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UKRAINE'S JOINING THE NATO: LEGAL AND POLITICAL ASPECTS OF REFERENDUM HOLDING

Joining NATO presupposes following of some obligatory procedures, which do not require holding of the national Country-Candidate referendum. Among the last ten countries which joined NATO, only three countries (Hungary, Slovenia and Slovakia) submitted the alliance membership issue to the national referendum. Besides, current Ukrainian legislation does not presuppose the referendum holding on joining NATO.

Legal Aspect

It is determined by Ukrainian Legislation, that the subject of All-Ukrainian referendum is people's decision making on important national issues. There are imperative (obligatory) and consultative (facultative) referendums which differ by the subject and legal consequences.

When the decision can't be made in the other way except people's voting, the imperative referendums are held in cases determined by the law. As for legal consequences, such referendums have the highest legal force, are obligatorily executed throughout Ukraine and don't require the state authorities approval.

According to Ukrainian Constitution, the issue on Ukrainian territory changing (article 73) could only be solved by means of All-Ukrainian referendum. Constitution could be determined and changed only by means of referendum held by the people (interpretation of article 5 of Constitution, according to the Ukrainian Constitutional Court Decision N° 6-rp of October 5, 2005). According to the Law "On All-Ukrainian and local Referendum", the issue on exercising Ukrainian people right on self-determination and Ukraine joining the state federative and confederative formations as well as its withdrawal (article 5) could only be solved by means of All-Ukrainian referendum.

The issue of Ukraine joining NATO doesn't relate to any of the mentioned above cases: territory or Constitution changing, joining the state federative and confederative formations (NATO is international organization without any superstate functions). In other words, nor the referendum on this issue nor its results cannot be obligatory. Theoretically, the referendum would be obligatory, if joining NATO required amendments to the Part I of Ukrainian Constitution. However, neither North Atlantic Treaty nor other basic NATO documents require it. The statement, that joining NATO requires foreign military bases deployment

on Ukrainian territory and reversal of the Part 6 of the article 17 of the Constitution correspondingly, is mistaken, since, as it was clarified in the framework of Intensified dialogue, it is not an obligatory requirement for membership in NATO. NATO basic documents don't content any words on necessity to hold the National referendum on this issue for the Country-Candidate membership.

For today, Ukraine was not even invited to NATO and there is no confidence that such possibility is available. The only reason to hold the referendum on joining NATO is to observe public moods. The issue on agreement or disagreement on Ukrainian membership in North Atlantic Treaty Organization is not subjected to any categories of the issues, which, in accordance with Ukrainian Law "On All-Ukrainian and local Referendums", could be the subject of All-Ukrainian referendum (either imperative or consultative), namely: "approving of Ukrainian Constitution, its separate regulations and Ukrainian Constitution amending; approving of amending or reversal of Ukrainian laws or its separate regulations; making decisions determining the basic principles of Ukrainian Constitution, Ukrainian laws and other legal acts" (article 3). For example, the issue on amending of Ukrainian Law "On the Fundamentals of National Security of Ukraine" concerning membership in NATO as a strategic goal of Ukraine could be the appropriate referendum subject.

If Ukraine receives an invitation to join NATO, the other situation might develop. Legal procedure requires North Atlantic Treaty ratification by Verkhovna Rada. According to Ukrainian Law "On International Agreements of Ukraine", the ratification of International Agreements of Ukraine is implemented by passing the law (article 9). International Agreements on Ukraine participating in the interstate unions and organizations and collective security systems should be ratified obligatorily. It means that the referendum holding on the issue on passing Ukrainian law on North Atlantic Treaty ratification is possible but not obligatory. However, even this referendum will be consultative because its subject does not concern the changing of territory or Ukraine joining the state federative and confederative formations and according to legal consequences, its results will not be obligatory.

Thus, we came to a conclusion that the referendum holding on Ukrainian membership in NATO is not obligatory from the legal point of view but if the referendum is held it will be consultative and its results will not be obligatory for the Government and the Parliament decision-making.

