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# **End to Informality?**

## **Examining the impact of institutional reforms on informal institutions in post-Euromaidan Ukraine**

**Abstract:** *What happens to informal institutions in the process of institutional reforms? This article aims to examine one particular aspect of the complex interaction between institutional reforms and informality; the impact of reforms on informal political institutions. The victory of Ukraine's Euromaidan in 2014 has ushered a wind of change to the post-Soviet political landscape, for decades dominated by authoritarian and semi-authoritarian forms of governance and the engraved in political traditions reliance on informal institutions. This study is among the first to question as to whether an ambitious reform agenda currently implemented by the Ukraine's post-Euromaidan government has a notable impact on the deeply-rooted informal relations in the political sphere. Drawing its empirical insights from a series of in-depth interviews conducted in Kiev in 2015, this study shows that while informal relations became increasingly vulnerable to formalization efforts and, as a result, various informal institutions in present-day Ukrainian politics have lost their functions and influence, other informal institutions are not only being preserved by the political elites, but also are employed to promote the reform processes.*

### **Introduction**

This study seeks to contribute to research on the relationship between institutional reforms and informal institutions in the political sphere. Previous research on informal institutions acknowledges that “to the extent that formal institutional change alters the costs and benefits of adhering to particular informal rules, it can serve as an important catalyst for informal institutional change” (Helmke and Levitsky 2004, 723). A voluminous body of literature has shown that institutional transformation in different parts of the world has left a notable imprint

upon the informal sphere. Institutional reforms in Latin America, Asia, Southern and Central Europe influenced various aspects of informal relations within formal institutions (deSoto 1989; Lomnitz 1988). The impact of institutional change on informal institutions has been identified to span in two directions. Firstly, institutional reforms designed to create transparent, democratic and free of corruption and patronage formal institutions are expected to weaken and undermine informal institutions (Castels and Portes 1989). Due to the effect of such reforms, informal structures either become absorbed by formal institutions, or they tend to completely disappear. This type of reforms is typical for democratic and democratizing political regimes. Secondly, reforms aimed at strengthening patrimonial and autocratic institutions designed to distribute rents and to enhance patronal networks are believed to increase the importance of informal institutions and to widen their influence on their formal counterparts (Gel'man 2004; Rose 1995). These autocratic reforms are characteristic to non-democratic regimes seeking to strengthen their control over state institutions.

The bulk of studies on institutional change in the former Soviet Union (fSU) concedes that a vast majority of institutional reforms thus far implemented in post-Soviet states – with the exception of Baltic States and the post-2003 Georgia – until 2014 were aimed at either strengthening non-democratic institutions or at centralizing top-down forms of governance (Gel'man 2004; Rose 1994; Bunce and Wolchik 2011). These reforms were expectedly conducive to the growth and proliferation of informal institutions (Rose 1995). For example, Ledeneva (2013) details the purposeful implementation of centralization reforms in Putin's Russia and their impact on *systema* (informal) political networks. In a similar vein, continuous reform efforts implemented in post-Soviet Central Asian republics were designed to enhance the system of patronage and provision of rents (Luong-Jones 2002; Schatz 2013). In the fSU, with the exception of post-“Rose Revolution” Georgia (Aliyev 2014) and some selective reform efforts in Moldova (Hale 2013), there were hardly any successful and continuous attempts at reforming state institutions in order to rid them off corruption and patronage, and with a pursuit of relieving these institutions of informality. Bearing in mind the lack of reform efforts and even more so their effectiveness in the post-Soviet space, little has been written about the relationship between institutional change and informal institutions in the fSU. The scholarly literature acknowledges that transformation from state communism to market economy, and even less so to democracy, has never been complete in the region (McFaul 2010; Bunce and Wolchik 2011), and that in the post-communist context instead of succumbing to transition, informality became even more widespread and omnipresent than it used to be under the Soviet rule (Morris and Polese 2014).

However, the continuity of Soviet legacy and autocratic entrenchment in the fSU are occasionally thwarted by episodes of political turmoil. Georgia’s “Rose Revolution,” Ukraine’s “Orange Revolution” and Kyrgyz “Tulip Revolution” were thus far the most successful moments of regime transformation in the fSU. While some of them were followed by continuous processes of institutional transformation, as in the case of Georgia, others resulted in return to autocracy. The most recent of these Eurasian revolutions is the Ukraine’s “Euromaidan” which took place in 2013-14 and culminated with the overthrow of Viktor Yanukovich. A massive push for institutional reforms that followed the victory of Euromaidan, resonates with Ukraine’s long-standing ambitions of integration with the European Union and of acquiring political and economic independence from Russia. In contrast to previous reform efforts in post-Soviet Ukraine, the Euromaidan-initiated reform agenda prioritized formalization of state institutions as one of its key goals. Since informal institutions were deeply embedded in all levels of political administration of the Ukrainian state, the dismantling of informal relations within the formal sphere emerged not only as the priority for building modern and efficient state institutions, but also proved to be an enormous task to accomplish. This makes the Ukrainian reforms as an intriguing case study of institutional changes’ effect (or the lack thereof) upon the informal sphere.

