

**Characteristics of Reforming the Institutions of
Power in Ukraine in the Transition to Democracy**

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Political Preferences

2018, vol. 21: 5-16.

DOI: 10.6084/m9.figshare.7533098

journals.us.edu.pl/index.php/PP

Submitted: 23/09/2018

Accepted: 04/10/2018



Abstract:

The author proves, that in Ukraine the level of political consolidation, when it would be possible to clearly define, whether a transition is completed or not, and what regime is firmly established in the state, is not achieved yet. Political players are far from confessing the inviolability of democratic rules of political game; there is a considerable threat of authoritarianism. Freedom House considers the Ukrainian state a free electoral state, not a liberal democracy. The judicial features of Ukraine in the democratization process are as follows: lack of fulfillment of one of the first tasks of the transition: replacement of elites; lack of legal culture of the authorities, their inability to realize the rules of governance; formal institutionalization; relative weakness of the basic opposition; slowness of the reformation and sustainable failure to perform the tasks of every stage of the transition; weakness and low legitimacy of democratic institutions, conjuncture reformation for party-group interests; gradual replacement of bits and pieces of the post-communist authoritarianism with the new oligarchic authoritarianism on the behavior level of some elite groups.

Key words:

Ukraine, transformation, president, parliament, government, reform, opposition

Introduction

Ukraine is a state that many scientists all around the world take interest in – due to its specific democratic transition characteristics. Their interest is natural, because there have already been three revolutions in Ukraine – student Revolution on Granite, Orange Revolution and Revolution of Dignity. Participants of each revolution demanded democratic development for the state and following democratic rules; however, this is yet to be achieved.

Like with most post-communist transition states, oriented character of the theological constitutionalism is inherent to Ukraine – meaning that provisions of the Constitution form a unique strategy of state development, while not reflecting the reality. It can be noted that this is a strategic model the state wants to build. Theological constitutionalism accumulates various instruments that help to stimulate or bring the transition states closer in their development to the desired models. The experience of CEE and the Baltic states shows that thoughtful implementation of “instrumental values of democracy” in a short period of time (a few electoral cycles) can help modernize the political system of society and move to the stage of consolidated democracy (Huntington 1997: 7-8; 1991: 14; Linz & Stepan 1996: 241). However, this scenario is only possible, if the basic development strategy is followed, regardless of the political volatility of the government.

Analyzing Ukrainian constitutional development processes, one can tell that the algorithm of the “democracy institutionalizing” is very “classic”, meaning all successful transition states underwent it. However, the result of a seemingly democratic transition is completely different from what can be observed in the CEE and Baltic states. Moreover, Ukraine’s peculiarity here is that it did not fall back to the previous authoritarian stage like all the other post-Soviet republics, except Georgia and the Baltic states.

What type of state is formed in Ukraine?

Ukraine is going through the formation of a so-called “oligarchic state” which has some of its own specific features (Kolodii 2001). The intention would be to monopolize the power by the means of financial and industrial groups. Representatives of the Ukrainian financial and industrial groups construct political institutions in such configuration that would make it possible for them to have governmental authority. Such political engineering is a formal preservation of seemingly democratic mechanisms of political participation and democratic political institutions, but their combination sets up the means for achieving certain electoral choice that was planned by the financial and industrial groups. This explains why sometimes people who have not proved themselves neither in social, political work nor showed their effective management skills, have political power. Only their involvement in the financial and industrial groups gives them advantage to make political decisions – via administrative posts or representative bodies.

The result of this elite incorporation principle is an “institutional sclerosis” – dystrophy of formal game rules or political institutions (Cimbal 2008). In reality this leads to devaluation of the constitutional norms: principles of the organization of police power, articulated in the Article 6 of the Ukrainian Constitution, which says that “police power in Ukraine is based on division it into legislative, executive and judicial power”, gained decorative features. Thus, the state turned into a “para-state”, which only partly serves as a classic state (some important functions remain – social welfare, regulative, law enforcement). Such “para-state” serves the interests of the financial and industrial groups, and, accordingly, all state institutions are adjusted to these interests (Kononenko 2007).

