

THE IMPACT OF SEMI-PRESIDENTIALISM ON DEMOCRATIC CONSOLIDATION: CASES OF POLAND AND UKRAINE

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ABSTRACT

This paper aims at distinguishing features of Polish semi-presidentialism which could be applied to Ukraine in order to make its institutional system more favorable for democratic consolidation. In order to reach this aim, this paper compares relative influence of semi-presidential form of government on democratic consolidation of the two countries, evaluating both general impact of this model of power distribution and separate roles of its main institutions – president, parliament, and cabinet. Conclusions from the conducted comparative analysis are used to find possible institutional options for Ukraine, which are then considered from position of their expected influence on democratic consolidation process. After choosing the best possible option in each category, they are discussed in more details. The paper finishes with summary of the main findings and concluding remarks on prospects of implementation of the mentioned institutional recommendations.

INTRODUCTION

Since 2010, Ukraine has started formidable slide towards authoritarianism, quickly losing its status of the most talented student of democracy among former Soviet Union republics and coming dangerously close to authoritarian Belarus. Moreover, recent political developments in Ukraine urged some observers to think whether they have overestimated the importance of the 2005-2009 period. After all, the visible political liberalization during that time did not prevent Ukraine's institutional system from reversing its trend of development in just few months. However, the question remains: what were the main reasons behind such vulnerability of Ukrainian political institutions to authoritarian tendencies of popularly elected president?

One of the possible explaining could be traced back to the previous periods of democratic development of Ukraine. Indeed, Ukraine has struggled with consolidating its democratic gains throughout 1990s and 2000s, never reaching the Western standards of democracy as "the only game in town". At the same time, interaction of main political actors in Ukraine was constantly taking place under the framework of semi-presidential form of government (with the brief exception of the 1995-1996 period), albeit in two different incarnations. Therefore, is it possible to say that semi-presidential was responsible for the failures of democratic consolidation in Ukraine during its independence period? Was it one of the main factors that could explain such outcome of Ukraine's political development? Alternatively, was it designed not well enough to prevent Ukraine from getting stuck somewhere along the road from authoritarianism to democracy?

All of these questions could be even more ambiguous if to take into consideration the experience of Ukraine's Western neighbor – Poland. Both countries had some remarkable similarities at the outset of their post-communist transition; however, after 20 years of political development, they are now on very different levels of democratic development. What could be even more surprising is that the two countries have adopted quite similar model of power distribution: both institutional systems fall into the semi-presidential framework. While the constitutional variations of Polish and Ukrainian semi-presidentialism were different, both countries have retained this form of government, at least formally, until now.

Having said that, it is quite naturally to proceed to another question: why did semi-presidentialism in Poland and Ukraine lead to different outcomes in their democratic consolidation? Was it different institutional features of this form of government that influenced the democratic development of the two countries differently? If this is true, is it possible for Ukraine to adopt some Polish features of semi-presidentialism in order to make its institutional system more favorable for democratic development? Or, maybe, the situation is much simpler: what if semi-presidentialism was just an irrelevant variable that was not responsible for the democratic successes and failures of Poland and Ukraine?

Therefore, the main aim of this paper is to understand how institutional framework of semi-presidentialism influenced the process of democratic consolidation of the two countries. The main question which inevitable arises in relation to the stated aim is why semi-presidential institutional model contributed to – or, at least, did not hampered – establishment of liberal democracy of Western type in Poland, while similar form of government, albeit with some remarkable differences in distribution of power between main political institutions, in Ukraine did not lead to the consolidation of its democratic gains. The second key issue which will be addressed in this paper will touch upon possible recommendations on how to use the experience of Polish semi-presidentialism in the case of Ukraine, i.e. what features of Poland's institutional system could be successfully applied to that of Ukraine in order to make it more favorable for the process of democratic consolidation.

The paper will be based both on scholarly research and on expert interviews, thus combining theoretical and empirical components. The paper will use two main middle-range theories. First – theory of semi-presidentialism as a distinct form of government (different from parliamentary and presidential systems), introduced by Maurice Duverger and since then developed by numerous scholars. According to their views, Poland and Ukraine fall into category of semi-presidential countries, since both have popularly elected fixed-term president which coexists with cabinet responsible to parliament (Elgie 1999, 13). However, in order to evade dangers of formal legal approach, the real interaction of political actors embodied in corresponding institutions would also be taken into consideration. In other words, the form of government would be analyzed not as a hardened display of constitutional provisions but as ever-changing and fluctuating process of cooperation and conflict between president, parliament and cabinet. Second – theory of democratization, which distinguishes processes of democratic transition and democratic consolidation. The main focus will be made on the latter, since the real differences in development of Poland and Ukraine manifested itself exactly during the period of consolidation of newly established democracy. Expert opinion will be used as a main basis for the development of recommendations, which could be applied to Ukrainian case. Therefore, the interviews will mainly touch upon Polish experience as an example of history of success, comparing to Ukraine.

The paper will be structured as follows. In the first section, a brief historical overview of institutional development of independent Poland and Ukraine will be given, followed by comparative analysis of influence of semi-presidential form of government on democratic

consolidation of the two countries. In order to make it more digestible, this section will be divided into several more sections, based on different periods of institutional development of Poland and Ukraine. The second section will contain recommendations for the Ukrainian institutional system on how to make it more favorable for democratic development using the Polish experience. Finally, main conclusions of the paper will be presented, as well as several insights about possible connected issues which could be examined in the future.

SEMI-PRESIDENTIALISM AND DEMOCRATIC CONSOLIDATION IN POLAND AND UKRAINE

Turbulent years of early post-communist period

The first thing about different paths towards democracy in Poland and Ukraine which catches one's eye is that Poland started its democratic transition two years earlier. In February 1989, members of communist establishment and oppositional Solidarity trade union started negotiations on further political development of the state. While the economic situation in the country was deteriorating and the legitimacy of ruling Polish United Workers' Party (PZPR) was waning, the government of communist Poland realized the necessity to make concessions to Solidarity movement which represented the united opposition. The negotiations resulted in the recognition of Solidarity, introduction of presidential office, and elections to both lower and upper chamber of Polish parliament (Sejm and Senate, respectively). However, only elections to Senate were totally free, while 65% of Sejm mandates were guaranteed to the members of PZPR and its allies. As a result, Solidarity won all freely contested seats in Sejm and 99 of 100 seats in Senate. According to another agreement reached during the round table talks, both chambers of parliament elected communist leader Wojciech Jaruzelski as the first president. However, communists were unable to secure enough votes to appoint their own prime minister, so a lot of them joined Solidarity deputies in voting for the first non-communist prime minister Tadeusz Mazowiecki. With the diminishing support of PZPR, Jaruzelski decided to resign, and first general election of president took place in December 1990. Solidarity leader Lech Wałęsa triumphed in the second round, becoming the first directly elected president of Poland. First totally free elections in Poland quickly created a precedent which, complemented by growing popularity of Solidarity and general dissatisfaction with the "contract" Sejm, led to conduction of free parliamentary elections in October 1991, which brought to parliament as many as 29 political parties.

Ukraine, on the other hand, officially started its democratic transition with the declaration of its independence on 24 August 1991, though it was preceded by the first relatively free parliamentary elections in March 1990, creation of constitutional committee aimed at developing a new constitution in December 1990, and introduction of presidential office in July 1991. The first phase of democratic transition in Ukraine ended with simultaneous presidential election won by former communist Leonid Kravchuk and national referendum which confirmed

the willingness of Ukrainian citizens to live in an independent country, both of which took place on 1 December 1991.

