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Constitutional processes in Ukraine

The overview- given by the author- of the constitutional process in Ukraine for 20 years shows that the government and the opposition were interested only in those issues of the Constitution related to the separation of powers between the President, the Supreme Council and the Cabinet of Ministers.

For more than 70 years, Ukraine had been part of the Soviet Union guided by its Constitution. Formally, it had its own Constitution and the right to secede from the Union, although the mechanism of the secession was not foreseen. Simply raising a question of a republic secession from the Union led to the accusation of anti-Soviet activity and imprisonment.

In the late 1980s of 20th century the crisis of the Soviet totalitarian system erupted. The central control over the events in the republics weakened. The bloody ethnic conflicts began in the Caucasus and Central Asia. Ukrainian guys did not want to serve as soldiers in these hot-spots and the majority of the population supported their decision. As a result of the tense situation in many regions of the Soviet Union, on July 16, 1990 the Supreme Soviet of the Ukrainian SSR adopted the Declaration of State Sovereignty of Ukraine. The Ukrainian SSR proclaimed itself as a sovereign national state developing within the existing boundaries based on the inalienable right to the self-determination of the Ukrainian nation.

It proclaimed the supremacy of the Constitution and the laws of the Republic on its territory, the equal protection under the law to all citizens and the prevalence of human values over the class values. In the foreign policy, Ukraine declared its intention to become a neutral state in the future that did not take part in the military blocks and adhere to three non-nuclear principles: neither possess nor manufacture, nor purchase nuclear weapons.

The next important step in the constitutional process in Ukraine was the adoption of the Concept of the new Constitution by the Supreme Soviet of Ukrainian SSR on 19 June 1991. According to this concept, the Constitution must be based on the idea of the rule of law, and that an individual, human rights and freedoms and their guarantee must be proclaimed as the highest social value. For the first time in Ukraine the Concept stated that the constitutional norms were recognized as the norms of direct action. The Concept identified a presidential Republic as the form of government. It introduced also the new proposal for Ukraine to create the Constitutional Court, to oversee the constitutionality of laws and the implementation of the Constitution by the branches of government.

The coup attempt in Moscow on 19-21 August 1991 accelerated the dissolution of the Soviet Union and the secession of Ukraine. On August 24 the Supreme Soviet of

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the still Ukrainian SSR adopted the Act of Independence of Ukraine. It stated that "in view of the mortal danger surrounding Ukraine in connection with the state coup in the Soviet Union on August 19, 1991 ... the Supreme Soviet of the Ukrainian Soviet Socialist Republic solemnly declares the independence of Ukraine and the establishment of an independent Ukrainian state - Ukraine. Ukraine's territory is indivisible and inviolable. From this day forward only the Constitution and laws of Ukraine are valid on the territory of Ukraine." The 1978 Constitution continued to operate in the country, and was constantly amended. Primarily, the Article 6 on the leading role of the communist party was withdrawn.

On July 1, 1992 the Supreme Council of Ukraine initiated a nation-wide discussion of the draft Constitution, based on the Concept of the Constitution adopted the year before. But some amendments were made. The principle of the socialist choice of the country was withdrawn from the Preamble of the Constitution, the establishment of bicameral parliament was proposed. The Constitution went through the long process of the discussion that was backed by the struggle for power between the President and the Supreme Council. This struggle led to the pre-term presidential and parliamentary elections in 1994. The election campaign moved aside the issue of the adoption of the Constitution. With the desire to constitutionally consolidate his power as a head of state, Leonid Kuchma, a newly-elected President, pursued the policy of confrontation with the Parliament. In 1994 he introduced the Bill of the Constitutional law on the state power and the local self-government in Ukraine. On May 18, 1995 the parliament adopted this law by the majority of votes. As a result the President became the head of the government which he could form himself without the Supreme Council's approval. To bring the bill into effect the President needed the support of constitutional majority in the parliament. However, he did not have such support in the Supreme Council. He had to find a compromise. In June 1995 they entered into the Constitutional Agreement on the formation and functioning of the state power and local self-government for the period of 1 year before the adoption of the Constitution. The Agreement extended the powers of the President and the local administrative bodies due to the reduced power of the parliament and the local councils. It nullified those articles of the 1978 Constitution which contradicted the Agreement. The new Constitution was planned to adopt during one year. For some time it cleared the air. The Constitutional Committee continued its work. On March 11, 1996 the bill of the Constitution was approved. But now there was disagreement in the procedure of the adoption of the Fundamental Law. President Leonid Kuchma suggested to favour it through the referendum, while Speaker of the Parliament Aleksandr Moroz insisted on discussing and adopting the Constitution by the Supreme Council. The President agreed to the Speaker's proposal and on June 28, 1996 when after an overnight tense session the Supreme Council adopted the first Constitution since the independence of Ukraine. The Constitution was a compromise between the centrists supported by the President and the Left wing, represented by A. Moroz. The President received a broad mandate. He represents Ukraine in the international arena, administers the foreign policy, signs international treaties, he is the Commander-in-Chief of the Armed Forces of Ukraine, confers high military and high diplomatic ranks, with the consent of the Supreme Council appoints the Prime Minister, the Prosecutor General, the Chairman of the

