

Alterations in Semi-Presidential Framework in Ukraine: Appointment and Dismissal Powers of the President

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Abstract

This research examines changes of constitutional presidential powers in Ukraine regarding appointment and dismissal of public officials. I investigate alterations in presidential powers in two frameworks of power separation defined as president-parliamentary (1996-2004, 2010-2014) and premier-presidential (2004-2010, 2014-to present) ones. In order to deal with my research problem, I apply content analysis of the data of 1996, 2004, 2010, and 2014 versions of Ukrainian constitution and construct a dataset of values of president's appointment and dismissal powers and group the powers into several dimensions depending on the sphere of competency of public offices. They are cabinet, law enforcement and defense bodies, diplomacy, and executive officials. I code the values of indicators according to the level of involvement of president in the appointment and recalling procedure. The main findings of this research show that the 2004 and 2014 amendments of constitution in comparison to 1996 and 2010 versions marked decrease of presidential powers regarding the main indicators. I found that most of appointment and dismissal powers are divided between president and parliament and this division grew after amendments of 2004 and 2014. In order to support my empirical findings, I try to situate them in the context of political development of Ukraine providing some actual examples of decisions on appointment and dismissals.

Keywords: Ukrainian constitutional framework, semi-presidentialism, presidential powers, appointment, dismissal.

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Table of Contents

Introduction	1
Puzzle of Appropriate Presidential Powers in Ukraine	3
Research question.....	5
Structure of the research.....	6
Chapter I. Conceptual Framework	8
Introduction	8
Semi-Presidentialism and its Two Subtypes: President-Parliamentarism and Premier-Presidentialism .	8
Indexes of Presidential Powers and Their Criticism.....	13
The Role of Appointment-Dismissal Powers of President in Ukraine.....	15
Chapter II. Measurement of Constitutional Data on Presidential Appointment and Dismissal Powers	21
Introduction	21
Measurement of Presidential Appointment and Dismissal Powers	23
Chapter III. Analysis of Constitutional Data on Appointment and Dismissal Powers of President	33
Introduction	33
Appointment and Dismissal Powers on Cabinet.....	33
Appointment and Dismissal in Law Enforcement Bodies and Defense Staff.....	38
Appointment and Dismissal Powers in Diplomacy Staff and Internal Executive Offices.....	41
Pattern of Relations with Parliament under the Two Frameworks	42
Conclusion.....	49

List of Figures and Tables

Table 1. President's Appointment and Dismissal Powers.....	25
Table 2. President's Appointment and Dismissal Powers On Cabinet.....	28
Table 3. President's Appointment and Dismissal Powers within the System of Law Enforcement and Defense Bodies	29
Table 4. Appointment and Dismissal of Foreign Policy Officials and Diplomats.	29
Table 5. Appointment and Dismissal of Other Executive Officials.....	30
Table 6. Constitutional Changes in Parliamentary Origin and Survival.....	42
Figure 1. Appointment and Dismissal Powers on Cabinet.....	33
Figure 2. Appointment and Dismissal in Law Enforcement Bodies and Defense Staff.....	38
Figure 3. Appointment and dismissal powers of president in foreign policy and internal executive offices.	41

Introduction

The top video streams as well as journal columns all over the world were occupied by the news from Ukraine since late November 2013. The events developed so fast and intensively that the chain was hard to reproduce. Unexpectedly for Ukrainian government it turned out that people in this country were ready to defend their European choice. Thus, rejection of Ukrainian president to sign up the agreement with the EU led to unexpected outbreak of public protests and taking over of the governmental buildings. What was also unexpected is that the government used force against demonstrators that caused deaths of nearly one hundred people. Protests did not dissolve but escalated and the president escaped from the country. Immediately after the interim government acquired its duties Crimea was annexed. The new president elected in June, 2014 promised to resolve unrest in the Eastern regions caused by pro-Russian armed people and lead country to democratic reforms.

The reasons of all these events could be named numerous. Firstly, EuroMaidan was not the only mass anti-governmental campaign in the last ten years in Ukraine. Another huge public protest mobilization against a government that resulted in regime change was Orange revolution in 2004. Therefore, this country had long tradition of protesting. Secondly, Ukrainian official foreign policy course has been hedging between the two super powers – the EU and Russia and integration with both seemed controversial. Thirdly, instead of building of an effective identity and regional policy the governments of the last few presidents were engaged in political technologies that resulted in deepening the pattern of East-West cleavage in the country¹.

¹ Vladimir Paniotto, and Vasilii Maksimenko. 2005. "The Impact of the Ukrainian Presidential Election 2004 on Ethnic Relations in Ukraine (Empirical Data Statistical Analysis)." *Nuukovi Zapysky. (Sociologichni Nauky)* 46 (Paniotto), 16

One of the important reasons for the lack of political stabilization is the missing status quo in constitutional structure and power sharing institutions. The evidence of this is hedging between constitutional frameworks that differ in relation to presidential powers and electoral rules. As for presidents, it is both in the view of the public and of the academic researches that Ukrainian presidents were unpopular figures and even lame-ducks². However, they were granted with enormous presidential powers. The original 1996 constitution prescribed the president huge control over governmental structures as well as various decree and veto powers³. However, the incumbent president in 2004 fails at appointing his successor and the outbreak of Orange revolution brings the opposition candidate to power. Together with the new regime Orange revolution caused constitutional changes that significantly reduced presidential powers.

Frequent variations in constitutional rules of power sharing could have convinced the politicians that those rules are a permanent subject of revision depending on the bargaining power of the figure in the highest governmental office. Therefore, for example, president Yanukovich who obtained support from the conformist parliamentary coalition and Constitutional Court managed to annul constitutional reform of 2004, the one that prescribed restricted presidential powers. In 2013-2014, however, history repeats again. Mass political upheavals leave a sign in the Constitution according to which the powers of president are reduced again to the type established by amendments of 2004. It is just the restoration of the previous constitutional version but further constitutional changes might follow.

² Hale, Henry E. 2005. "Regime Cycles: Democracy, Autocracy, and Revolution in Post-Soviet Eurasia", *World Politics*, 58 (1), 161.

³ Protsyk, Oleh. 2003. "Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet N Ukraine." *Europe-Asia Studies* 55 (7), 1077

Being aware of the variety of reasons of instability of Ukraine, this work focuses on the institutional conditions that could be perilous for establishing a durable political regime in Ukraine. In particular, I aim at examining the variance in appointment and dismissal presidential powers according to the constitutional versions, namely the original 1996 one, the one introduced by constitutional reform of 2004, then after the abolishment of constitutional reform in 2010 that restored the 1996 version, and finally return to the 2004 version which happened in 2014.

Puzzle of Appropriate Presidential Powers in Ukraine

Debates about the concept of presidential powers did not stop in Ukraine since 1996 when the original version of Ukrainian constitution was adopted. In his 2003 article O. Protsyk stated that choice of political power institutions was still an issue in Ukraine unlike in most post-communist transitional countries where it had already been settled and decision making moved to the scope of everyday political problems through the rules set⁴. Although researcher Andreas Umland calls constitutional settlement in Ukraine an overdue issue⁵, it does not lose relevance even in 2014 and particularly 2014 is the time when it becomes extremely topical after the EuroMaidan revolution. Because of the significance of political will to reform Ukrainian legal framework according to European democratic standards and the awareness that present 2004 version contains ambiguous principles, further amendments and experimentations are very likely to take place. Therefore, relevance of academic research in the field of constitutional structure is connected with its timeliness in practical terms.

⁴ Ibid., 1078

Though the talks about the powers of Ukrainian president are widely present in everyday politics, they might lack some academic dimension which makes it much more likely to become a topic of political speculations with the public⁶. This speculation was observed back in 1996, in time of adoption of constitution in the draft which was backed by president and prescribed significant powers to him. It was also observed in 2000 when president Kuchma initiated referendum on extending presidential powers on dissolving parliament and limiting immunity of MPs and got huge popular consent on all the questions in the ballot. Despite that the results were never implemented into the constitution in Ukraine, they witnessed at least that institution of president of Ukraine enjoyed more public trust and support than the institute of Parliament did.

Scholarly research of presidential powers in Ukraine is not missing at all (for example, such scholars as Wolczuk⁷, Protsyk⁸, Sedelius⁹ and others produced circumstantial works in this field) but because constitutional changes happen so frequently there is a need to investigate this field further. Due to the frequent reforms in constitutional rules, existing research contains a gap in examining this topic because rich scholarly analysis needs years to be done. Therefore, the gap is detected particularly in the studies of the more recent constitutional changes of 2010 and 2014. Therefore, relevance of this topic is explained through the need to investigate what research in

⁵ Umland, Andreas. 2014. Politreforma dlya Ukrainy [Political Reform for Ukraine] Ukrainian Truth 2 May 2014 <http://www.pravda.com.ua/rus/columns/2014/05/2/7024039/>

⁶ Umland, Andreas. 2010. "What Political System Does Ukraine Need? From Presidentialism to Parliamentarism." *OpEdNews*. <http://www.opednews.com/articles/What-Political-System-Does-by-Andreas-Umland-101028-518.html>.

⁷ Wolczuk, Kataryna. 2001. *The Moulding of Ukraine : The Constitutional Politics of State Formation*. Budapest: CEU Press.

⁸ Protsyk, Oleh. 2003. "Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet N Ukraine." *Europe-Asia Studies* 55 (7), 1077–95.

⁹ Sedelius, Thomas. 2012. "Towards Presidential Rule in Ukraine: Hybrid Regime Dynamics Under Semi-Presidentialism." *Baltic Journal of Law and Politics* 5, 40.

political science can say about the structure of institution of president and its recent changes in Ukraine.

At the time of investigation of existing research work on constitutional powers of Ukrainian president I observed that one of the missing topics is presidential powers on appointment and dismissal of other officials. Relevance of this research is that it generalizes the constitutional data on presidency in Ukraine, analyzes it through the set of indicators, and compares between the two constitutional structures that functioned in this country. This research contributes to the existing one in the empirical analysis of constitutional framework and presidential powers in Ukraine. Also, findings as well as analytical framework of this research can be used in the comparative and case studies of constitutional structure of other transitional countries, in particular semi-presidential ones.