With all of the above in mind, this study seeks to answer the following research question: *how have the institutional reforms implemented in the post-Euromaidan Ukraine thus far affected informal institutions?* On the one hand, keeping in mind that Euromaidan has shaken the foundations of decade-long regional patronage, rent-seeking and oligarchic networks, initial theoretical expectation would be that Ukraine’s recent reforms must have affected the informal institutional framework. On the other hand, owing to the embeddedness of informality in the Ukrainian politics and economy, it is hard to expect that a Euromaidan-encouraged regime change, similarly to the earlier Orange Revolution, would have a significant impact on informal institutions. The key empirical observation that emerges from the findings of this study reflects both of these theoretical expectations and shows that while institutional reforms weaken and undermine some informal institutions, they enhance other informal structures and even contribute to the creation of new sets of informal rules.

This article proceeds in the following order. This introductory section is followed by a brief discussion of theoretical foundations of the existing research on informal institutions and their relationship with institutional change. Then, data sources, research methods and case selection are discussed. Next, a history of informal institutions in Ukraine is explained and the current reforms are analyzed. In the last section, empirical discussion presents findings of this

study. The conclusion summarizes the results of the study and offers suggestions for future research and practice.

### **Informal institutions and institutional change**

Although the phenomenon of informal relations in politics is centuries old, research on informal institutions in the political sphere began booming only a couple of decades ago. Unlike research on informality in economics – that has been proliferating since the 1960s – a study by Lauth (2000) was among the first research works on informal political institutions. It was not until 2004 that a thorough definition and classification of informal institutions emerged in political science (Helmke and Levitsky 2004). This study borrows its definition of informal institutions from Helmke and Levitsky's (2004, 727) seminal article that defined informal political structures as “socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels.” As broad as it sounds, this definition enables researchers to cover not only negative aspects of informality, such as corruption and nepotism, but also informal rules and behaviors that are commonly acceptable and socially-approved, such as informal problem-solving mechanisms.

This study is most of all concerned with the process of institutional transformation that involves both formal and informal institutions. The effect of formal institutional change on informal institutions has been largely disregarded by theories of institutionalism. Among those few theorists who have sought to explore the interaction between formal and informal institutions in the political sphere, Knight (1992), Wedel (2003), as well as Helmke and Levitsky (2004), associate the change of informal institutions as closely interlinked with the transformation of their formal counterparts. Most commonly, it is posited that the change of formal institutions has direct effect on the informal sphere. For example, Knight (1992, 172) suggests that “when the relationship between formal and informal rules is considered, the main focus is from the top down: the effects of the state's formal institutions on informal rules and conventions.” Since many informal institutions are thriving on weaknesses and demerits of formal structures, modernization and the strengthening of formal institutions is often synonymous with the decline of informal institutions (Thelen 2004).

The uneasy relationship between institutional change and informality – if analyzed through the prism of institutionalism – is understood differently in different strands of institutionalist theory. In sociological institutionalism, the change of informal institutions is a continuous process of behavioral and perceptional societal change that may span across

decades (Peters 2011). The proponents of rational choice institutionalism insist that informal rules change only when and if they become redundant and can be easily, and at no cost, replaced by their formal counterparts (Hall and Taylor 1996). The most influential school of institutionalism studies, historical institutionalism, approaches the transformation of informal institutions – similarly to changes of formal institutions – as process occurring as a result of “critical junctures” or various external or domestic shocks (Thelen 2004; Mahoney and Thelen 2009). Due to the impact of such cataclysmic events as regime changes, economic crises, revolutions or wars, both formal and informal institutions are forced to change and evolve. These episodes of transition are followed by periods of stasis and stability, when newly formed institutions experience little or no transformation.

While different schools of institutionalism maintain their own positions about the relationship between formal institutional change and informal institutions, there is a tacit consent among the various strands of institutionalism that informal rules have few chances to emerge unaffected after a process of formal institutional change. Nevertheless, even the most comprehensive institutional reform cannot be expected to completely wipe out all informal institutions. As explained by North (1990, 88), “new informal equilibrium will evolve gradually after a change in the formal rules.” A similar assumption had been promoted by Pejovich (2012, 170) who argued that “formal institutions can suppress but cannot change informal institutions.”

