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Some Aspects of the Ukrainian Constitutional System

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Abstract

Three years after the proclamation of the Act of Independence, the Ukrainian state lacked a association constitutional basis, some thing which led to a political paralysis that engulfed Ukraine in 1993.

The president attempted to deal with the division of powers at the centre in a stop-gap constitution, which took the form of a Constitutional Agreement of June 1995.

On February 21, 2014, Verkhovna Rada (Ukrainian Parliament) voted for a return to the premier-presidential shape of government, which was in firce earlier, in 2006-2010. Under that system, a parliamentary coalition appoints and dismisses the head of the government (cabinet) and its ministers.

In the same time, Ukraine's head of state retains a quantity of powers that separate him from different presidents of nations with a premier-presidential form of government.

It is likely that Ukraine's president has stronger constitutional powers than any other president does in the other with the same form of government.

Keywords: *Ukraine, Constitution, president, parliament , NATO, European Union*

Introduction

There seem to be two motives for the diversification of semipresidential systems in postcommunist countries. One is the level of mutual tests between the branches of power. Another motive for the diversification of semipresidential regimes is the opportunity of cohabitation.

In these countries, there have been three types of constitutions in regard to cohabitation[1].

The first group of constitutions (such as the Bulgarian and Romanian ones) obliges the president to seek advice from with the parliamentary majority or the greatest party when he nominates a candidate prime minister. With this

[1] See K. Matsuzato, *Semipresidentialism in Ukraine: institutionalist centrism in rampant clan politics*, p. 47.

provision, the cohabitation nearly routinely takes area when the leading party (or coalition) opposing the president becomes dominant in the parliament[2].

The second group of constitutions (such as the Polish, Lithuanian, Ukrainian, and Armenian ones) does now not encompass provisions to get to the bottom of disagreements between the president and the parliament regarding the candidacy of the prime minister[3].

The third group of constitutions (such as the Russian, Belarusian, and Kazakhstani ones) institutionally excludes the possibility of cohabitation through authorizing the president to disband the parliament if the latter rejects the presidential candidacy for the prime minister three times (or twice in the case of Kazakhstan)[4].

1. The bases of constitutional system

The Polish, Lithuanian, and Ukrainian constitutions do no longer have any constitutional provision to get to the bottom of disagreements between the president and the parliament related to the nomination of the prime minister. However, even though the Polish and Lithuanian parliaments exploited this indefiniteness for their personal advantage, making the president appoint the candidacy of the parliamentary majority to the put up of the prime minister, this did now not manifest in Ukraine.

When a presidential system was introduced in Ukraine in December 1991, Ukrainian society selected semipresidentialism nearly unconsciously.

The government continued its work below socialism, whilst the president succeeded the political function performed by using the Party Central Committee. The theoretical lookup and debate in the Ukrainian constitutional process in 1992-96 solely justified this existing system. The constitutional weak points furnished a appropriate pretext for politically inspired tries at constitutional reforms[5].

The new Ukraininian Constitution was promulgated in June of 1996.

It inaugurated a president-parliamentary form of government. According to the Constitution the president of Ukraine is the head of country and acts on its behalf. He is a guarantor of nation sovereignty and territorial indivisibility, of the observance of the Constitution and of human and citizens' rights and freedoms[6].

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[2] See K. Matsuzato, *op. cit.*, p. 47.

[3] See K. Matsuzato, *op. cit.*, p. 47.

[4] See K. Matsuzato, *op. cit.*, p. 47.

[5] See K. Matsuzato, *op. cit.*, p. 47.

[6] See D. Boban, *„Minimalist" principles of semi-presidentialism: are Ukraine and Slovenia semi-presidential states?*, p. 165.

The president is elected for a five-year term, while the head of government is the prime minister appointed by the president with the consent of extra than one-half of the constitutional composition of the Verkhovna Rada. The president additionally designates distinct elections for the Verkhovna Rada within the phrases installed by using the Constitution. He dissolves the Verkhovna Rada if the plenary assembly fails to start inside thirty days of one ordinary session[7].