On the one hand, such temporal discrepancy could partially account for differences in democratic transition of the two countries, especially if one is to take into consideration that Polish communist rulers began to be challenged as early as in the beginning of 1980s. Indeed, it is possible to claim that earlier start of democratization in Poland was one of the reasons behind its quicker and smoother transition from authoritarianism to democracy. However, two-year lag in start of democratic transition cannot tell us much about different outcomes of democratic consolidations of the two countries.

This is indirectly confirmed by quite similar problems in coexistence of newly formed democratic institutions that experienced both Poland and Ukraine in the first half of 1990s. In both countries, the process of development of new constitution was inseparably connected with the political struggle of main political actors and institutions they represented. Interestingly, both countries passed legislation which defined the power relations in the president-parliament-cabinet triangle in 1992. In Poland it was called "small constitution", while in Ukraine it was adopted as an ordinary legislative act. Both acts established semi-presidential form of government, but in its two different types. Polish system, according to distinction made by Shugart and Carey (1992), could be called premier-presidential, since the leading role in shaping domestic policy was attached to prime minister office; in Ukraine, on the other hand, president-parliamentary system was established in which president had relatively more executive power than prime minister. However, as was already mentioned, both systems lay within semi-presidential model.

The reasons for adoption of these two legislative acts were somehow different. In Polish case, it was largely conditioned by rather slow and ineffective process of cabinet formation in late 1991 when Wałęsa failed to get majority support for his preferred candidate Waldemar Pawlak. Inability of numerous political forces which at that time inhabited Sejm to effectively cooperate raised the need to somehow alter traditional parliamentary mechanisms of cabinet appointment (Howards and Brzezinski 1998, 143-4). Thus, a cabinet appointment model involving leverages of both president and parliament was introduced. In Ukraine, 1992 constitutional amendments came as a result of recent independence and establishment of democratic institutions. For that matter, their authors did not use previous experience of political coexistence, but rather wanted to distinguish new democratic system from old communist one.

At the same time, the problems were very much the same. In Poland, Wałęsa adopted quite confrontational style of relations with prime minister and parliament. This was caused both by Wałęsa's personal style of politics, which earned him reputation of "master of destabilization"¹, and his dissatisfaction with the role of president in the small constitution, which provided this office with quite considerable powers, but lacked mechanisms of their

¹ Interview with professor Wiktor Osiatyński, 12 March 2012.

implementation (Howards and Brzezinski 1998, 141-2). His vision of strong president often clashed with preferences of both parliamentary majorities and prime ministers which naturally favored stronger parliament. As Taras puts it, during his term of office, Wałęsa tried to "prevent a parliamentary system from being institutionalized" (1998, 66), which inevitably led to conflicts with parliament and cabinet. The problem was reinforced by Wałęsa's refusal to be representative of any party and his willingness to stay away from party politics. While he must have thought that such decision would reinforce his position, in fact it often led to his inability to rely on support of any political force in parliament during his conflicts with prime ministers (Millard 2000).

Wałęsa confrontational style became even more problematic after 1993 election which was won by post-communists, his natural opponents. Wałęsa continued using his direct mandate to challenge prime ministers appointed by parliament and thus lacking popular legitimacy. But if before 1993 Wałęsa's struggle with prime ministers usually resulted in the defeat of the latter, his success rate after new parliamentary election significantly dropped. This could be explained by the different nature of 1993 parliament which was elected on proportional basis with rather high electoral threshold (5 per cent for parties and 8 per cent for party coalitions). New electoral system resulted in much lesser quantity of parliamentary parties (seven this time) and their corresponding enlargement. This, in turn, created more favorable conditions for their cooperation and structuring along the lines "majority-opposition". More stable coalition was formed, and it provided greater support for cabinet. As a result, position of prime minister vis-à-vis president was strengthened, which made Wałęsa's attempts to bring him down much less successful. Indeed, for some authors (MacMenamin 2008, 37), 1993 elections was a turning point – or, at least, one of them – in democratic consolidation of Poland, as new electoral system provided for the formation of stable coalition able to effectively exercise its main functions, i.e. control legislative process and provide support for cabinet. The basis for future stabilization of political system was laid, although the conflict-ridden political environment lasted for at least two more years. In many respects it ended with the 1995 presidential elections, which was won by former communist Aleksander Kwaśniewski.

In Ukraine the alignment of forces was different but the problems of institutional development were quite similar. Former communist-turned-national democrat Kravchuk had to coexist with communist majority of 1990 parliament (called Verkhovna Rada). Like Wałęsa, Kravchuk favored stronger president, but had little understanding of how to use his constitutional powers. Novelty and lack of traditions of presidential office pushed Kravchuk to put more emphasis on using informal methods of power execution, with which he was much better familiar with during communist era (Birch 2008, 225). Nevertheless, while the goal was the same – to have a loyal prime minister – strategy adopted by Kravchuk was considerably more inclusive in nature. In fact, he was trying to obtain good relations with all key players of the political system while keeping in mind his ultimate aim of controlling the executive. In early days of his presidency he reached considerable success in this task effectively controlling then prime minister Vitold Fokin. However, such informal strategy of Kravchuk played a bad

joke with him after he secured parliamentary support to supposedly loyal to him Leonid Kuchma, representative of former communist *nomenklatura*. New prime minister quickly demonstrated his unwillingness to stay in president's shadow and started gathering support of both parliamentary deputies and population. Uneasy relations between president and parliament finally ended in the political decision to hold pre-term presidential and parliamentary elections in 1994, the results of which were hugely affected by severe economic crisis of 1993. Unlike in Poland, new elections did not result in structured parliament, as they were conducted on mixed electoral system which brought to the new parliament large number of independent candidates. Presidential election was won by Kuchma.

Therefore, both in Poland and Ukraine, early periods of independence were plagued by institutional conflicts between main actors: president, on the one hand, and prime minister and parliament, on the other hand. Constitutional provisions were only partially responsible for them. Semi-presidential framework indeed provided for clashes between president and parliament, who both had direct legitimacy and mechanisms of influence on cabinet. More importantly, new political institutions and political actors embodied in them were not used to new democratic environment and had little understanding of how it works. It was more obvious in Ukraine, where both president Kravchuk and Verkhovna Rada preferred informal methods of obtaining their political aims, often leaving constitutional mechanisms aside. In Poland, on the other hand, conflicts could be also explained by the different visions of president Wałęsa and Sejm, who favored different models of power distribution – presidential and parliamentary, respectively. Thus, forced to function in the framework of semi-presidential model, they were doomed to coexist in permanent tension. Such tensions, however, did not result in any directly unconstitutional attempts to monopolize power, as was the case in Russia in 1993, urging some authors to claim that Polish constitutional framework was quite realistic reflection of the real distribution of power (Michta 1998, 108-9). Nevertheless, in both cases it was clear that main political actors were not satisfied with the balance of power provided by the amended Soviet constitutions, so the need to adopt a new constitution was more than obvious. This task was entrusted to the new parliaments and presidents elected in the end of the first period of independence of the two countries.

Two different ways to adopt constitution

Newly elected political institutions did managed to develop constitutions for their countries in relatively short terms. However, the character of constitution-making process differed a lot. In Poland, president Kwaśniewski took much more constructive stance towards parliament, which, in addition, was controlled by coalition led by his former party – Democratic Left Alliance (SLD). Constitution-making was concentrated in the hands of parliament, while Kwaśniewski as a former chairman of the Constitutional Committee restricted his activities to offering several specific changes to the draft of constitution. Naturally, they were aimed at some increase in president's powers, but nevertheless demonstrated Kwaśniewski's unwillingness to

push for strong presidential model. Most of them were accepted by parliament, as they did not disrupt its preferred balance of power (Millard 2000, 53). Furthermore, Kwaśniewski succeeded in creating broad coalition of support for the constitutional draft, which included not only post-communist majority, but also post-Solidarity opposition. As a result, both president and parliament supported final constitutional draft, which was put on referendum in early 1997. People approved constitution, and it came into force the same year.

