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Semipresidentialism in Ukraine. A mixed assessment between institutional conflict and checks on President's superpower

Simone Benvenuti, Anatoliy Kostruba

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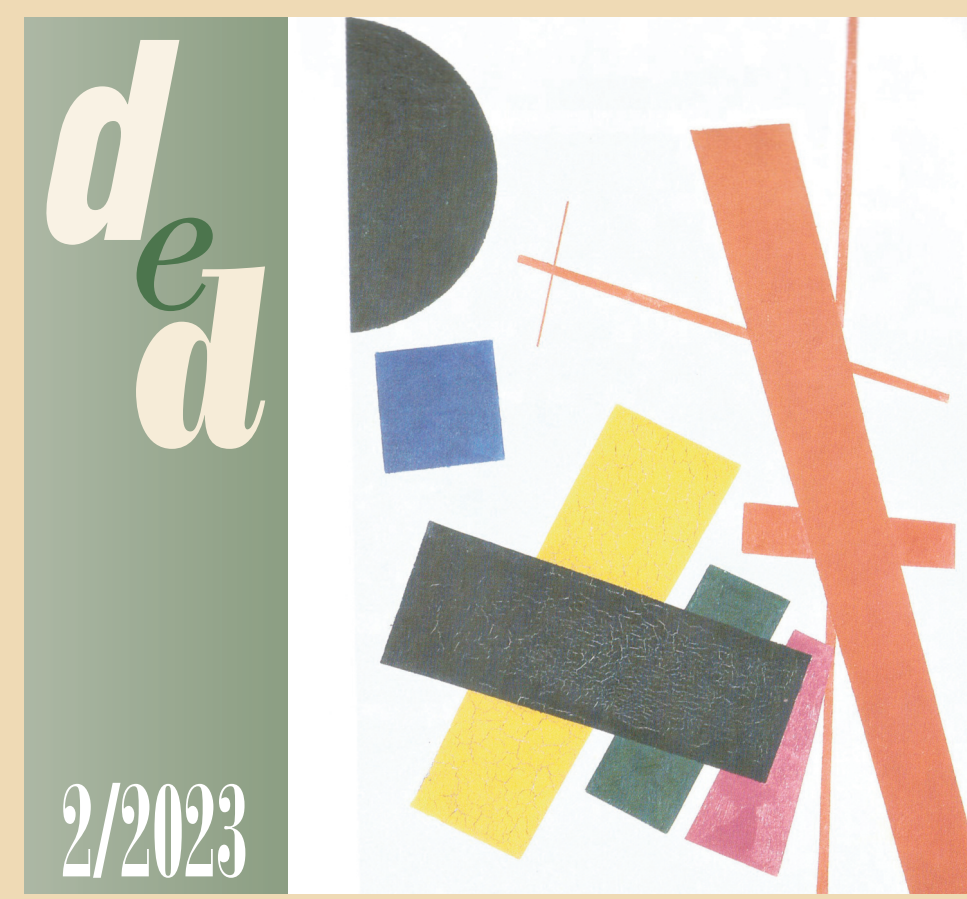
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Semipresidentialism in Ukraine.

A mixed assessment between institutional conflict and checks on President's superpower

by Simone Benvenuti, Anatoliy Kostruba

1. Introduction

After the collapse of communist regimes, semipresidentialism – as a system of government with a two-headed executive and two autonomous powers: a popularly elected President and the legislative assembly¹ – became the most widespread template in transitioning contexts². In the Post-soviet area, Ukraine represents an interesting case. While problematic in its formal design and under strain in practice, as a reflection of a difficult and unstable transition, Ukrainian semipresidentialism proved to resist the test of time. Thirty-two years after Ukraine's independence, and twenty-seven years after the adoption of a new Constitution, it managed to overcome major crisis – political, economic and military – without consolidating into an authoritarian regime³. Still, for some, a strong elected President had detrimental effects on the development of Ukrainian political and party systems and did not allow for real democratic consolidation.