Existing research on informal institutions portrays informal rules not only as vulnerable to formal institutional changes, but also as highly resistant to change. For instance, Pierson (2000, 478) insisted that since informal actors are rational players they might be expected to show resilience in the face of transition if and when informal institutions offer more benefits than formal rules. This means that the resilience of informal institutions to change may inevitably affect the effectiveness of the reform. Wedel (2003, 428) pointed out that “[m]uch evidence worldwide suggests that informal groups and networks facilitate, inhibit, or otherwise alter the institutions and processes of industrialization, urbanization, bureaucratization and democratization.”

Notwithstanding the resilience of informal institutions to change and reform, institutional reforms are known to have a critical impact on informal rules. In Grødeland’s (2010, 167) words “[i]f … [informality] is a response to the institutional and legislative disruptions initially brought about by transition—then one may expect it to gradually wither away as ‘chaos’ is replaced by institutional order and clear rules and regulations allowing for the formal solution of problems.” A number of scholars provided extensive empirical accounts of the reforms’

effect on informality (Castels and Portes 1989; Maloney 2004; Hart 1973). Since most of these reforms were implemented with an ultimate goal of creating “democratic institutions” (O’Donnell 1994, 57), there is a general expectation in the literature that informal institutions would only begin to decline as a result of “democratic reforms.” The bulk of “democratic reforms,” or institutional reforms aimed at decentralizing, liberalizing and modernizing state institutions occurs in transitional or hybrid regimes (Way 2005), which often tend to merge formal rules with their informal equivalents (Knight 1992).

In consequence, the course and outcome of reforms designed to formalize state institutions are often unpredictable and the impact of formal institutional changes on the informal sphere is ambivalent. While theoretically the influence of reforms on informal institutions is grounded in the assumption that reforms undermine informal structures, empirical studies of the phenomenon beyond the scope of the third and fourth wave democracies are still limited (McFaul 2010). This article seeks to offer a fresh empirical evidence contributing to the above detailed debates in research on institutionalism and informality.

### **Case study and data**

Ukraine renders itself as a convenient laboratory for research on the relationship between institutional change and informal institutions. As it will be shown in the following section, Ukraine’s state institutions remained heavily de-formalized even by the post-Soviet standards throughout most the country’s recent history. In Ukraine, informality pervaded various aspects of the formal institutional framework and the decision-making processes, and often served as a key source of executive, legislative and judiciary powers. The ongoing post-Euromaidan reforms are not only implemented amid the consensus among the major political forces, but are also socially supported and popularly-backed. In contrast to Georgia’s reforms under Mikheil Saakashvili, the Ukrainian reform process is characterized by the plurality of political actors, owing to which the reform agenda continuously enjoyed a multi-party support. Unlike many reform initiatives in other fSU republics, Kiev-implemented reform agenda seeks to purposefully dismantle the old political networks and to weaken the deeply-rooted oligarchic dominance in politics. Both the ongoing economic crisis and the armed conflict with Russian-backed separatists in eastern Ukraine increase the need for effective and successful institutional decentralization and modernization. Contrastingly to Saakashvili’s Georgia, where the

legislative and judiciary were largely left unreformed until the end of Saakashvili's two terms in office, in Ukraine reforms encompass all three branches of the government.

This study derives its empirical data from a series of in-depth qualitative elite interviews. A total of 26 elite informants were interviewed during July-August 2015 in Kiev. The interviewees consisted of two categories of elite informants: (1) members of civil society, involved in preparation, consulting and monitoring of the reform process; (2) senior political officials engaged in reform implementation and political decision-makers. An additional category of informants consisted of policy experts formally or informally (as freelancers) employed in reform ministries and other reform agencies. The key sampling method used to enlist the informants was non-random snowballing technique, based on identifying the key reform actors, institutional stake-holders and the members of civil society from mass media sources or as based on their professional affiliation. Interviewees were asked to suggest further informants among their colleagues and partners. Recruiting informants from both the government and civil society enabled the author to collect a diversity of opinions and views from the two major camps of the political spectrum. Each interview lasted on average 30 minutes and was digitally recorded. All interviews were anonymous and non-structured, allowing informants to freely express their opinions and to engage in discussions with the interviewer. The interview data is qualitatively interpreted and organized as a case-study analysis. The empirical data covers period from the start of reform preparation in the immediate aftermath of Euromaidan until the current state of reforms, as of August 2015.

