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WILL THE UKRAINIAN PARLIAMENT COUNTERBALANCE SUPERPRESIDENTIALISM?

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INTRODUCTION

It has become conventional wisdom that one of the decisive reasons for the polarization of the political regimes of the former socialist countries is the balance of power between the parliament and the president. Western post-communist (Višegrad and Baltic) countries, which are moving toward the European mega-area, chose parliamentarism or semi-presidentialism with a weak presidency, while Eastern post-communist (CIS or Eurasian) countries chose semi-presidentialism with extremely strong presidency.¹ According to this parameter, despite its self-assertion as a European country, Ukraine has remained a typically Eurasian country. This situation becomes even more intriguing if one considers that Ukraine is a rare case among CIS countries, in which the constitution was adopted in a civilized way, by compromise between the president and the parliament, while in other CIS countries the constitutions were adopted after shelling the parliament or an anti-constitutional plebiscite-“referendum.” As a result, the 1996 Ukrainian Constitution has a certain (if not significant) number of merits, absent in the constitutions of other CIS countries, the most significant of which is the lack of presidential prerogative to dissolve the parliament in case of the its repeated rejection of the presidential candidate for prime minister. Unfortunately, the Ukrainian parliamentary opposition has not been able to exploit this advantage.

Recent political developments in Ukraine added actuality to the study of this issue. From the end of 2003 to April 2004, the pro-Kuchma forces attempted to amend the 1996 Constitution for transition from a

¹ Kimitaka Matsuzato, “Semi-Presidentialism in Ukraine: Institutional Centristism in Rampant Clan Politics,” forthcoming in *Demokratizatsiya*.

president-parliamentary to a premier-presidential system.² This attempt was based on the perspective that V. Yushchenko, Kuchma's rival, would win the 2004 presidential elections. Although, in this negative context, the pro-Kuchma forces' attempts revealed that a decisive factor determining the characteristics of the Ukrainian political regime is the relation between the president and parliament. With this situation in mind, this chapter will focus on the interrelations between parliamentarism and presidentialism in Ukraine, paying attention to the political and judicial factors that affected this relationship. Based on this empirical investigation, this author hopes to propose several measures to strengthen the role of the parliament.

Unfortunately, a study of the bibliography on this subject suggests that neither Ukrainian nor foreign researchers have studied it deeply. Political scientists in Ukraine describe contemporary Ukrainian parliamentarism in the context of the tradition of Western democracy or Ukrainian ancient history. Reading their writings, one gains the impression that he/she will learn more about American, British or German than Ukrainian parliamentarism. Likewise, the literature dedicated exclusively to Ukrainian parliamentary history provides detailed descriptions of ancient historical events (beginning with the Greek settlements within the boundaries of present-day Ukraine and Kievan Rus'), but the authors appear to run out of energy as they come closer to the present-day Ukrainian politics. The studies of the contemporary Ukrainian parliament, as a rule, target technical aspects, such as various regulations and procedures, rather than the fundamental issue of its relations with other branches of power.³ In contrast, non-governmental think tanks in Ukraine show interest towards parliamentarism. These think tanks are producing most valuable research today.

Western political scientists seem to have been more interested in ethnolinguistic factors in Ukrainian politics,⁴ elections and electoral

² On the concept of semipresidentialism, see: Robert Elgie, ed., *Semi-Presidentialism in Europe* (Oxford, New York, 1999). On the concepts of president-parliamentary systems and premier-parliament systems, see: Matthew S. Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (New York, 1992), pp. 55-75.

³ A rare exception to this dismal situation is: R.M. Pavlenko, *Parlaments'ka vidpovidal'nist' uriadu: svitovyi ta ukrains'kyi dosvid* (Kyiv, 2002).

⁴ Andrew Wilson, *Ukrainian Nationalism in the 1990s. A Minority Faith* (Cambridge: UK, 1997); Idem, *The Ukrainians. Unexpected Nation* (New Haven, London, 2000).

geography,⁵ and political parties and clans,⁶ than political institutions. Rare exceptions to this tendency⁷ reveal the infancy of its study. This becomes yet stranger if one considers that the Russian parliament, however weak it is, continues to attract scholarly interest.⁸ Only very recently, under the impact of the aforementioned attempted constitutional reform to strengthen the parliament, experts and representatives of foreign organizations began to pay more attention to the Ukrainian parliament.

