

From Presidentialism to Parliamentarianism

Strengthening or Weakening Democracy in Ukraine?

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Since the late 1980s, crises in Ukrainian politics have been resolved through political compromise. Ukraine's peaceful transition to independence, the 1994 electoral transition of power (the first in the post-Soviet space), and the adoption of the 1996 constitution all came about through elite compromises. Even during former Ukrainian president Leonid Kuchma's second term, marked by a drift toward authoritarianism, Ukraine's political system remained quite pluralistic; neither the Ukrainian parliament nor the constitutional court were under Kuchma's full control. This can be explained by the presence of a strong democratic opposition in parliament, as well as by competition among oligarchic groups within the ruling elite.

This trend continued during the Orange Revolution, as a compromise was reached in parliament that opened the way for a repeat runoff presidential election and, consequently, Viktor Yushchenko's victory by legal means. This compromise agreement, effective from January 1, 2006, paved the way for constitutional reforms which gave the parliamentary majority the right to appoint the prime minister, who could not be removed by the president. This was a step in the right direction, demanded by democratic forces for many years. At the same time, the constitutional reforms were rushed and, in some cases, poorly conceived. A striking example of this is

the decision to allow parliament to dismiss any minister by a simple majority, which makes ministers vulnerable to parliamentary lobbies. Constitutional articles were not debated individually as required by law, and several changes were not approved in advance by the constitutional court.

During and after 2006 parliamentary elections, Ukrainian elites again demonstrated their willingness to settle political disputes by compromise, engineering a peaceful, though tense and dramatic, power-sharing agreement between ruling groups and the opposition. The political process in Ukraine, however, is still shaped by shadow decisionmaking and sharp conflicts between executive and legislative bodies, as well as between central and local governments. These factors have been aggravated by the introduction of the constitutional reforms and the establishment of a new trilateral political system, in which an alliance of any two of the three main centers of power (the president, the parliamentary chairman, and the prime minister) could have the potential to overwhelm the third official and dictate the rules of the game. Taking into consideration that the next election cycle will start in 2009-2011, the crucial aspects that can prevent the restoration of oligarchic rule are reformed courts, a free media, and an effective and strong opposition.

The Impact of the March 2006 Parliamentary Elections

In Freedom House ratings for 2006, Ukraine was labeled the only free country among the post-Soviet states, with the exception of the Baltic countries. The free and fair conduct of March 2006 parliamentary elections was a direct result of the Orange Revolution. These elections also demonstrated quite stable voting patterns, comparing the results with those of the 2004 presidential election. "Orange" forces received 46 percent of the vote in 2006, compared with 52 percent in 2004. Support for Viktor Yanukovich's camp also declined somewhat, from 44 percent in 2004 to about 40 percent in 2006 (including votes for Communists and other forces that supported Yanukovich in the 2004 runoff). In the local elections held simultaneously with parliamentary elections, "orange" regions supported "orange" parties, while "blue" regions remained loyal to Yanukovich's Party of Regions. Party composition is more diverse in local councils than in parliament, however, and in some cases "orange" mayors were victorious in "blue" regions (for example, in Odessa) and vice-versa, compelling opposing political forces to find some form of cohabitation.

The 2006 parliamentary elections, based for the first time on a purely proportional system, resulted in only five political parties winning seats, with no party in the majority. Yanukovich's Party of Regions benefited from a Yushchenko-Tymoshenko rivalry to gain a plurality of votes (32.1 percent). Tymoshenko's anti-oligarchic and anti-corruption rhetoric resulted in increased electoral support for her bloc (22.3 percent). The pro-presidential bloc, Our Ukraine, came in third (13.9 percent). The Socialists of Oleksandr Moroz fared poorly (5.6 percent), though better than the Communists, who took fifth place (3.3 percent), barely surpassing the 3 percent electoral barrier. It was believed that this outcome would make Ukraine's parliament more structured along party lines and force a negotiated power-sharing settlement.

Building a Coalition Government in the New Constitutional Framework

According to the amended constitution, a parliamentary coalition shall be constructed within 30 days of the first plenary meeting of the new parliament. Otherwise, the president has the right to dissolve parliament and call early elections. As Yushchenko had a loyal acting prime minister and cabinet at the time, he would have remained the chief political player if new elections were held.

With Our Ukraine's 82 parliamentary seats, it was up to the president to decide whether to form a coalition with the Party of Regions (183 seats) or with Yulia Tymoshenko's Bloc (129 seats) and the Socialists (30 seats). Both variants were under serious consideration and each had its advantages and disadvantages. Polls conducted from April 27 to May 4 by the Kiev International Institute of Sociology and Democratic Initiatives Foundation indicated that only 38 percent of the population supported a "grand coalition" between Yanukovych and Yushchenko, while 47 percent preferred a restoration of the "orange coalition."

After three months of negotiations and the development of a common agenda, the three "orange" parties agreed on June 22 to create a coalition, with Tymoshenko as prime minister and a representative of Our Ukraine as speaker. On July 6, 2006, however, in violation of this agreement, Socialist leader Moroz was nominated by his own party as candidate for parliamentary chairman during the voting process without any advance warning. He was elected by 238 votes from his own party, the Party of Regions, and the Communists. In this way, the so-called "anti-crisis" coalition emerged, and Yanukovych was nominated as prime minister. Our Ukraine and Yulia Tymoshenko's Bloc blamed Moroz for betraying his voters, as his party had opposed Yanukovych in 2004 and a coalition with the Party of Regions in the 2006 elections.