In this article, we address the question of the impact of the Ukrainian semipresidential system on democratic consolidation in Ukraine. For that

¹ R. Elgie (2008), “The Perils of Semi-Presidentialism. Are They Exaggerated?”, *Democratisation*, 1, p. 50-ss.

² Only Latvia and Estonia adopted a parliamentary system. Among post-communist countries that were not part of the Soviet Union, three out of six countries (East Germany aside) chose the parliamentary system (Czech Republic, Hungary, Slovakia) while the remaining countries chose a semipresidential system.

³ Suffice here to mention 1990s economic crisis due to unfair privatization and stagnation of the country's economic development, the 2014 “Revolution of Dignity”, the prolonged Donbass war and Crimean crisis, Covid emergency and, most recently, Russian aggression.

purpose, we provide a description of the system highlighting the changes it underwent from its original design and expound the reasons for the adoption of a semi presidential system (par. 2). We then switch from *de iure* design to its *de facto* functioning, showing the practice of power relations between the main State powers (par. 4). After that, we question the overall effects of this system of government on Ukrainian democracy (par. 5).

2. The semi presidential system in the Ukrainian Constitution

2.1. *The unstable constitutional architecture: the President-Parliament pendulum*

The Constitution of Ukraine was adopted on 28 June 1996 by the State Parliament – the *Verkhovna Rada* of Ukraine (from now on, *Rada*). Before, the amended Constitution of the Ukrainian SSR of 1978 was formally in force. Yet, on 8 June 1995, the Constitutional Agreement “On the Basic Principles of the Organization and Functioning of State Power and Local Self-Government in Ukraine for the Period Before the Adoption of the New Constitution of Ukraine” was signed between the *Rada* and the President of Ukraine⁴. By its very nature, the Agreement was a political deal in the context of the first political crisis in the history of independent Ukraine, but was intended to perform the function of a transitional constitution.

Within such an unstable framework, since 1991 the President has been endowed with a significant share of powers as head of state and head of the executive power, but the extent of these powers shifted over time. In particular, constitutional changes moved the pendulum back and forth from a “president-parliamentary” system, where the *Rada* and the President can dismiss the Prime minister, to a “premier-presidential” system, where this power is endowed on the former only⁵.

⁴ “Vidomosti Verkhovna Rada of Ukraine” 1995, No. 18, Art. 133. One of the conditions of this Act, which indicated that “until the adoption of the new Constitution of Ukraine, the provisions of the current Constitution of Ukraine (1978) shall apply only to the extent consistent with this Constitutional Agreement”, testified that the Constitution of the Ukrainian SSR of 1978 did not formally expire, but was considered subordinated to the Agreement. On the Agreement, see N. Gallina (2016), “Ukraine”, in A. Fruhstorfer, M. Hein (eds.), *Constitutional Politics in Central and Eastern Europe From Post-Socialist Transition to the Reform of Political Systems*, Springer VS, Wiesbaden, p. 492.

⁵ R. Elgie (2007), “What is semi-presidentialism and where is it found?”, in R. Elgie, S. Moestrup (eds.), *Semi-Presidentialism outside Europe*, Routledge, London, p. 11.

Between 1991 and 1996, the system developed in practice as a president-parliamentary sub-type of semi-presidentialism. Then, based on the existing practice and the 1995 Agreement, the new Constitution established a semipresidential system of government with a strong presidency, based on partial transplant of presidentialist features of the previous period. In particular, the original 1996 design placed the President in a privileged position in the appointment of the Prime minister and its ministries endowing him with a power of dismissal⁶.

In 2000, Leonid Kuchma called for a referendum to consult the people on four amendments aimed at further empowering the President and modifying the structure of the Parliament. The rationale of this proposal – never implemented by the *Rada* – was in line with Kuchma's stance at the time of the 1995 Agreement, which outlined a stronger President compared to the one provided by the 1996 Constitution. In particular, the proposal allowed the President to dissolve the *Rada* if it failed to form a stable and operational majority within one month after elections⁷ or adopt the State budget within three months from its submission; it limited the immunity of MPs and reduced their number; it provided for the establishment of an upper house (a move aimed at weakening the *Rada*).