The president appoints chief officers of different central bodies of executive power, the heads of local state administrations, and removes them from office. On the submission of the prime minister the president establishes, reorganizes and liquidates ministries and different central our bodies of government power, performing within the limits of funding envisaged for their maintenance.

The president revokes acts of the government and acts of the Council of Ministers of the Autonomous Republic of Crimea. In foreign policy, the president represents the nation in internstional relations, administers the overseas political activities and conducts negotiations and signs international treaties. In republican regimes the head of nation is known as the president of the republic, but in the Ukrainian constitution he or she is called the president of Ukraine[8].

The president is obliged to name for a referendum following the famous initiative after three prerequisites have been met. The referendum petition has been endorsed through the signatures of no fewer than three million residents with the proper to vote. The signatures have been accumulated in no fewer than two thirds Ukrainian provinces; in each of them no fewer than a hundred thousand signatures must be collected.

The president is Commander-in-Chief of the armed forces, appoints and dismisses from office the excessive command of the armed forces, and administers the spheres of country wide protection and defense, the president is head of the Council of National Security and Defense of Ukraine[9].

The president forwards the submission to the Verkhovna Rada on the assertion of a state of war, and adopts a choice in accordance with the law on the conventional or partial mobilization. In the case of aggression or threat to the state independence of Ukraine, the president declares a country of emergency in complete Ukraine or in some of its areas.

The president's powers involving the management of courts include appointing one-third of the composition of the Constitutional Court and organising courts by using the manner determined by law. With the consent of the parliament the president appoints the general - prosecutor regularly occurring and also dismisses him or her from office[10].

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[7] See D. Boban, *op. cit.*, p. 165.
[8] See D. Boban, *op. cit.*, p. 165.
[9] See D. Boban, *op. cit.*, p. 166.
[10] See D. Boban, *op. cit.*, p. 166.

The president has important legislative competences, the right to legislative initiative, he or she signs legal guidelines adopted by way of the Verkhovna Rada and has the proper to veto these laws. In that case, the law is returned to the parliament for repeat consideration; a two-third majority of votes is required to override the president's veto on the unique draft of the law.

Apart from this, for the execution of the Constitution and the legal guidelines of Ukraine, the president troubles decrees and directives. Some of them are cosigned through the prime minister and the minister responsible for these acts and their execution. Since the independence and the introduction of the group of the president, the Ukrainian political practice gave rise to a material Constitution that, mixed with the system of clientelism, enabled the president to have the top hand involving the other institutions of country authority to such an extent that the principle of tests and balances used to be betrayed. In fact, that precept was once implied solely in the proviso that the president could, to a smaller or greater degree, manipulate the work of the government and force the parliament to agree to certain concessions in his or her favour[11].

The purpose for this weakness of the parliament was once its lack of ability to forge stable majorities that may have stood up to the president related to the composition of the government. Stable majorities could not be executed due to the fact many parties and unbiased candidates entered the parliament after the elections, and due to the fact the organisation of the legislative physique compounded the negative results of this fragmentation. The fragmentation itself was once a consequence of the electoral regulation which enabled a massive wide variety of parties and impartial candidates to get a seat in the Verkhovna Rada, and also because the political parties system was susceptible and unconsolidated, and the citizens mistrusted the political parties[12].

Due to the unpopularity of the first freely elected Verkhovna Rada of 1994, President Kuchma succeeded to develop his already sizeable constitutional powers in two ways. First, he forced the parliament to undertake the felony acts, first the Constitutional Agreement of 1995 and then the new Constitution of 1996 – that made for a robust position of the president in Ukraine's political system; secondly, he exploited the state's cadre and monetary assets in attaining his political objectives[13].

2. The Situation after 2004

At the beginning of 2006 the president still retained widespread powers which, even though reduced, though enabled him to hold the repute of a primary

[11] See D. Boban, *op. cit*., p. 166.
[12] See D. Boban, *op. cit*., p. 167.
[13] See D. Boban, *op. cit*., p. 167.

political actor. The president-parliamentary gadget consequently brought about a complete domination of the president and, practically, a whole dependence of one phase of the executive (the government) on the different (the president). After 2004 and the "Orange Revolution", the constitutional modifications strengthened the parliament[14].