### **Informal Ukraine: from Khrushchev to Yanukovich**

Informal relations were an inseparable part of the Ukrainian society for centuries (Magosci 1996), but owing to the Ukrainians' limited experience with statehood and formal institutions until the incorporation of present-day Ukraine into the USSR, the role of informality in Ukraine's pre-communist politics remained ambiguous. Under Joseph Stalin, Ukraine was governed by the Kremlin-appointed ethnic Russians who made few efforts to involve Ukrainians in matters of the state. The situation began to change with Khrushchev's de-Stalinization which resulted in the appointment of a first ethnic Ukrainian – Oleksii Kyrychenko – to lead the republic (Subtelny 2009). Khrushchev's patronage of Ukrainian affairs – influenced by his own experience as a Stalin-era administrator of Ukraine – had led to the establishment of patronage networking between Kremlin's *nomenklatura* and their protégés in Ukraine. The appointment of Mykola Podhorny – second person after Khrushchev

in the Communist Party of the Soviet Union (CPSU) – as the head of Ukraine’s Communist administration had brought Ukrainian elites even closer to Kremlin. Khrushchev’s successor – Leonid Brezhnev – was not only the native of Ukraine’s Dnepropetrovsk city, but also a member of Ukrainian political networks established under Khrushchev. As detailed by Magosci (1996, 659), during his tenure as the Secretary General of CPSU “Brezhnev built a political machine consisting of former engineers, factory directors, and officials from his home region.” Under Brezhnev, Dnepropetrovsk became a “launching ground for the political careers of many Soviet politicians in Moscow because of its close association with the Brezhnev clan” (Zhuk 2008, 663). The prevalence of Brezhnev’s protégés among Ukrainian higher echelons of power resulted in staunch resistance to perestroika and the replacement by Gorbachev of Brezhnevite, Vladimir Shcherbytsky, was too late to change the demise of perestroika reforms in Ukraine.

Following Ukraine’s independence in 1991, the first president, Leonid Kravchuk was known for his efforts to preserve the old system. In Kuzio’s (2000, 188) observation “the new state was often simply built on the old.” As Kravchuk was neither in favor of the reform, nor particularly keen on preserving the command economy and the communist-era *nomenklatura*, informal relations prevailed at all levels of political life. On the one hand, former CPSU functionaries – who remained in charge of many state institutions – offered their support to Kravchuk and, on the other hand, ex-communist economic administrators formed a so-called party of “red directors,” who controlled Ukraine’s economic resources. The urgent need of economic reform was a decisive factor during the 1994 presidential elections, which brought to power the leader of “red directors,” Leonid Kuchma.

Kuchma’s two terms in power had witnessed the consolidation of informal politics and the dominance of informal institutions in areas of political administration (Puglisi 2003). A set of economic reforms, implemented under Kuchma, including privatization reform, have led to the emergence of oligarchs and other informal political power-brokers (Way 2005, 136). In D’Anieri’s (2007, 61) description, Kuchma “used his de facto (informal, ‘practical,’ rather than theoretical) power to institute rules that gave him more formal powers. He was able to use those formal powers to gain informal power, and so on, in a self-reinforcing cycle.” Ukraine was notorious not only for having one of the most informal political systems in the fSU, but also as one of the most corrupt post-Soviet republics (Karatnycky et al. 2001). Nevertheless, unlike his predecessor, Kuchma demonstrated an enviable ability to manipulate informal actors in his favor in order to maintain an informal balance of powers, enabling him to win elections and to secure support among competing regional power networks.

Ukraine's 2004 "Orange Revolution" – a series of mass protests against electoral fraud by Viktor Yanukovich – resulted in the victory of Orange coalition, led by Yanukovich's opponents Viktor Yushchenko and Yulia Timoshenko. Despite high hopes for change and reform, the Orange coalition continued to prioritize informal institutions over their formal counterparts, primarily because neither Yushchenko, nor Timoshenko trusted in the eroded by decades of corruption and nepotism formal institutional framework. Similarly to Kuchma's Ukraine, positions within the government were distributed informally and alliances were built around patronage networks of politicians (D'Anieri 2007). The lack of reform progress and the continuity of corrupt practices in politics, were among the key reasons of electoral failure of the Orange coalition at the 2010 presidential elections. The victory of Yanukovich and his Donbas-centered Party of Regions effectively marked the end of post-Orange euphoria.

For Yanukovich, informal institutions were not only the key source of legitimacy and political power, but they also functioned as means to achieve his ends – that is, to reward his supporters among the fellow members of Donetsk clan and oligarchic circles of Donbas (Chaisty and Chernykh 2015, 188). In contrast to Yushchenko, Yanukovich had sought to consolidate informal structures under his absolute control and to deploy them in power struggles against rival regional clans, such as Dnepropetrovsk and Kharkiv clans. Unlike Kuchma, Yanukovich and his political allies had never attempted to establish balance among informal actors. Instead, the president employed his influence within the Party of Regions to weaken all other informal power-brokers in order to achieve dominance in the executive, legislative and judiciary branches. As the majority of administrators hired by the previous president were replaced by individuals from Donbas region, the Party of Regions usurped over state institutions, which it chose to administer through informal rules and constraints.

