

Political Reform or a Game of Survival for President Kuchma?

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Ukrainian President Leonid Kuchma is constitutionally prohibited from running for a third term. Viktor Yushchenko, the leader of the main opposition bloc Our Ukraine, is, according to opinion polls, the best placed to succeed Kuchma in next October's presidential election. Kuchma, distrustful of Yushchenko, is looking for guarantees that he will not face criminal proceedings after he leaves offices. Under current conditions, it looks unlikely that Kuchma will repeat the presidential-succession scenario played out in Russia, where Boris Yeltsin chose Vladimir Putin as his successor. Instead, to secure his future and influence the 2004 outcome as much as possible, Kuchma has decided to try to change the constitution less than one year before the presidential election.

Ukraine's Political System: The Necessity for Change

The 1996 Ukrainian constitution was a result of a compromise between the president and the parliament. Kyiv solved its constitutional impasse in a peaceful, organized way, as opposed to the Yeltsin way, which involved an armed assault on the Russian parliament and bypassing the parliament by taking the presidential draft of the constitution to the people in a referendum. As a result, the Ukrainian model, in general, appears to be more balanced between president and parliament than the Russian one. The president appoints the prime minister with the consent of the parliament but, unlike in Russia, he may not dissolve the parliament if it rejects his candidate for prime minister three times. The Ukrainian president can dismiss the parliament only if it fails to convene for 30 consecutive days. Parliament can influence the government by rejecting its program or voting it out of power in a vote of no-confidence.

Kuchma held a referendum in 2000 on a so-called "people's initiative" (which was, in fact, organized by oligarchic clans). In this referendum, Kuchma tried to increase his authority, first of all, by obtaining the right to dissolve parliament and creating a second parliamentary chamber. This attempt, however, failed as two of the most pressing issues in the referendum, the right of the president to dissolve the sitting Parliament and the ability to adopt a new constitution via referendum, were deemed unconstitutional by the Constitutional Court. The referendum included a constitutional amendment giving the president the authority to dissolve future parliaments, which was approved. Moreover, the

Constitutional Court stipulated that the results of the referendum should be implemented through proper constitutional procedure, which requires approval by two-thirds of the parliament. Due to opposition in the parliament, from both the left and the right, the president's draft law on constitutional changes failed.

Nevertheless, the president remains the dominant figure in the Ukrainian political system and continues to hold an excessive amount of power. He can fire the prime minister at his will, thus giving him the ability to control the government without being held responsible for its actions. This makes the governmental system quite unstable, as ten people have held the office of prime minister during Ukraine's twelve years of independence. To try to maintain or increase his dominance, Kuchma has vetoed (seven times) a draft law to increase the role of the cabinet and its responsibility to the parliament; has made law enforcement agencies answerable to him personally, and can appoint ministers without the formal consent of parliament. In addition, members of the government are lobbied by financial-industrial groups ('clans') and back room deals are cut between different branches of the government and within parliament. Deputies are vulnerable to administrative pressure, which can and has forced them to change factions. This occurred in the 2002 parliamentary election and substantially distorted the results (see Table 1, next page).

Without an adequate legislative framework, the pace of administrative reform in Ukraine depends on the political motives of the president rather than on decisions made by parliament. For example, the position of state secretary, arbitrarily created by Kuchma in April 2001, was just as arbitrarily eliminated in May 2003 and the state secretaries are now once again called deputy ministers. Kuchma's motive was to create tension within the factions of the pro-presidential majority, thus causing the factions to compete for presidential favor in order to be given the newly re/created posts.

What Kind of Reforms Does Ukraine Really Need?

The most important constitutional change Ukraine needs is for the government to be formed with the consent of parliament and removed only with a constructive vote of no-confidence (as in the German model, where a new government is simultaneously appointed when the previous government is voted out).

Another crucial reform that should be undertaken is the creation of stronger parties. One step toward developing effective political parties would be to prohibit an MP from changing parliamentary factions if elected in a party-list vote. If an MP elected in a party-list vote does choose to change factions, that MP should be forced to give up his/her seat in parliament. Although this provision may appear to be undemocratic, in the post-Soviet situation in Ukraine it would serve as a way to ensure that deputies are not bought-out by powerful forces.

The present parliamentary voting system in Ukraine, which involves 50 percent of the seats being decided in party-list votes and 50 percent in single-member district races, was introduced on the eve of the 1998 election and was a clear step forward from the previous "winner take all" system, which favored the "non-party" former members of the *nomenklatura*. Nevertheless, the outcomes in the single-member district elections are still more vulnerable to influence by the administration than are party-list elections.

Thus, it seems that the next logical step in structuring the parliament along party lines is to implement a strict proportional representation system.