Therefore, actually, in Ukraine formal (constitutional) essence of the branches of power and public authorities is substituted by the power of informal groups of influence – agents of the financial and industrial groups. In addition, the choice of the operating mixed-member proportional representation electoral system with an absolute dependence of the court system and police services on presidential institutions has formed a system of preventive actions that distort the will of electors considerably. Due to the system of preventive actions (forming of election commissions, nominating candidates for deputies, procedures of voices counting, ignoring the violations of electoral process, bribery at elections, hidden agitation from the police services), the role of political elections as a mechanism of electoral selection was disrupted.

Civil society, revolution and political demands of their participants

Taking into account the weakness of the civil society institutions, the embryos of political participation, political responsibility, and “social elevators” have been degraded in Ukraine. Degradation of the state became the consequence of degradation of the system of state policy and mechanisms of political participation, which resulted in mass social and political protests – Orange Revolution in 2004 and Revolution of Dignity in 2013-2014. Let’s point out that these revolutions are not conventional forms of political participation and have destructive influence on the development of the state. Nevertheless, they do not arise at random and they are a reflection on the deficit of legitimacy of political and public power institutes and inadequate domestic policy of the state (DIF 2018).

Thus, public authorities are accountable for mass social and political crises, which due to their functions, should be reacting to social and political moods, taking into account public

opinion. Remembering the demands of the participants of the Maidan Nezalezhnosti protest actions in Kiev, it should be specified their firstly personalized character – resignation of the current Minister for Internal Affairs Alexander Zakharchenko and punishment of the guilty in beating of protestors. Only afterwards the participants demanded the resignation of Nikolay Azarov government, early elections of both parliament and the President of Ukraine. However, absence of reaction of President Victor Yanukovych caused further escalation of the conflict. Actually, the 2013-2014 events on the Maidan Nezalezhnosti brightly illustrate pseudocapacity of the instruments of democracy formed in Ukraine, and the quality of the state, the leaders of which became the main culprits of bloody outcome due to their inadequate reaction.

Therefore, one could say the forms of political participation accepted in the civilized world were not working in institutional terms in Ukraine, which means they were only formal. Destruction of many features of the state system, loss of certain characteristics of state sovereignty (integrity of territory, change of borders, loss of monopoly of the state on a compulsion, etc.) was a consequence of this. Weak statehood is one of the reasons for the Crimea annexation by Russian Federation and war in Donbas, proclamation of so-called “Luhansk and Donetsk people’s republics” as Russia’s instrument of promotion of the idea of “Russian world” and demands for federalization of Ukraine (Dmytrenko & Shystopal 2016: 73).

Taking into account the political requirements of Maidan participants, political actors that came to power after the Revolution of Dignity, first, would have to grant them. New political actors in theory would have to focus their activity on destruction of the oligarchic model of power, where corruption and parallel (informal) groups of influence became essence of the system, substituting formal public authorities; on demonopolization of political market; on restoration of the functions of the state.

It should be stressed that one of the basic requirements of the Orange Revolution and Revolution of Dignity was a transition to the parliamentary presidential republic. The main advantage of this form of government is bringing (including) of a considerably bigger, than in mixed or presidential system, number of political actors to the process of making political decisions. In Ukraine it would create terms for destruction of monopoly of the financial and industrial groups on power, reduce their total scales and would start the system of “social elevators” through introduction of mechanisms of political competition, that for has an extremely important value to the modernization of state administration.

Institutional changes in the form of government after the Revolution of Dignity

After the Revolution of Dignity, as the beginning of institutional changes of the state form we should consider the Act passed by the Verkhovna Rada of Ukraine “On rehabilitation of the action of certain provisions of the Constitution of Ukraine” (BPP 2014); decision of VRU that annulled the Constitutional reform from 2010 (the so-called “constitutional revolution”). In Ukraine, the parliamentary presidential republic was restored as the form governance. It extended the constituent function of the parliament, in particular returning the natural and logical functions of forming government, to the legislative body by redistributing the authorities, while forming the executive power. The law restored some provisions of Constitution of Ukraine with changes and additions to the benefit of VRU. President still has a right to present the candidature of prime Minister in parliament that is determined by a coalition of deputy factions, Minister for Defense and Minister for Foreign Affairs. All other members of the government and leaders of other central government bodies – the Chairman of the Antimonopoly Committee of Ukraine, Chairman of the State Committee of Television and Radio Broadcasting of Ukraine and Chairman of State Property Fund of Ukraine are appointed by VRU after the government leader’s nomination (Rudik 2014).