Antimonopoly Committee and the Chairman of the State Property Fund, appoints one-third of the members of the Constitutional Court of Ukraine, has the right to veto laws adopted by the Parliament and to revoke acts of the Cabinet of Ministers, appoints a national referendum regarding the amendments to the Constitution. The Supreme Council also had the right to appoint a national referendum, but only on issue regarding the change of territory of Ukraine. The president was elected for a 5-year period. The Supreme Council is elected for 4 years.

Under the Constitution, the Supreme Council adopts laws, approves the State Budget of Ukraine, appoints the Chairman and other members of Chamber of Accounts, as well as half the total members of the Council of the National Bank, and one-third of the members of the Constitutional Court, exercises the control over the activities of the Cabinet of Ministers.

Regarding the Government, the Article 113 of the Constitution stated: "The Cabinet of Ministers of Ukraine shall be responsible to the President of Ukraine and the Supreme Council, under the control of, and accountable to the Supreme Council".

The adoption of the Constitution did not lead to the separation of powers between the branches of the government. The considerable part of the parliamentary deputies disliked the broad powers of the president. On the second day after the Fundamental Law had been adopted, the left-wing deputies claimed it had to be amended. In two years the leader of Ukrainian communists P. Symonenko introduced the bill on Amendments to the Constitution regarding the distribution of powers between the head of the state, the parliament and the government. It should be stressed that these were the only issues the opposition was interested in. This was a struggle for power that passed with the variable success.

In spring 2000 the referendum was initiated, and the President raised the questions on eliminating of the parliamentary immunity, reducing the number of deputies from 450 to 300 and creating a bicameral parliament. The majority of the referendum's participants supported these questions, but the Ukrainian laws lacked the mechanisms to implement the decisions of the referendum.

On November 28, 2000 Speaker A. Moroz revealed to the journalists the tapes made by a Major M. Melnychenko and stated the connection of higher officials to disappearance of journalist G. Gongadze. The tape scandal began, and it has been lasting till now.

The run-up to the 2002 parliamentary elections drew the attention away from the Constitution, though it was renewed in 2003. The President submitted the draft law on Introducing Amendments to the Constitution of Ukraine, the discussions led to the removal of the three most controversial questions – on creating a bicameral parliament, reducing the number of deputies and adopting laws directly on a national referendum. The deputies submitted to the Supreme Council their 3 bills, that envisaged the shift from a presidential-parliamentary republic into a parliamentary-presidential republic, as well as the election of the head of state by the parliament. As these bills included the main points proposed by the President, he withdrew his draft law. The attempt to adopt one of the deputy's laws did not succeed. On May 26 the working group was established to finalize the amendments to the Constitution based on three existing draft laws. In the run-up to the presidential elections the situation in the country worsened. Some deputies were unwilling to take part in the

plenary sessions before the presidential election result announced. After the second round of the voting mass protest of citizens began. The citizens of eastern and southern regions supported V. Yanukovich, the citizens of central and western regions supported V. Yushchenko. The compromise must be found to resolve the emerged situation. Some deputies insisted in the shift to a parliamentary-presidential republic and suggested to adopt the law on "Introducing Amendments to the Constitution of Ukraine", other deputies were against it and introduced their one bill on Peculiarities of implementation of the Law of Ukraine on Election of President of Ukraine in repeated vote in December 2004. The situation worsened as nobody trusted anyone. Therefore, the decision was made to combine both bills and vote for them in package. 402 deputies voted for the package decision on December 8, 2004.