The final document did not radically change system of power distribution in Poland, but somehow curtailed president's powers in controlling executive branch and granted all powers not reserved to any other state or local institution to cabinet. Such diminishing in president's power led many Polish scholars to the conclusion that the 1997 Constitution established parliamentary – not semi-presidential – system, albeit with popularly elected head of state². While such position could be justified, I will stick to the point of view which defines popular election of president on a fixed term (five years in case of Poland) as not only necessary, but also sufficient feature of semi-presidentialism. According to such approach, even after 1997 Poland remained well within semi-presidential framework.

Apart from more pragmatic approach of Kwaśniewski, success of constitution-making process could be also explained by the very defeat of Wałęsa in 1995 election. As Ray Taras argued, people's refusal to reelect Wałęsa expressed their discord with his vision of presidential system as the most preferred one (1998, 66). Thus, Polish electorate made indirect favor to parliament in his willingness to keep president from gaining too much power in the new constitution. At the end of the day, all main stakeholders of Polish constitutional process in fact were looking in the same direction, which greatly contributed to its success.

Such unanimity was also caused by the strong process of lesson learning which took place in Poland during first years of its post-communist period. Two lessons considering overtly liberal electoral law and Wałęsa's unproductive intention to broaden his presidential powers were already mentioned. Two more require closer look. First one considered frequent change and instability of government, which led to the introduction of constructive vote of no confidence to the Polish constitution. It meant that parliament was no more able to overthrow cabinet without at the same time appointing the new one. Another lesson was made possible by experience of internal opposition of three "presidential" ministers to other cabinet members, which were appointed by parliament. During Wałęsa's term, such conflicts were usual things, so the new constitution eliminated such president's prerogative, leaving all powers to nominate and appoint ministers to parliament.

The only relevant opponents of the new constitution in Poland were in fact various right-wing and former Solidarity forces, who failed to enter parliament in 1993. However, their criticism of the draft of the new basic law was caused rather not by its content but by the very fact that it was written by post-communist forces. Many of former Solidarity members just could not put up with the constitution of democratic Poland developed by its former

² Interview with professor Piotr Winczorek, 29 February 2012.

'oppressors'. However, as time has shown, their resistance to the new constitution quickly vanished in the air after they succeeded in winning next parliamentary election the same year it came into force. Having gained a majority of seats in the new parliament, they soon realized that constitution provided a favorable framework for their stay in power. Thus, the potential problem of non-compliance with the new constitutional was automatically solved³.

Things were radically different in Ukraine. Newly elected president Kuchma from the first days in the office demonstrated his willingness to be the leading actor in the process of developing a new constitution. Already in late 1994 presidential administration introduced a constitutional bill to parliament, which in case of adoption would create presidential model and, naturally, was eventually blocked by parliament. Using his high popularity and direct mandate, Kuchma, nevertheless, continued to be the frontrunner of constitution-making process and did not disdain using blackmailing tactics vis-à-vis parliament, threatening to initiate nation-wide referendum on constitutional issues. The conflict finally ended in June 1996 when after 24-hour non-stop work parliament adopted modified presidential bill. Quite surprisingly, eventual result in many regards resembled previous president-parliamentary system. Executive continued to be headed by both president and prime minister, although the former had clearly more powers.

Unlike in Poland, in Ukraine neither president nor parliament were satisfied with the resulting document. Double responsibility of cabinet to both these institutions clearly indicated compromise nature of the new constitution. Such outcome of the constitutional process was of no surprise considering its confrontational nature. Indeed, as noted by Olena Podolian, conflict-ridden environment of constitution adoption inevitably leads to attempts of the key players to revise the basic law already in the near future (2008, 424-7). As we shall see later, this was precisely the case in Ukraine. Even more important, compromise nature of Ukrainian constitution did not favor its stable functioning either, since neither president nor parliament had enough incentives to comply with constitutional provisions, which did not correspond to their initial preferences and were adopted as a result of significant concessions from both sides. At the other end of spectrum, Polish president and parliament were generally satisfied with the new basic law, since both the process and the result conformed to their interests.

Therefore, the processes of adoption of constitutions in Poland and Ukraine were in many respects the bifurcation points which put these two countries on different tracks. However, the picture would be incomplete without taking into account two important factors which determined such outcomes of constitutional processes. Firstly, personalities of presidents played a great role. While Kwaśniewski was from the beginning geared up for setting consensual relations with parliament and took moderate position towards parliamentary work on the new constitution, Kuchma used all kinds of formal and informal means to force parliament to succumb to his vision of the constitutional model. Clearly, the results of presidents' actions were radically different. Secondly, electoral system chosen in Poland for the

³ Interview with dr Jacek Kucharczyk, 22 February 2012.

1993 parliamentary elections favored consolidation of political forces and led to the formation of stable coalitions. On the other hand, Ukrainian mixed electoral system produced highly fragmented parliament which proved unable to effectively resist president's pressure. Both these features contributed to the different outcomes of constitution-making process and – eventually – further institutional development of the two countries.

Moving in opposite directions

And the impact of constitution-making process on democratic consolidation of the two countries was indeed visible. Polish political system, for instance, immediately faced period of cohabitation: 1997 parliamentary election was won by former Solidarity political forces which united in Solidarity Electoral Action (AWS) coalition. Thus, right-wing parliamentary majority was forced to coexist with leftist president. However, such cohabitation proved to be quite peaceful. On the one hand, AWS-led coalition was able to quickly install cabinet of Jerzy Buzek, which lasted until the next parliamentary elections. This clearly indicated serious maturing of Polish party system and establishment of effective mechanism of cabinet parliamentary responsibility. On the other hand, president Kwaśniewski chose not to confront with coalition and government as much as did Wałęsa. His approach to policy-making was more of negative nature, i.e. in his relations with parliament and cabinet he mostly used his constraining powers, such as right to veto and refer bills to the Constitutional Tribunal. In doing so, he demonstrated his willingness not to compete with cabinet for executing state policy but rather to correct its possible mistakes. As a result, while relations between president and members of cabinet and coalition were far from friendly, they never erupted into serious conflicts which could damage institutional balance of Polish political system. Moreover, quite natural division of responsibilities between president and prime minister was reached at that period. While cabinet dealt mostly with domestic policy, president took active stance on international area, resisting attempts of cabinet to curtail his powers in the sphere of foreign policy (Millard 2000, 55).

Situation did not change much after 2001 parliamentary elections, which again brought to power left-wing DLA. Relations between Kwaśniewski and two cabinets of Leszek Miller and Marek Belka in many regards were characterized by similar features of divided responsibilities. Maybe even more important, political tranquility of Polish form of government proved resistant to the turbulent economic situation which plagued country since the end of 1990s. Firstly, while both Buzek and Miller enjoyed rather low level of support and citizens' evaluation of performance of democracy in Poland was mixed at best (Public Opinion Research Center 2004; 2007), this did not lead to delegitimization of Polish democratic institutions. Such detachment of political institutions from too close dependence on public opinion may seem undemocratic, but in many cases, including Polish, it favors more stable functioning of state and evades the dangers of populist politics. Secondly, economic problems did not cause unsolvable problems in parliament. Miller did have to resign from the post of prime minister on the next day after

Poland's accession to the European Union (EU), and Belka did become a prime minister only on a second attempt. Yet, the left-wing coalition survived, and there were no implications of parliament becoming dysfunctional. Such resistance of Polish political system to exogenous shocks of lowering of level of citizens' support, on the one hand, and economic troubles, on the other hand, was a clear indicator of success of its democratic consolidation.