Although Yanukovich's refusal to sign the association agreement with the European Union and his preference for closer economic and political ties with Russia are considered as the main immediate causes of Euromaidan, rampant corruption and the oligarchization of Yanukovich's regime were among the major long-term grievances of the Ukrainian public during the outburst of popular protests in November 2013.

### **Mapping the post-Euromaidan reforms**

The collapse of Yanukovich's regime in February 2014 and the victory of pro-EU coalition – led by the newly elected president Petro Poroshenko – in May 2014 elections highlighted the start of an ambitious reform program designed by the new government to rid Ukraine's political

system of corruption and patronage. The progress with reform implementation was initially slow; it was only in November 2014 that the first document (the Coalition Agreement) signaling the start of reforms was ratified. Next fundamental step toward the reform was the adoption of the “Strategy 2020” in January 2015. The strategy consists of 62 reforms, planned in most key areas of political and economic administration. The document prioritizes such reforms as anti-corruption, decentralization, judiciary, law enforcement, public administration and healthcare reforms. The bulk of reforms envisioned by the “Strategy 2020” are also at the basis of EU-Ukraine Association Agreement ratified in March 2015 and consisting of a list of reform plans which the Ukrainian government is expected to implement in the near future. The implementation of reforms is supervised by the National Council for Reforms (NCR), and is chaired by the President, Prime Minister and the Cabinet of Ministers. The anti-corruption reform, along with decentralization and judicial reform are identified by the reform plan as of the highest priority. In order to bring to life extensive anti-corruption plans, the National Anti-Corruption Bureau and the National Agency for Prevention of Corruption were created and put in action during the second half of 2015. Following the adoption of the reform strategy, some reforms have entered the implementation stage relatively fast. For example, the reform on lustrating former regime’s officials was rapidly implemented and within its first months led to the removal of thousands of Yanukovich’s cadres (Zhuk 2015). Among other key reforms that had seen relatively immediate implementation, was the police reform. Some other reforms, such as the decentralization and judicial reforms, were much slower to implement and require longer periods of time.

Among the strategies of Poroshenko’s administration designed to ensure swift and effective implementation of reform plans was to create “reform ministries” directly responsible for the reforms. A number of individuals with no previous history of engagement in Ukrainian politics, including foreign functionaries, were invited to lead and join these ministries. The former head of Microsoft Ukraine, Dmitro Shymkiv – appointed as the Deputy Head of Presidential Administration and placed directly in charge of the “Strategy 2020” implementation is one of the examples of that policy. A wave of new appointments in the executive was followed by a number of sweeping changes within the legislative branch. To name a few, members of parliament (MPs) were no longer allowed to vote for absent members of their parties and due to increased accessibility of parliament’s facilities to the press, behind-the-door deals among MPs became harder to implement. A greater degree of civil society involvement in political process has led to growing accountability of political actors.

All of the above suggests that post-Euromaidan reforms created a window of opportunity for institutional change to have an impact on informal institutions. Bearing in mind that the scope and extent of post-Euromaidan reforms surpass any other reform initiative in Ukraine's modern history, it might be expected that the ongoing reform process has already started to influence the informal institutional framework.

### **Between success and failure**

As detailed earlier, a significant success in undermining informal institutions has thus far been achieved in legislative branch. Following the adoption of a number of laws on transparency of MPs' incomes and funding sources, it has become significantly harder for the members of parliament to hide information about their beneficiaries. As explained by a member of civil society group monitoring the work of parliament:

Some parties and individual MPs continue receiving funds from shadowy beneficiaries, but as the law on personal incomes is being introduced, it is much more difficult for MPs to make informal deals with oligarchs and members of criminal underground, as many of them did before.<sup>1</sup>

Another notorious venue for informal institutions in parliament was the lack of public access to backstage processes where many informal deals were made between the MPs and informal actors (oligarchs, mafia bosses, etc.). Making backstage processes open to public through granting the access to mass media, in the words of a head of a monitoring NGO,<sup>2</sup> "established extra barriers for MPs' informal relations with their patrons and funders from outside political parties." Notwithstanding these notable achievements, "under-the-carpet" deals on the allocation of seats in parliament – in accordance with financial or patronal interests – have not entirely disappeared. Rather, as admitted by a member of civil society, "they have shifted further underground."<sup>3</sup>

One other major change that occurred in parliament after 2014 is the elimination of informal "gate-keeping" system. The informal institution of "gate-keeping" became embedded

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<sup>1</sup> Author's interview with a civil society member, Kiev, July 10, 2015.