Research question

The question of appropriate presidential powers in Ukraine becomes a real puzzle for academicians as well as policy makers. There are basically two options: either the president of Ukraine should be a symbolic figurehead¹⁰ or a sufficient warrant of sovereignty, unity and vector for reforms of the state¹¹. This research takes, however, a more modest objective of comparison between already existing constitutional frameworks in regard to their variance in presidential powers - the original 1996 version and the one after the constitutional reform of 2004. Those constitutional frames are conceptualized theoretically as varieties of semi-

¹⁰ Umland, Andreas. 2014. Politreforma dlya Ukrainy [Political Reform for Ukraine] Ukrainian Truth 2 May 2014 <http://www.pravda.com.ua/rus/columns/2014/05/2/7024039/>

¹¹ Lutsevych, Orysia. 2014. "Theree Priorities to Restart Ukraine after Presidential Elections." *Chatham House: The Royal Institute of Foreign Affairs*. <http://www.chathamhouse.org/expert/comment/14510>.

presidential forms of government, in particular president-parliamentarism (1996-2004), (2010-2014) and premier-presidentialism (2004-2010), (2014- up to now). Each of these structures was restored and banned several times in Ukraine.

The main objective of this research is to describe and compare between the two constitutional frameworks focusing on particular aspect of these powers – the rights to appoint and dismiss other officials. I identify and distinguish between the types of constitutional frameworks in Ukraine using indicators of presidential powers. Therefore, I examine indicators are plausible to measure presidential powers in Ukraine and their change and in which of them the changes were significant and in which they were minor.

Structure of the research

In order to examine the alterations in constitutionally prescribed appointment and dismissal powers of president in Ukraine, this research aims at building the framework for analysis of constitutional framework of 1996, its amendments in the year of 2004, restoration of 1996 version in 2010 and restoration of 2004 version in 2014 with focus on appointment and dismissal presidential powers. In order to reach my research goals, I conduct content analysis of constitutional data and present it in comparative tables of indicators.

This thesis proceeds as following:

In the first chapter, I will elaborate on my theoretical framework focusing on the main concepts applied in the research. Separate subchapters will be devoted to the concepts of semi-

presidentialism, definitions of presidential powers, and arguments of why powers to appoint and dismiss lower officials played crucial role in defining the separation of powers between president and parliament. This framework is applied to the case under analysis for the years since 1996 (adoption of the original constitutional version) till 2014. In first subchapter of the second chapter, I will define my methodology, justify the choice of the indicators, and explain the coding procedure. In the following subchapter I will present empirical data from Ukrainian constitutional versions of 1996 (restored in 2010) and 2004 according to indicators of presidential powers. Then I will explain briefly the results of analysis that was made. In the third part, I will give interpretation to the main findings of the empirical analysis and then try to situate it in the context of the political development of Ukraine. Here I will indicate on which parameters the indicators showed no changes between the two structures and where the changes could be observed by political scientists. I will also support my findings with some actual examples from Ukrainian political life. In the concluding part, I will elaborate the main perspectives of future constitutional development in Ukraine as well as perspectives for future research in this field.

Chapter I. Conceptual Framework

Introduction

This chapter deals with conceptualization and elaboration of the main terms used in this research and the relationship between them. First, I will explain the theoretical definitions of the main concepts applied. They are semi-presidentialism and its two subtypes which were introduced by versions of Ukrainian constitution – president-parliamentarism and premier-presidentialism. Then I will present the ways of measurement of presidential constitutional powers which pretend for precision and explain the possible pitfalls which the researcher could face applying those concepts for studying political institutions in Ukraine. In the last subchapter I try to argue why my concept of presidential powers which focuses on president's appointment and dismissal powers is the most useful for the purpose of my research on the Ukrainian context. I argue that the powers to appoint and impeach other officials establishes or eliminates either informal clientalistic relationships between politicians or formal relations of accountability between them.

Semi-Presidentialism and its Two Subtypes: President-

Parliamentarism and Premier-Presidentialism

Trying to define the constitutional framework of Ukraine one comes across the concept of semi-presidentialism widely present in scholarly research. This concept has been a topic for investigations and scholarly debates since its emergence. The most famous works on semi-

presidentialism belong to M. Duverger¹², M. Shugart and J. Carey¹³, R. Elgie¹⁴, M. Shugart¹⁵, and R. Elgie¹⁶. The first historical prototype of semi-presidential state is agreed to be Weimar republic where constitutional structure was a product of theoretical construction of German social scientists including Max Weber but fell under Nazi dictatorship. However, the first time the term appeared was only in 1959 in the work of Hubert Beuve-Mery, a journalist in French “Le Monde”¹⁷. Maurice Duverger is the first scholar who theoretically and systematically defined semi-presidentialism and used this term to describe the system of government of the Fifth Republic of France¹⁸. His concept with some modifications was used by Robert Elgie who is the author of several works on semi-presidentialism and the author of a blog in the Internet “The Semi-Presidential one”¹⁹. Under his notion, semi-presidentialism “is a situation where a popularly elected fixed term president exists alongside a prime-minister and cabinet who are responsible to parliament”²⁰. This supposedly corresponds to the Ukrainian type of constitution through all its amendments.

Elgie’s concept was criticized by further research due to its breadth and vagueness. D. Boban fairly points out that it is focused mostly on the source of legitimacy of president and

¹² Duverger, Maurice. 1980. “A New Political System Model: Semi-Presidential Government.” *European Journal of Political Research*, 8 (2), 165–87.

¹³ Shugart, Matthew, and John Carey. 1992. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press.

¹⁴ Elgie, Robert. 1999. *Semipresidentialism in Europe*. Comparative Politics. Oxford ; New York: Oxford University Press.

¹⁵ Shugart, Matthew Sobert. 2005. “Semi-Presidential Systems: Dual Executive And Mixed Authority Patterns”. *French Politics*, 3, 323-351.

¹⁶ Elgie, Robert. 2008. “The Perils of Semipresidentialism. Are They Exaggerated?”. *Democratization*, 15(1): 49-66.

¹⁷ Elgie, Robert. 1999. *Semipresidentialism in Europe*. Comparative Politics. Oxford ; New York: Oxford University Press, 1.

¹⁸ Ibid

¹⁹ Elgie, Robert. “The Semi-Presidential One.” <http://www.semipresidentialism.com/>.

²⁰ Elgie, Robert. 1999. *Semipresidentialism in Europe*. Comparative Politics. Oxford ; New York: Oxford University Press, 13.

parliament leaving aside other important features of the constitutional structures²¹. Following his definition, this author identifies 55 regimes over the world as semi-presidential ones as soon as they have dual basis of electoral legitimacy, dual executive, and functioning legislature. However, Elgie does not specify to which degree the cabinet should be responsible before parliament in order to define the regime as a semi-presidential one. In this regard, Davor Boban, for instance, criticizes inclusion of Slovenian regime into semi-presidential type made by Elgie, because the role of president is insignificant, he has no relations with cabinet which allows defining the state as parliamentary²². Therefore, throughout existence of this term it remained unclear how to demarcate this type of government from other types and identify whether this or that political regime can be defined as a semi-presidential one.

Elgie distinguishes between the three types of semipresidentialism: highly personalized semi-presidentialism, balanced semi-presidentialism, and semi-presidentialism with ceremonial presidents²³. In his 2005 article he defines Ukrainian 1996 framework as “balanced semi-presidentialism” in which separation of powers between president and cabinet may or may not lead into political trap, though on the case of Ukraine it did²⁴. Therefore, Elgie’s own distinctions seem imprecise because he gives no exact clue about how to distinguish between the types of semi-presidentialism he offers.

In his concept of semi-presidentialism Shugart stresses on the powers that certain actors possess and goes further identifying the power relationships that those constitutional powers

²¹ Boban, Davor. 2007. “‘Minimalist’ Concepts of Semi-Presidentialism: Are Ukraine and Slovenia Semi-Presidential States?” *Politička Misao* XLIV (5). Comparative Studies, 175.

²² Boban, Davor. 2007. “‘Minimalist’ Concepts of Semi-Presidentialism: Are Ukraine and Slovenia Semi-Presidential States?” *Politička Misao* XLIV (5). Comparative Studies, 155–77.

²³ Elgie, Robert. 2005. “A Fresh Look at Semipresidentialism. Variations on the Theme”. *Journal of Democracy*. 16 (3),109

should establish²⁵. In this regard, Shugart and Carey suggest further subdivisions inside semi-presidential form of government depending on the type of actor who is responsible for origin and survival of the cabinet, therefore to whom the cabinet is accountable. In this regard, the authors distinguish between premier-presidential (cabinet is responsible only to parliament) and president-parliamentary regimes (prime-minister's and cabinet's responsibility is divided between parliament and president)²⁶. Scholars who study Ukrainian institutional development, most often follow Shugart's and Carey's concepts of president-parliamentarism applying it to the 1996-2004 and 2010-2014 constitutional framework whereas they tend to apply the concept of premier-presidentialism to the framework of 2004-2010²⁷ and since 2014 (as the 2004 reform was restored)²⁸. The two subtypes mentioned by Shugart and Carey – premier-presidentialism and president-parliamentarism - are crucial for this research because they indicate the difference between the two Ukrainian constitutional frameworks that both fall into semi-presidential type of governance.

By comparing subtypes of semi-presidentialism Shugart and Carey stress on superiority of premier-presidentialism where presidential powers are restricted and legislature enjoys control over cabinet. Elgie also notices the regularity that most of the countries that implement semi-presidentialism with strong presidential powers perform badly on democracy indicators as the

²⁴ Ibid, 103.

²⁵ Shugart, Matthew Sobert. 2005. "Semi-Presidential Systems: Dual Executive And Mixed Authority Patterns". *French Politics*, 323-351.

²⁶ Shugart, Matthew, and John Carey. 1992. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press.

²⁷ Sedelius, Thomas. 2012. "Towards Presidential Rule in Ukraine: Hybrid Regime Dynamics Under Semi-Presidentialism." *Baltic Journal of Law and Politics* 5, 20-45.

²⁸ Elgie, Robert. "The Semi-Presidential One." <http://www.semipresidentialism.com/>.

systems of constitutional checks might be violated there. Also Frye (1997) found that among post-Soviet countries strong presidentialism with quite high reliability is associated with authoritarian tendencies and weaker implementation of economic reforms (Frye 1997).