**THE EMERGENCE OF PARLIAMENTARISM
AND PRESIDENTIALISM IN UKRAINE
1990-1996**

Even before the first free parliamentary elections in 1990 the Supreme Rada of Ukraine, ruled by the 1978 Constitution of the UkrSSR, shared a number of formal features with Western democratic legislatures. In reality, however, the Rada operated on a temporary basis,

⁵ Peter R. Craumer and James I. Clem, "Ukraine's Emerging Electoral Geography: A Regional Analysis of the 1998 Parliamentary Elections," *Post-Soviet Geography and Economics* 40:1 (1999), pp. 1-26; Sarah Birch, *Elections and Democratization in Ukraine* (New York, 2000); Kimitaka Matsuzato, "All Kuchma's Men: The Reshuffling of Ukrainian Governors and the Presidential Election of 1999," *Post-Soviet Geography and Economics* 42:6 (2001), pp. 416-439.

⁶ Hans van Zon, *The Political Economy of Independent Ukraine* (Houndmille, London, 2000); Kimitaka Matsuzato, "Elite and the Party System of Zakarpattia Oblast: Relations among the Levels of Party Systems in Ukraine," *Europe-Asia Studies* 54:8 (2002), pp. 1265-1299.

⁷ Andrew Wilson, "Ukraine: Two Presidents and Their Powers," Ray Taras, ed., *Postcommunist Presidencies* (Cambridge: UK, 1997); Idem, "Ukraine," Robert Elgie, ed., *Semi-Presidentialism in Europe* (Oxford, New York, 1999); Charles R. Wise and Volodymyr Pigenko, "The Separation of Powers Puzzle in Ukraine: Sorting Out Responsibilities and Relationships between President, Parliament, and the Prime Minister," Taras Kuzio et al., eds., *State and Institution Building in Ukraine* (Houndmills, London, 1999), pp. 25-55.

⁸ Joel M. Ostrow, *Comparing Post-Soviet Legislatures: A Theory of Institutional Design and Political Conflict* (Columbus, 2000); Thomas F. Remington, "The Evolution of Executive-Legislative Relations in Russia since 1993," *Slavic Review* 59:3 (2000), pp. 499-520; Idem, "Majorities without Mandates: The Russian Federation Council since 2000," *Europe-Asia Studies* 55:5 (2003), pp. 667-691.

convening twice a year for brief sessions, which were well-orchestrated to pass bills and laws unanimously. The agenda was always carefully deliberated to every technical detail. The Supreme Rada's activities were guided by its Presidium. Under Article 106 of the 1978 Constitution, the Presidium was established as a permanent body of the Supreme Rada that performed as the highest state authority between sessions. It was a collective body vested with the functions of the head of state. The Presidium was entitled to issue decrees, interpret laws, cancel resolutions and instructions of regional councils, set up and abolish ministries and state committees on the request of the cabinet of ministers, appoint and dismiss ministers and authorize representatives of the UkrSSR in foreign countries, and accept foreign credentials.⁹

Such a cumbersome model of government was not able to cope with the acute social and economic crises in the USSR at the end of 1980s. Therefore, after declaring the sovereignty of Ukraine on July 16, 1990, the Supreme Rada began to amend the UkrSSR Constitution and other laws of the republic in order to introduce a presidency in the UkrSSR. In accordance with the new Article 114-1 of the amended Constitution, the president was the highest public official of the Ukrainian state and simultaneously the head of the executive branch.¹⁰ The president was to propose to the parliament candidates for prime minister, request his dismissal, and appoint the ministers of defense, national security and emergencies, internal affairs, foreign affairs, finance, and justice, as well as the head of the State Security Committee with the consent of Supreme Rada.¹¹ Moreover, the Rada adopted the Law on Presidential Powers, which provided the president with all necessary authority to govern the country. At the beginning of 1992, the 1978 Constitution was amended again to include the provisions that deprived the Supreme Rada's Presidium of its prerogatives and

⁹ The powers of the Presidium of the UkrSSR Supreme Rada are listed in accordance with Article 106 of the UkrSSR Constitution. However, the majority of these powers were gradually taken away from the Presidium after mid-1991.

¹⁰ Note that under the current Constitution passed on June 28, 1996 the president is only the head of state with no subordination of the executive branch.

¹¹ Zakon URSR "Pro zasnuvannia posta Prezidenta Ukrain's'koi RSR i vnesennia zmin ta dopovnen' do Konstytutsii (Osnovnoho zakonu) Ukrain's'koi RSR" vid 5 lipnia 1991 roku (5 July 1991), No. 1293-XII, No. 1293-XII // *Vidomosti Verkhovnoi Rady*, No. 33 (1991), st. 445.

distributed them among the parliament, the president, and the cabinet of ministers (government). Thus, the basic features of Ukrainian semi-presidentialism took shape by the spring of 1992.