Analogous process in Ukraine, though, suffered serious blow during two-term presidency of Kuchma. During his time in office, Kuchma did his best to bring existing semi-presidential model as close as possible to pure presidentialism. In order to reach this aim, he used different strategies. In his relations with prime minister, he extensively used his constitutional powers to appoint loyal members of cabinet, thus eroding prime ministers' role, and launched massive attacks on head of cabinet if the latter was challenging president's dominance (the best example being corruption scandal which brought down prime minister Pavlo Lazarenko, who eventually got imprisoned). In his relations with parliament, Kuchma created extended clientelistic network, which allowed him to secure loyalty of many deputies, stimulating their support by political and economic benefits and threatening them with revealing discrediting evidence in case of non-compliance (Protsyk 2003). In extreme cases, Kuchma resorted to constitution breaching, such as refusal to sign legislative acts after parliament has overridden his veto with constitutional majority.

Main institutional rivals of Kuchma, on their part, were unable to effectively resist his attempts to monopolize power. Parliament was inhabited by numerous factions and non-party deputies which had no clear ideological and programmatic commitments. Therefore, the process of coalition-formation was doomed from the beginning: no stable parliamentary majority was formed in Ukraine until 2006. Not surprisingly, members of Verkhovna Rada were unable to speak in one voice and counteract against president Kuchma. Cabinet, by turn, had even less chances to act as a strong political actor. In many regards, his weak position was conditioned by constitutional provisions, which guaranteed the right of its dismissal both to parliament and president. Permanently under crossfire, cabinet and its members, therefore, were concentrating their efforts more on the task of survival than on policy making duties. As a result, president Kuchma generally succeeded in dominating the executive and marginalizing parliament, which severely disrupted the logics of semi-presidential model and hindered the process of democratic consolidation.

What, again, were the main reasons behind different institutional development of semi-presidentialism in Poland and Ukraine after adoption of their constitution? We could argue that both institutions and actors were responsible. On the one hand, mode of power distribution in Poland provided much less occasions for clashes between two head of executives – president and prime minister. Having been deprived of right to appoint ministers of interior, defense, and foreign affairs, Polish president no more had any role in determining the composition of cabinet, and his role in this process was limited to right to nominate candidate for prime minister itself. Moreover, according to constitution, cabinet was clearly guaranteed prerogative to exercise domestic policy, while president's domain was restricted to foreign affairs.

Therefore, president simply lacked serious interest to challenge prime minister in his control over executive, as he had very limited constitutional mechanisms to do that. Ukrainian constitution, in turn, provided president with many institutional incentives to expand his political role. Firstly, his direct mandate encouraged him to use it as a powerful tool of influence on indirectly elected prime minister. As we have already seen, this was characteristic also for Wałęsa, which could indicate that such flaw is embedded in the very nature of semi-presidentialism (Pugaèiauskas 1999). However, first Polish popularly elected president never had so much power as Kuchma had. It was precisely the combination of direct mandate and considerable executive powers that made second Ukrainian president a dangerous source of authoritarian impulses. Moreover, unlike in presidential systems where president directly controls executive branch of power, under conditions of Ukrainian semi-presidentialism Kuchma had also to worry about political orientation of parliament, since the latter also exerted control over cabinet. Therefore, Kuchma's strong ambition also seriously damaged the functioning capacity of Verkhovna Rada. All in all, Ukrainian legal framework created strong incentives for president to invade other institution's constitutional territory and at the same time lacked serious constraining mechanisms for such actions.

On the other hand, we could repeat that political development of both countries was much determined by the personalities of Kwaśniewski and Kuchma. It was clear that they had very different structure of political interests and preferences, as well as used different means to achieving desirable ends. While the former made significant efforts in order to stabilize and routinize politics of peaceful coexistence, the latter preferred to act unilaterally and overdosed political system with clientelism and corruption. As both presidents reached the end of their second – and last – term in 2005 and 2004, respectively, in terms of democratic consolidation their countries were miles away from each other.

Stray from the path

Further political developments of the two countries could have created an impression that they started to move towards each other. In Poland, parliamentary and presidential elections conducted in 2005 brought to power right-wing Law and Justice (PiS) party and president Lech Kaczyński, who was a twin brother of PiS leader Jarosław Kaczyński. Thus, new parliamentary majority and president came from single political force, which in case of semi-presidentialism could exercise both positive and negative influence on stability of regime. Polish case generally fell into second category. During two year of PiS governance, both president and parliamentary majority used different tactics in order to concentrate state power in their own hands and marginalize political opponents. This was displayed, for instance, by deformation of legislative process which was often characterized by lack of debates, undue respect to procedural norms, and neglect of opposition point of view. As a result, during 2005-2007, Polish parliament came dangerously close to becoming rubber-stamp for political decision imposed by cabinet and president (Staśkiewicz 2008, 35-7). PiS members' idiosyncratic understanding of electoral

democracy as “winner-takes-all” system was confirmed by their personal attacks on opposing or independent political actors, including judges of Constitutional Tribunal (Wyrzykowski 2011). Period under consideration was also marked by attempts of ruling coalition to restrict some constitutionally guaranteed rights and freedoms, such as freedom of assembly, freedom of conscience, right to privacy, and freedom from discrimination (Sadurski 2008, 20-5).

These processes clearly indicated some erosion of Polish democracy, yet the power appetite of ruling coalition never resulted in slide towards authoritarianism. This was clearly the case because of unwillingness of president and PiS members to breach the constitutional norms. While both Kaczyński brothers expressed their desire to increase role of president in Polish system of power, they lacked constitutional majority to make necessary amendments to basic law. Interestingly though, they tried instead to raise president supposed political role by creating artificial conditions for him to look more powerful than he was. For instance, in 2005 both parliamentary speaker and coalition members deliberately dragged out the work on state budget, which pushed the date of its adoption dangerously close to constitutional limits. This allowed Lech Kaczyński to credibly threaten to dissolve Sejm, raising his political profile in the eyes of citizens. However, such tricks could be more likely explained by Kaczyński’s awareness that increase of real presidential powers under given circumstances would be virtually impossible task⁴.

This became even more obvious after 2007 pre-term parliamentary election caused by PiS-led coalition split, which saw the electoral victory of the main PiS opponent – liberal Civic Platform (PO) party. Kaczyński had no other choice but to ask PO leader Donald Tusk to form a government, thus again putting Polish system in the phase of cohabitation. This time, though, it was less peaceful than during the coexistence of Kwaśniewski and Buzek. Kaczyński did not give away his desire to pursue more competences, thus from time to time challenging prime minister Tusk. Aside from frequent use of his veto right, Kaczyński also engaged in conflict with Tusk over the right to represent Poland at the EU summit in 2008. Tusk wanted to visit the summit alone, referring to the article 146 of the constitution, which grants cabinet the right to conduct foreign policy of the state. Kaczyński, nevertheless, based his willingness to join Tusk in his visit on the article 133 which names president “representative of the State in foreign affairs”. Both leaders eventually visited Brussels, and the case was taken to the Constitutional Tribunal, which decided that president could represent Poland abroad, but only as a spokesman of position adopted by cabinet. Thus, the Constitutional Tribunal played a role of mediator of conflict, preventing it from damaging the very constitutional order of the state⁵. This was yet another sign of successful democratic consolidation in Poland: while the personal relations between two supreme political actors were at times very tense, they did not lead to serious institutional dysfunctionalities. In other words, Polish system of high powers distribution was able to develop mechanisms which prevented transformation of personal conflicts into institutional crises.

⁴ Interview with doctor Jarosław Zbieranek, 17 February 2012.

⁵ Interview with professor Mirosław Wyrzykowski, 8 March 2012.