<sup>2</sup> Author's interview with an NGO head, Kiev, July 14, 2015.

<sup>3</sup> Author's interview with a civil society member, Kiev, July 21, 2015.

in legislative branch yet under the “red directors.” Its main rule was that all non-party affiliated MPs had to “purchase” their seats, sometimes for up USD 5 million.<sup>4</sup> This meant that only wealthy businessmen, or representatives of oligarchs were able to secure independent seats in Verkhovnaia Rada (parliament). After the end of “gate-keeping” age, a number of members of civil society and representatives of mass media were elected as MPs at the 2014 parliamentary elections.<sup>5</sup>

The end of “gate-keeping” coincided with the collapse of clan politics within the parliament. Since Ukraine’s independence, as explained by a prominent political analyst:<sup>6</sup>

For decades, the majority of MPs represented either of the powerful political clans; Dnepropetrovsk clan under Kuchma and Yushchenko, and Donetsk clan under Kuchma and Yanukovich. Nowadays, clan identities lost their importance ... instead party affiliation is much more important than belonging to a certain regional clan.

The continuity of informal institutions in parliament is seen by many within the political establishment as inevitable. In the words of a member of parliament:

Not all MPs have extra [legal] incomes, such as their own businesses, and as long as the official salary of an MP stays around USD 300 per month, it is hard to expect that informal deals between MPs and their “beneficiaries” will disappear. On average, a Member of Parliament needs about USD 1 million per year to finance all work-related expenses. If these money cannot be earned through formal channels, they will continue [arriving] from informal sources.<sup>7</sup>

The post-Euromaidan popular “de-oligarchization” campaigns have put further pressure on oligarchs and large business-owners and increased the value of political protection (*krysha*). The insecure position of many oligarchs has also raised the cost of paying “shares” (*vytkat*) for political protection. As a result; higher demand for *krysha* is matched with the growing costs

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<sup>4</sup> Author’s interview with a public official, Kiev, July 12, 2015.

<sup>5</sup> For example: Mustafa Nayyem, Serhiy Leshtchenko and Svitlana Zalishchyk.

<sup>6</sup> Author’s interview with a political analyst, Kiev, July 7, 2015.

<sup>7</sup> Author’s interview with an MP, Kiev, July 24, 2015.

of *vytkat*. All of this presents informal relations as highly beneficial and attractive for both parties.

The least effective of the reforms is deemed to be the anti-corruption campaign among political administrators. Apart from a bunch of new functionaries invited to join reform ministries, masses of administrative employees – some holding their jobs since Soviet times – continued to occupy their positions in ministries and other formal institutions. Despite the relative success with tackling elite corruption, lower level bribery remained rampant. In the words of a top-ranking official: “more than 60% of my employees are ‘old’ employees. Many of them do not even know how to use modern equipment.”<sup>8</sup> In consequence:

I have to outsource a great deal of work to professionals who know how to do things. I can’t fire old employees, nor can I hire extra employees, because there are no funds. Often, I simply have to offer them informal favors, or I have to pay them from my own pocket.<sup>9</sup>

The lack of experienced and reform-minded professionals is yet another serious obstacle to reducing the pernicious effects of informal institutions in politics. Not only in legislative, but also in many aspects of executive and judiciary administration it is currently simply impossible to manage state institutions without resorting to informal rules, some of which are dating back to the Soviet period. An energy sector official describes:

Despite the political change on the top, we still have to work with [informal] bureaucratic teams in order to get projects through … we have to do it simply because they [informal actors] have experience and they know how to get things done. Contrariwise, [new] administrators in government have neither.

This example shows that despite replaced by new reform-oriented functionaries, the “old school” policy-makers are still needed for their experience and therefore they still find their place in the new system.

The cohabitation of newly created, or recently reformed, formal rules with informal institutions assumes a variety of forms in present-day Ukraine. In particular, the start of reform

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<sup>8</sup> Author’s interview with an executive official, Kiev, July 14, 2015.

<sup>9</sup> Ibid.

process has led to the emergence of brand new informal institutions. Some of these informal structures are purposefully brought to life by the reform-makers, others emerged as a synthesis of previously existing institutions with newly established formal rules.