Shugart's concept is of special importance for this research as they focus on the distribution of powers between president, parliament, and cabinet in his definition of the system of government. However, this concept also raises some questions regarding limits of its application. For instance, Andreas Umland, a political scientist who specializes in post-Soviet politics claims that it makes sense to talk about semi-presidentialism in Ukraine only after 2004 constitutional reform whereas before that time the state should be identified as purely presidential rather than president-parliamentary one²⁹. In this regard, the scholar calls prime-minister fully controlled by the president which does not apply to Shugart's definition of semi-presidentialism. Indeed, on the case of Ukraine of 1996 constitutional version parliament possessed some level of control over cabinet but it was shared with the president. The political practice showed that cabinets were dismissed by president much more often than by parliament. For example, from 1996 till 2003 only 3 out of 10 prime-ministers were dismissed by the parliament whereas 7 of them were terminated by president due to collective action problem associated with parliament³⁰. This last factor together with presidential decree and veto powers allowed the latter to build a strong pyramid of dependency of other branches on president. Therefore, formally accountability of cabinet was divided which allows to define the structure as

²⁹ Umland, Andreas. 2014. Politreforma dlya Ukrainy [Political Reform for Ukraine] Ukrainian Truth 2 May 2014 <http://www.pravda.com.ua/rus/columns/2014/05/2/7024039/>

³⁰ Protsyk, Oleh. 2003. "Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet N Ukraine." *Europe-Asia Studies* 55 (7), 1080.

president-parliamentary subtype of semi-presidentialism. In fact, there was considerable supremacy of presidential control over government which raises questions to appropriateness of Shugart's concept of semi-presidentialism and president-parliamentarism in application to Ukrainian constitutional framework of 1996-2004 and 2010-2014. In this sense, Shugart's and Carey's concept that focuses on relations between different power branches according to the constitution and particularly on the power to hold cabinet accountable seems ambiguous like Elgie's one.

As it is indicated above, defining presidential powers through theoretical concepts relying on either the nature of power legitimacy (Elgie) or on the relations of branches towards cabinet (Shugart and Carey) leaves some level of imprecision. That is why it seems plausible to give some attention to the more precise quantifiable evaluations of presidential powers. The next subchapter elaborates on the ways of quantifiable measurement of presidential powers in order to clearly define constitutional structure.

Indexes of Presidential Powers and Their Criticism

Among the studies of political institutions that deal with measurement of presidential powers many tend to compose one-dimensional indices so convenient for comparative evaluations of presidential powers across countries. They aggregate the possible powers that the president could possess and add up all the powers presidents in particular countries really possess. Then those indices just give exact numbers to the amount of all constitutional power of the president according to the proposed indicators following the constitution of a particular country. The first attempt to use this approach goes back to Shugart and Carey who develop a

scale of power indicators for presidential countries in the United States and Latin America³¹. A few years later Frye and his coauthors develop the entire index of measurement of presidential powers in post-communist countries based on method borrowed from Shugart and Carey³². These authors suggest presidency rankings on the basis of 27 formal indicators defining formal constitutional powers³³. Armingeon and Careja work in the same approach of calculations of all powers of presidents in post-communist countries prescribed by the constitution³⁴. Calculations used in these researches allow to compare between the amounts of power the presidents of particular countries enjoy.

These methods of calculations, however, are criticized by other researchers. Some scholars, like J. Fortin criticize the idea of aggregate measurement of presidential powers challenging whether those indexes really create unidimensional scale³⁵. Applying factor analysis to the indicators proposed by previous research and correlating the variables among each other, the author finds out that measurement schemes proposed by other scholars do not fall within one-dimensional scale. Therefore, she suggests that in defining and measuring presidential powers there is a need to give descriptive presentations of presidential powers for different regimes or classify the powers into several dimensions.

Besides questioning whether the powers form one-dimensional scale, it can also be questioned whether all of those powers possess the same level of importance to identify the

³¹ Shugart, Matthew, and John Carey. 1992. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press.

³² Frye, Timothy. 1997. "A Politics of Institutional Choice." *Comparative Political Studies* 30 (5), 523–52.

³³ Ibid

³⁴ Armingeon K and Careja R (2007) *Comparative Data Set for 28 Post-communist Countries, 1989–2007*. Bern: Institute of Political Science, University of Berne

³⁵ Fortin, Jessica. 2012. "Measuring Presidential Powers: Some Pitfalls of Aggregate Measurement." *International Political Science Review* 34 (1), 91–112.

strength of president. The general idea behind the indexes of presidential powers is that if the president possesses a huge amount of powers according to the constitution, it implies his high/dominant position within system of separation of powers and the smaller is the amount of his/her powers on the paper, the less powerful he is. However, the problem with those researches might be that some of the power indicators seem essential in defining whether the president is strong and others might play quite marginal role. Therefore, scholarly attention should be paid to those powers which are significant in defining presidential powers.

The Role of Appointment-Dismissal Powers of President in Ukraine

Among the previous researches that focused on the particular presidential powers instead of calculating all of them, comprehensive attention has been given to emphasis on the legislative and veto powers of presidents³⁶. Those researches focus the role of presidents in agenda setting in legislative process and comparison of their role with the role of parliaments.

Much smaller attention has been paid to the powers of presidents to appoint and dismiss other officials that occupy a considerable part of the Constitution of Ukraine. As it will be argued further in the research, the power of Ukrainian president to appoint and dismiss the top-level public officials define the type of constitutional relations between different branches and offices and are crucial in identifying the powers of president. The previous research neither makes detailed descriptions of this type of powers of presidents, nor estimates the effects those powers produce.

³⁶ Tsebelis, George, and Tatiana Rizova. 2007. "Presidential Conditional Agenda Setting in the Former Communist Countries." *Comparative Political Studies* 40 (10), 1155–82.

In trying to define which powers of Ukrainian president are significant it is worth tracing back how the presidential powers changed over time in institutional terms and whether those changes led to a significant shift of the balance of powers from one actor to another/ others. As it will be showed further in the research, the most crucial differences between the two frameworks regarded appointment and dismissal powers of cabinet and other state agencies, including law enforcement bodies which were traded between parliament and president. This comparison leads me to argue in this research that in the context of Ukraine the crucial indicator of presidential powers is appointment-dismissal ones. I support my claim by comparing between the two constitutional structures that functioned in Ukraine – since 2004 and since 2010 till 2014 which shifted appointment-dismissal powers and at the same time shifted balance of powers between president, legislature and cabinet.

There are several reasons why in defining presidential powers for Ukrainian president this aspect is crucial and they are connected with the specificity of relationships between different governmental cabinets and branches that are defined by the power to appoint and dismiss other officials.

The first reason is connected with the way of politicking in Ukraine which applies also to many other transitional countries. This specific structural characteristic of Ukrainian politics is political clientalism, or logic of clans, according to which “incentives and sanctions... exist within the network of individuals linked by kin-based bonds”³⁷. By creating these incentives and sanctions through appointing and recalling of public officials, presidents control the informal relations within different clans in politics. According to K. Matsusato, Ukrainian presidents used

³⁷ Collins, K. 2006. *Clan Politics and Regime Transition in Central Asia*. Cambridge University Press, 231.

their powers to appoint and dismiss officials as the tool to manipulate between different clans³⁸. Therefore, the last government headed by Mykola Azarov contained members from the two clans, the so-called Yanukovych's own "family" and people of his main business partner, the richest person in Ukraine Rinat Akhmetov³⁹. For example, the president would use his prerogative to appoint officials in order to make a favor in reward or because of other informal ties between him and his friends, family, and partners which in fact have nothing to do with formality of constitutional prescriptions or with the professional characteristics of the candidate. For instance, minister of energy and coal industry Stavytsky in the government of Azarov was the man who helped Yanukovych to privatize his famous mansion Mezhyhirya and accompanied the president to the mountain Athos for pilgrimage⁴⁰. Therefore, the president's powers to appoint and dismiss the cabinet and other officials was used as a tool to influence informal ties inside clan-like structures in politics.

The second reason why appointment and dismissal powers are important does not apply solely to the specific constraints of Ukrainian politics. Appointment and dismissal powers establish specific governmental relations, for example, they are means for horizontal accountability. According to O'Donnell's concept, horizontal accountability is the existence of state agencies that are "willing and able to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies

³⁸ Matsuzato, Kimitaka. 2005. "Semi-presidentialism in Ukraine: Institutional Centristism in Rampant Clan Politics." *Demokratizatsiya*. 13(1), 45-58.

³⁹ Leshchenko, Serhiy. 2012. "Simyi Yanukovycha. Versiya 1.0. [Government of Yanukovych's Family. Version 1.0.]" *Ukrainska Pravda [Ukrainian Truth]*. <http://www.pravda.com.ua/articles/2012/12/25/6980434/>.

⁴⁰ Ibid

of the state that may be qualified as unlawful”⁴¹. Within this concept of accountability special attention is given to the ability to sanction in the form of dismissal as only it makes accountability possible, according to O’Donnell and Kenney, otherwise it is “toothless”⁴². Therefore, the power to dismiss the agent is crucial and depending on whether another actor possesses this powers in regard to the agent relationships between those actors can be defined as hierarchical (if there is a power to dismiss) or transactional (if there is no power to dismiss another actor)⁴³.

The thoughts above lead me to distinguish between the powers to appoint and to dismiss. They establish origin and survival of other public cabinets respectively. The power to appoint officials indicates where the initiative of granting office comes from but it can really set the political game in town only to some extent. So, if the president possesses appointment powers very often parliament in order to prevent power usurpation and ensure some checks between the branches, splits the appointment process into nomination of the candidate and confirmation of him in the office. The power of political initiative, i.e. nomination power, usually comes from the president and parliament is needed to confirm the appointment. But sometimes it is vice versa, like in Ukrainian premier-presidential framework that the coalition presents a candidacy for prime-minister and president submits this candidacy for parliamentary voting⁴⁴. If another branch has to confirm president’s appointment it provides checks and certainly eliminates president’s unilateral power of appointment since parliament can give no consent for appointment of a

⁴¹ Quoted in Kenney, Charles D. (2003). *Horizontal Accountability: Concepts and Conflicts*. In *Democratic Accountability in Latin America*. New York: Oxford University Press, 57.

⁴² Ibid: 60.

⁴³ Shugart, Matthew Soberg. 2005. “Semi-Presidential Systems: Dual Executive And Mixed Authority Patterns”. *French Politics*, 340.

⁴⁴ Article 9 of the Constitution of Ukraine 2014 The Law from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

particular person. In this case the president in his choice of candidacy should take into account whether this or that politician would be acceptable for the coalition. Again there is a double check, therefore when the parliament does not give consent for appointment several times the president has the power to appoint without parliamentary confirmation. In general, power to appoint points who selects the candidate among various available choices.