The president was vested not only with the powers of the head of state, previously exercised by the Presidium's chairperson, but also with the right to determine government policies. The president was to organize the government, while the role of the parliament in this matter was substantially limited. Before the constitutional amendment in 1992, the Supreme Rada had been authorized to appoint and dismiss all members of the cabinet of ministers. Now the parliament preserved only the right to give its consent to the candidacies of the prime minister, ministers of defense, foreign affairs, emergencies, finance, justice, and the chairman of the State Security Committee, all proposed by the president. In 1992, the list of powers that the president exercised with the consent of the Supreme Rada was extended to the appointment of the chairmen of the State Customs Committee and the State Border Guard Committee.¹²

The constitutional legislation did not define the mechanisms of cooperation between the Supreme Rada and the cabinet of ministers over the implementation of the governmental Plans of Action. It did not prescribe the procedure of either how the parliament gave its consent to the presidential candidate for the prime minister or how parliamentary committees exercised their oversight functions. Under such conditions, the parliamentary oversight functions were limited to deputy requests and appeals, control over the use of public accounts, and consideration of the government's reports on its activity. There were also certain discrepancies within the constitutional provisions. Thus, according to the Constitution, if the parliament voted no confidence in one or another member of the cabinet of ministers, this should provide a reason for his/her resignation. But since the same Constitution prescribes that the dismissal of high officials of the executive branch falls under the president's competency, the parliamentary resolution of no confidence did not result in automatic reshuffling of cabinets.

¹² Zakon Ukrainy "Pro vnesennia zmin i dopovnen' do Konstytutsii (Osnovnoho zakonu) Ukrainy" vid 14 liutoho 1992 roku (14 February 1992), No. 2113-XII, // *Vidomosti Verkhovnoi Rady*, No. 20 (1992), st. 271.

Since the constitutional amendments described above did not solve the problem of regulating the relations between the branches of power, the Supreme Rada chair Oleksandr Moroz and President Leonid Kuchma signed the Constitutional Agreement on June 8, 1995, aimed at regulating the state and substate government in Ukraine during the period until the adoption of a new Ukrainian Constitution. This agreement, at least *de jure*, transformed Ukraine into a country of almost pure presidentialism by placing the cabinet of ministers under the complete subordination of the president. The president acquired not only the right to guide and oversee governmental policies, but also limitless powers to form the highest organ of the executive branch of power. The parliament was deprived of the right to confirm the presidential candidacies for prime minister and other “key” ministers.

In addition to the legal limitations that regulated the status of the parliament before 1996, there were also a number of political factors that laid the ground for the future superpresidentialism. First of all, the lack of stable parliamentary factions made the participation of the legislature in appointments and removals of prime ministers purely nominal.¹³ The Supreme Rada constantly broke into marginal factions and was unable to put forward alternative candidates. Moreover, the president behaved tactfully, proposing candidates who enjoyed certain popularity among the majority of faction leaders.¹⁴ In 1991 and 1994, Vitold Fokin and Vitalii Masol were such candidates, backed by the leftist parliamentary majority. In 1992, both the communists and Rukh supported Leonid Kuchma.¹⁵ Once the parliament gave its consent to the appointment of the prime minister, the president obtained a free hand to appoint other “key” ministers.

¹³ According to Oleh Protsyk, “the president repeatedly used his power of cabinet nomination to construct a situational majority around his choice of prime minister. In this sense, the parliamentarians tended to rely on the president in solving their problem of collective action in regard to cabinet formation.” Oleh Protsyk, “Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine,” *Europe-Asia Studies* 55:7 (2003), p. 1079.

¹⁴ *Halyts’ki kontrakty*, No. 50 (2000), p. 14.

¹⁵ Sergei Rakhmanin, Yuliia Mostovaia, “Ukraina partiinaia, Chast’ 2, *Nasha Ukraina*,” *Zerkalo nedeli*, No. 6 (2002), pp. 1-2.

The Supreme Rada had even less influence on the dismissal of prime ministers. Thus, out of the five prime ministers who held office during 1990-1996, one resigned on his own (Vitalii Masol, 1990-1991); two were dismissed by the president (Vitalii Masol, 1994-1995,¹⁶ and Yevhen Marchuk, 1995-1996), while only two governments, headed by Vitold Fokin (1991-1992) and Leonid Kuchma (1992-1993), were dictated to resign by the parliament.¹⁷

FROM THE 1996 CONSTITUTION TO THE PRESENT (2004)

The constitutional process was in a deadlock in 1996. More than 6,000 amendments were proposed to the constitutional draft that passed the first reading in May 1996. Parliamentarians did not have any vision in regard to the most important articles of the new constitution, such as the state language, national symbols, deployment of foreign military bases on the Ukrainian territory, and concurrence of parliamentary executive offices.¹⁸ This made the president and the majority of deputies believe that the constitution would not be passed by the end of 1996, or, even if passed, would hardly be acceptable to the president. Leonid Kuchma used this uncertain situation and signed on June 26, 1996 a Decree on the Organization of a National Referendum on Adoption of the New Constitution of Ukraine, planned for September 25, 1996.¹⁹ At

¹⁶ The formal reason for Masol's dismissal was his own desire to resign. In fact, the prime minister was forced to resign after the president appointed Evhen Marchuk, Petro Sabluk, and Viktor Pynzenyk as deputy prime ministers, and Valerii Pustovoitenko as minister of the cabinet of ministers (all of them were Kuchma's men). This deprived the prime minister of political support in the government. See Pavlenko, *Parlaments'ka vidpovidal'nist' uriadu*, p.166.