### **The birth of new informal institutions**

It would be obvious even to an outside observer that corruption is much less tolerated in post-Euromaidan Ukraine than it ever was since the country's independence from the USSR. The low tolerance for corruption among public officials nevertheless did not decrease the demand for services exchanged through corrupt channels. As previously, Ukrainian businessmen need favors from politicians and politicians seek for financial support from private entrepreneurs. According to civil activists, "political corruption is still seen by both businessmen and politicians as a long-term investment either in their businesses or in their political careers."<sup>10</sup> Since it became much harder to exchange hard currency for favors, other less "direct" forms of corrupt behaviors have emerged to replace monetary transactions. As revealed by a head of a political watchdog:

Instead of giving politicians briefcases full of cash [as before] ... businessmen and oligarchs chose to pay for politicians' family members' travel abroad or they serve as "beneficiaries" covering education abroad for politicians' children. They would always claim that they are family friends or *kumy* [godparents], so there is nothing wrong.<sup>11</sup>

Hence, informal relations in politics have started to transform from direct monetary exchanges toward indirect networking-based forms of favor-exchanges. Unlike corrupt practices of previous regimes, informal exchanges in the present-day political sphere are far more covert and ambivalent.

A brand new field for informal institutions appeared in the least expected area: reform-ministries. Created under the direct control of the Presidential Apparatus, reform-ministries are charged with advocating and implementing the reform agenda. Many reform-ministers are well-known for their crusades against informal institutions not only in their new positions in

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<sup>10</sup> Author's interview with a group of civil activists, Kiev, July 28, 2015.

<sup>11</sup> Author's interview with a head of an NGO, Kiev, August 10, 2015.

Ukraine, but also during their previous careers.<sup>12</sup> All of this makes reform-promoting institutions as the least probable places for the emergence of new types of informal structures. The problem began with the absence of legal basis for open tenders in newly created or reformed institutions.<sup>13</sup> On the one hand, in order to tackle corruption, patronage and nepotism, reformists were tasked with attracting “fresh blood” into the executive branch and public administration. On the other hand, they were left with no other choice but to hand-pick individuals hired for newly created reform positions. This required the use of informal networks of acquaintances, family members and contacts indispensable to finding individuals with right skills and experience. Low salaries in public administration and the stigma of “corrupt officials” prevents highly qualified experts from private sphere to officially assume positions offered to them by reformists. In consequence:

A number of people whom we would like to employ are not interested in [permanent] jobs in our institution, so we have to keep them as outside [informal] advisers and pay them on a freelance basis. We do not even have [financial] means to offer them desired [by them] salaries ... so we cannot even afford [hiring] them permanently. However, they do [a great deal] of work here and it is thanks to them that reforms are moving forward.<sup>14</sup>

Other informants within reform-ministries revealed that their institutions employ masses of such informal employees, whom they call “freelance advisers” or “outside consultants.” In some areas of public administration, these informal experts perform the bulk of reform tasks.<sup>15</sup> In other sectors, such as banking and energy sectors, freelance advisers seemed to be the driving force behind the reform; implementing the reform agenda, heading teams and managing projects.<sup>16</sup> The existence of this informal professional sector enables reform ministers to implement reforms without having to rely on corrupt and unprofessional staff of state

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<sup>12</sup> The former Georgian president, Mikheil Saakashvili, invited by President Poroshenko to head Odessa administration is one of the most well-known examples.

<sup>13</sup> As of the time of this fieldwork in summer 2015.

<sup>14</sup> Author’s interview with a public official, Kiev, July 07, 2015.

<sup>15</sup> Author’s interview with a public official of reform-ministry, Kiev, July 23, 2015.

<sup>16</sup> Author’s interview with a manager of state bank, Kiev, July 16, 2015.

institutions, although it also creates a massive informal sector of political power-brokers remaining outside of formal institutional boundaries.

While it has been noted that “freelance advisers” also existed before Euromaidan,<sup>17</sup> they were neither that numerous nor did they ever occupy leading positions within state institutions. The relatively new in the Ukrainian politics phenomenon of informal reform advisers is also noteworthy due to the diversity of methods and tactics employed by these informal actors. As observed by an insider of a reform-ministry:<sup>18</sup>

Some of them [freelance advisers] bring with them their own rules and approaches to tackling problems. These rules are completely different from what we got on paper [in official documents]. Some of these rules balance on the boundaries between legality and illegality. Although I have to admit that they get the job done.

The general consensus among the members of watchdog civil society organizations is that these new reform actors pose a potential challenge to formalization and in spite of their contribution to the reform process create parallel informal institutions which compete with and even replace formal rules. The other challenge which these informal actors pose is that most of them are members of the reform-ministers’ or reform-managers’ interpersonal networks. This means that armies of informal advisers based at each reform-implementing institution are directly accountable and responsible only to the individual who hired them. Keeping in mind that the majority of them are working without contracts or other formal obligations, these actors may not only disappear at any moment, but they might also shift their priorities and loyalties following the interests and preferences of their (informal) employers.