Political Factors

The referendum holding is very important for both NATO and Ukraine from the political point of view. But it should be held on time provided by NATO procedure and cannot be a subject for any political forces manipulations. The point is not that Ukrainian people majority doesn't even have basic information on Alliance activity or cannot get rid of stereotypes. The point is that people should express their will when the submitted issue, in particular on joining NATO, is on the agenda but not a perspective.

According to the "Study on NATO Enlargement", the consultations with country-candidate should be provided after NATO Country-Members consensus on positive position towards membership of specific country (North Atlantic Council Decision at NATO Summit and official Secretary General Notification) is reached and before elaboration and signing of the joining protocol. During this time, a country should confirm that its decision to join complies with all interior requirements which will assure the acting Alliance members that the mentioned country really intends and will certainly join NATO (point 81). In other words, the referendum holding on membership in NATO will be a kind of confirmation that Ukraine (on conditions of positive reply) "really intends and will join". The referendum is important for NATO from this point of view. But it will be held after North Atlantic Council Decision at the appropriate level and Secretary General Notification are taken that allied members are positive on Ukraine joining NATO.

The referendum holding is also very important for Ukraine. Democratic state or that one which considers itself as such, respects and realizes democratic values, namely: democratic freedoms, supremacy of law, division of powers etc. According to Ukrainian Constitution, people are the only source of power in Ukraine and direct democracy is implemented by means of voting and referendums. Thus, the referendum holding at the required time gives not only the possibility to determine Ukrainian people's will but to exclude the possibility of political speculations on the direct democracy inobservance also. Transparent, fair and free Parliamentary and local authorities' elections are direct democracy implementation. In other words, since Parliamentary elections 2007 were recognized by international community as transparent, fair and free and Parliament consist of elected representatives of the people, which on behalf of the people have the right to solve the important state issues, make decisions by means of voting in Verkhovna Rada so it is also direct democracy implementation. Besides, state adherence to the democratic values is the main joining requirement stated in North Atlantic Treaty preamble and other official documents.

Thus, we came to a conclusion that the referendum is important for both Ukraine and NATO from the political point of view. For Ukraine, it is the issue of political trust to the Government, approval of the foreign policy course of the country by means of people's wills which is the main democracy element. For NATO, it is the step which confirm the desire and Ukrainian people will on our country joining Alliance and guarantee that the country will certainly join (on conditions of positive reply). So, Ukraine can demonstrate its adherence to the democratic development depending on how the referendum will be organized and held.

Foreign Experience

According to the preceded facts and in the case of right (correct) interpretation, the foreign experience of countries that held referendums on joining NATO is very interesting and useful.

Spain was the first country to hold such referendum. But this referendum was held well after Spain officially joined Alliance in May 1982 and participation in the Alliance, as a military structure, was the referendum subject. On March 12, 1986, the referendum was held, caused by the policy carried out by the ruling Spain Socialist Working Party with F. Gonsales party leader who, during elections, promised to hold the referendum on continuation of Spain membership in NATO. According to the study, the referendum was a manipulation and the organized influential campaign on "uninformed, frightened and easy persuaded society", where NATO associated with war, militarism and abroad military duty, provoked a destructive political resonance for the Right in the Government and gave decisive victory to the Socialists during elections held on October 28, 1982.

The Socialists did not change their own policy having come to the power and declared beginning of the period of "recomprehension and suspension of negotiations on military integration" - formally, the integration process was frozen. In reality, Spain proceeded with active participation in the work of Alliance authorities, namely: Military Planning Committee and Eurogroup. Spain had the observation status in Nuclear Planning Group and special consultative group, etc. Thus, on the one hand, the Socialists could not step aside from their election pledges on referendum holding, that could be absolutely unpopular step and on the other hand, their attitude towards NATO membership changed radically during some period of time. The final position concerning the referendum was developed on October 23, 1984, when F. Gonsales declared "ten defense and security principles", where the referendum on continuation of Spain membership in NATO was included. On March 12, 1986, the referendum was held. Citizens were supposed to answer the question: "Are you agree to continue Spain membership in NATO under the conditions that Spain will not participate in the military Alliance structures, will not have nuclear weapons deployed on its territory and will reduce American contingent presence on its territory?". Results were the following: 59.71 % electors participated in the voting. Among them 52.54 % citizens voted for continuation of the country membership in Alliance; 39.83 % citizens voted against continuation of the country membership in Alliance, 6.54 % citizens abstained from the voting.