President influence on the activity of Government is limited. President has a right to terminate the acts of Cabinet of Ministers only due to their inconsistency to the Constitution with a simultaneous addressing the Constitutional Court of Ukraine; to appoint and dismiss the chairmen of local state administrations (after the Cabinet of Ministers of Ukraine presented the candidate); to appoint and dismiss the Prosecutor General of Ukraine with the consent of VRU is maintained and presenting the idea about assigning for position and dismissing the Head of Security Service of Ukraine to VRU is also present.

The parliament has a function of current adjustment of Government composition and leaders of certain central government bodies that strengthened the constituent function of parliament. If the activity of ministry is assessed negatively – the minister must be dismissed. The same goes for the whole Government in case its work is recognized as unsatisfactory. Parliament has an independent right to dismiss all specified officials. Right in front of the newly elected VRU the Cabinet of Ministers of Ukraine is dismissed. Parliament also bears political responsibility for the composition of government, its implementation of the Program of Action.

This provision eliminated a blank space in the triangle of bearers of power “Parliament – Government – President”.

The next stage of perfecting the system of state governance in Ukraine began after the early elections to VRU in October 2014 and forming of coalition of deputy factions, consisting of factions of Petro Poroshenko Block, People’s Front, “Samopomich”, Radical Party of Oleh Liashko and “Fatherland”. Signing of the Coalition agreement meant forming a wide coalition in VRU that created ideal, from the Ukrainian realities’ point of view, terms for realization of rapid reforms. In the Coalition agreement, some reforms were covered and taken into account that could considerably change the institutional subsystem of the political system. Although, from the point of view of the terms covered in the Agreement (and it was 2015–2016), it seemed a utopian document, which, certainly, added to the skepticism relating its implementation. But it was apparent from the contents of the Coalition agreement that political forces that came to power demonstrate willingness and understanding of conduct reforms, and the fact of formation of wide coalition – a presence of political will to reforms – are two basic and necessary terms for further advancement (Korol 2016: 14).

Indeed, in relation to the activity of the parliament of the 8th convocation, its quantitative indicators can be considered successful, comparing to the parliaments of all previous convocations. The amount of the legislative acts adopted by the parliament in its almost 4-years-long term of office exceeds the analogical indicators of work of parliaments of previous convocations in many times.

However, quality of the Parliament activity is extremely unsatisfactory. The permanent violation of norms of the Regulation law by the deputies is considered to be the main problem (Radchuk 2017). One can observe it throughout all of the stages of the law-making process and implementation of other functions of the Parliament. It would be possible to ignore this, because necessary decisions, even though slowly and with difficulties, are being adopted, however, chronic violations of the Regulation law destroy already weak political institutions – rules of the game that provide a delicate balance in the state. Therefore, their destruction is a way to chaos and vagueness, while the lack of foresight could create even bigger threats, than political stagnation. “The supreme bodies of state governance activity practice within the operating constitutional model is characterized by increased level of political competition, that can have both healthy, constructive character and acquire a destructive form” – scientists from NISR say

(DIF 2018). “The government authorities, formed on a coalition basis are less stable, and direct dependence of the executive power on representative power can make the government a hostage of populist decisions of leading political forces and internal parliamentary fight. Furthermore, the lack of a transparent method of forming of electoral party lists, predominance of political parties of authoritative type with one man leadership principle, as Ukrainian practice shows, result in getting clan-oligarchic groups into parliament of and, as a result, in opaque schemes of lobbying for interests of big business” (Rozumnij et al. 2015: 18). Therefore, a desirable result from forming a wide coalition in VRU was not achieved.

At the same time parliament, despite its high productivity regarding the amount of passed acts, is the most reactionary organ that often frankly sabotages the acceptance of important judicial laws that would start necessary processes for the state. As the practice of amending the Constitution shows, in relation to Judicial reform, issuing the most resonant changes to the publicity, consolidation of expert environment and influence of western partners are the means of pressure on a deputy body and, in particular, on factions engaged in frank populism. It should help to form necessary political will in the parliament (political bargaining is not an exception, too). Unfortunately, at the moment such humiliating practice is the only possible with deputies that have neither political responsibility nor dignity. Parliament became a place for lobbying of interests of several industrial and financial groups and banal earning of money through lobbying of various bills.