¹⁷ Both prime ministers resigned after parliamentarians accused them of being unable to improve the economic situation in the country and voted no confidence in them.

¹⁸ Iryna Pohoryelova, "My ne mozhem zhdat' milosti ot naroda. Dat' emu Konstitutsiiu - nasha zadacha," *Zerkalo nedeli*, 22-28 June 1996 (<http://www.zerkalo-nedeli.com/nn/index/90>); Iuliia Mostovaia, "Delo chest'," *Zerkalo nedeli*, 29 June - 5 July 1996 (<http://www.zerkalo-nedeli.com/nn/index/91>).

¹⁹ Ukaz Prezydenta Ukrainy "Pro provedennia vseukrains'koho referendumu z pytannia novoi Konstytutsii Ukrainy" vid 26 chervenia 1996 roku (26 June 1996), No. 467/96 // *Uriadovyi kur'er*, 4 July 1996.

this referendum people were to express their opinion on a constitutional draft that considerably extended the powers of the president. However, during the next day and night (which would be memorialized in Ukrainian history as “constitutional night”) deputies compromised and passed the new Constitution of Ukraine. On July 1, 1996, President Kuchma canceled the decree on the national referendum.

In comparison with the Constitutional Agreement of 1995, the new Constitution of Ukraine substantially limited the presidential powers. The president has nothing to do with the executive branch because the Constitution made the cabinet of ministers the highest body of the executive branch of power. However, a number of staffing and controlling powers over the executive branch allowed the president to exercise considerable influence on the implementation of governmental policies. He is the commander-in-chief of the Ukrainian armed forces and the guarantor of national security, and guides foreign policies. He appoints members of government and other highest executives, including regional governors, based on the proposals of the prime minister. He has the right to dismiss any executive official on his own initiative (from the prime minister down to chiefs of the raion, district state administrations). The president introduces, reorganizes, and abolishes central executive bodies, based on the proposals of the prime minister, and cancels governmental acts.

The Constitution provided the president with significant levers of influence on the legislature too. The main lever is the presidential right to veto bills passed by the parliament. This right was set in the Constitution in quite contradictory and undeveloped norms. First of all, the Constitution does not determine whether presidential proposals to a bill or the veto can be appealed to the Constitutional Court. Secondly, the Constitution does not regulate the procedures of official promulgation of laws in case the parliament overrides a presidential veto and the president groundlessly refuses to sign the law. Having vested the president with important powers on the coordination of national security and law-enforcement bodies, and with the right to dismiss at his own discretion the Prosecutor General of Ukraine (which made this office dependent on the president), the Constitution provided the president with another lever of influence on parliamentarians. It is no secret that the majority of them combine their parliamentary activities

with business. Not surprisingly, it would be absurd for businessmen deputies to confront the president, who wields broad powers in law-enforcement. In the present-day Ukraine it is impossible for businessmen to follow all norms of tax, customs, and economic legislation, which are not liberal enough to allow normal entrepreneur activities.

The Constitution does not prescribe individual political accountability of ministers to the parliament. Article 98 of the Constitution has considerably restrained the parliament's powers to exercise efficient financial control over the operation of the government and other executive authorities, because this article empowers the Accounting Chamber to control only the use, but not formation, of public accounts in Ukraine. The Constitution limited the principle of checks and balances between the president and parliament to the latter's right to appeal to the Constitutional Court against the noncompliance of presidential acts with the Constitution, deputies' requests (that in addition shall be supported by one-third of members of parliament), and a very inefficient impeachment procedure. The latter, for example, may result in the situation in which the president can continue exercising his powers even though found guilty by the Supreme Court, as long as three fourths of deputies do not support the decision on pre-term termination of his powers under the impeachment procedure.

The situation mentioned above suggests that the Constitution of Ukraine has become the primary reason that strengthened presidentialism in the system of governance in Ukraine.

