

ICPS newsletter[®]

Ukraine's political system: Crash, freeze, reboot

*For the umpteenth time, Ukraine finds itself hostage to a serious political crisis. The International Centre for Policy Studies has pointed out many times that, without democratic institutions that can protect and entrench the democratic freedoms the country has attained, political stand-offs among various political players will continue to push the country into repeated dead ends. ICPS analysts Viktor Chumak and Ivan Presniakov wrote an article for the on-line publication *Ukrainska Pravda*, on problems with Ukraine's political system and possible directions that the political process could evolve in*

At this point, all of Ukraine's politicians have come to the obvious conclusion that, without serious institutional changes, we will continue to suffer from the same old problems. Still, their approach has changed not at all. The post held by the given politician—not common sense or a sense of responsibility—determines their political position and their view of what the necessary direction of any reform should be. And this makes the positions of key political players both different and changeable.

In its ambition to be democratic, the new "democratic" coalition has started to eat itself. Statements by the President and Premier, who lead the political forces in the current VR coalition and Government, make it clear that they are at the polar extremes of the political system in Ukraine today and have absolutely incompatible views of its future. The rivalry between them has moved to a personal, uncompromising vendetta. *De facto*, the coalition has long ceased to exist, although *de jure* it could continue on for some time.

Another election on the way

The country is currently marching in seven-league boots towards another snap election to the Verkhovna Rada. Still, there are two very different scenarios for how this might be undertaken.

Early elections could be called if the coalition collapses, something that is awaited at this point like the fall of an overly ripe apple. Or they could be the result of Constitutional changes.

First scenario: The coalition crashes

According to the Constitution, one of the partner factions in the coalition must decide to leave the coalition. Declarations about their withdrawal by individual deputies do not establish the necessary conditions for its breakdown. Even if the President wanted the coalition to fall apart, there are not enough willing deputies within the NU–NS faction to form the necessary majority to make the decision to walk out of the coalition. BYT also has little interest in being labeled the "murderer of the Orange dream."

The coalition is in state of suspended animation. Neither side in the coalition can afford to make a move to leave it, without risking the epithet of "ultimate traitor." And yet neither side wants to continue co-existing in the current "frozen" mode, as it is blocking the possibility of undertaking any initiatives and is costing them voter support.

With the help of the President, the opposition could come to power by initiating a vote of non-confidence in the Government. In order for this to work, they would need at least partial support from the NU–NS faction. The

resignation of the Government would untie BYT's hands and allow it to walk out of the coalition, while blaming the President's circles for their betrayal and the destruction of the coalition.

It is impossible to set up an alternative coalition in the legislature according to current norms. The Party of the Regions, CPU and Lytvyn Bloc do not have the necessary number of seats, while BYT will not join forces with PR under any circumstances. Within NU–NS itself, of course, there are not enough deputies to agree to form a coalition with PR. Under the Constitution, should there not be a coalition formed within 30 days, the President has the right to dismiss the Verkhovna Rada. For such a decision to be completely legitimate, it has to be taken no sooner than a year after the previous snap election, that is, no sooner than 1 October 2008.

Constitutional reform as blackmail

The Constitutional reform about which everyone is talking and over which they are all in disagreement could well remain little more than a straw man that politicians use in negotiations in order to change the positions of their opponents. The President is against any move towards a parliamentary republic. Although he appears to be the weaker player, compared to BYT and PR, he has enough options at his disposal to block Constitutional reform if it goes in a direction that is unfavorable to him. This, he can do in one of two ways: by blocking the work of the Constitutional Court—notably, Justice Suzanna Stanik was unable to regain her position after being dismissed by him—or by continuing to negotiate with Party of the Regions. The latter still has not

made its position clear, whether it wants to alter the Constitution together with BYT or whether it wants to oppose BYT together with the President.

Elections without reform will change little

Strategically, this first option is not especially convenient for any of the sides. Still, for tactical purposes, any one of them could decide to go for it. The President will resort to this if the alternative to new elections is an amended Constitution that weakens the Presidency.

Moreover, the President's negotiating position after another snap election will grow stronger because of the right to reject a candidate for Premier, which is one of the changes in the newly-passed Law "On the Cabinet of Ministers of Ukraine." Both BYT and PR could go for such elections in anticipation that they will increase their seats in the Rada and that the political situation will be more favorable for setting up a loyal coalition.

The consequences of another snap election are obvious. Since Nasha Ukraina is unlikely to be the leader of the future coalition, there is likely to be a fresh round of conflict between the President and the newly-appointed Premier in terms of powers, appointments, political leadership, and the government agenda. Politicians, and all of Ukraine's voters behind them, will find themselves in another vicious cycle, which will inevitably lead to the next political crisis.

Any pre-term elections that take place in the late fall are not going to resolve the systemic problems with Ukraine's politics. They will only make clear, once more, how impossible it is for the Government to work effectively without undertaking systemic changes.

Second scenario: A parliamentary republic in 2009

There is, of course, another, somewhat adjusted scenario available. But whether it is more optimistic or not is

hard to say just yet. The catalyst for this scenario could be the Constitutional process that the President set in motion through the National Constitutional Council (NCC).

The NCC has prepared its concept of Constitutional amendments that are loyal to the Office of the President. Still, the process is no longer in his control: the active position of the President forced all the other political players to join the Constitutional game and declare their own intentions. On the surface, there appears to be consensus between BYT and Party of the Regions that Ukraine needs to move towards a parliamentary republic. The submission of draft amendments to the Constitution shortly will establish legitimate grounds for setting up a special VR Constitutional commission to come up with an agreed text for these changes.

The Constitutional amendments submitted in the Rada by various political forces will become agreed in the form of a draft Law by the end of the current session. They then pass first reading and are sent to the Constitutional Court for a ruling. The Court very quickly hands down a ruling regarding the constitutionality of these amendments and sends this to the Rada right at the start of the next session of the legislature.

At this next session, no later than October, these Constitutional amendments are passed and come into force after pre-term Presidential and Rada elections. These elections are called for no later than the end of May 2009, that is, more than half a year before the next scheduled Presidential race, in accordance with the Constitution. And in June 2009, Ukrainians find themselves living in a parliamentary republic.

Constitutional reform needs stakeholder input

Why is this less than optimistic as an option? For this model not to turn into a complete dictatorship of the ruling party, the process of developing the

Constitution needs to be transparent and more interest groups and stakeholders need to be engaged in this process. If BYT and PR decide to cut deals with each other, they will be doing the same as the President in his draft amendments: they will write these amendments "for themselves" and not for the future of Ukraine's democratic system. And where the President's version of the Constitution seems an attempt to corner the judiciary under his office, the BYT version includes such anachronisms as imperative mandates or—even more astounding—a two-round proportional electoral model, which gives most of the seats in the legislature to one party and makes it impossible for minor parties to influence state policy by joining the ruling coalition.

A lot depends on the President with this particular scenario. He needs to take on the role of moderator in the revived Constitutional process, and engage more interest groups and stakeholders in the process. This would be a fine conclusion to his historic objective to democratize Ukraine.

Or, the President could decide differently. If his idea of adopting a Constitution that favors the Presidency through a national referendum does not fly, then his main political objective should be to put a wrench in the works of his political opponents' versions. If so, the chance to move towards a more effective system of government will have been lost and Ukrainians can look forward to the next round of snap elections without any institutional changes and, essentially, without any purpose whatsoever. That means Ukraine's political system will continue moving in its familiar pattern: crash, freeze, reboot. ■

The full version of the article can be found at <http://www.pravda.com.ua/news/2008/5/21/76171.htm>.

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