The power to dismiss a candidate can be even more important since it establishes subordinating relations between the offices. The power to dismiss an official is what really sets hierarchical relations and ensures accountability between different branches according to Shugart⁴⁵. For example, on the case of France which is prototypical for premier-presidential states, the president appoints the prime-minister but because only parliament can dismiss him and his cabinet, the latter is accountable to parliament rather than the president. The similar condition applies to Ukrainian premier-presidential frame with the distinction that here the president even does not appoint the prime-minister and cabinet but only submits the candidacy that is proposed by parliament but has no power to recall him or her. Also in his choice of the candidacy for prime-minister the president should really care of whether parliament would support him or her because if not parliament can immediately dismiss the cabinet.

The previous considerations about split of appointment and dismissal powers between president and parliament, various checks between the two branches in these decisions lead to argue that presidential powers are tightly connected with the parliament. It means that the kind of parliamentary coalition, either it is supportive to president or not, either it is solid or discrete, matters for presidential decisions that need parliamentary consent. This also encourages to

⁴⁵ Shugart, Matthew Soberg. 2005. "Semi-Presidential Systems: Dual Executive And Mixed Authority Patterns". French Politics, 328

describe briefly the type of party system of Ukraine as the type of coalition is supposed to reflect parties in parliament. Therefore, in the last chapter I explain the way the quality of parliamentary coalition is connected to the presidential role in appointing and recalling public officials. In this regard I look at how Ukrainian constitution changed concerning functioning of parliament and how this is connected with the role of president to influence parliamentary decisions.

I conceptualize presidential powers as powers to appoint and dismiss lower officials. In this research, variance of presidential powers in different frameworks is defined mostly by variance in presidential powers to influence origin and survival of other political bodies. My approach takes from the methods of Shugart and Carey who stress on significance of identifying constitutional framework and presidential powers through relations of president to cabinet. I also look at other public offices that are related to president. I follow the researches that enumerate indicators and measure presidential powers but concentrate on one type of such powers – appointment and dismissal powers thus trying to avoid the fallacy of putting different powers into one one-dimensional measurement. In the next chapter, I present analysis of power indicators and how the configuration of presidential powers of appointment and dismissal differed since 2004 and since 2010.

Chapter II. Measurement of Constitutional Data on Presidential Appointment and Dismissal Powers

Introduction

In this chapter, I present analysis of the constitutional data in order to draw the dynamics of constitutional change in Ukraine with the main emphasis on changes in presidential powers to appoint and dismiss public officials. I compare between the four observations – 1996-2005, 2006-2010, 2010-2014, and 2014-to present. Those observations are within two constitutional structures – president-parliamentary 1996-2004, restored in 2010-2014, and premier-presidential 2004-2010, 2014-present. As this work is being done on one case study which is Ukraine, comparison that I conduct is the within case comparison. By within case comparison I mean, according to van Evera, the changes of major variables over time on the one country case⁴⁶.

I apply content analysis to the data of Ukrainian Constitution of 1996 (restored in 2010)⁴⁷ and 2004 (restored in 2014)⁴⁸ versions. Constitutional reform in 2004 was introduced by the law № 2222-IV from 08.12.2004⁴⁹. Another source is decision of Constitutional Court of Ukraine N 20-пп/2010 that legalized the restoration of 1996 version of constitution of Ukraine in 2010

⁴⁶ Evera, Stephen. 1997. “What Are Case Studies? How Should They Be Performed?” In *Guide to Methods for Students of Political Science*, Ithaca: Cornell University Press, 61-63.

⁴⁷ Konstytutsiya Ukrainy [Constitution of Ukraine], dated 28 June 1996, No 25к/ 96-BP, available at zakon.rada.gov.ua/go/254к/96-bp

⁴⁸ Constitution of Ukraine 2014 The Law from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁴⁹ Zakon Pro Vnesennya Zmin do Konstytutsiyi [The Law on Amending the Constitution of Ukraine] № 2222-IV from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/2222-15>

abolishing 2004 reform⁵⁰. My main focus are chapters IV (Parliament of Ukraine), V (President of Ukraine), and VI (Cabinet of Ministers). Ukrainian Constitution is available in the original language⁵¹ and in English⁵². These data is used in order to compare the constitutional structures in relation to changes in presidential powers. Almost all appointment and dismissal powers of Ukrainian president are formulated in the Article 106 (5), (8-14), (22), (23), and Article 90 of the Constitution of Ukraine.

Content analysis is used in order to construct a dataset for measurement of presidential powers. This dataset is compiled by using descriptive method of measurement of presidential powers. According to this method, I am asking whether the president possesses this or that particular power. There could be different answers of whether this power is possessed unilaterally by president or it is shared with parliament. Therefore, I tackle which powers are present and which are not in particular arrangements. In the footnotes I cite the relevant parts of the constitution if the explanations to the values of indicators are needed.

Coding of appointment and dismissal powers:

4 – Yes, president's unilateral decision,

3 – Yes, president's decision requires confirmation of simple parliamentary majority; dismissal belongs to president and parliament,

⁵⁰ Rishennya Konstytutsiinoho Sudu N 20-pn/2010 [Decision of Constitutional Court of Ukraine], September 30, 2010 <http://zakon2.rada.gov.ua/laws/show/v020p710-10>

⁵¹ Konstytutsiya Ukrainy [Constitution of Ukraine], dated 28 June 1996, No 25к/ 96-BP, available at zakon.rada.gov.ua/go/254к/96-вп

⁵² Constitution of Ukraine 2014The Law from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

2 – appointment by parliament upon president's submission; nominate a candidate of PM;
withdrawal before newly elected president,

1 – president presents a candidate, proposed by parliamentary coalition,

0 – president has no such power.

Measurement of Presidential Appointment and Dismissal Powers

The indicators for defining presidential powers are the following:

1. Parliament.

Does the president have a right to dismiss parliament?

2. Cabinet.

Does the president have a power to appoint a prime-minister?

Does the president have power to dismiss a prime-minister?

Does a president have a power to appoint ministers of the cabinet?

Does a president have power to dismiss ministers of the cabinet?

3. Prosecutor General.

Does the president have power to appoint prosecutor general?

Does the president have power to dismiss prosecutor general?

4. The Head of State Security Services.

Does the president have a right to appoint the head of state security services?

Does the president have a right to dismiss the head of state security services?

5. Courts.

Does the president have a right to appoint judges of Constitutional Court?

Does the president have right to establish courts?

6. Armed forces.

Does the president have right to appoint and dismiss high command of Armed forces of Ukraine?

7. Central Bank.

Does the president have a power to appoint the Head of Central Bank?

Does the president have right to appoint the Council of Central Bank?

8. Executives.

Does the president have right to appoint the Chair person of Antimonopoly Committee, the Head of State Committee on Television and Radio broadcasting and its council, the Head of State Property Fund?

9. Local self-governors.

Does the president have power to appoint and dismiss local self-governors?

10. Diplomatic missions.

Does the president have power to appoint heads of diplomatic missions to other states?

11. Members of Central electoral commission.

Does the president have power to appoint the members of Central electoral commission?

Table 1. President's Appointment and Dismissal Powers

	Appointment				Dismissal			
	1996-2004	2004-2010	2010-2014	2014-to present	1996-2004,	2014-to present	2010-2014	2014-to present
1. Parliament	-	-	-	-	2	3 ⁵³	2	3 ⁵⁴
<u>2. Cabinet</u> ⁵⁵ Prime-Minister Other Ministers	3 ⁵⁶ 3	0 ⁵⁷ 0	3 ⁵⁸ 3	0 0	3 3 ⁵⁹	0 0 ⁶⁰	3 3 ⁶¹	0 0 ⁶²
3. Prosecutor General	3 ⁶³	3	3	3	3	3	3	3

⁵³ Due to parliament's inability to form a coalition within 30 days or form a government within 60 days after the first session

⁵⁴ Due to parliament's inability to form a coalition within 30 days or form a government within 60 days after the first session

⁵⁵ About the more nuances of cabinet appointment and dismissal see the Table 1.2. below

⁵⁶ upon the confirmation of the simple parliamentary majority

⁵⁷ appointed by Parliament

⁵⁸ upon the confirmation of the simple parliamentary majority

⁵⁹ Powers to dismiss cabinet belong to president and parliament but president can use this power more easily

⁶⁰ Cabinet dismissal moved to parliament as exclusive body for dismissal of cabinet

⁶¹ Cabinet could be terminated by president or parliamentary coalition

⁶² Cabinet dismissal moved to parliament as exclusive body for dismissal of cabinet

⁶³ Appointment and dismissal power belongs to president but requires parliamentary confirmation

4. Head of State Security Services	4	2 ⁶⁴	4	2 ⁶⁵	4	2	4	2
<u>5. Courts</u>								
Constitutional Court	2 ⁶⁷	2	2	2	2	2	2	2
General Courts ⁶⁶	3	3	3	3	3	3	3	3
6. High Command of armed forces.	4 ⁶⁸	4	4	4	4	4	4	4
<u>7. Central Bank</u>								
The Head	2 ⁶⁹	2	2 ⁷¹	2	-	2	2	2
The Council of Central Bank	2 ⁷⁰	2	2 ⁷²	2	2	2	2	2
<u>8. Executives</u>								
Chairperson of the Antimonopoly Committee	3	2	3	2	3	2	3	2
Head of State Property Fund	3	2	3	2	3	2	3	2
the Head of Council on Television and Radio Broadcasting	3	2	3	2	3	2	3	2
the Council of Television and Radio Broadcasting	2 ⁷³	2	2 ⁷⁴	2	2	2	2	2
9. Local Self-Governors.	3 ⁷⁵	3	3 ⁷⁶	3	3	3	3	3
10. Heads of Diplomatic Missions.	4 ⁷⁷	4	4 ⁷⁸	4	4	4	4	4
11. Members of Central Electoral Commission.	2	2	2	2	2	2	2	2

⁶⁴ President submits the candidate, appointment moved to parliament.

⁶⁶ The first appointment of a professional judge to office for a five-year term is made by the President of Ukraine. All other judges, except the judges of the Constitutional Court of Ukraine, are elected by the Verkhovna Rada of Ukraine for permanent terms.

⁶⁷ Appoints 1/3 of the Composition of Constitutional Court

⁶⁸ Power to appoint armed forces Command is not checked by other branches.