THE ROLE OF THE SUPREME RADA AND THE PRESIDENT IN THE CONTEMPORARY POWER TRIANGLE OF UKRAINE

The members of the fourth parliament (2002-2006) spent almost one month simply in order to elect the speaker and committee chairpersons. In a situation in which the parliament has been eroded by internal contradictions and the majority and opposition are formed according to only one criteria, *pro et contra* the president, it is difficult to imagine that the legislature has any serious influence on the executive power. Even though the government headed by Viktor Yanukovych

was formally organized on the “coalition principle,” i.e. by delegations of ministers from the fractions that composed the so-called “parliamentary majority” in 2002, these fractions were unable to control their members.²⁰ A number of ministers behaved independently from the parties that delegated them to the cabinet, such as minister of finance Mykola Azarov, minister of transportation Heorhii Kyrpa, and minister of economy and European integration Valerii Khroshkovs’kyi. The ministers’ term of office depends not on the will of parliament,²¹ but exclusively on the president. The parliament has no influence at all on the appointments to some executive offices, such as the ministers of foreign affairs, internal affairs, defense, the chiefs of central executive authorities outside the government, as well as regional governors and local chiefs. For example, the parliament failed to make the president dismiss the chief of the L’viv Tax Administration Serhii Medvedchuk (brother of the chief of the presidential administration Viktor Medvedchuk), even though the profile parliamentary committee revealed serious violations of the current legislation committed by the agency headed by him.²²

Broad powers vested in the president of national security, law-enforcement, and governance of foreign policies have also strengthened the role of the presidential administration, which de jure provides legal, organizational, consultative, and expert support to the head of state. Today, however, the presidential administration influences the appointments and dismissals of executive officials and coordinates the operation of executive organs. The role of the presidential administration in the power triangle is evidenced by its structure; it is composed of the Main Department for Organization,

²⁰ A manifest proof of this observation is the decree issued by the president on December 5, 2003 to dismiss Vitalii Haiduk, vice prime minister in charge of the fuel and power sector, after Haiduk expressed publicly his position concerning energy policies (the reverse use of the Odesa-Brody oil pipe-line, privatization of power distribution companies, and setup of the Russian-Ukrainian gas transporting consortium). See Alla Eremenko, “Tekh komu veriat, proveriaut te, komu doveriaut,” *Zerkalo nedeli*, No. 48 (2003): <http://www.zerkalo-nedeli.com/ie/show/473/44559/>

²¹ Tet’iana Silina, “Sergei Tigipko. Tochki nad ‘i’ v voprose EEP rasstavit parlament,” *Zerkalo nedeli*, No. 36 (2003): <http://www.zerkalo-nedeli.com/nn/show/461/42215/>

²² Sergei Smirnov, “Brat za brata ne otvechaet?,” *Zerkalo nedeli*, No. 34 (2003): <http://www.zerkalo-nedeli.com/nn/show/459/41668/>

Staffing Policies and Cooperation with Regions, the Main Oversight Department, the Main State and Legal Department, the Main Departments for Foreign, Internal, Economic and Information Policies, Judicial Reform, Operation of Military Units and Law-Enforcement Bodies.²³ It is the departments of the presidential administration, not parliamentary committees, that guide the daily operation of the ministries and other executive authorities, while the president makes the final decision on dismissal of executive officers.

POLITICAL FACTORS BEHIND SUPERPRESIDENTIALISM DURING 1996-2004

A significant reason for the hypertrophy of the presidential office was the lack of stable parliamentary majorities throughout 1994-2003. Even after the 1998 parliamentary elections, which resulted in the left wing's victory,²⁴ they (communists, socialist, the Peasant and Progressive Socialist Parties) failed to create a parliamentary majority (226 deputies) and participate in the allocation governmental offices. On the other hand, the parties representing financial-industrial groups were unable to unify. Even after the so-called "Rosy Revolution" in parliament (the removal of the leftist parliamentary leadership in January-February 2000), the illusive "majority" with heterogeneous political and financial interests had minimal influence on the formation and operation of the government headed first by Viktor Yushchenko, and then by Anatolii Kinakh. The 2002 parliamentary elections produced a result similar to that of 1998 with the only difference that the first place, formerly occupied by the communists, was passed to

²³ <http://www.president.gov.ua/authofstate/prezidlist/prezidentadmin/>

²⁴ In 1998 eight parties overcame the four percent threshold, namely, the Communist Party (with 24.65% of votes and 84 parliamentary seats), People's Movement of Ukraine (Rukh) (9.4% of votes and 32 seats), Bloc of the Socialist and Peasant Parties (8.55% of votes and 29 seats), Green Party of Ukraine (5.43% of votes and 19 seats), Popular Democratic Party (5.1% of votes and 17 seats), Hromada (4.67% of votes and 16 seats), Progressive Socialist Party of Ukraine (4.04% of votes and 14 seats), and United Social Democratic Party of Ukraine (4.01% of votes and 14 seats). See the website of the Central Electoral Committee of Ukraine: <http://195.230.157.53/pls/vd2002/webproc0v?kodvib=1&rejim=0>

Our Ukraine under the leadership of former prime minister Viktor Yushchenko. The new “parliamentary majority” formed after the 2002 elections consisted of pro-presidential political forces, but the economic policies of this “coalition government” were nothing more than a medley of the conflicting interests of the financial and industrial interests composing the “majority.”