While after 2005 democratic consolidation in Poland for some time faced quite serious challenges, Ukraine was actually moving in the opposite direction. Two events in many regards influenced its development after end of Kuchma's second term. First one was the so called Orange revolution – mass and enduring uprising of citizens protesting against mass falsification of the results of 2004 presidential election, which enabled Central electoral commission to name Victor Yanukovych, Kuchma's favorite, the new head of state. Eventually, however, Supreme court declared the results of the second round invalid and ordered to conduct the third round of voting, which resulted in victory of opposition candidate Viktor Yushchenko. Second major event was connected with the first one, as during the negotiations of authorities and opposition between second and third rounds of presidential elections a legislative act amending constitution was passed. It transformed Ukraine into premier-presidential system which strongly resembled pre-1997 Polish form of government. According to constitutional reform, president lost many of his mechanisms of control over cabinet, except for right to nominate two ministers, and the latter became responsible only to parliament. Clearly, the new system vested most of executive power in the hands of prime minister.

Changes in the democratic development of Ukraine after Orange revolution and constitutional reform seemed profound. Conflicts between main institutionalized actors still were one of the main features of Ukrainian political system, however, nature of such conflict significantly differed from those during earlier period. During the early years of Yushchenko presidency there was no dominant political actor in Ukrainian institutional system, as both president and prime ministers competed for the prerogative to shape executive policy. As time has shown, victory was on the side of prime minister, which was clearly indicated by the leading role of prime minister Yuliya Tymoshenko during her second premiership in 2007-2010. Parliament also underwent serious structural changes, not least because of the new constitutional model. Since the basic law required parliamentary factions to form a coalition in order to nominate a prime minister, they were stimulated to improve their culture of negotiation and consensus-seeking. While the first attempt to form a coalition in 2006 suffered a great blow after defection of one of the coalition members to another side, next analogous processes were much smoother. Another condition that favored coalition-making process was the change in electoral law, as 2006 parliamentary election became the first one conducted under proportional system. Very much like in Poland in 1993, introduction of proportional representation led to decrease in number and increase in size of parliamentary parties, as well as elimination of independent candidates with no party affiliation. No wonder that bigger parties were in better position to negotiate between each other and structure parliament along the lines of coalition and opposition.

As in Poland, a relative success of democratic consolidation in Ukraine after 2005 could not be attributed to only one factor. On the one hand, constitutional reform created new logic of relations between president and prime minister, which proved to be more easily achievable than rather misbalanced system of 1996 constitution. In many respects thanks to the new constitutional provisions, cabinet became a strong player able to effectively shape public

policy, while president retained his powers in the sphere of foreign affairs and defense. Even more obvious was the positive influence of the constitutional demand of coalition formation on structuring of parliament along the lines majority-opposition and establishment of mechanism of cabinet parliamentary responsibility. On the other hand, personal dimension of politics remained as important as ever. President Yushchenko surely tried to undermine prime minister's role during his term of office, using not only legal methods, and his level of democratic political culture was far from that of Western heads of states, but he nevertheless never tried to breach constitution in order to achieve his aims. Same could be said about Tymoshenko – his biggest rival during 2005-2009.

The only credible threat of authoritarian reversal during this period of time in fact came from the party of Yushchenko's main opponent in 2004 presidential election Victor Yanukovych – Party of Regions (PR). After successful creation of coalition in 2006 parliament and appointment of Yanukovych as a prime minister, its members started to entice away individual opposition deputies in what was seen as an attempt to create constitutional majority necessary for the change of basic law. Their ultimate aim was clear – to make president merely a figurehead and make parliament the only powerful political institution. While transferring powers to parliament may have seemed as a noble idea, under that circumstances it could *de facto* result in one-party rule. However, president Yushchenko was able to pre-empt this scenario by calling early parliamentary elections with his decree in April 2007. While this act caused a great debate about its constitutional purity, Yushchenko presented it as an adequate answer to what he saw as the emerging threat of monopolization of political power. At first strongly opposed to presidential decision, coalition members soon agreed to comply, setting the new election for the autumn of 2007, which was won by small margin by PR opponents.

However, while democratic consolidation of Ukraine was clearly improving after 2005 – which was indicated by the status of "free" country that it gained for the first time in its history in 2005 and retained till 2010 (Freedom House 2012) – it still considerably lagged behind Polish situation. This could be explained both by high level of democratic consolidation that Poland achieved during Kwaśniewski's presidency and notable shortcomings of Ukrainian path to democracy under Yushchenko rule. Again, both institutional factors and political actors were responsible. While being for the most part a step ahead in comparison to 1996 Constitution, 2004 constitutional reform did not bring expected clearness in the relations between president, parliament, and cabinet. Coexistence of two "presidential" ministers with "parliamentary" cabinet and considerable level of legal vagueness were somehow impeding Ukrainian political system from reaching point of balance. And, as was already mentioned, democratic political culture of majority of – if not all – main political actors in Ukraine still was not on the level of their Polish counterparts.

On different poles of democratic consolidation

The last remark became evidently clear during recent developments of Poland and Ukraine. In this regards, not much could be said about Poland. After tragic death of Lech Kaczyński and numerous high officials after a plane crash near Smolensk in April 2010, Polish institutional system evaded any serious turbulence and has retained stability after early presidential elections, won by member of prime minister's party, Bronisław Komorowski. Polish system, thus, returned to the phase of peaceful coexistence of president and prime minister from one political camp. Surely, Komorowski sometimes criticizes actions of cabinet and on several occasions have used his veto right. But he, nevertheless, has not demonstrated any signs of willingness to increase powers of president, like his predecessor did. This not only keeps Polish form of government in comfortable balance, but also contributes to the lack of any serious talks about need to change the constitution. Future of the president-prime minister relations in Poland is yet to be seen – especially when inevitable comes another period of cohabitation – but for now the whole system of high power looks stable and resistant to any serious institutional or personal challenges.

Political developments in Ukraine after 2010 has taken radically different form and content. The newly elected president Viktor Yanukovich immediately started to use his direct and “fresher” legitimacy⁶ in order to restructure parliament and create new coalition, loyal to him. Although his party (PR) could not form a majority even with its two political allies, president's aim was quickly reached with several members of opposing Yulia Tymoshenko Block (BYuT) and Our Ukraine – Popular Self-Defense (NUNS) faction deserted them and joined new majority. While being contradictory to the constitutional provision of coalition formation solely on faction basis (not on basis of individual deputies), this process was easily legalized by the Constitutional Court, which in its decision reverted its opinion on similar matter adopted two years later. This created first serious blow to the legitimacy of the new ruling coalition.

The following ones came very quickly. Parliament soon transformed into rubber stamp for decisions imposed by presidential administration, while the new opposition since then became totally ignored when it came to important legislative acts. President was also able to exert effective control over judiciary system with the help of new legislation adopted in July 2010 and strong political pressure on the judges. Political dependence of Ukrainian court became extremely manifested by very confusing and highly dubious decision of the Constitutional Court in September 2010 which declared the 2004 constitutional reform as being adopted with procedural violations and thus ordered all state organs to bring their acts in conformity with the 1996 Constitution. Political character of such decision was not a secret and bore virtually

⁶ According to Oleh Protsyk (2005, 738-9), political actors embodied in the institutions that were elected more recently possess higher legitimacy in the eyes of the population. In Ukraine, Verkhovna Rada was already three years old when Yanukovich took presidential office in 2010.

no legitimacy for political opposition and most Ukrainian citizens; nevertheless, Ukraine returned to the president-parliamentary system of the 1996 Constitution.