These proposals stand in stark contrast to Kuchma's 2004 reform, which strengthened the Parliament's control over the executive endowing it, instead of the President, with the power to appoint the Prime minister and the Ministries⁸ and with the power of dismissal⁹. It also provided that presidential appointments and dismissals of high officials must be approved by Parliament (including the Prosecutor General). Yet the reform maintained the provision that the Parliament forms a parliamentary majority after elections, otherwise it could be dissolved. Finally, proportional representation was constitutionalized together with the imperative mandate. The 2004 version of the Constitution, adopted with the aim of overcoming "presidential authoritarianism", actually turns the declared separation of powers into a separation primarily between the President and the Prime minister, each of whom seeks to sway the *Rada* to their side. Scholars agree in interpreting this reform as a personal warrant for the incumbent President in view of the quite possible win of Viktor Yushchenko at next presidential elections. Such rearrangement of the

⁶ Article 106.

⁷ At the time, dissolution was only possible if the Parliament failed to open the session within 30 days from elections.

⁸ The President only proposed a candidate for the post.

⁹ Articles 115 and 87.

power balance in favour of the Parliament also reflected the political confrontation between pro-Western elites and pro-Russian elites¹⁰.

Between 2010 and 2014, the pendulum struck back towards the President. This followed September 2010 Constitutional Court decision invalidating 2004 amendments on procedural grounds, turning back the clock to the times of a parliamentary-presidential type of semipresidentialism. The decision of the Constitutional Court was a consequence of the election campaign for 2010 Presidential elections, when the newly elected President Yanukovich, wishing to regain full power, managed to “convince” the Constitutional Court of Ukraine of the 2004 amendments unconstitutionality.

On 22 February 2014, in the aftermath of the Euromaidan demonstrations and Yanukovich’s ouster, the *Rada* reinstated the 2004 Constitution – once again in a highly charged political context and based on societal demands. This constitutional change was not grounded on Chapter XIII provisions¹¹, but on “exceptional circumstances” in violation of the established constitutional order.

The described instability of constitutional design is a characteristic of the Ukrainian system of government, mirroring uncertainty in framing the power relationship between the President and the Parliament. Also, the 2014 reform entails the risk that future Presidents rely on its controversial character to strengthen his or her own power. More recently, debates around constitutional reform at the end of 2021 witnessed a revival of a presidential-parliamentary setting¹². This brought to the registration of a petition to reform the Constitution promoted by a group of politicians¹³.

¹⁰ In order to maintain political control following the probable loss of power of L. Kuchma’s influence group, which has a large representation in the Parliament, 2004 amendments minimized the political influence of pro-Western elites headed by V. Yushchenko.

¹¹ Accordingly, the relevant draft law had to be reviewed by the Constitutional Court of Ukraine for compliance with Articles 157 and 158 of the Constitution of Ukraine, approved by a simple majority of the constitutional composition of the Verkhovna Rada of Ukraine, and on at the next session of the Parliament by a qualified majority of two-thirds of its constitutional composition.

¹² Such ideas were mostly developed by the Secretary of National Security and Defense Council of Ukraine Oleksiy Danilov on press.

¹³ Petition №22/099954-еп. Чому не повернути нашу Україну до президентсько-парламентської республіки!?, <https://petition.president.gov.ua/petition/99954>; A. Deina (2022), “Жорстка Президентська Республіка: Секретар Рнбо Запропонував Змінити Форму Управління в Україні” [*Rigid Presidential Republic: Secretary of the RNBO Proposed to Change the Form of Government in Ukraine*], *Mirror of the Week*, 25/10, <https://zn.ua/ukr/politics/zhorstka-prezidentska-respublika-sekretar-mbo-zaproponuvav-skontsentruvati-vsju-vladu-v-rukakh-zelenskoho.html>.