On the one hand, the presidential powers were decreased and on the different the new electoral rules changed the segmented electoral system with a proportional one. This created the institutional prerequisite for curtailing the parliament's fragmentation and facilitated the formation of a stable and coherent coalition capable of forming government and offseting the president's dominance. This altered the transactional and the hierarchical members of the family among the president, the cabinet/government and the parliament. The president no longer has the right to dispose of the prime minister nor to appoint all the ministers. The Constitutional amendment of 2004 stipulates that the president submits to the parliament the candidates for the ministers of Foreign Affairs and Defense, but has no say in appointing the other ministers[15].

The fast disintegration of the Soviet Union and the shift of power to the republics stimulated the introduction of a presidential institution, as it used to be hoped that a presidency would enhance the strengthening of the institutional assets and the self-governing potential of the Ukrainian republic.

The Ukrainian constitution of 1996 aspects the ordinary characteristics of a president-parliamentary system, consisting of a directly elected president with a first say on cupboard formation and executive matters, and a cupboard subordinated to presidential as nicely as parliamentary confidence. Less typical, though, the Ukrainian president was not vested with the authority to dissolve the parliament, neither before, nor after the adoption of the 1996 constitution. With the constitutional amendments of 2004, the system shifted in the direction of premier-presidentialism (in force 2006-10). The presidential prerogatives have been notably curtailed[16].

In fact, the 1996 Ukrainian constitution is very close to that of Russia in terms of presidential prerogatives. Their coding also exhibits that the constitutional reform after the Orange revolution reduced presidential powers to the common level of Central European premier – presidentialism. The minimize in presidential prerogatives related to government formation and dismissal is in particular conspicuous in their assessment. In distinctive ways, the scholarly arguments in opposition to semi-presidentialism address the risk and penalties of intra-executive

[14] See D. Boban, *op. cit*., p. 168.

[15] See D. Boban, *op. cit*., p. 168.

[16] See T. Sedelius, S. Berglund, *Towards Presidential Rule in Ukraine: Hybrid Regime Dynamics below Semi-Presidentialism*, p. 24.

(president and government) and executive-legislative (president/government-parliament) conflicts.

But the existence of two one after the other chosen chief executives also implies a scenario of "dual legitimacy" , meaning that each the president and the prime minister (although indirectly) can declare authority on a popular mandate and for this reason the possible for conflict over powers and prerogatives[17].

This war potential is exacerbated in a transitional context the place the distribution of authority is often ambiguous and fluid. Constitutions in transitional international locations normally grant a large framework for the workout of power, however except precedents and long-established conventions that outline the boundaries between key establishments greater precisely.

The constitutional framework of semi-presidentialism has hence end up a terrain on which establishments and their leaders, in particular presidents and prime ministers, have struggled to outline their influence[18].

The most difficult situations are in which there is a very unstable (or no) majority in the parliament.

If the president does no longer have the support of a parliamentary majority, the dual loyalty of the authorities to the president and to the parliament, is bound to produce combat and political stalemate. The president constantly retains the option to push aside the prime minister in an attempt to destroy the political stalemate. But the appointment of a new prime minister candidate requires the guide of the parliament and the president may also find that the relationship with the new top minister is simply as troublesome, if now not more so because of the crisis brought about via the dismissal of his or her predecessor. Since both the president and the parliament preserve the power to dismiss the government, every group may calculate that the fantastic way to maximise affect is to work in opposition to alternatively than with the other institution.

And indeed, in a number of president-parliamentary international locations in the former Soviet Union, Belarus, Russia and Uzbekistan, the strong presidential component, brought from the very beginning, has contributed to legitimising and reinforcing already authoritarian tendencies. As such, the president-parliamentary machine has furnished a constitutionally sanctioned tool for gathering power in the fingers of presidents who have been less than interested in promotion democratic reforms. Instead of democratisation, the outcome has been expanded strength of already effective presidents[19].