Moreover, after September 2010, it actually obtained a very dangerous for young democracies incarnation of super-presidential model⁷. President further expanded his powers by reducing prime ministers' appointment competences with the new law on the Cabinet of Ministers rushed through parliament and his own edict on re-organization of executive system. Complemented by criminal prosecutions of main political opponents and curtailment of basic right and freedoms, Yanukovych's activities in the institutional sphere allowed him to monopolize political power in his hands already during first two years of his presidency. Thus, semi-presidential model in Ukraine quickly degenerated into something resembling authoritarian system which envisages no need of separation of power between different institutions. In other words, the very logic of the form of government became severely disrupted, which does not allow even to talk of any form of government in Ukraine right now. Not surprisingly, the process of democratic consolidation was not only stopped, but significantly reversed in terms of both rule of law and political plurality and citizens' rights and freedoms.

Actors or institutions?

As simple as it may sound, both actors and institutions were responsible for the different outcomes of the processes of democratic consolidation in Poland and Ukraine. During the first years of post-communist period both countries suffered from quite similar conflicts between president and prime minister/parliament. Sources of such conflicts were also comparable – personal ambitions of political actors who wanted to challenge existing institutional balance and were not used to playing according to formally established rules. However, at the point of adoption of constitutions in Poland and Ukraine it became clear that situation has already changed a lot. In Poland, majority of political actors have strongly engaged in the process of learning lessons from the past and realized importance of institutions for stable development of political system. This resulted in quick change of electoral law, which greatly contributed to the structuring of parliament, and quite consensual adoption of the new basic law, which eliminated most of the potential institutional dangers of the amended soviet constitution. Constitutional process in Ukraine, in contrast, demonstrated that political players mostly has come to treating institutions as means or obstacles to achieving their aims and preferred to change them rather than to adapt to them. As a result, constitution of independent Ukraine was adopted in highly conflicted environment and created rather misbalanced system of power distribution.

With some reservation, it is safe to say that after adoption of the new constitution, in Poland institutions shaped its political development more than personalities (Castle and Taras

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Interview with doctor Bartłomiej Nowotarski, 7 March 2012.

2002, 2007). Sure, the 2007-2010 period of cohabitation was much less peaceful than similar 1997-2001 period mostly due to different character of personal relations between president and prime minister. But the whole institutional system proved to be resistant both to challenges to democratic consolidation (during 2005-2007) and dangers of constitutional instability (2007-2010), thus effectively preventing personal animosities from overlapping into sphere of state institutions interaction. The same could not be said about Ukraine: for the most part of its post-constitution political history, political actors dominated institutions. The 2006-2009 period could be described as an only exception, since it clearly showed how institutional rules can shape the behavior of political actors. However, the same institutional arrangements became vulnerable to authoritarian tendencies which started to unfold after 2010 presidential elections. Since then, political institutions were marginalized to the level not seen even during second presidential term of Kuchma.

INSTITUTIONAL OPTIONS FOR UKRAINE

This section will consider possible recommendations on how to use Polish relative success in consolidating democracy in the present Ukrainian realities. These recommendations will touch only institutional dimension, leaving various aspects of behavior and culture of political actors aside. This is explained by three main reasons. Firstly, as Polish experience has shown, prevalence of institutions over actors could be considered as one of the keys to successful democratic consolidation. Thus, while institutions alone could not guarantee positive outcome of democratization process, they nevertheless could make it more or less probable by shaping and constraining behavior of actors. Secondly, institutional recipes are far more operable and easier to implement than various appeals to change of political culture of actors. Thirdly, such choice is simply conditioned by the title of this paper, which is intentionally aimed at disaggregating the relative influence of form of government as a set of institutional rules on the process of democratic consolidation.

The chapter will be divided into five main subsections. First three will be dedicated to the main institutions of semi-presidential form of government – president, parliament, and cabinet. Fourth subsection will concern constitutional court as another important institution that could influence process of democratic consolidation, while fifth will touch upon electoral system which could not be avoided as it has direct impact both on the functioning of semi-presidentialism and democratic development of a state. In each subsection, several possible options for institutional change will be presented and analyzed according to their expected influence on democratic consolidation process. Then, the preferred option will be chosen and described in more details.

Since the institutional options presented in this chapter usually require changing the constitution, it is necessary to say few words about this controversial process. Sure, in short term another constitutional reform in Ukraine seems very unlikely, mostly for obvious political reasons. Moreover, under present conditions of *de facto* one-party rule even ideal

constitutional norms would not change much in contemporary political practice. However, options for institutional changes, which are presented below, aim at longer perspective, i.e. when political conditions would be more favorable for open and inclusive constitution-making process. We could only hope that it would not take too long for Ukraine to reach such point in time.

President

From the previous chapter we have seen that in Ukraine president was, for the most part of its independent political history, the main source of authoritarian tendencies. This was in many regards the direct result of his popular legitimacy coupled with considerable executive powers. In other words, constitutional provisions indirectly provided him with incentives to use his direct mandate to challenge authority of his main rival – prime minister – who lacked legitimacy derived from the people. Therefore, we can conclude that modification of his constitutional power could diminish such incentives for authoritarian moves or even eliminate them.

For the reason presented in the previous chapter, it seems senseless to increase president's power. In such case, his desire to use popular legitimacy to monopolize executive power will become even more tempting which could destroy democratic principle of division of power. After all, presidential systems in Latin America are too obvious examples of "perils of presidentialism" (Linz 1990) in countries with not enough respect for the rule of law.

Another option would be radically diminishing presidential powers and changing the mode of his election from nation-wide to parliamentary. However, such option would also be not good enough. As we have seen from the case of 2007 coalition formation process in Ukraine, parliament also can threaten constitutional balance of power. Then, however, this threat was eliminated by the decision of president Yushchenko to dissolve parliament and order pre-term elections. If, on the other hand, president had been elected by parliament, he would not have been an independent player and, consequently, possibility of such resolute decision would have been close to none.

Therefore, it can be argued that the best option in the Ukrainian case would be to strip president of all executive power but increase his negative powers, i.e. to make him strong veto player⁸. In such case, president would not have incentives to challenge prime minister's authority, since he would simply have no starting position from which to expand his power. On the other hand, he could obtain a role of political overseer who could preclude any attempts to disrupt constitutional balance of power by any institution or political actor. Such position of president would require following changes to the Ukrainian constitution:

⁸ Veto player is, according to Tsebelis, "individual or collective actors whose agreement is necessary for a change in the status quo" (2002, 19). In our case, being a veto player means being able to prevent one institution from monopolizing exclusive powers of other ones. Such ability is crucial for the principle of division of power and, consequently, success of democratic consolidation.

- (1) Popular election of president should be kept, but the term of office could be diminished from five to four years, which would mirror reduction of his real powers.
- (2) Role of president in formation of cabinet should be minimized. Constitutional wording of president's role in this process could be different, with one of the options corresponding to the provisions of 2004 constitutional reform. In any case, it is proposed that president should only approve candidate of prime minister chosen by parliament and have no right to reject him.
- (3) President should have no right to appoint or dismiss any minister in cabinet. He should have no "presidential" ministers, as was in 1992 Polish small constitution or 2004 Ukrainian constitutional amendments.
- (4) President should have no right to appoint or dismiss other members of cabinet and heads of local state administrations.
- (5) President could retain some powers in nominating or appointing heads of institutions such as National Bank or National Broadcasting Council which could not be totally referred as parts of executive branch. This could be the subject of further debates.
- (6) President should retain his right to veto parliamentary acts and right to refer legislative acts to Constitutional Court, while his right of legislative initiative could be eliminated. Possible reduction of size of parliamentary majority needed to override presidential veto could be considered.
- (7) President should have more grounds to dismiss parliament. Corresponding provisions of 2004 constitutional reform could be re-introduced: i) in case when parliamentary coalition is not formed in constitutionally defined terms; ii) in case when cabinet is not formed in constitutionally defined terms.

Parliament

The biggest problem of Ukrainian parliament throughout its independence period was connected with its inability to form stable majorities and effectively control cabinet. This resulted in fragmentation of parliament and high vulnerability of deputies to various kinds of pressure from president and – sometimes – members of cabinet. Thus, provisions that would stimulate parliamentary factions to create stable majorities should be introduced.