The other aspect of reforms is the emergence of different types of informal institutions – many of which are not necessarily new, but, following the start of reforms, have acquired a new life. For example, the law on lustration has brought to life a brand new form of informal institutions – previously unknown in Ukraine’s politics. The scores of lustration subjects – politicians and officials implicated in dubious practices under the previous regimes, and some even while working for communist administration under the Soviet rule, have seemingly

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<sup>17</sup> Author’s interview with an energy sector official, Kiev, July 22, 2015.

<sup>18</sup> Author’s interview with an official of reform-ministry, Kiev, August 02, 2015.

managed to find their way around the lustration. As explained by an informant engaged in “lustrating” officials:

Many lustration subjects were offered an opportunity to redeem themselves by serving in the ATO [anti-terrorism operation] … nearly all of them simply stayed a week or so in the ATO zone … some even never left their hotels. They came back to Kiev [later] and assumed their previous jobs, as if nothing happened.<sup>19</sup>

It was also lamented that due to personal networks of lustration subjects, many officials simply managed to get a job at another state institutions,<sup>20</sup> sometimes even a better paid position. In order to shift jobs while avoiding lustration, officials had to both rely on their informal networks within political echelons and to pay bribes in order to gain access to “people in power.”

Another informal institution that has transformed following the reforms is the so-called *reshaly* (“problem-solvers”), who – for a fee – offered both private citizens and politicians to obtain favors from institutions through circumventing the bureaucracy. In the political sphere, *reshaly* functioned as informal mediators enabling law-makers and decision-makers to informally access formal institutions in order to avoid formal rules. During the previous regimes, many high-level *reshaly* were not formally employed by the state, but instead functioned as influential private actors with close links to politicians and oligarchs. Due to Euromaidan, the previous political balance collapsed, destroying the institution of *reshaly* in its previous form. The need for problem-solving, however, did not disappear and the role of inter-institutional mediators became assumed by public officials employed by the state. As explained by a civil society representative:<sup>21</sup>

These people are public servants, but along with their formal duties they also have informal jobs. These include granting services of preferential “access” to interested individuals. They might help to influence court decisions, tender allocation, etc. They do not do it on their own, but by using their extensive networks. This all has a price, of course.

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<sup>19</sup> Author’s interview with a political analyst at a watchdog, Kiev, July 28, 2015.

<sup>20</sup> Author’s interview with a member of civil society, Kiev, July 05, 2015.

<sup>21</sup> Author’s interview with an NGO manager, Kiev, August 06, 2015.

This and other examples of the transformation of informal institutions show that the informal sphere emerges as both adaptive and resilient to changes of formal rules. Often, new informal institutions are purposefully created by reformers to assist them in their work and the reliance on informal channels is understood by the reform-ministers as the “lesser evil” if compared to corruption or the persistence of old regime’s legacy.

## **Conclusion**

This article has sought to examine the impact of institutional reforms on informal institutions in Ukraine’s post-Euromaidan political sphere. The empirical evidence collected by this study suggests that the formal institutional change has had an encompassing effect on the informal scene. However, the theoretical expectation of informal institutions disappearing or replaced by the newly reformed formal institutions is far from reality. In Ukrainian case, while some informal institutions were weakened and undermined by the reform, others have either acquired a different shape or have appeared from the scratch. Accordingly, the process of institutional reforms is conducive to both the transformation of informal institutions and to their emergence.

As this study observed a relatively early period of reform implementation, it must be emphasized that the early-stage research has both its advantages and disadvantages. On the one hand, exploring institutional change at its formative stage provides us with clues as to how informal institutions respond to the start of reforms and how informal rules interact with their formal counterparts during the early moments of transformation. This enables researchers to examine the process of institutional change in terms of its multistage development. On the other hand, the early analysis of the reform process is not indicative of future transformations. Since at the time of fieldwork the reform process was less than one year old, the bulk of reform-initiated changes were still in their early stages and the impact of institutional change on informality was in its formative stage. Provided that the reforms will last, it might be expected that many of the currently observed informal institutions would undergo a number of changes and may even disappear or reshape in the process.

This article has a number of implications for practice and future research. Firstly, it is erroneous to understand the process of institutional change as a straightforward development resulting in the replacement or absorption of informal institutions by their formal equivalents. Rather, formal and informal structures continue coexisting and collaborating throughout the entire period of institutional transformation. Secondly, the perception of reform-makers as

strictly formal agents of institutional change is far from accurate. Under the uncertainty and ambivalence of institutional transition, the reform actors are as inclined on using informal channels as other institutional players. Lastly, further research is needed in order to improve our understanding of the nuances of relationship between institutional change and informal institutions.

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