Tab. 1 – *Semi-presidential subtypes and electoral systems: Ukraine, 1991-2016*¹⁴

<i>Period</i>	<i>Semi-presidential subtype</i>	<i>Electoral system</i>
1991-1996	President-parliamentary*	SMD (1994-96)
1996-2005	President-parliamentary	SMD (1996-98), MMS (1998-2002)
2006-2010	Premier-presidential	PR
2010-2014	President-parliamentary	PR (2010-12), MMS (2012-14)
2014-	Premier-presidential	MMS

Notes: * Interim post-Soviet constitution. MMS = mixed-member system; PR = proportional representation; SMD = single-member district.

2.2. Why a semi presidential system of government? State-building, institutional legacies and open-ended compromise in a fragmented polity

It is often said that the reason for the spread of elected presidents in semi presidential settings in Post-Soviet countries lies in the lack of an institutionalized and efficient system of political parties able to sustain a stable government. The elected leadership would indeed partly neutralize this problem. However, this is more an ex-post justification for the adoption of the system, rather than an explanation of the reasons historically conducive to it.

In Ukraine, the system of government outlined in 1996 was indeed not so much the outcome of a strategic design, it rather resulted from a mix of factors pertaining mostly to the weight of institutional legacies and to the unsettled power balance within society as reflected in the political system. To this, someone also adds that the choice for a popularly elected President stems from the idea, shared by National Democrats (but not by Communists' heirs) that an elected figure would concretize a symbol of independence and national unity¹⁵ for a political community still in the process of State-building¹⁶.

This idea is common to many post-Soviet States that found themselves in a similar “post-colonial” situation, which explains the widespread diffusion of elected presidents in the area¹⁷. Apparently, Communists' disfavour for an

¹⁴ S. Choudhry, T. Sedelius, J. Kyrychenko (2018), *Semi-Presidentialism and Inclusive Governance in Ukraine. Reflections for Constitutional Reform*, IDEA, Stockholm, p. 24.

¹⁵ A. Wilson (1999), “Ukraine”, in R. Elgie (ed.), *Semi-Presidentialism in Europe*, OUP, Oxford, p. 263.

¹⁶ V. Pigenko, C.R. Wise, T.L. Brown (2002), “Elite Attitudes and Democratic Stability: Analysing Legislators' Attitudes towards the Separation of Powers in Ukraine”, *Europe-Asia Studies*, 1, pp. 87-107.

¹⁷ Also J. Blondel (2012), “‘Presidentialism’ in the Ex-Soviet Union”, *Japanese Journal of Political Science*, 1, p. 13.

elected President was overcome in 1991 once the prospects for former secretary of the Communist Party and former President of the Ukraine Supreme Soviet Leonid Kravchuk to be elected concretized.

Also, when the choice for a strong President was first made in July 1991, Ukraine was still part of the Soviet Union and independence (which would have been declared in August) was not on the agenda¹⁸. Part of the political élite was still supportive of remaining part of the Union and the presidential option was considered to favour Ukrainian position in negotiations with Mikhail Gorbachev¹⁹. After independence, January 1992 constitutional amendments just incorporated this presidential choice, transforming the President of the Ukrainian Republic in the elected Head of the (new) Ukrainian State and moulding the institutional setting to be partly replicated in the 1996 Constitution.

Scholars also underlined the relevance of institutional legacies, with the partial overlap between the peculiar semi-presidential setting and the previous Soviet power structure, and the weight of the Russian system²⁰. As Matsuzato puts it «[t]he semipresidential choice [at the level of the USSR in 1989] was almost automatically passed to union republics», and then transferred to new States after their independence. As a form of institutional mimicking, the presidency was the heir of the presidium and its adoption would better fit the previous arrangement than a parliamentary system²¹.