⁶⁹ Candidate submission, appointment by parliament

⁷⁰ ½ of the membership

⁷¹ Candidate submission, appointment by parliament

⁷² ½ of the membership

⁷³ Appoints and dismisses one half of the composition of the Committee

⁷⁴ Appoints and dismisses one half of the composition of the Committee

⁷⁵ Upon submission of the Cabinet of Ministers

⁷⁶ Upon submission of the Cabinet of Ministers

⁷⁷ Article 106 (5) Constitution of Ukraine, from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁷⁸ Ibid

Though the values of indicators are presented in numerical terms, the aggregate measurement of appointment and dismissal powers of president seem inappropriate due to the issues discussed above – some powers might be more important than others and do not form a unidimensional scale. Therefore, I group those powers to appoint and dismiss other officials into several dimensions – cabinet (Table 2), law enforcement bodies (Table 3), foreign policy and diplomacy staff (Table 4), executives outside the cabinet (Table 5). I abstain from counting the overall score of appointment and dismissal presidential powers and compare values on particular dimensions.

President's Appointment and Dismissal Powers over Cabinet

1. Nomination of candidate of PM.

Does the president have the power to nominate a candidate of prime-minister?

2. Appointment of PM.

Does the president possess the power to appoint a PM?

3. Appointment of Defense and Foreign Minister.

Does the president possess the power to appoint Defense and Foreign Minister?

4. Appointment of other members of Cabinet of Ministers.

Does the president have power to appoint other members of the Cabinet of Ministers?

5. Dismissal of cabinet.

Does the president have power to dismiss the cabinet?

6. Cabinet withdrawal before the newly elected president.

Does the cabinet withdraw itself from its functions before the newly elected president?

7. Dissolution of parliament.

Does the president have power to dissolve parliament?

Table 2. President's Appointment and Dismissal Powers On Cabinet

	1996-2004	2004-2010	2010-2014	2014-to present
1. Nomination of PM	2	1 ⁸⁴	2	1 ⁹²
2. Appointment of PM	3 ⁷⁹	0 ⁸⁵		0
2. Appointment of Defense and Foreign Minister	3 ⁸⁰	2 ⁸⁶	3 ⁸⁷ 3 ⁸⁸	2
3. Appointment of other ministers.	3 ⁸¹	0	3 ⁸⁹	0
4. Cabinet dismissal.	3 ⁸²	0	3 ⁹⁰	0
6. Cabinet withdrawal before	2 ⁸³	0	2 ⁹¹	0

⁷⁹ The PM is appointed by the president of Ukraine upon the confirmation of the simple parliamentary majority

⁸⁰ upon recommendation of the PM

⁸¹ upon recommendation of the PM

⁸² Cabinet could be terminated by president or parliamentary coalition

⁸³ I think that this power concerns dismissal of the cabinet as well

⁸⁴ The candidate for PM proposed by the coalition and is submitted by president.

⁸⁵ appointed by Parliament

⁸⁶ Submitted by president, appointed by parliament

⁸⁷ The PM is appointed by the president of Ukraine upon the confirmation of the simple parliamentary majority

⁸⁸ upon recommendation of the PM

the newly elected president. 7. Powers to dissolve parliament.	2	3	2	3
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Table 3. President's Appointment and Dismissal Powers within the System of Law Enforcement and Defense Bodies

	Appointment		Dismissal	
	1996	2004	1996	2004
Prosecutor general	3 ⁹³	3	3	3
Head of State Security Services.	4	2	4	2
1. Courts.				
Constitutional Court	2 ⁹⁵	2	2	2
General Courts ⁹⁴	3 ⁹⁶	3	3	3
High Command of armed forces.	4	4	4	4
Minister of Defense.	3	2	3	2

Table 4. Appointment and Dismissal of Foreign Policy Officials and Diplomats.

	Appointment		Dismissal	
	1996	2004	1996	2004
Minister of foreign affairs	3	2	3	2
The heads of diplomatic	4	4	4	4

⁸⁹ upon recommendation of the PM

⁹⁰ Cabinet could be terminated by president or parliamentary coalition

⁹¹ This power concerns powers on cabinet as well

⁹² The candidate for PM proposed by the coalition and is submitted by president.

⁹³ President appoints upon parliamentary consent

⁹⁴ The first appointment of a professional judge to office for a five-year term is made by the President of Ukraine. All other judges, except the judges of the Constitutional Court of Ukraine, are elected by the Verkhovna Rada of Ukraine for permanent terms

⁹⁵ 1/3 of the staff

⁹⁶ Establishes courts and makes the first appointment of professional judges

missions.				
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Table 5. Appointment and Dismissal of Other Executive Officials

	Appointment and Dismissal ⁹⁷ 1996-2004, 2010-2014	Appointment and Dismissal 2004-2010, 2010-2014
<u>Central Bank</u>		
The Head	2	2
Council of Central Bank	2	2
Antimonopoly Committee	3	2
State Property Fund	3	2
Head, Council on Television and Radio Broadcasting	3	2
the Council of Television and Radio Broadcasting	2	2
Local governors	3	3

The data shows that president possesses powers to appoint and dismiss civil servants in various public offices. Over the two frameworks of the constitution the president maintained some powers over the highest executive body, the cabinet, law enforcement bodies and armed forces, foreign ministry and diplomatic missions, and other officials like the head of National Bank and its Council, The State Property Fund, Central electoral commission, and also organs of local self-government. This certainly implies that those bodies were subordinated to president in their policies and accountable to him. This also supports the principle that president is the highest organ administering foreign policy course, Commander-in-Chief of the Ukrainian armed forces, and the decisive body in internal affairs.

The data also shows that many presidential decisions on appointments and dismissals of the officials are dependent on the confirmation of parliament or are proposed by president but decided by parliament. This division of powers is connected with one of the complexities that the author faced while doing this research: finding the right measurement to the different ways of president's involvement into appointment and recalling public officials. Quite minor amount of those powers of president are counted 4 which means unilateral appointment or dismissal by president. They primarily concern some of the law enforcement bodies, defense sphere, and diplomatic missions. Other decisions – like appointment of judges in general courts or the Prosecutor General are made by president but require confirmation from parliament, therefore I count this power as 3. If the final decisions are made by the parliament but submitted by the president (like the Head and Council of Central Bank) I count this power as 2. In case president submits the candidacy upon proposition of parliament I count this power as 1. Therefore, there is alteration of actual powers of president to push assigning a position to someone and recalling of them and the president needs loyal parliamentary coalition in order to pass important decisions in this regard.

First there is a division of powers to nominate a candidate, to confirm a candidate, and to appoint the candidacy. According to the 2004 framework even the nomination power is divided (the president submits the candidacy which is proposed by parliament). This principle of separation of appointment powers is applied in constitutional practices of many democratic countries in order to prevent concentration of powers in one branch or organ. In some cases the president appoints upon parliament's consent. In others parliament appoints upon president's submission. These separated powers most often apply to appointment of the most significant

⁹⁷ Constitution prescribes the same actor to appoint and dismiss officials of this rubric

offices in order to ensure checks - cabinet appointment and some important organs like the security services or prosecutor general.

In general the data indicates that while the constitution regarding presidential powers was changing since adoption of the original version in 2004, in 2010, and in 2014, there in fact was only an interchange between two frameworks that altered among each other. Therefore, the powers of president that were decreased in 2004 just returned to the 1996 version in 2010 (president-parliamentary structure) and in 2014 it returned to the 2004 version of premier-presidential structure with some of presidential powers shifting to parliament. These trajectories of constitutional changes regarding presidential powers can be described as zigzag movement.

Apart from the power of appointment of the Prime-minister, there is a power to appoint other ministers. Another indicator is the power of dismissal of the named officials. As can be observed, the power of appointment and dismissal of the highest executive in Ukraine was divided between the president and legislature. According to Leven Goneng “Prospects for Constitutionalism in Post-Communist Countries” between nomination and confirmation the more significant is the right to nominate officials which usually belongs to the president ⁹⁸. The confirmatory body which is usually Assembly has no right to choose between the alternative candidates or to impose a candidate, but only to confirm or disconfirm the proposed one. However, the constitutional framework of 2004 prescribed the power of parliamentary coalition to present a single candidate for president’s submission.

⁹⁸ Gonenc, Leven. 2002. *Prospects for Constitutionalism in Post-Communist Countries*. The Netherlands: Kluwer Law International, 265

Chapter III. Analysis of Constitutional Data on Appointment and Dismissal Powers of President

Introduction

This chapter gives analysis of the constitutional data on the alterations of presidential powers in the two frameworks – 1996-2004, restored and functioning in 2010-2014 and premier-presidential of 2004 (functioning since 2006-2010, restored in 2014). Indicators of appointment and dismissal powers are grouped according to the spheres of competency of state bodies. Therefore, there are groups on appointment and dismissal of cabinet, law enforcement and defense bodies, bodies responsible for foreign policy and diplomacy, and other executives not included in cabinet.

Appointment and Dismissal Powers on Cabinet

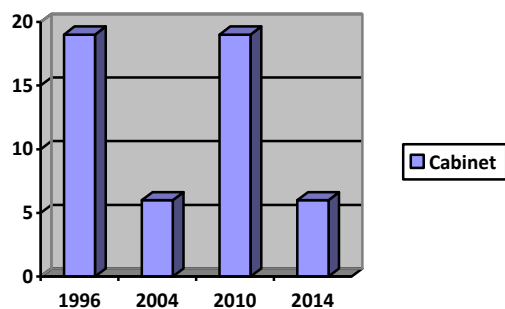


Figure 1. Appointment and Dismissal Powers on Cabinet.

As can be seen from the Table 2 and Figure 1 about appointment and dismissal powers on cabinet, the powers differed sharply in the two frameworks and four observations. According to author's calculations, the president's powers over cabinet decreased from 19 points to 6 points from the original president-parliamentary structure to the premier-parliamentary one in 2004. I also observe fluctuation of powers on cabinet – increase of them in 2010 to the values of 1996 and decrease in 2014 to the values of 2004.