Other important changes that should be made to the Ukrainian political system include:

- Reserving for the prime minister the authority to appoint and dismiss members of the government and heads of the other central executive bodies;
- The formation of a new government being connected to the election of the new parliament, not to the election of a new president;
- The president being able to dismiss the prosecutor general only with parliamentary consent;
- All agencies of the executive branch, including law enforcement agencies, becoming subject to the control of the Cabinet of Ministers;
- The president being able to call for new elections if a government is not formed within 30 to 60 days.

As these examples demonstrate, the package of new laws that should be implemented in order for political reform to take place includes laws on parliamentary elections, parliamentary procedures, the Cabinet of Ministers, and the president. In addition, despite being provided for in the constitution, there is no law on the impeachment of the president. Ukraine also lacks legal definitions of the status and function of the president's administration (staff) and its chief; these provisions could be included in the new law on the president.

Kuchma's Attempt to Retain His Post

With Kuchma's support, Viktor Yanukovych, the former governor of Donetsk, formed a proto-coalition government based on back-room deals between oligarchs rather than on electoral results. Kuchma declared that Yanukovych might be the presidential candidate from the "party of power." However, Yanukovych's rating in opinion polls remains quite low. Moreover, he is distrusted by two other powerful clans—the Dnipropetrovsk Group and the United Social Democrats [SDPU(u)]. Despite administrative and non-governmental (e.g. clan) pressure, Yushchenko remains, for the time being, the leading contender to replace Kuchma (as long as the current rules of the game remain in place). (See Table 2, next page).

The best scenario for the presidential election would be if Kuchma reached a tacit agreement with Yushchenko that he would not impede Yushchenko's campaign for the presidency in return for certain guarantees that Kuchma will not be prosecuted. Given Kuchma's distrust of Yushchenko, this is not very likely, at least at this point.

On August 24, 2002, Ukraine's Independence Day, Kuchma appeared to agree to a proposal to form a coalition government and to implement a proportional representation electoral system, even though he had already vetoed legislation on a proportional representation system five times. He also began to discuss constitutional reforms to transform the Ukrainian political system into a parliamentary-presidential system. These moves were aimed at splitting the opposition by separating Our Ukraine and Yulia

Tymoshenko's block from the Socialists and Communists, who wanted to create a parliamentary system in Ukraine. The initiative was also seen as an attempt to divert public attention from scandals surrounding Kuchma and the oligarchs.

In early March 2003, Kuchma submitted his plan to a so-called nation-wide discussion. An alternative plan designed in the parliament and deemed constitutional by the Constitutional Court, was not submitted to this discussion. The executive branch used its influence over the mass media and its administrative tools to control the process of national discussion on reform.

Kuchma proposed to have all elections (presidential, parliamentary, and local) occur during the same year. This, of course, could be used to postpone the upcoming 2004 presidential and 2006 parliamentary elections and also violates the current constitution. Kuchma also started to talk again about the introduction of a second chamber in parliament, which oligarchs could easily control, as well as direct referendums for adopting laws and the constitution.

Since these proposals were largely unpopular, Kuchma withdrew them while trying simultaneously to introduce other changes that would help him control the legislative and judiciary branches. He sought to reserve as a presidential prerogative the right to appoint the ministers of defense, foreign affairs, domestic affairs, and emergency situations. He also proposed to allow members of the Constitutional Court to be appointed to a second term as well as to provide for the election of judges for 10-year terms rather than life terms, which would make judges more vulnerable to outside pressure. There was some speculation that Kuchma hoped the Constitutional Court would make him eligible to run for a third term on the premise that the 1996 constitution was adopted after he became president in 1994. However, a special parliamentary commission that had active participation by the opposition developed its own plan that called for: 1) the formation of a coalition government based on a parliamentary majority that is approved and ousted only by the parliament and 2) the introduction of a purely proportional representation system. On July 11, after several days of blocking discussion in the parliament, the opposition persuaded the majority to submit to the Constitutional Court not only the presidential draft law on constitutional changes, but also the commission's one.

Parliamentary Republic: Another Option for Kuchma?

In August 2003 Kuchma declared his intention to withdraw his reform plan. Kuchma feared that a strong presidential successor, even if elected with his support, could become too independent of Kuchma. Instead, another plan was developed by Viktor Medvedchuk, the president's chief of staff, with the support of the Communists. It envisaged the creation of a parliamentary republic after the 2006 parliamentary election in which the president is elected by the parliament by a two-thirds majority. Thus, whoever is elected in 2004 would hold office for only two years rather than five. This is also in the interest of Medvedchuk, who has no chance of being elected president in a direct vote but who could be greatly aided by the oligarch-supported Social Democratic Party of Ukraine [SDPU(u)] if the parliament were to elect the executive.