A key element favouring premier-presidentialism over president-parliamentarism is that the former provides the possibility of combining

[17] See T. Sedelius, S, Berglund, *op. cit*., p. 25.
[18] See T. Sedelius, S, Berglund, *op. cit*., p. 25.
[19] See T. Sedelius, S, Berglund, *op. cit*., p. 27.

presidential management with a government anchored in parliament. Since the president cannot push aside the authorities as soon as it has been formed, he or she will have incentives to negotiate with the parliament in order to reap affect over the government and the political process. But again, the arguments introduced above concerning the chance and consequences of intra executive hostilities give an explanation for why there are few arguments in favour of premier-presidentialism over parliamentarism[20].

3. The last ammendments

The modification to the Constitution in order to strengthen Ukraine's dedication to European Union membership and Euro-Atlantic integration took location for the duration of the term of former President Petro Poroshenko, who put this at the centre of his presidential campaign. The Constitutional Court of Ukraine greenlighted the amendments in its Opinion of 22 November 2018 with 6 Separate Opinions of the Judges who claimed that the Opinion of the Constitutional Court should have been extra unique on its motivation alternatively than simply formally checking compliance with procedural requirements.

Amendments to the Ukrainian Constitution require at least 2/3 votes (300 deputies) of the Parliament (450 deputies). While there had been of path opposing views among the deputies at some point of the adoption of these amendments, the Ukrainian Parliament, on 7th February 2019 in the end adopted the modifications to the Constitution with 335 (out of 450) votes in favour[21].

In the preamble the following passage used was added: „and reaffirming the European identity of the Ukrainian humans and the irreversibility of the European and Euro-Atlantic course of Ukraine[22]".

Paragraph 5 of the first phase of Article 85 (the competences of the Parliament of Ukraine) is now worded as follows: „determination of the standards of domestic and overseas policy, implementation of the state's strategic route towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization[23]".

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[20] See T. Sedelius, S, Berglund, *op. cit*., p. 27.

[21] See Verkhovna Rada of Ukraine, „On amending the Constitution of Ukraine (regarding the State's Strategic Course towards Obtaining Full Membership of Ukraine in the European Union and the North Atlantic Treaty Organisation)".

[22] See Verkhovna Rada of Ukraine, „On amending the Constitution of Ukraine (regarding the State's Strategic Course towards Obtaining Full Membership of Ukraine in the European Union and the North Atlantic Treaty Organisation)".

[23] See Verkhovna Rada of Ukraine, „On amending the Constitution of Ukraine (regarding the State's Strategic Course towards Obtaining Full Membership of Ukraine in the European Union and the North Atlantic Treaty Organisation)".

Article 102 (the President of Ukraine) now states the following: „The President of Ukraine is the guarantor of the implementation of the state's strategic path in the direction of full membership of Ukraine in the European Union and the North Atlantic Treaty Organization".

Article 116 (the Cabinet of Ministers of Ukraine) was amended so as to add object which states the following: „ensures the implementation of the strategic path of the state for the acquisition of full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization[24]". Following the Revolution of Dignity of 2014, Ukraine's Constitution was amended twice.

On 2 June 2016, the Ukrainian parliament launched a essential and long-anticipated reform of the country's judiciary and machine of enforcement administration.

These changes were being applied from September 2016, are aimed at growing the independence of the judicial system, combatting corruption, and, generally, increasing the transparency and effectiveness of the judiciary in Ukraine.

The New Law on the Judicial System is a essential overhaul of Ukraine's judiciary.

It replaces the contemporary four-tier court docket system with a three-tier system, introduces predominant adjustments to the shape and jurisdiction of the Supreme Court of Ukraine, and calls for the introduction of new, specialised courts focused on corruption and the safety of intellectual property rights.