In general, after moving from president-parliamentary to premier-presidential framework in Ukraine, the powers of president decreased on most of the parameters. However, the first of the parameters shows increases in presidential powers. This is the power to dismiss parliament. According to the president-parliamentary version of Ukrainian constitution, the president had powers to dismiss parliament only if it did not hold plenary meetings after the 30 days of the regular session⁹⁹. The premier-presidential version adds the power to dissolve parliament if it fails to form a coalition or to form the personal composition of the Cabinet of ministers within the terms set¹⁰⁰. It is argued by Shugart that usually the premier-presidential regimes the more enhanced powers of president to dissolve parliament prescribe counterweight to parliament's powers on cabinet¹⁰¹. Though this enhanced power over parliament is the compensation for other powers that the president lost, it is quite important power. In fact, president Yushchenko who in total possessed fewer powers than his predecessor according to premier-presidential constitution used this power when in 2007 he dissolved the parliament. This was only one occasion in history of Ukraine when the president dissolved the parliament though president Kuchma threatened to

⁹⁹ Article 90. Constitution of Ukraine 2014The Law from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

¹⁰⁰ Ibid, Article 90.

¹⁰¹ Shugart, Matthew Soberg. 2005. "Semi-Presidential Systems: Dual Executive And Mixed Authority Patterns". French Politics, 335

dissolve the parliament several times during constitutional process in the first years of independence for example.

The enhanced powers of president regarding parliament dissolution in premier-presidential framework in this research are included within the powers over cabinet because parliament dissolution under this framework would inevitably lead to cabinet dismissal though the president was deprived of the direct powers to dismiss cabinet. The latter happened because according to premier-presidential version of constitution (2006-2010) “the cabinet diverts itself from its function before the newly elected Verkhovna Rada of Ukraine”¹⁰². Therefore, despite that his control over cabinet was significantly diminished his power to dissolve the parliament led simultaneously to cabinet dismissal as well and therefore, this implied some powers over cabinet dismissal. In addition, despite that president lost his powers to dismiss the cabinet directly and by that to hold it accountable, the president kept the power to responsibility of cabinet and adopting of the resolution of non-confidence to the cabinet of ministers of Ukraine¹⁰³. Passed through the vote of majority of constitutional composition of Verkhovna Rada this also leads to resignation of cabinet.

The presidential powers on cabinet appointment pictured another type of relation between cabinet and president. This means that the president could control the whole cabinet because the other members of cabinet are usually negotiated between the president and the nominated PM. So, for example, the latest government headed by Mykola Azarov which was in office since 2010 (after Yanukovich was elected as president) contained the figures that were considered as

¹⁰² Article 115 of the Constitution of Ukraine 2014The Law from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

¹⁰³ Article 87 of the Constitution of Ukraine 2014, dated 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

the “family” of Yanukovych from his native region Donbas. They were the first deputy prime-minister Serhiy Arbuzov, so-called “banker” of Yanukovych elder son, and the Energy minister, E. Stavytskyi who has close relations with Yanukovych¹⁰⁴ (Ukrainska Pravda 2012). Most of the highest officials in cabinet and other executives were originally from Donbas region and members of Donbas business elite.

Overall the shift of powers of president to control cabinet can be observed if comparing between the two constitutional frameworks. After 2004 the president lost his/ her power to present a candidate of a PM, to appoint the PM, and to nominate other ministers. These powers were transmitted to the parliament. Comparing with president-parliamentary framework, president in premier-presidential one, the president preserved only a power to submit the candidacy of the PM (which is presented by the parliamentary coalition). Therefore, this power to present a candidacy of PM was only a formal one. However, the president retained the right to nominate Foreign and Defense Minister. The right to appoint those ministers, as well as the right to appoint the remaining cabinet staff was transmitted to the parliament. The president also lost the power to appoint the remaining composition of the Cabinet of Ministers. Now this power transmitted to the parliament upon prime-minister’s submission.

There are some other changes in the constitutional versions regarding the cabinet and prime-minister. Firstly, “cabinet diverted itself from its functions” before the newly elected parliament after implementation of the reform and before the newly elected president according to the old version and after the restoration of the original version. Secondly, in case of preterm termination of presidential powers the right to execute his function passed to prime-minister according to

¹⁰⁴ Leshchenko, Serhiy. 2012. “Simyi Yanukovycha. Versiya 1.0. [Government of Yanukovych’s Family. Version 1.0.].” *Ukrainska Pravda [Ukrainian Truth]*. <http://www.pravda.com.ua/articles/2012/12/25/6980434/>.

president-parliamentary framework and to the parliamentary speaker in case of premier-presidential framework. Those two factors also indicate decrease of presidential powers and growth of powers of parliament.

In sum, the powers of president on cabinet decreased in premier-presidential structure adopted in 2004 and restored in 2014 in comparison to the original 1996 version restored in 2010. Those changes implied that according to the first one, the cabinet was accountable before the president whereas in the premier-presidential framework it was mostly accountable to parliament. Some of appointment and dismissal powers were further divided in order to provide checks on presidential decisions by the parliament.

Appointment and Dismissal in Law Enforcement Bodies and Defense Staff

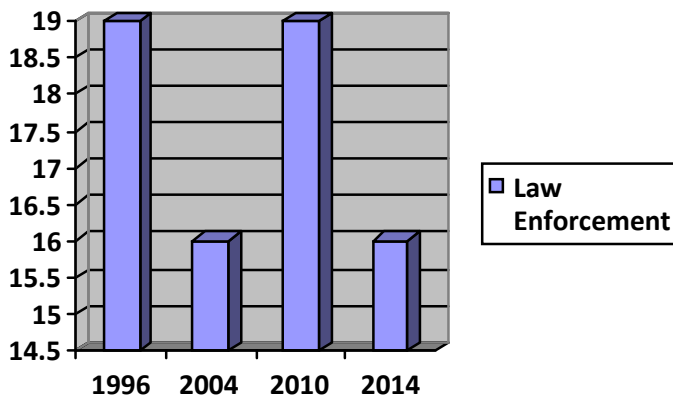


Figure 2. Appointment and Dismissal in Law Enforcement Bodies and Defense Staff.

The second set of indicators of appointment powers described the control over law enforcement bodies represented in the Table 1.3 and comparative graph above. The most important are the powers of appointment and dismissal concern the Head of Security Services, Prosecutor General, Defense Minister, membership of Constitutional Court, and the Courts of General Jurisdiction. Again some of the powers are divided between parliament and president but not as much as in cabinet powers which means that presidential dominance on defense and law enforcement sphere maintains. In general, cabinet appointment and dismissal powers changed and fluctuated sharper than powers on appointment and dismissal in law enforcement bodies. For example, powers on cabinet changed from 19 to 6 whereas powers on law enforcement bodies changed from 19 to 16.

Appointment and dismissal powers of president in the system of law enforcement bodies also changed since 2004, then in 2010 and in 2014. His powers to appoint and dismiss Prosecutor General, however, remained constant. But the power on State Security Service decreased as since the 2004 version came into force parliament obtained the power to appoint and dismiss the head of state security service. However, it required president's candidacy submission and therefore still depended on him. The powers on courts and the High Command of the Armed forces remained constant. Those powers are one of the minor ones where presidential decision should not be negotiated and confirmed with parliament. In the 1996 version the president had power to appoint Defense and Foreign policy ministers but according to 2004 version he only nominated candidates for those posts and parliament appointed them. But the power to dismiss them totally moved to parliament as the whole dismissal power on cabinet moved to parliament. Mentioning of appointment of the Head of State Security appeared in the constitution only in 2004 after the reform. Before that it was prescribed in the Law "On State Security Service" that the president had unilateral power to appoint and dismiss the Head of State Security Services¹⁰⁵ without any checks from parliament.

Having control over security services and law enforcement bodies was an important factor for all presidents in Ukraine. From the times of Kuchma state security services became a highly corrupted organ responsible for some political crimes¹⁰⁶. For example, high officials from this body were accused of the murder of journalist Georgiy Gongadze¹⁰⁷. Also, State Security Services were divided after Yushchenko came to power in 2004 and some of the officials

¹⁰⁵ The Law on State Security Service of Ukraine, available at <http://zakon4.rada.gov.ua/laws/show/2229-12>

¹⁰⁶ D'Anieri, Paul. 2011. "Structural Constraints in Ukrainian Politics." *East European Politics and Societies* 25 (1), 37.

¹⁰⁷ Sedelius, Thomas. 2012. "Towards Presidential Rule in Ukraine: Hybrid Regime Dynamics Under Semi-Presidentialism." *Baltic Journal of Law and Politics* 5, 33.

connected to the previous regime stayed there. According to the 2004 constitution, the president could not appoint the head of state security service and this power belonged to parliament. As it was revealed much later, only after Euromaidan, Ukrainian Security services contained a huge number of agents of Russian Federal Security Services which stayed there since Kuchma times, according to some data over 30% of the membership of SBU¹⁰⁸. The power over Prokuratura and state security were extremely important for the president Yanukovych in the light of dangers of mass protests that feared the regime of this president. Therefore, restoration of 1996 constitution was needed for president. As Euromaidan showed, security services were actively involved in prosecutions and violence against protesters and therefore, were considered to be an important tool for presidential influence on internal politics.

According to the data, the constitutional powers of president did not change in the sphere of judiciary. The president appoints one third of the composition of Constitutional Court. Also according to the Constitution¹⁰⁹, the first appointment of judges of general courts for the term of five years is made by the president of Ukraine. After that time the judge is appointed or not for the permanent term. This considerable control of president on the judiciary branch caused quite active discussion on future constitutional amendments in Ukraine regarding independence of judiciary. Some cases connected with political trials were headed by young judges on their first term which presumably were dependent on president for their office holding. For example, the ruling on Yulia Tymoshenko's case who was sentenced for 7 years term was conducted by the

¹⁰⁸ Liga.Novosti. 30% lichnoho sostava SBU byli agentami FSB I GRU, available at http://news.liga.net/news/politics/1483915-30_lichnogo_sostava_sbu_byli_agentami_fsb_i_gru_ekspert.htm

¹⁰⁹ Article 128 of the Constitution of Ukraine 2014, dated 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

young judge Kireev who was on his first term¹¹⁰. Therefore, the current discussions about constitutional amendments in Ukraine concern taking the powers of president of first appointment of judges in order to eliminate dependency of judiciary on president and avoid trials favorable for president and his milieu.