The referendums holding conditions in Hungary, Slovakia and Slovenia were principally distinctive.

Taking into account the current situation in Ukraine, Slovak referendum in advance was especially interesting. It was organized by the Left before NATO Summit in Madrid in 1997, where the decision concerning the country joining invitation could be reached. Four questions were submitted for the referendum: do citizens approve Slovak membership in NATO; do they agree on nuclear weapons deploying on Slovak territory; do they agree on military bases deployment; do they agree on direct President Elections? There were different voting papers with various types of questions at the polls, because of political disagreement concerning legitimacy of the submitted question on direct President Elections. Only 9.8% citizens participated in the voting. Among them 54% citizens

voted against joining NATO, 89% citizens voted against the nuclear weapons deploying and 83,5% citizens voted against the military bases deployment. The referendum was not legitimate from the legal point of view, but from the political point of view, it was significant for NATO and, as a result, Slovakia did not receive invitation to start the negotiations in the first wave of widening.

Hungary acted in the framework of the agreed procedures and held the referendum after Madrid Summit invitation. As opposed to Poland and the Czech Republic, which received the invitation together with Hungary, Hungary decided that such important political step needs people's support and referendum holding will be an exact confirmation of its firm will to join or, on the contrary, its unreadiness to join NATO. So, on November 16, 1997, Hungarian citizens were suggested to answer the following questions: "do you wish that Hungary will insure its own security by Hungary membership in NATO?" 42.4% citizens participated in the voting. Among them 85.3% citizens voted for joining NATO. Among the countries of the second wave, only Slovenia held the referendum. The referendum was held on March 23, 2003 before signing of joining NATO Protocol (March 26). Two questions were on the agenda: joining NATO and joining EU. 60.3 % citizens participated in the voting. Among them 66.02 % citizens voted for joining NATO and 33.98 % citizens voted against joining NATO. 89.64% citizens voted for joining the EU.

The referendum holding in Slovenia had very important interior political meaning for this country. The risk, that the referendum on joining NATO will be unsuccessful, forced to unite all main parties, government and opposition, that is naturally quite unusual. The referendum was a serious test for politicians, because the referendum results confirmed trust of Slovenes to the main political parties and their leaders.

Thus, we came to a conclusion. We have three examples according to the previously mentioned historical facts of the referendum holding concerning country membership in NATO: 1) the referendum on continuation of the membership in NATO; 2) holding of the referendum in advance in order to receive the invitation; 3) the referendum holding in accordance with the current procedures. Taking into account experience of the countries, which held the referendum on joining NATO, Ukraine has a very useful Hungarian and Slovene examples and negative Slovak one. Also we have Spanish good example that showed how moods and preferences could change during the membership. The example of the really necessary referendum holding - after country being invited to the membership - and with the purpose to observe the people will concerns such expedient membership - is useful for the borrowed experience.

Consequently, we came to the following conclusions.

Firstly, All-Ukrainian referendum holding concerning the foreign policy is not obligatory from the legal point of view. This referendum will be consultative and its results are not obligatory for legislative authorization.

Secondly, such referendum is very important for Ukraine as well as for NATO from the political point of view. It demonstrates the political trust to Ukrainian government, support of the country foreign course by means of people will, which is the main democracy element. For NATO - it is the step confirming Ukrainian people wish and will concerning our country joining Alliance and guarantee that the country will certainly join (on conditions of positive reply). Besides, state adherence to the democratic values is the main joining requirement stated in North Atlantic Treaty preamble and other official documents. So, Ukraine is able to demonstrate its own adherence to democratic development depending on organization and holding of the referendum.

Thirdly, the correct understanding of what and when to do will help to hold the legitimate, fair and transparent referendum. An exact date of referendum holding should be determined after obtaining of Country-Members consensus and after Summit holding where Ukraine will be informed of that and it will be an exact time when the referendum might be held. Besides, an issue or issues submitted for the referendum should be scrupulously elaborated, because incorrectly submitted issue may negatively influence on the referendum results. And the last one, the referendum should not be an object of political manipulations, power fighting or an activity sponsored by the third countries.