The New Law on the Judicial System is the first step of judicial reform in Ukraine and is supposed to put an end to corruption inside the judicial system. In addition to the reform of the gadget of courts, the new law establishes limits of judicial immunity, extra eligibility requirements for workable judges, and other modifications aimed at improving the professional and moral standards for judges. It is predicted that as the end result of this reform, approximately 70% of cutting-edge judges will be replaced with the aid of new judges[25].

Before the new law Ukraine's judicial system consisted of a four-tier machine of courts, courts of first instance (general, commercial, and administrative), courts of attraction (general, commercial, and administrative), courts of cassation (the High Specialized Court on Civil and Criminal Cases of Ukraine, the High Commercial Court of Ukraine, the High Administrative Court of Ukraine) and the Supreme Court of Ukraine,

The New Law on the Judicial System introduces a new three-tier system, circuit courts of first occasion (general, commercial, and administrative), circuit

[24] See Verkhovna Rada of Ukraine, „On amending the Constitution of Ukraine (regarding the State's Strategic Course towards Obtaining Full Membership of Ukraine in the European Union and the North Atlantic Treaty Organisation)".

[25] See Verkhovna Rada of Ukraine, „On amending the Constitution of Ukraine (regarding the judicial system)" of 2 June 2016.

courts of appeal (general, commercial, and administrative) and the Supreme Court of Ukraine,.The New Law on the Judicial System also presents for the establishment of two specialised courts, the High Court on Intellectual Property and the High Anti-Corruption Court[26].

These two courts are courts of first instance for some categories of cases.

The High Specialized Court on Civil and Criminal Cases, the High Commercial Court of Ukraine, the High Administrative Court of Ukraine, and the Supreme Court of Ukraine (as section of cutting-edge four-tier device of courts) will act upon the development of the new three-tier system of courts and the re-establishment of the Supreme Court of Ukraine in accordance with the New Law on the Judicial System.

The Supreme Court of Ukraine will be reorganised and shall consist of: Major Chamber of the Supreme Court of Ukraine, Cassation Administrative Court, Cassation Commercial Court, Cassation Criminal Court and Cassation Civil Court.

Each of the cassation courts consists of chambers considering exceptional classes of disputes[27].

According to the New Law on the Judicial System, separate chambers shall be installed inside the Cassation Administrative Court for consideration of the instances associated to taxes, protection of social rights andelections, referendums, and safety of political rights.

In addition, separate chambers shall be mounted within the Cassation Commercial Court for consideration of the cases related to insolvency, protection of intellectual property as nicely as instances associated to antitrust and competition legislation and corporate disputes, safety of corporate rights, and securities.The president also supported an historical initiative to abolish parliamentary immunity in criminal matters, notwithstanding worries of the Constitutional Court of Ukraine mirrored in its Opinion and hints of the Venice Commission.

President Zelensky made a statement in parliament in September 2019 disturbing that parliamentary immunity be abolished, in line with campaign promises. With this purpose, the President supported the draft constitutional change initiated through former President Petro Poroshenko.

On 30 August, the Verkhovna Rada preliminarily approved the amendments with the help of 363 deputies, and

On three September, it amended the constitution getting rid of the provision that required the prior consent of parliament to prosecute, detain or arrest

[26] See Verkhovna Rada of Ukraine, „On amending the Constitution of Ukraine (regarding the judicial system)" of 2 June 2016.

[27] See Verkhovna Rada of Ukraine, „On amending the Constitution of Ukraine (regarding the judicial system)" of 2 June 2016.

members of parliament for criminal offenses. On eleven September, the President signed the amendment. Accordingly, there are no parliamentary immunity for criminal offenses in Ukraine from 1 January 2020[28].

Although the abolition of immunity is famous amongst the public, civil society enterprises and experts adverse the alternate as it may also adversely affect parliamentary autonomy and, accordingly, democracy, in Ukraine.

The existence of parliamentary immunity targets at protecting parliamentarians from unjustified pressure of law enforcement agencies, the prosecutor's office and different entities, which are all guilty to the presidency and may also impede the exercise of powers through parliamentarians. Immunity ensures relative stability for the division of powers and exams the viable executive usurpation of the legislative.