Appointment and Dismissal Powers in Diplomacy Staff and Internal Executive Offices

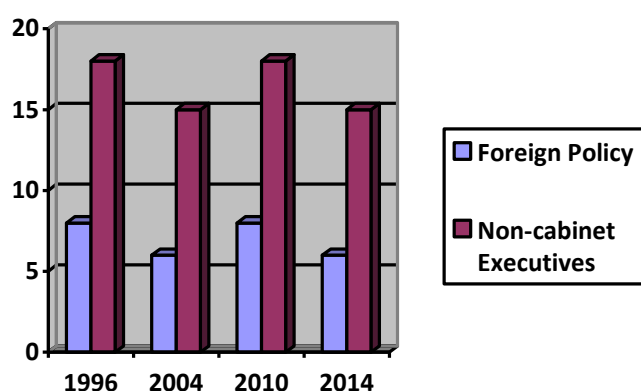


Figure 3. Appointment and dismissal powers of president in foreign policy and internal executive offices.

The powers to appoint officials of foreign policy track changed in regard that president lost power to appoint and dismiss the minister of foreign affairs but just to nominate his candidate. Appointment and dismissal of the heads of diplomatic missions in other states this power remained on president's side as before. This left a fairly good amount of presidential control over foreign policy and according to the constitution; he remained the administrator of foreign policy and representation of the state in its international relations.

¹¹⁰ "Suddya Rodion Kireev Kak Zerkalo Ukrainskoy Sudebnoy Sistemy". Judge Rodion Kireev as a Mirror of Ukrainian Judiciary System. Advokatura Ukrainy 24 June 2011, available at <http://www.advokatura.org.ua/sudya-rodion-kireev-kak-zerkalo-ukrainskoj-sudebnoj-sistemy/.html>

Another dimension of presidential powers is the powers over the other central executive bodies that are outside the cabinet. The ones numerated in the set of indicators are those which appointment-dismissal powers shifted after the constitutional reform of 2004 and returned after its abolishment in 2010. The data shows that since 2004 and since 2014 appointment and dismissal powers on three executive offices were withdrawn from the powers of president after the reform: Antimonopoly Committee, Head of State Committee on TV and Radio, and Head of Fund of State Property. Those appointment powers were possessed by the president before the reform.

However, some of appointment and dismissal powers of president remained constant. For example, no changes are observed in the powers to appoint diplomatic missions to the foreign states, to appoint constitutional and general courts, local governors. This indicates that though decreases in presidential powers happened in regard to cabinet and law enforcement bodies they were not so radical and the head of state preserved many important appointment and dismissal powers. In general the powers on diplomacy staff changed from 8 to 5 and the power on non-cabinet executives changed from 18 to 15.

Pattern of Relations with Parliament under the Two Frameworks

Table 6. Constitutional Changes in Parliamentary Origin and Survival.

	1996	2004
President's dissolution powers on parliament	2 ¹¹¹	3
Electoral system	mixed	proportional
Threshold to enter parliament	4%	3%
Coalition requirement	no	yes
Presidential powers to veto constitutional amendments	yes	no

¹¹¹ Coding of appointment-dismissal powers of president is available above

As it was described in the previous chapters, the two constitutional structures that existed in Ukraine differed mainly in the configuration of powers between the main institutional actors, namely the president, parliament, and cabinet of ministers. The original 1996 framework is defined following M. Shugart¹¹² and O. Protsyk¹¹³ as president-parliamentary type of semi-presidentialism. The framework introduced by the 2004 constitutional reform can be defined as premier-presidentialism, according to the same authors. The frameworks are said to build the different patterns of intra-executive relations as well as the relations between legislature and president. As the findings of this research show, one of the most important differences between the two constitutional structures is the power to control cabinet and to a lesser extent law enforcement bodies.

I also pointed above that some of the powers of president on appointment and dismissal of other officials depended on the consent from parliament and this dependency increased after adoption of reformed constitutional version in 2004. This implies that the president needed loyalty from parliament in order to implement a lot of political decisions. Back in 2006 when the present version of constitution came into force the president Yushchenko after Orange revolution was unable to push through cadre appointments that would have replaced people loyal to previous president for example in State Security Services because he did not obtain consent with parliament regarding dismissal. He was also unable to implement a lot of reforms that were promised to people on Maidan, one of the most important of which was lustration of the previous regime. This happened to a large extent because many decisions had to be negotiated with

¹¹² Shugart, Matthew Soberg. 2005. "Semi-Presidential Systems: Dual Executive And Mixed Authority Patterns". *French Politics*, 3, 323-351.

¹¹³ Protsyk, Oleh. 2003. "Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet N Ukraine." *Europe-Asia Studies* 55 (7), 1077-95.

parliament which was opposing him¹¹⁴. This leads to argue that actual powers of president depended on what the parliament looked like. Therefore, it makes sense to describe how the constitutional versions differed in the rules of composition and functioning of the parliament and what it meant for the president-parliamentary interaction.

The constitution of 2004 for the first time applied the term “parliamentary coalition”. The parliament was obliged to form it within constitutionally limited term (equal to 30 days) as well as to form the personal composition of the Cabinet within 60 days after resignation of the previous one. Inability of parliament to do so could lead to dissolution of parliament by the president¹¹⁵. On the one hand, it looks like 2004 version of constitution prescribed more powers of president over parliament because it added new conditions for dissolution of the later in comparison to 1996 one. At the same time it deprived president of some of the powers over cabinet and passed it to parliament. The enhanced powers over parliament compensated the loss of presidential power on cabinet. Parliament held cabinet accountable but was checked by president who had no direct powers on cabinet. This implied to some extent more transparent way of cooperation between president and parliament in comparison to 1996 framework where president was much less likely to dissolve parliament but parliament had limited impact on cabinet.

The constitutional reform did not just pass some powers over highest executive and law enforcement from president to parliament and added new conditions to parliamentary dissolution but introduced some new principles on parliamentary election and regulations. Those are

¹¹⁴ Lavrynenko, Inga. 2014. Konstytutsiyna Reforma: Na Chasi Chy Ni? [Constitutional Amendments: Topical or Not?]. Rakurs. 10 June 2014. <http://ua.rakurs.ua/557-konstytuciyna-komisiya-zminy-do-konstytuzhii>

¹¹⁵ Article 90 of the Constitution of Ukraine, from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

proportional electoral system which meant election of MPs only through party lists and not individually and lowering the minimum threshold for parties to enter the parliament from 4% to 3%, and extension of mandate of parliament from 4 years to 5 years. There was also new requirement to join the parliamentary faction of the party from which the MP was elected¹¹⁶. Regarding the need of this last requirement, Ukrainian political practice had the concept “tushka”, which means the MP who enters the parliament by the list of particular party but joins the coalition with the other one. This practice was implemented through bribery inside parliament and use of president’s administrative resource and led to extremely unstable party composition of parliament. Also the last but not the least, the president according to the constitutional reform was deprived of the right to veto constitutional amendments that were passed through all the stages of constitutional amending in parliament. So, it looked like constitutional amending of 2004 aimed at crystallization of political parties to some extent in the artificial manner.

However, 2004 version had a lot of ambiguities which was indicated by authoritative international legal commissions. Some of the amendments – especially on termination of deputy’s mandate upon his not joining the faction of his party in parliament was criticized in the Opinion on the Amendments to the Constitution of Ukraine by Venice Commission¹¹⁷. Most important of them was that it increased dependency of individual MP on his party. The other thing is that it divided further the power to appoint prime-minister by dividing the power to nominate him between president and parliament. There also was no explanation of what happens

¹¹⁶ Ibid, Article 81 (6)

¹¹⁷ Venice Commission. Opinion on the Amendments to Constitution of Ukraine, CDL-AD(2005)015, 13 June 2005, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)015-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)015-e)

if president does not submit the candidate proposed by parliament. Therefore, premier-presidential version of constitution left many things to be improved.

The type of cooperation between the president and parliament depends on the type of coalition. The coherence of parliamentary majority reflects to some extent the coherence of party system. The strong party system most probably produces a coherent structure of parliamentary majority. This majority could be either pro-presidential or hostile to him which would be reflected in the way most important political decisions that are confirmed by parliament are made. Protsyk describes the indicator for evaluation the strength of party system. He defines it as the pattern model of contestation and discourse among the parties in parliament¹¹⁸. Strong party system is indicated by the parliamentary contestation along the programmatic and ideological issues while weak party system is detected if the parties are scattering in their ideological preferences.

Ukrainian party system is described as the weak one and the role of clientalistic patterns of parliamentary struggle there are indicated by various researches¹¹⁹. The parties are mostly personality oriented of which the best evidence is the name of those parties – “The Motherland of Yulia Tymoshenko”, “UDAR – the party of Vitaliy Klychko”. The opposition parties since 2010 have been only roughly speaking called grounded on ideological principles, ether national democratic or liberal democratic ones. In this regard, development of party system seems to be interconnected with the ability of parliamentary parties to implement their political agenda in the

¹¹⁸ Protsyk Oleh. 2005. “Politics of Intraexecutive Conflict in Semipresidential Regimes in Eastern Europe.” *East European Politics and Societies* 19, 140.

¹¹⁹ -. 2010. “Ukraine’s Party System: Specifics of Establishment, Problems of Functioning, Trends of Evolution.” *Razumkov Center. National Security and Defence* 5, available at http://www.razumkov.org.ua/eng/files/category_journal/NSD116_eng_1.pdf

executive, in other words, the ability to form and control cabinet. However, this requirement forms a vicious circle in Ukrainian politics when it was under president-parliamentary framework because the parliament was for a long time deprived by constitutional rules to hold the cabinet accountable – to form and dismiss it. As the constitutional reform of 2004 increased the role of parliament in executive process, it could lead to a more coherent relations between parliament and president. However, it did not. In the time after election of Yushchenko composition of parliament in its coalition remained unstable and loyal of previous regime and the next parliamentary elections took place only in 2006 – two years after presidential ones and according to the new rules prescribed in constitutional reform of 2004.

So, the changes in presidential powers constituted different patterns of relations between the president and parliament there was a need to have either clientalistically oriented parliament with handy coalitions or the one with stable coalition that might follow the line of the president or not follow it. The president-parliamentary framework in this regard demanded no parliamentary coalition and did not hold the individual MP with his party. On the other hand, according to the premier-presidential one absence of this coalition would be a threat of dissolution of parliament by the president. In general,

In conclusion, this chapter summarizes the findings of empirical analysis of constitutional versions of Ukraine in regard to presidential powers to appoint and dismiss other officials. The 2004 constitutional reform decreased the powers of president and giving those powers to the parliament. The interchange of powers regarded appointment and dismissal of other officials and the rules of holding of the offices of parliament. Also, unlike in the original version of the 1996, since 2004 and till 2010 the president extended his powers to dismiss parliament. At the same time, the powers of president were connected with the composition of parliament. Therefore, the

last subchapter discusses what constitutional changes brought to the relations between parliament and president.