As a result of the constitutional reform in Ukraine the form of government transformed from a presidential-parliamentary into parliamentary-presidential. Parliamentary elections should hold on a proportional basis. The winning coalition received the right to form the government, and the parliamentary term was increased from four to five years. Besides, in case of pre-term termination of the powers of the President his functions should be executed by the Chairman of the Supreme Council. The President received the right to dismiss the parliament if the ruling coalition was not formed within a month or within the same period the plenary sessions were not commenced. Within the President's authority remains the appointment of heads of regional state administrations and submission of the names of a candidature to be appointed to the office of the Minister of Defence, Minister of Foreign affairs, the head of the Security Service, the Prosecutor General and the Chairman of the National Bank of Ukraine, with the consent of the Supreme Council. The other ministers were submitted to the Parliament by the Chairman of the Government.

The constitutional reform of 2004 was forced to compromise. It solved only the key contradictions between the branches of the government, the minor issues remained unsolved. Though each party consciously tried to pass them unnoticed, and hoped that in future they would be solved in their favour. As the question who would be a President remained open, nobody cared about the restriction of his power. The majority were afraid that the greater power would be concentrated in the arms of the representatives of opposition. The politicians' inability to keep their words played an important role and resulted in distrust not only between rivals, but allies and one-party members. President V. Yushchenko was more frightened by the growth of Prime Minister Y. Tymoshenko's popularity than by the actions of opposition. However, they acted as one great team during the Orange Revolution. It happened that the President's Secretariat prohibited the heads of regional administrations to attend the government sessions. It led to the imbalance of powers and officials' tyranny. The result was the defeat of the Orange team in the presidential election of 2010.

Being elected a President, Viktor Yanukovych decided to return the previous presidential power. It could be done in 2 ways: 1) through the parliament amending the existing Constitution, and 2) through the Constitutional Court considering the 2004 amendments unconstitutional. The President could not resolve the issue using the first way as he did not have the support of a constitutional majority or 300 deputies in the Supreme Council. As we see, President did not have another choice.

An appeal was made to the Constitutional Court against violation of enactment procedure of the Law of December 8, 2004. Though the lawyers spoke about the procedure violation during the enactment. But due to the tense situation nobody paid attention to them. We think some political forces agreed to the procedure violation in 2004 in order to dispute the constitutional amendments in future. The attempt was made in 2008, though it failed.

On September 30, 2010 the Constitutional Court of Ukraine considered unconstitutional the Law "On Introducing Amendments to the Constitution of Ukraine", adopted on December 8, 2004. Thus, the 1996 Constitution was reinstated; Ukraine again has become a presidential-parliamentary republic. The Court obliged the government bodies to conform other laws and normative legal acts to the Constitution. The deputies of the Supreme Council opposed the Court decision because under the 2004 Constitution the parliamentary term is 5 years, and according to the Constitution of 1996 the parliament is elected for four years. It was decided to amend the Fundamental Law's Articles 76 and 77 on extending the parliamentary term from 4 to 5 years. The proposal was supported by more than 300 deputies: the interests of deputies from the government and the opposition coincided. It seems the Constitution could be left aside as it meets President's and parliamentarians' needs. But it is not the case. A month ago, President Viktor Yanukovich signed a decree on establishing the Constitutional Assembly in order to draft a Constitution.

The overview of the constitutional process in Ukraine for 20 years shows that the government and the opposition were interested only in those issues of the Constitution related to the separation of powers between the President, the Supreme Council and the Cabinet of Ministers. Though for the vast majority of Ukrainian citizens, it does not matter which form of government is in our country – whether a presidential-parliamentary or a parliamentary-presidential. However, it is very important that the Constitution is executed especially by those who are constantly improving it.