However, as the parliament is not sufficiently structured along party lines, the danger exists that in a parliamentary model the government would be very unstable. It seems that

the Ukrainian system could more easily be adjusted to resemble the French presidential-premier model or the Polish parliamentary model (with a distinctive role for the president) through the formation of a coalition government based on a parliamentary majority and by increasing the parliament's responsibilities.

A purely parliamentary model in Ukraine could turn into an "oligarchy", in which Kuchma would try to retain influence behind the scenes or even attempt to become prime minister. However, even under these conditions, Yushchenko, if elected in 2004, could influence the situation on the eve of the 2006 parliamentary elections.

Thus, in mid-September 2003 one more plan emerged from the pro-presidential camp: to have the parliament elect the president in 2004. Theoretically, with Communist support, Kuchma could gain the 300 votes needed to make the necessary changes to the constitution. There are several factors that will likely impede the adoption of this new plan. First, the Communists may be cautious about dealing with Kuchma. It is not clear what kind of proportional representation electoral law would be introduced, if any. At present, the Communists are not ready to support the election of the president by the parliament in 2004, because in the present parliament their position is weak. Moreover, dealing directly with Kuchma and Medvedchuk would undermine their position. The same is true for the Socialist leader Oleksandr Moroz, who seems to understand that supporting this plan would simply play into the hands of Medvedchuk and that, despite the many points of disagreement between Moroz and Yushchenko, the only real democratic alternative in the 2004 election is the leader of Our Ukraine. Secondly, the Donetsk Group and some other SMD deputies in pro-presidential factions do not want to introduce a purely proportional electoral law as they will not have enough support throughout the country. Thirdly, public opinion is strongly against the idea of the parliament electing the president. This plan is viewed as proof that the existing regime is trying to influence the presidential election.

Conclusion

Many analysts believe that the present constitution will not be changed until the 2004 presidential and 2006 parliamentary elections are over. Thus, Kuchma's plan to change the rules of game at the end of his term may fail. In this situation, those in the presidential administration will do everything possible to prevent Yushchenko from coming to power. Therefore, demands of the international community for a free and transparent election will be of extreme importance.

At the same time, a positive trend towards increasing the role of the cabinet based on a parliamentary coalition has been initiated by the opposition and supported by many in the pro-presidential majority. These reforms could be introduced through minimal changes to the constitution or the adoption of several key laws and would help the present Ukrainian political system move in the direction of democracy.

Table 1: Composition of the Parliament

	Percentage of Vote Earned in Party List Vote	Seats Earned from Party List Vote	Single-Mandate District Seats Earned	Total Seats Held (As of March 31, 2002)	Total Seats Held (As of Oct. 3, 2003)
Opposition Factions					
Our Ukraine	23.57	70	42	112	104
Communist Party of Ukraine	19.98	59	6	65	60
Tymoshenko Bloc	7.26	22	0	22	18
Socialist Party of Ukraine	6.87	20	2	22	20
Subtotal				221	202
Pro-Presidential Factions					
For a United Ukraine (split into 8 factions)	11.77	35	86	121	189
Social Democratic Party of Ukraine (United)	6.27	19	8	27	37
Subtotal				148	226
Deputies from other parties and independents			80	80	22
TOTAL IN PARLIAMENT				449*	450

* one seat remained vacant

Sources: www.rada.gov.ua and www.cvk.ukrpack.net

Table 2: Electoral Preferences of Ukrainians, in %

<i>Would vote for...</i>	2002 Feb.	2002 Nov.	2003 Feb.	2003 May	2003 June
Yushchenko (Our Ukraine)	23.4	24.8	23.5	21.4	22.6
Symonenko (Communists)	13.7	9.2	11.1	10.4	13.6
Yanukovytsch (prime minister, Donetsk group)	–	–	5.2	8.1	6.9
Tymoshenko (Tymoshenko's Block)	3.6	6.0	4.8	6.1	6.1
Moroz (Socialists)	3.8	4.1	4.6	4.9	5.8
Medvedchuk (President's chief of staff, SDPU/u/)	6.2	5.3	4.6	4.1	4.3
Lytvyn (parliamentary speaker, former President's chief of staff)	1.2	1.3	1.9	2.7	2.7
Tyhypko (head of the National Bank, 'Dniepropetrovsk group')	0.9	0.9	1.1	1.2	1.3
Would vote against all	8.2	15.2	15.0	11.6	12.2
Would not vote at all	5.3	4.8	6.6	7.7	6.8
Difficult to say	18.4	17.5	19.1	19.5	16.4
No response	1.9	3.7	2.5	2.3	1.3

Source: www.kiis.com.ua

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