the near absence of intermediary institutions, yet mainly refer to political parties. Other interest groups are left out of the picture, which is surprising given that the alternative discussions on transformations of contemporary representative democracies stress the increasing importance of these actors (Rosanvallon, 2011). While Zelensky and SP put referendums on the agenda, actors from civil society called for more direct democracy as well. In the final analysis, the paper thus suggests that while Zelensky's stance towards referendums is burdened with contradictions, the new salience he and his party lent to this issue in the Ukrainian public sphere does constitute a significant qualitative change that may affect the future of citizen participation.

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