The abolition of parliamentary immunity contravened procedural guidelines and may adversely have an effect on parliamentary functioning and autonomy.

The Venice Commission mentioned that in a political system with inclined democracy, as in Ukraine, the abolition of parliamentary immunity should endanger the functioning and autonomy of parliament, and disrupt the device of assessments and balances. The historical tendency of the Ukrainian presidency in the direction of authoritarianism in addition compounds fears of weakening parliamentary autonomy.[29]The procedure for amending Ukraine's Constitution is governed via a separate Chapter of the Constitution–Chapter XIII („Amendments to the Constitution of Ukraine"), comprising Articles 154-159[30].

The important feature here is that there are two procedural tracks for amending a range of components of the Constitution. The „simple track" have to be followed in amending any constitutional provisions barring these contained in „protected" components of the Constitution–Chapters I („General Principles"), III („Elections. Referendum") and the equal Chapter XIII, for which there is the „strict track".[31]The „simple track" offers for three steps[32]:

We are speaking about the submission of a draft modification consignment via the President or with the aid of no less than one hundred fifty MPs, the preliminary assent with the aid of a simple majority of the parliament (at least 226 MPs) and the subsequent confirmation via no much less than 300 MPs for the duration of the subsequent everyday session of the parliament[33].

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[28] See Verkhovna Rada of Ukraine, Draft Law on Amending Article 80 of the Constitution of Ukraine (as to the Immunity of the People's Deputies of Ukraine).

[29] See Verkhovna Rada of Ukraine, Draft Law on Amending Article 80 of the Constitution of Ukraine (as to the Immunity of the People's Deputies of Ukraine).

[30] See Constitution of Ukraine.

[31] See Constitution of Ukraine.

[32] See Constitution of Ukraine.

[33] See Constitution of Ukraine.

The „strict track", which has by no means been used or even significantly attempted, includes the submission of a draft amendment to the Parliament by using the President or via no much less than 300 MPs, the adoption of the draft by means of the equal majority and the confirmation by way of a countrywide referendum declared by the President.

A motion for any provision inside the „protected" Chapters might also only be attempted once all through a parliamentary term[34].

Further, there are frequent necessities for both tracks.

There are forbidden mendments to abolish or avoid human rights and freedoms, to terminate Ukraine's independence or violate its territorial integrity.

The Constitution can't be amended in conditions of martial law or national emergency.

A failed modification cannot be resubmitted beforehand than a year after the respective was rejected by the Parliament.

The Parliament cannot amend the identical provisions of the Constitution greater than once in the course of a convocation.

The Parliament cannot adopt an modification unless there is a superb opinion by using the Constitutional Court of Ukraine confirming its correspondence to the above requirements.[35]

Conclusion

Ukraine's constitutions were an obstacle to political and economic reforms, fostered instability, and degenerated cycles of pre-term elections and mass protest.

In the recent negotiations with Russia to stop the conflict, Ukraine made an offer to accept neutrality if it receives adequate security guarantees from western nations, abandoning aspirations to join NATO.

But such actions would require amending the constitution or a referendum, neither of which can be done in wartime.

Under international law, a country is neutral if it won't interfere in situations of international armed conflict involving other belligerent parties. It cannot allow a belligerent party to use its territory as a base of military operations, take sides or supply military equipment.

Ukraine's aspiration to join NATO is mentioned in the Constitution, which cannot be amended during martial law, as is in effect now, or during a state of emergency.

Any change would require approval of the measure by 300 out of 450 lawmakers in two separate parliamentary sessions, and then be validated by the Constitutional Court.

[34] See Constitution of Ukraine.

[35] See Constitution of Ukraine.

The faults of the current system are obvious. Mass popular protests against an unpopular president took place twice under the previous presidential-parliamentary system in Ukraine. Under the current system, if the president becomes highly unpopular, it is more likely that the politician will cede real power to the Cabinet or the parliament As a result, the conflict will be resolved within the political system, thus avoiding potentially unpredictable and destabilizing effects.

But we can speak about further developments after the current conflict will end.

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