In this situation, Yushchenko faced a difficult political and constitutional dilemma. He could theoretically call for new elections after July 26, using the constitutional provision that allowed the president to dissolve parliament if a new cabinet of ministers was not formed within 60 days after the government's resignation. This, however, would mean further polarization of the country at a time when the president was losing political control. There was also a question of whether the president had the constitutional right to refuse Yanukovych's candidacy as prime minister. The only institution that could answer this definitively was the constitutional court. However, its formation had been blocked by parliament over the last year, as deputies feared that the court might cancel the constitutional reforms that had been agreed upon because of violations of procedure in their adoption.

After two weeks of uncertainty, Yushchenko decided to convene a national roundtable to develop a document that would establish a framework for a political compromise and serve as a precondition for accepting Yanukovych as prime minister. Yushchenko's intention was to outline a course for the incoming cabinet and make Yanukovych adhere to a pro-Western orientation and democratic values. To some extent, the president's initiative helped stabilize the country. The text of the Declaration of National Unity was signed by all parties except Tymoshenko's Bloc. Despite the

Party of Region's electoral slogans in support of federalization, Ukraine was characterized as a unitary country, an important victory for the president. Moreover, Yushchenko succeeded in keeping not only his pro-Western minister of foreign affairs and minister of defense (it was the president's prerogative to appoint these ministers), but also a minister of internal affairs known for his strong accusations against members of the Party of Regions for their illegal activities.

The Delineation of Powers: To Be Continued

At the same time, the Declaration of National Unity was not a legally binding document. On the one hand, Yanukovich had to stress to his supporters that it was not possible to introduce Russian as an official language of Ukraine, as this would require constitutional changes and a national referendum. Even more importantly, many analysts believed that while stressing partnership with Russia, Yanukovich would keep moving Ukraine toward Europe, albeit in a more gradual and pragmatic way. However, the prime minister quickly declared that it was too early for Ukraine to request a NATO Membership Action Plan and postponed efforts to join the World Trade Organization until 2007. Yanukovich's team also started to monopolize key positions in government offices and state companies – almost four-fifths of newly appointed deputy ministers originate from or made their careers in the Donetsk region.

When Yushchenko appealed to the provisions of the Declaration of National Unity, reminding Yanukovich that he had to follow the president's instructions on foreign policy, the prime minister's office struck back, rejecting six presidential decrees that were issued without Yanukovich's signature. Yanukovich's lawyers argued that the prime minister had a constitutional right to countersign presidential decrees regarding the creation of courts, the declaration of a state of emergency, the appointment and dismissal of ambassadors, and the adoption of National Security and Defense Council (NSDC) decisions. This last point was crucial, since two-thirds of the NSDC are loyal to the president and with their help he can still produce orders that are obligatory for the cabinet of ministers. After a war of words, both sides agreed to allow the constitutional court to officially decide on their division of powers.

Another presidential lever is Yushchenko's legislative veto. Yanukovich needs 300 votes in order to overrule presidential vetoes. For now, he can rely on the support of only 240 to 250 deputies. However, the Party of Regions has shown that it can sway deputies using money or threats, and it is actively trying to collect 300 votes in order to amend the constitution.

Yanukovich's team has tried to establish total control in areas where the Party of Regions holds a majority in regional councils. However, Yushchenko only agreed to appoint Party of Regions candidates as the heads of regional administrations (commonly referred to as governors) in Donetsk and Luhansk, and rejected Yanukovich's proposal to dismiss five more governors. Though Yanukovich had to retreat for the time being, the Party of Regions has sought out opportunities to gain the support of a two-thirds majority in various regional councils, which could then force the president to dismiss pro-presidential governors.

The stability of the "anti-crisis" coalition, however, cannot be taken for granted. Its

left-wing Socialists and Communists have continued to support populist initiatives in spite of Ukraine's economic conditions. For his part, Yanukovich mandated the development of a state budget for 2007 that favored big business in Donetsk and introduced cuts in social spending. His party also lost a struggle to achieve a majority in the constitutional and supreme courts and to nominate their heads. The constitutional court appears to have a pro-presidential majority, while the supreme court is headed by a representative of Tymoshenko's Bloc (however, the Party of Regions holds a strong position in the prosecutor general's office and has begun using it to prosecute businesses and politicians from opposing camps). Finally, the most popular media and television outlets remain generally independent and provide opportunities to criticize government failures.

Understanding these limitations, Yanukovich seeks to get his cabinet's program confirmed by parliament and secure for his cabinet a year of immunity from dismissal, as provided for by the constitution.

Conclusion

Ukraine's president and prime minister are trying to secure separate and sometimes parallel structures of power. The Party of Regions, which needs both internal and, especially, international legitimacy, tries to portray itself in a civilized manner and may continue to try and identify areas where it can compromise with the president, who still has the potential to remain a powerful political actor. For the time being, the present system somewhat resembles the French "double executive" model of a period of cohabitation, in which the prime minister and president compete with each other, at the same time that they find themselves forced to cooperate to ensure stability and govern the country. Such a situation can be used by a strong parliamentary opposition to criticize the government. At the moment, however, Tymoshenko continues to strive to be Yushchenko's successor in 2009. There still exists both a niche and a demand for the creation of a new European type of opposition in Ukraine, based not on a leader but on programmatic and ideological values.