One reason for the fragmentation of parliamentary factions is the mixed parliamentary election system used both in 1998 and 2002, according to which fifty percent of deputies were elected in single-seat constituencies by a relative majority of votes, and the other half were elected on the party lists in the single nationwide election constituent. This system allowed the executive branch to influence considerably the formation of the Supreme Rada and facilitated the recruitment into politics of people who won the elections not by their political programs but by the amount of money they spent on the electoral campaign. The affiliation of deputies elected in single-seat constituencies had a significant influence on faction discipline in parliament. For example, the most cases of transfers from one party to another in the parliament were committed by deputies elected in single-seat constituencies. Another reason for fragmentation is the weakness of the Ukrainian party system. As Andrew Wilson notes, besides the amorphous and embryonic nature of civil society common for post-communist countries, ethno-linguistic divisions at the subnational level hindered the creation of nationwide parties in Ukraine.²⁵

LEGAL FACTORS PROMOTING SUPERPRESIDENTIALISM DURING 1996-2004

The Constitution of Ukraine defined only the principles of operation of top public authorities in Ukraine. The procedure of formation and operation of the cabinet of ministers, central executive authorities, procedures of parliamentary oversight, creation of the hierarchy of regulative and legal acts, and the status of presidential

²⁵ Wilson, “Ukraine,” p. 272.

decrees were to be regulated by laws. A number of them were filed for parliamentary consideration back in 1996, but none of them was accepted and signed by the president. The basis for the operation of the government's Law on the Cabinet of Ministers of Ukraine was passed seven times by the parliament and eight times returned for repeated consideration with presidential proposals. The president did not like the provisions requiring political consultations between the president and parliamentary factions and groups to discuss candidate prime ministers and norms depriving the president of the monopoly right to cancel acts of the Cabinet of Ministers. Since the president has not signed this law, it is impossible to discuss the Law on Central Public Executive Authorities. As a result, the operation of all public executive authorities with nationwide competence is regulated by acts of the president. Violating the Constitution, the president independently defines the structure of the public executive system and establishes procedures for appointment and dismissal of top officials within public executive bodies. For example, on December 15, 1999, the president issued the Decree on Changes in the Structure of Public Executive Authorities, which granted a special status to certain bodies within the executive branch to subordinate them directly to the president, thereby taking them away from subordination to the cabinet of ministers.²⁶

As to the parliamentary oversight powers, their normative regulation is also not well developed. Today, parliamentary control is exercised on the basis of the obsolete Parliamentary Rules of Procedure, passed in 1994, and the Law on Parliamentary Committees, passed in 1995.²⁷ At the same time, the Constitution of Ukraine requires that the parliamentary rules of procedure be regulated by a law. Since the president vetoed even less important laws regulating parliamentary oversight functions (such as the Law on Temporary Special and Investigative Parliamentary Commissions), many parliamentarians began to believe that even if the parliament adopted the Law on

²⁶ Ukaz Prezydenta Ukrainy "Pro zminy u strukturi tsentral'nykh organiv vykonavchoi vlady" vid 15 hrudnia 1999 roku (15 December 1999), No. 1573/99.

²⁷ Reglament Verkhovnoi Rady Ukrainy vid 27 lypnia 1994 roku (27 July 1994) No. 129a/94-VR; Zakon Ukrainy "Pro Komitety Verkhovnoi Rady Ukrainy" vid 4 kvitnia 1995 roku (4 April 1995), No. 116/95-VR, *Vidmosti Verkhovnoi Rady*, No. 19 (1995), st. 134.

Parliamentary Rules of Procedure, there would be very little chance that it would be signed by the president. This is why the parliament has not considered a number of bills on parliamentary rules of procedure.

There is also no legislative regulation of the functions and powers of the president. The status of the president, as well as consultative and advisory bodies supporting his work, are regulated by the Constitution of Ukraine, by the Law on the President of the Ukrainian SSR passed in 1991 (with some of its provisions contradicting the Constitution), and regulative acts of the head of state. The absence of a Law on the President of Ukraine allows the president to fill in gaps in legal regulations of public affairs, which he often does by violating constitutional provisions in order to influence operation of the government.