Under framework of presidential system, such aim would be virtually unreachable, as parliament would have no right to appoint prime minister and form cabinet and no incentives to structure itself along the lines of majority and opposition. Therefore, high level of fragmentation would most likely continue to plague Ukrainian parliament in such case.

On the other hand, introduction of provision that cabinet is formed by the biggest party in parliament would be absolutely unrealistic under Ukrainian circumstances. No party has ever won absolute majority of parliamentary seats in Ukraine until now and there are no signs that

it could happen in the near future. At the same time, practice of minority governments is rather unfamiliar for Ukraine, and prospects of its effectiveness are highly doubtful.

The most realistic way of addressing the problem of parliament fragmentation is to re-introduce the institution of parliamentary coalition which should possess the right to form cabinet, which was characteristic for 2004 constitutional reform. However, additional provisions should be added in order to correct legal gaps of the mentioned constitutional amendments which led to the frequent defections of deputies from oppositional factions to parliamentary coalition. Such faction changes in most cases were the results of political pressure or direct bribes and led to distortion of elections' results, as was the case after 2010 presidential elections. In order to stimulate parliament to form stable coalition, effectively control cabinet, and prevent deputies from leaving their factions, which, combined, will make parliament a much stronger political player, introduction of such constitutional provisions should be considered:

- (1) Constitution should re-introduce the institution of parliamentary coalition. Parliamentary coalition should be defined as a legal body consisting of parliamentary factions which together have majority of deputies in parliament. Inclusion of separate deputies from other factions should be prohibited.
- (2) Parliamentary factions should form coalition in constitutionally established terms. Parliamentary majority formed with inclusion of individual deputies from other factions should not be considered valid. If already formed coalition includes individual deputies, it should be declared invalid on the day of such inclusion, and another term for the formation of new coalition should be launched.
- (3) Imperative mandate should be introduced. This means that if deputy decides to leave his parliamentary faction he should automatically lose his mandate. In such case, next candidate on the list of party that formed a faction should replace him as a deputy.
- (4) Parliamentary coalition should choose candidate of prime minister and appoint him in constitutionally established terms. Role of president in this process, as was mentioned above, should be formal.
- (5) Constructive vote of no confidence should be introduced, so that parliament could not dismiss prime minister without appointing the new one at the same time. Corresponding provisions of 1997 Polish constitution could be considered as an example.
- (6) Introduction of upper chamber could be considered. In such case, mechanism of its formation should guarantee its independence from lower chamber as to make it another strong veto player.

Cabinet

Cabinet under present Ukrainian constitution is responsible to both president and parliament. Such situation of double dependence does not create favorable conditions for cabinet to evolve into strong political player with its own political agenda. Therefore, the need to eliminate one of the objects of cabinet's political responsibility is quite obvious.

Placing cabinet under direct control of president would be quite dangerous in Ukrainian case for the reasons that were already discussed. This would most likely lead to the situation when president dominates executive and constantly tries to ignore parliament by acting unilaterally. The threat of authoritarianism under such conditions would be as high as ever.

Therefore, it is president who should be "sacrificed". If cabinet is responsible only to parliament, favorable conditions of effective cooperation between these two institutions could be created. In such case cabinet would shape executive policy within legislative borders established by parliament. Clear political responsibility for failures and successes of state policy of those parties which formed coalition and cabinet would be another benefit of such model. It would be presented in more details below:

- (1) Cabinet of ministers should be the head of executive branch of power. It should be responsible for both domestic and foreign policy. In order to make limits of its competencies as clear as possible, introduction of provision 2 of article 146 of Polish constitution (*"the Council of Ministers shall conduct the affairs of State not reserved to other State organs or local government"*) could be considered.
- (2) Cabinet should be responsible only to parliament.
- (3) Prime minister should represent parliamentary coalition by corresponding mechanisms of his appointment mentioned above.
- (4) Right of dismissal of prime minister and whole cabinet should belong solely to parliament.
- (5) Prime minister should have no right to dismiss parliament.

Constitutional court

While position of constitutional court in the political system does not influence form of government, there is a strong evidence that it had considerable impact on process of democratic consolidation in both Poland and Ukraine. In Poland, as was discussed above, it proved its ability to both resist undemocratic impulses of ruling coalition, as was during 2005-2007, and settle political disputes within constitutional field, preventing them from erupting into full-blown crisis, as was in 2008. In Ukraine, on the other hand, not only did it prove unable to act as a guardian of constitutional division of power after 2010 presidential elections, but in fact turned into political instrument of new authorities. Thus, strengthening

independence of constitutional court in Ukraine could provide additional benefit to ability of its institutional system to provide for successful democratic consolidation.

This task is not simple, though. Ironically, Ukrainian legislation *de jure* grants constitutional court more independence than Polish one. For instance, Ukrainian constitutional court is composed of 18 judges which are appointed in equal shares by president, parliament, and congress of judges, while Polish constitutional tribunal is formed solely by parliament. While in many other institutional areas Polish constitutional provisions could serve as a model for Ukraine, the same could not be said about institution of constitutional court. In other words, changing Ukrainian legal norms by granting the power to appoint all judges of constitutional court to parliament would not bring expected results, since it would raise the possibility of political dependence of judges on parliamentary coalition. If in Poland such constitutional provisions work, in Ukraine they could lead to undesirable outcome of merging of different branches of power.

The simplest answer to the arising puzzle would be to wait for gradual change in political culture of those who appoint and who are appointed as judges of constitutional court. However, several remarks on possible institutional modifications could be made. One of the possible options would be to change the process of appointment of judges of constitutional court by granting the power to nominate them to legal departments of state universities or professional lawyer organizations. Such step – which is now also under consideration in Poland – could significantly raise both professional level and political resistibility of future judges, making them less dependent on current political trends. Other option would be to strip both president and parliament of their right to appoint constitutional court judges, leaving it only to congress of judges. This could potentially eliminate threat of politically motivated appointments and further divide main branches of power. However, considering high vulnerability of Ukrainian judicial system to political pressure, this option should be further discussed in order to prevent other institutions from using congress of judges as a disguise for their strategy of appointing loyal judges.

Electoral system

Although electoral rules do not define form of government, institutional experience of both Poland and Ukraine has shown that they could exert considerable influence on its functioning. As we have seen, 1993 electoral reform in Poland was in many regards responsible for the rationalization of parliament's work and, as a result, for much quicker process of democratic consolidation. In Ukraine, proportional system which was first introduced in 2006 parliamentary elections also contributed to structurization of parliament and favored easier process of coalition formation. However, after the restitution of mixed electoral system in 2011, threats of fragmented parliament re-emerged. Therefore, the need to change present electoral system in Ukraine is rather self-evident.

One option is to introduce fully majoritarian system which is supported by number of ruling PR deputies. They argue that such system would bring parliamentary candidates closer to their voters, as they would compete in local districts. However, flaws of such system were visible in each and every parliamentary campaign in Ukraine, where these electoral rules were applied. For instance, in 2002 majoritarian component of the then mixed system brought into parliament many businessmen which were able to "buy" their voters and then joined ruling majority in order to secure their businesses. In most cases, such deputies were free of any party affiliation and bore no political responsibility for their actions.

Proportional system first applied in 2006 was designed precisely to get rid of such shortcomings of majoritarian component. While this task was completed, some other problems came to the fore, the most salient one being connected with closed party lists. Since voters had no influence on parties' lists of candidates, they could "buy pig in a poke", i.e. elect absolutely unknown deputies. In many cases, such deputies became the biggest source of trouble for their factions, acting voluntarily and breaking party discipline. Simple re-establishment of closed list proportional system would just increase quantity of deputies of such kind.