Conclusion

This work presents how constitutional power of president with regard to appointment and dismissal of other public officials changed in Ukraine since adoption of the original version of the constitution in 1996, then after 2004 constitutional reform, abolishing of this reform in 2010, and restoration of the 2004 reform in 2014. The system of government in Ukraine was defined as semi-presidential throughout its period of constitution adoption since 1996, but is demarcated following theoretical distinctions as president-parliamentary and premier-presidential frameworks¹²⁰. In trying to define presidential powers for Ukraine I focused on appointment and dismissal powers of the president arguing that they define the formal and informal set of relations between different actors of Ukrainian politics. By formal set of relations I mean accountability of different branches of powers. By informal relations I mean those that helped the president to use his powers to appoint officials helps in order to maintain control over various informal business elite structures in Ukraine.

This work applies content analysis of the constitutional data in order to compare the mentioned constitutional frameworks that changed between each other twice. The first change of original constitutional version occurred in 2004, then the original version was restored, and finally the 2004 version with reduced presidential powers was re-established. The main difference between the two frameworks of separation of powers is with regard to the cadre appointment which prescribed control and accountability chains of cabinet, law enforcement bodies, other central and local executives. The dataset of constitutional powers focuses upon the alteration of appointment/ dismissal powers of president on the dimensions of cabinet, law

¹²⁰ Sedelius, Thomas. 2012. "Towards Presidential Rule in Ukraine: Hybrid Regime Dynamics Under Semi-Presidentialism." *Baltic Journal of Law and Politics* 5.

enforcement and defense bodies, diplomacy and foreign policy, and other executives who are not included in the cabinet.

In his considerations about why constitutions change Leven Gronenc points that it might happen because the constitutions do not reflect the political culture of the state. So, for example, the main principles of Constitution of German Weimar republic were inconsistent with the culture of people who inhabited this country – it was “a republic without republicans”, according to Leven Gronenc¹²¹. Therefore, I might challenge whether constitutional structure with strong president is in fact that the political elites tried to impose on Ukraine are consistent with political perceptions of the head of the state in this country. In 2004 and in 2013-2014 Ukrainian capital experienced mass public protests against authoritative presidents and their regimes with the demands to remove pressure of state apparatus with the president on top.

The irony is that there are reasons to consider only one version of constitution of Ukraine as legitimate – the original one of 1996. The amendments of constitution in 2004, its ban in 2010, and the restoration of 2004 reform in 2014 did not comply with the rules of amending the constitution described in Chapter XIII of the constitution of Ukraine¹²². The 2004 amendment, for example, did not contain the opinion of Constitutional Court and the abolition of the amendment was not the result of parliamentary voting at all which both are strict requirements. Relevance of investigation in this sphere is explained by the fact that Ukrainian parliament reinstated the constitution of 2004 in 2014. This decision was made immediately after the

¹²¹ Gonenc, Leven. 2002. *Prospects for Constitutionalism in Post-Communist Countries*. The Netherlands: Kluwer Law International, 366.

¹²² Article 159 of the Constitution of Ukraine, from 08.12.2004, available at <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

resignation of Yanukovych on the 22nd of February 2014 and also does not entirely comply with the legal procedure of amending of Constitution of Ukraine (change was not preceded by the conclusion of Constitutional Court this time). This means that constitutional amendments were made in a hurry, not thoroughly processed, and conducted in order to suit particular political figures.

Current discussions touch upon the issues declining presidential responsibilities by further increasing parliamentary ones or even transformation of Ukraine into parliamentary republic with the president as an informal country's leader¹²³. This, as most of the authors believe, would ensure checks and balance of power between legislative and executive branches. However, it might face problems with legitimacy and constitutionality because current president Petro Poroshenko elected in June 2014 was elected under the framework of 2004 premier-presidential version of Constitution. Therefore, all amendments reducing presidential powers after his election might be considered non legitimate.

The issues of the powers of president are present in different degrees in political, academic, and public discussions. Because of strengthening of majoritarian tendencies the stronger the president becomes this may lead to deepening of the societal cleavage in Ukraine which was existent in this country due to historical reasons between different regions. Existence of this cleavage is evinced by electoral pattern that, as scholars state, have been existing in this

¹²³ Umland, Andreas. 2014. Politreforma dlya Ukrainy [Political Reform for Ukraine] Ukrainian Truth 2 May 2014 <http://www.pravda.com.ua/rus/columns/2014/05/2/7024039/>

country for more than a decade¹²⁴. Mykhailo Pohrebinskyi, Director of Kyiv Center for Political Studies and Conflictology made a very accurate prediction in 2010 that returning the powers of president could lead to “disastrous deepening of the split in Ukraine, up to the issue of Ukraine's existence within its current boundaries”¹²⁵. The scholar was right in his warnings because Ukraine did in fact experience tremendous public protests after the restoration of the old 1996 constitutional version by decision of Constitutional court in 2010.

As this research points out, who makes the decision on appointment and dismissal of public officials really matters for functioning of the political system. However, a lot of those powers are divided between president and parliament or president and cabinet. It was also pointed above that inability of Viktor Yushchenko elected in 2004 to push important decisions on appointment and dismissal as well as reforms was connected with his small support from parliament. The parliament to a large extent stayed loyal to previous regime. In 2014 after Euromaidan and election of the new president the same problem of lustration of previous political elite and deep reforms remain quite topical. Though the president possesses a lot of power on his side to appoint and dismiss the officials, many of the decisions on dismissal have to be negotiated with parliament. Some of the deputies terminated their authority prior to the expiration of 2012-2016 Verkhovna Rada in fear of being imprisoned after revolution. Others stayed but the president still lacks sufficient number of MPs to pass the laws and confirm sufficient appointments. Unlike in 2004 after Orange revolution, very actively discussed is dissolution and calling of the new parliamentary elections that would make possible dismissal of

¹²⁴ D’Anieri, Paul. 2011. “Structural Constraints in Ukrainian Politics.” *East European Politics and Societies* 25 (1). 40.

¹²⁵ Interfax-Ukraine. 2010. Political analysts: Cancellation of 2004 political reform may deepen split in Ukraine 25 August 2010 <http://www.kyivpost.com/content/politics/political-analysts-cancellation-of-2004-political-r-79746.html>

officials from the previous regime. In case the composition of parliament changes it influences actual powers of president.

In this regard, strong presidential framework also had negative implications on political culture and party system. Political power being on the presidential side created weak parliament and therefore undeveloped party system. According to Protsyk, transitional politicians lose incentives to build strong parties if the scope of influence of parliament on political situation is limited¹²⁶. Weak parliamentarism also triggers weak overall political culture. In Ukrainian case this had unusual impact on the number of parties. In fact, it led to proliferation of the number of parties with missing ideological background, shoddy programs, and weak influence on policy making¹²⁷.

Other post-Soviet countries in the region experience changes in the constitutions which resemble some tendencies of their political course. In some post-Soviet countries which are believed to transit to European democratic principles the recent constitutional reforms shift from strong presidentialism. For example, Moldovan constitutional reform turned this republic from semi-presidential to parliamentary one abolishing the public presidential elections and instead establishing presidential election by the highest legislature. Georgia is also a case of gradual decline of presidential powers. The original 1994 constitution granted presidents with enormous powers which decreased after 2004 turning republic from super-presidential to president-parliamentary and then in 2010 to parliamentary-presidential one. These tendencies could have been implemented by Ukraine also. At the same time Russia and Belarus strengthened their presidents which correlated with direction of regimes in those states. Therefore, issues of what

¹²⁶ Protsyk, Oleh. 2003. "Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet N Ukraine." *Europe-Asia Studies* 55 (7).

kind of presidential institution Ukraine needs becomes quite relevant now after the Euromaidan revolution because of the proclaimed courses for European integration and democratization.

In the nearest future Ukraine will most probably follow the same path of reducing powers of the head of the state by amending the constitution. Due to the separatist movements in the Eastern Ukraine the hottest topic for discussion regarding constitutional reform is the one that concerns local self-government. According to the present constitutional version, the power to appoint local governors belongs to the president which undermines the principle of self-governance. The draft law on “Amendments to the Constitution of Ukraine (Decentralization of power)” suggests that local state agencies are no more accountable before the president¹²⁸ and the president loses power to appoint after the proposal of cabinet of ministers. For example, the reform in local is being now which would eliminate presidential power to appoint local governors and transmit it to popular election.

There is a need to examine whether decreased constitutional presidential powers in Ukraine fostered democratization and whether enhanced ones protract democracy and introduce authoritarian patterns. This would be an interesting topic for further research. In this sense, scholars like Sedelius simply look at correlation between constitutional structures and Freedom House scores. This author finds that in premier-presidential framework Ukraine scored higher in democracy than in president-parliamentary one. However, it might be virtually impossible to distinguish whether that was an effect of institutions or of the people in power. As Yushchenko

¹²⁷ (-. 2010. “Ukraine’s Party System: Specifics of Establishment, Problems of Functioning, Trends of Evolution.” *Razumkov Center. National Security and Defence* 5

¹²⁸ Proekt Zakonu Pro Vnesennya Zmin Do Konstytutsii Ukrainy (shodo Decentralizatsiyi Vlady [The Draft Law of Ukraine on the Amending of Constitution of Ukraine “About Decentralization of Power”], available at <http://minregion.gov.ua/koncepciya-reformuvannya-miscevogo-samovryaduvannya-ta-teritorialnoyi-organizaciyi-vladi-v-ukrayini-333230/porivnyalna-tablicya-do-proektu-zakonu-ukrayini-pro-vnesennya-zmin-do-konstituciyi-ukrayini-schodo-decentralizaciyi-vladi-619673/>

came to power after Orange revolution and the huge democratic breakthrough was expected from Ukraine.

Further experiments with the Fundamental law of Ukraine needs involvement of scholars and lawyers and not only politicians. Right now expert initiatives which include people outside politics called “Reanimation Packet for Reforms” work on constitutional amendments regarding the changes of presidential powers, local governments, and reform of judiciary. In fact, it is very crucial opportunity now to involve academic community to the process of constitutional amendments because of their impartiality in comparison to politicians. In fact, they were hardly included in Ukrainian constitutional process before. As it was mentioned, too many times constitutional amendments happened through violation of constitutionally prescribed procedure and in order to fit powerful politicians.

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