THE ROLE OF THE CONSTITUTIONAL COURT IN STRENGTHENING PRESIDENTIALISM

Since the Constitution is the main legal document that defines functions and powers of the Supreme Rada, the president and the cabinet of ministers, the Constitutional Court of Ukraine has the leading role in differentiating the powers among branches of power and implementating the principle of checks and balances. From the very first moment of its creation the Constitutional Court was doomed to be involved in political matters. The lack of the notion of the “civil constitutional appeal” concentrated the operation of the Constitutional Court only around the issues of division of powers among different public authorities.

Before 2000, there were no grounds to accuse the Constitutional Court of a biased attitude either toward the parliament or the president. The majority of Court’s decisions in those times could be criticized from a legal perspective, but they were not politically motivated. In the context of influence on the operation of the president and the parliament, there were two crucial decisions ruled by the Constitutional Court between 1996 and 2000. One was on the constitutionality of Decree No. 371 on the National Investigation

Bureau of Ukraine, issued by the president on April 24, 1997,²⁸ and another on the formation of factions in the Supreme Rada²⁹.

By the first decision the Constitutional Court on April 24, 1997 ruled that the Constitution allows the president only to create central executive authorities, while the structure and subordination of their top officials, as well as appointment and dismissal of officials, shall be defined exclusively by the Constitution and laws of Ukraine, and not by acts of the president. This legal decision of the Constitutional Court should have kept the president from abusing his constitutional powers in the regulation of organization and operation of central public executive authorities. In practice, however, the president's aspiration to subordinate executive authorities continued, in many cases owing to the support of the Constitutional Court.

In contrast, the decision of the Constitutional Court on December 3, 1998 concerning the formation of factions in the Supreme Rada weakened the parliament. With this decision the Constitutional Court ruled unconstitutional the provisions of the Parliamentary Rules of Procedure, according to which "factions in the Supreme Rada shall be formed by parties and blocs that overcame the four percent threshold at the parliamentary elections." This ruling destroyed the eight-faction structure of the parliament. In March 2002 there were 14 factions and groups in the parliament. This trend towards the lack of solid faction structure, caused by the ruling of the Constitutional Court, would continue in the future.

In 2001 the Constitutional Court completely fell into the hands of the president. The Court violated the Constitution and the Law on the Constitutional Court of Ukraine by refusing to consider the appeal of

²⁸ Rishennia Konstytutsiinoho Sudu Ukrainy vid 6 lypnia 1998 roku (6 July 1998) No. 10-rp/98 u spravi za konstytutsiinym podanniam narodnykh deputativ Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) Ukazu Prezidenta Ukrainy vid 24 kvitnia 1997 roku (24 April 1997) No. 371 "Pro Natsional'ne biuro rozsliduvan' Ukrainy (sprava shchodo utvorennia Natsional'noho biuro rozsliduvan' Ukrainy)," *Ofitsiinyi Visnyk Ukrainy*, No. 27 (1998), p. 146.

²⁹ Rishennia Konstytutsiinoho Sudu Ukrainy vid 3 hrudnia 1998 roku (2 December 1998), No. 17-rp/98 u spravi za konstytutsiinym podanniam narodnykh deputativ Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) Postanovy Verkhovnoi Rady Ukrainy "Pro vnesennia zmin do Rehlamentu Verkhovnoi Rady Ukrainy" (sprava pro utvorennia fraktsii u Verkhovnii Radi Ukrainy), *Ofitsiinyi Visnyk Ukrainy*, No. 49 (1998), p. 41.

parliamentarians about the unconstitutionality of the Presidential Decree on Regular Measures for Further Implementation of Administrative Reform in Ukraine, issued on May 29, 2001.³⁰ By this decree the president introduced the offices of state secretaries in the cabinet of ministers and ministries, established procedures for their appointment and dismissal, and defined their functions. If the Constitutional Court followed its earlier ruling concerning the introduction of the National Investigation Bureau, the decree on May 29, 2001 should also have been recognized as unconstitutional. The Constitutional Court, however, abstained from any decision.

In 2001-2003, the Constitutional Court acted especially discriminatorily. It ruled that the right of parliamentarians to be accepted without delay by state and municipal officials was not extended to the president.³¹ By another ruling, the Constitutional Court supported the president's right to veto not only ordinary laws, but also laws on constitutional amendments.³²

CONCLUSIONS: A CONSTITUTIONAL REFORM TO MAKE UKRAINE MORE EUROPEAN?

In this paper, I analyzed the process that generated a typical Eurasian (CIS) political regime, semi-presidentialism with a extremely strong presidency, in Ukraine. The first cause of this is the vagueness of

³⁰ Ukaz Prezydenta Ukrainy "Pro chervovi zakhody shchodo dal'shoho zdiisnennia administrativnoi reformy v Ukraini" vid 29 travnia 2001 roku (29 May 2001), No. 345/2001.