However, it is an obvious fact that practice of violation of base principles of democracy (equal rules for all) is usual for Ukraine. It became a daily phenomenon during the adoption of number of fundamental laws (changes in the Law on General Prosecution (BBP 2015a) are resonant, as well as passing the Act “About the state budget” in 2015 and in 2016 (BBP 2015b; 2016), etc. It causes further destruction of the state functions and disrupting its role, reduces legitimacy of public authoritative and, accordingly, of all their decisions. In addition, essentially, a government “in the manual mode” reduces the opportunity to foresight political processes, makes it impossible to form identical and even game rules for everybody.

This situation can be certainly explained by the complicity of political realities and justified by political usefulness. However, political decisions, accepted this way, are extremely controversial. Especially regarding the personnel appointments, mid-term elections etc., which makes such political usefulness doubtful, because it disrupts political competition and leads

neither to deoligarchization nor to the appearance of social elevators. Therefore, it is extremely important to develop effective mechanisms of rotations and management personnel, and subjects of political process, that would be based on understandable procedures and on legal framework. This includes distribution of political and administrative positions, changes in labor law that would not create legal collisions, when it touches the realization of lustration procedure, or elementary resignation of an official due to professional ineligibility.

Reasons for the failure of parliamentary model

They are contained, in our opinion, lie, first, in maintenance of mechanisms of co-optation of political class, in particular – mixed majority-proportional electoral system to VRU that has been renewed during the presidency of Victor Yanukovych as instrument of recreation of financial and industrial groups in government. There are a few reasons for this. Firstly, by saving the old electoral system, the mechanisms of electoral selection were preserved in the state, which guaranteed the recreation the financial and industrial groups of power, or so-called “oligarchs”. Why parliament has not, despite the promises, changed of the electoral system is not clear. Nevertheless, we can assume that the very same financial and industrial groups which could lose the instrument of the secured reproduction in government. It might seem that they supported Revolution of Dignity, but they were not opposing the system, but certainly the “Yanukovych clan” that usurped all power and all financial streams.

Secondly, it is obvious, that President Poroshenko did not take a risk to implement the proportional electoral system with open party lists, because in fact the level of the governability of the state was very low and handle the composition of VRU over “to the generosity” of citizens would be risky. Yes, the Leader of the country would lose the assured informal instruments of influence on deputies.

Thirdly, between early presidential and parliamentary elections there was little time and it was extremely difficult to prepare the country (forming of electoral districts based on new principles, members’ of electoral districts studying, explanation of the voting procedure to the electors) for the elections on new basis, that threatened cancellation of parliamentary elections as a whole.

The second error that became the consequence of maintenance of the mixed majority-proportional electoral system concerns the imperative character of the deputy mandate, which is

impossible to apply at this electoral system. Instead, VRU needed instruments that would help deal with the problem of discipline: factious and parliamentary in general. A right to exclude those deputies that separated from fractions, whose lists they were elected, was given to the political parties (it is often called “dictatorship of parliamentary fractions”). According to the amendment to the Act “On elections of people’s deputies”, parties got a right to eliminate even an acting deputy from the electoral list (known as a “party dictatorship law”). In fact, it is a substituted the role of electors, became rather an “antireform”, because it created an instrument for dictatorship of parliamentary parties and distorted the principle of folk sovereignty.

The Block of Petro Poroshenko took advantage of this very right, excluding the Nikolay Tomenko and Yegor Firsov deputies from the electoral rolls, who lost their mandate of people’s deputy a result ([Ukrainska Pravda 2016](#)). However, even the adoption of such norm did not decide the problem of discipline in VRU, shaking loose already too diverse parliamentary factions. In addition, the presence of many deputy groups outside of the fractions, lead to strengthening of the so-called “political bargaining” and, eventually, to disintegration of wide coalition.