Therefore, it is proposed to introduce proportional system with open party lists. Under such system, voters will be given possibilities to define the order of candidates in party lists. In such case, voters would obtain real mechanisms to influence party lists and choose only those candidates which they are familiar with. This, in turn, would raise the professional level of parliamentary deputies and effectiveness of parliament as an institution. Mechanisms of such preferential voting could be different, with one of them being described in the Electoral Code project, which was registered in Verkhovna Rada back in 2008 and gained generally positive review from the Council of Europe but was not adopted for clear political reasons. Reconsidering of this Electoral Code could be one of the best ways to modify present electoral system.

CONCLUSIONS

Troubled post-communist transition of Ukraine, which now has entered its most dangerous phase, was not determined by only one set of factors: either institutional or behavioral. However, while change of mode of behavior of Ukrainian ruling elites could be very uneasy and protracted process, institutional changes could serve as good starting point for shaping attitudes of Ukrainian political actors towards democracy and its rules. Poland's way to democracy demonstrates, among others, that introduction of certain institutional rules could indeed make process of democratic consolidation much easier by limiting political actors' power ambitions and creating strong preventing mechanisms for possible authoritarian tendencies. Moreover, it also indicates great role of actors' attitude towards institutions: democratic success will be much more likely if actors understand importance of institutions in democratic development of their country and not just treat them as instruments of gaining personal or

corporate political aims. Applying such assumption to modern Ukraine, we could state that introduction of constitutional provisions aimed at constraining political actors' power appetites and improving system of reciprocal control among main institutions will create favorable conditions for easier democratic consolidation of the country.

Mentioned constitutional changes deal precisely with form of government as model of distribution of power among main state institution and, therefore, could fall under three main types of republican regimes: presidential, parliamentary, and semi-presidential. As was argued above, the greatest challenge of current Ukrainian political system consists in its high vulnerability to authoritarian impulses of its political actors. New government model, therefore, should be aimed foremost at improving its resistibility to such threats. Taking into account these considerations, the best possible institutional option for Ukraine would be premier-presidential type of semi-presidential form of government. The main rationale beyond such decision is that proposed system would, on the one hand, eliminate president's incentives to use his popular legitimacy to challenge prime minister's authority or marginalize parliament and, on the other hand, improve his role as strong veto player in preventing possible attempt of cabinet and/or coalition to monopolize political power or act unconstitutionally. In this regard, strengthening of constitutional court as another veto player would also make sense. Moreover, in order to supply such form of government with more favorable conditions for more effective and professional parliament, change of electoral system is also proposed. Key elements of the recommended institutional change for Ukraine are presented below:

1. Popularly-elected president should be stripped of all executive powers and take part in process of cabinet formation only formally. President should also have no right to dismiss prime minister or any cabinet member. However, he should regain his powers to dissolve parliament in case if it proves unable to form coalition or cabinet in constitutionally established terms.
2. Parliament should appoint prime minister and form cabinet on the basis of coalition of parliamentary factions created according to constitutional rules. Coalition should be formed only on faction basis, and inclusion of individual deputies should be prohibited. Deputy's withdrawal from parliamentary faction should be banned; in such case, he should lose his parliamentary mandate.
3. Cabinet should conduct both domestic and foreign policy. It should be responsible only to parliament.
4. Mechanisms of appointment of constitutional court judges should be modified either by giving the right to nominate them to legal departments of state universities or by granting the power to appoint judges solely to congress of judges.
5. Electoral system should be changed to proportional with open party lists, allowing voters to influence the consecution of parties' candidates in their electoral lists.

Proposed constitutional changes should not, however, be treated as final and only possible institutional option for Ukraine. First of all, they could and should be subjected to further discussion considering both their content and ways of implementation. Moreover, they do not

preclude Ukrainian form of government from further changes. Need for next modification of constitutional model could arise when main opportunities and threats of Ukrainian political system change considerably, for instance if Ukraine reaches the level of democratic consolidation now present in Poland. In such case, need for more effective and consolidated public policy could outweigh necessity for radical division of power and different institutional changes would enter political agenda.

REFERENCES

- Birch, S. (2008). Ukraine: presidential power, veto strategies and democratization. In R. Elgie and S. Moestrup, *Semi-presidentialism in Central and Eastern Europe*. Manchester: Manchester University Press.
- Castle, M., and Taras, R. (2002). *Democracy in Poland*. Boulder: Westview Press.
- Elgie, R. (Ed.). (1999). *Semi-presidentialism in Europe*. Oxford: Oxford University.
- Freedom House. (2012). *Ukraine* [data]. Retrieved from <http://www.freedomhouse.org/country/ukraine>
- Howard, A. E. D., and Brzezinski, M. F. (1998). Development of Constitutionalism. In R. F. Staar (Ed.), *Transition to Democracy in Poland*. Basigstoke: Macmillan.
- Linz, J. (1990). The Perils of Presidentialism. *Journal of Democracy*, vol. 1, no. 1, 51-69.
- MacMenamin, I. (2008). Semi-presidentialism and democratisation in Poland. In R. Elgie and S. Moestrup, *Semi-presidentialism in Central and Eastern Europe*. Manchester: Manchester University Press.
- Michta, A. (1998). The Presidential-Parliamentary System. In R. F. Staar (Ed.), *Transition to Democracy in Poland*. Basigstoke: Macmillan.
- Millard, F. (2000). Presidents and democratization in Poland: The roles of Lech Wałęsa and Aleksander Kwaśniewski in building a new polity. *Journal of Communist Studies and Transition Politics*, 16:3, 39-62.
- Podolian, O. (2008). The Role of Political Actors in Distributing Power During Constitution-Making Process: The Case of Ukraine. *CEU Political Science Journal*, Vol. 3, No. 4, 403-432.
- Protsyk, O. (2003). Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine. *Europe-Asia studies*, vol. 55, no. 7, 1077-1095.
- Protsyk, O. (2005). Prime ministers' identity in semi-presidential regimes: Constitutional norms and cabinet formation outcomes. *European Journal of Political research*, vol. 44, 721-748.
- Public Opinion Research Center. (2004). *Polish Public Opinion* [Data File]. Retrieved from http://www.cbos.pl/PL/publikacje/public_opinion/2004/10_2004.pdf
- Public Opinion Research Center. (2007). *Polish Public Opinion* [Data File]. Retrieved from http://www.cbos.pl/PL/publikacje/public_opinion/2007/01_2007.pdf

- Pugačiauskas, V. (1999). Semi-presidential institutional model and democratic stability: comparative analysis of Lithuania and Poland. *Lithuanian Political Science Review*. Retrieved from <http://www.pugaciauskas.lt/study/ltupol.pdf>
- Sadurski, W. (2008). The Constitutional Order. In L. Kolarska-Bobińska, J. Kucharczyk, and J. Zbieranek (Eds.), *Democracy in Poland 2005-2007*. Warsaw: Institute of Public Affairs.
- Shugart, M. S., and Carey, J. M. (1992). *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press.
- Staśkiewicz, W. (2008). The Legislative Process. In L. Kolarska-Bobińska, J. Kucharczyk, and J. Zbieranek (Eds.), *Democracy in Poland 2005-2007*. Warsaw: Institute of Public Affairs.
- Taras, R. (1998). Voters, Parties, and Leaders. In R. F. Staar (Ed.), *Transition to Democracy in Poland*. Basingstoke: Macmillan.
- Tsebelis, G. (2002). *Veto Players: How Political Institutions Work*. Princeton: Princeton University Press.
- Wyrzykowski, M. (2011). Ten Lessons in Constitutional Resilience. *European-Asian Journal of Law and Governance*, vol.1, no. 2, 174-186.