³¹ Rishennia Konstytutsiinoho Sudu Ukrainy vid 10.04.2003 No. 7-rp/2003 u spravi za konstytutsiinym podanniam Prezydenta Ukrainy pro ofitsiine tlumachennia polozhen' chastyn druhoi, tret'oi statti 17, chastyny druhoi statti 27 Zakonu Ukrainy "Pro status narodnoho deputata Ukrainy" (sprava pro harantii diial'nosti narodnoho deputata Ukrainy), *Ofitsiinyi Visnyk Ukrainy*, No. 17 (2003), p. 131, st. 789.

³² Rishennia Konstytutsiinoho Sudu Ukrainy vid 11.03.2003, No. 6-rp/2003 u spravi za konstytutsiinym podanniam 73 narodnykh deputativ Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) zdiisnenoho Prezydentom Ukrainy prava veto stosovno priiniatoho Verkhovnoiu Radoiu Ukrainy Zakonu Ukrainy "Pro vnesennia zmin do statti 98 Konstytutsii Ukrainy ta propozyzii do n'oho (sprava shchodo prava veto na zakon pro vnesennia zmin do Konstytutsii Ukrainy), *Ofitsiinyi Visnyk Ukrainy*, No. 16 (2003), p. 55, st. 710.

provisions of the 1996 Constitution that was passed overnight. Its abstract definitions and inherent contradictory approach to determining the place and role of the “head of state” in the system of public authorities created legal prerequisites for the development of superpresidentialism. The second, even more important, factor was the lack of political stability in Ukrainian society and consequently factional instability in the Ukrainian parliament.

The third factor promoting superpresidentialism was Leonid Kuchma’s personal characteristics. Unlike his predecessor Leonid Kravchuk, Kuchma did not seek consensus, but constantly harassed his opponents. He made four attempts to use the people to damage the parliament and his opponents (an attempted referendum asking the people’s confidence in the parliament in 1995; an attempt to submit the presidential draft of the constitution to a referendum in 1996; the referendum to amend the Constitution in 2000; and in 2003, the organization of a nationwide discussion of the draft amendments to the Constitution aiming to neutralize Viktor Yushchenko as an undesirable presidential contender for Kuchma). At the same time, Kuchma pressured oppositional deputies (beginning with the *Hromada* in 1998 and ending with the *Our Ukraine* in 2003), offered electoral support to the deputies loyal to the president by using “administrative resources,” and used law-enforcement organs for political purposes. The fourth factor is the clan characteristic of the Ukrainian politics, revealed in the fight among financial and industrial groups for the favor of the president. Accordingly, political forces representing interests of financial and industrial groups and forming the majority in parliament have never been prone to resisting the president. The final factor is the gradual involvement of the Constitution Court in political matters.

Few in Ukraine deny the necessity of political reform and the redistribution of powers among public authorities. At the same time, each political force has a different vision of the ultimate aim of the reform. Pro-presidential forces that pursue the restriction of presidential powers see the reform as an instrument to fix the existing power and as a mechanism to prevent the transition of power to somebody who does not support the interests of both the current incumbent and the financial and industrial groups backing him.

In my view, the redistribution of powers among public authorities by amending the Constitution will not increase the role of the parliament and the government in the power triangle. For example, if the parliamentary form of governance is introduced in the country, in which the president is elected by the parliament, the victory of one party at parliamentary elections will allow it to make their leader the president and another member of the party – the prime minister. Under these circumstances, the constitutional norms will hardly play any essential role in strengthening the role of either the parliament, or the government, but both will be subordinated to the president. A similar situation has developed in Moldova where a parliamentary-presidential republic was established. Therefore, the implementation of constitutional reform should not be given the highest importance, especially considering that the full potential of the Constitution of Ukraine has not been used over the whole period of its existence.

The restriction of presidentialism is possible even within the framework of the current Constitution. For example, the adoption of a purely proportional system in Ukraine on March 25, 2004 was a great victory for this purpose.³³ The system of proportional representation will decrease the violations of electoral laws and bring the results of the elections into compliance with the real will of the people. This system will also improve party and faction discipline. As a result, the parliament will acquire more realistic possibilities to form a coalition government, while the influence of the president on the executive branch will be reduced. For further enhancement of parliamentarism, it is necessary to pass a number of basic laws to regulate relations among the branches of power, specifically the laws on the Cabinet of Ministers, on the President of Ukraine, on Central Executive Authorities, on Parliamentary Rules and Procedures and others. However, this will be possible only after the election of a new president in 2004.

³³ Zakon Ukrainy "Pro vybory narodnykh deputativ Ukrainy" vid 25 bereznia 2004 roku (25 March 2004) No. 1665-IV, *Vidomosti Verkhovnoi Rady*, No. 27-28 (1992), st. 366.