Radical party of Oleh Liashko, “Samopomich” and “Fatherland” left the coalition. A long term-term social and political crisis of winter-spring 2016 emerged, related to the unsatisfactory estimation of activity of the Government of Arseny Yatseniuk and the inability of the VRU to dismiss him. It radically changed the style of realization of public policy in the conditions of parliamentary republic, eliminated its core. We believe that the real reason of disintegration of coalition is dissatisfaction of business-interests with the shareholders of parties that left the coalition. Therefore, its disintegration, from this point of view, can be viewed as justified.

However, the next forming of a narrow coalition composed of Petro Poroshenko Block and People’s Front in April 2016 and the style of making the political decisions show that country’s Leader due to his informal influence, administrative resources and usage of his legal plenary powers, leveled the role of VRU to the role of an organ that legitimizes political decisions accepted in the Administration of President. Therefore, it states the apparent usurpation of power, return to the informal dominance of the President in the system of government bodies and scaling down of political competition. In the future such phenomenon can result in a new social explosion, because, in fact, the “game rules” and the Constitution are breaking, causing a political disobedience and destabilization of a state.

However, taking into account the quality composition of VRU and the formation of, not opposition, but “fronde” in it, which operates on a “the worse, the better” principle, introducing frankly populist laws to VRU, arranging political bargains (positions and whole industries of economy in an exchange for votes), causing parliamentary conflicts, blocking the voting for important bills, and aiming only for early elections – formation of a narrow (or situational) coalition seems the politically justified lesser evil on this stage (Savickii 2016). The next steps of the state’s and Government Leader regarding the voting for a number of bills, characteristics of the bills that President and Government bring for the discussion, show the intentions to reform a country by changing all spheres of public life institutionally, that in the present terms of war with Russia is the question of maintenance of the statehood. Thus, the essence of the public authorities’ reformation is a change of political basis, that would start mechanisms of political competition and social elevators, dystrophy of which caused gradual dystrophy of functions of the state. And if (before the Russian aggression) similar hybrid regime could function relatively safely – with different levels of political tension and political alienation – right now the erosion of state functions and absolutely inadequate political basis create extraordinarily high risks for the state. Their source is a deep social stratification and political alienation through fracturing of the already weak political institutions, which creates pre-conditions of internal civil conflict.

Conclusion

In Ukraine the level of political consolidation, when it would be possible to clearly define, whether a transition is completed or not, and what regime is firmly established in the state, has not been achieved yet. Political players are far from confessing the inviolability of democratic rules of political game; there is a considerable threat of authoritarianism. Freedom House considers the Ukrainian state a free electoral state, not a liberal democracy. The judicial features of Ukraine in the democratization process are as follows: lack of fulfillment of one of the first tasks of the transition: replacement of elites; lack of legal culture of the authorities, their inability to realize the rules of governance; formal institutionalization; relative weakness of the basic opposition – national democrats; slowness of the reformation and sustainable failure to perform the tasks of every stage of the transition; weakness and low legitimacy of democratic institutions, conjuncture reformation for party-group interests; gradual replacement of bits and

pieces of the post-communist authoritarianism with the new oligarchic authoritarianism on the behavior level of some elite groups.

Let us stress that said positions reflect the presence of requirement in realization of parliamentary reform in Ukraine, the actual task of which is to recover the trust in Parliament and transform it into a real representative organ for interests of the Ukrainian people. This must include the next steps in such directions as: improving the electoral legislation of Ukraine according to the recommendations of the Parliamentary Assembly of the Council of Europe and the Venice Commission of PACE, in particular implementation of the electoral system with open party lists; an increase of responsibility of people's deputies to the society (providing the execution of the constitutional norm by the deputies regarding the incompatibility of positions, establishment of effective and proportional disciplinary sanctions for the violation of the personal voting principle or missing the meeting of committees and plenary meetings of Parliament without good reasons, violation of ethics of deputy activity, legal settlement of lobbyist activity in VRU, etc.); increase of efficiency of legislative activity of Parliament (by arranging and improving the legislative process organization, strengthening of the role of committees of Verkhovna Rada as the basic subjects that are working on the bills, holding of the parliamentary listening on pressing questions of legislative politics, implementation of a procedure of public consultations about bills with everyone interested, execution of the legislative requirement in regarding the obligatory anticorruption examination of bills, etc).

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