Someone also stresses the «[n]atural evolution of the Soviet executive diarchy between the Central Committee of the Communist Party and the government». Mimicking did not only concern the idea of an elected President counterbalancing the legislative assembly; it relates to the two-headed executive model too, which stems from the soviet functional distinction between political and managerial functions. Under the Communist rule, the Presidium (together with the Supreme Soviet) used to deal with strategic and political decisions, while the Government was endowed with a managerial responsibility²².

¹⁸ In March 1991, slightly more than 70% of Ukrainians supported Gorbachev's referendum on the preservation of the Union.

¹⁹ A. Wilson, "Ukraine", cit., p. 261.

²⁰ «As a separate Ukrainian state then seemed a distant prospect, Ukrainian law-makers simply grafted the presidency onto the already existing parliamentary (soviet) system without really considering the consequences this would have in institutionalizing conflict between the various branches of power once the latter began to act with real independence» (*ibid.*).

²¹ K. Matsuzato (2011), "Disintegrated Semi-Presidentialism and Parliamentary Oligarchy in Post-Orange Ukraine", in R. Elgie, S. Moestrup, Y-S. Wu (eds.), *Semi-Presidentialism and Democracy*, Palgrave MacMillan, p. 194; J. Blondel, "Presidentialism", cit., p. 7.

²² K. Matsuzato (2005), "Semi-Presidentialism in Ukraine: Institutional Centristism in Rampant Clan Politics", *Demokratizatsiya*, 1, p. 48.

The third rationale for the coming into existence of a semi-presidential system of government in Ukraine relates to the fragmented and polarized nature of society and the political élite. A semi-presidential setting was to best ensure «a sharing of powers in the context of mutual fear and suspicion between opposing political forces»²³. It also fitted clientelistic characteristics of post-Soviet politics «since the President can use his prerogative to appoint and dismiss prime ministers to manipulate between various clans»²⁴.

Successive reforms of the 1996 Constitution did not result either from a well-thought consideration of pros and cons compared to other systems, notably the parliamentary system, or from accurate assessment of existing semi-presidential systems. Constitutional changes over time did not emerge from societal discussion and intra-parliamentary negotiation, rather being contingent and irregular outcomes of political instability.

Thus, 2004 reform was not the outcome of a frank discussion about recalibrating the President's power, rather mirrored Kuchma's power preservation attempt and personal self-warrant in view of Yushchenko's victory and the compromise on new presidential elections after the so-called Orange Revolution. Similar observations can be made as far as it concerns post-Euromaidan constitutional changes, occurring «only through extraordinary and irregular processes in periods of constitutional and political instability [...] [T]hus far constitutional changes have generally been driven by extraordinary, non-parliamentary events»²⁵. As mentioned, 2010 return to pre-2004 setting was realized by the Constitutional Court, testifying its overt politicization. Overall, this explains loopholes and shortcomings in constitutional design.

3. A peculiar semi-presidentialism open to multiple outcomes

In its current form, the Constitution foresees a dual executive composed by a (directly elected) President of the Republic and a Government. The latter must enjoy the confidence of the *Rada*, while the President enjoys the same democratic legitimacy of the *Rada*. At the same time, some typical elements of the presidential system of government are also present, consist-

²³ F. Frison-Roche (2007), "Semi-presidentialism in a postcommunist context", in R. Elgie, S. Moestrup (eds.), *Semi-Presidentialism outside*, cit., p. 57.

²⁴ K. Matsuzato, "Semi-Presidentialism in Ukraine", cit., p. 48.

²⁵ S. Choudhry, T. Sedelius, J. Kyrychenko, *Semi-Presidentialism and Inclusive Governance in Ukraine. Reflections for Constitutional Reform*, cit., p. 17-ss.

ently with post-soviet trends. As Wilson put it: «the 1996 constitution aimed towards a classic separation of powers, but did not fully establish it».

Thus, strong separation of powers inspires the system, which also provides for checks and balances through shared powers or specular counter-powers. As a consequence, the detailed constitutional regulation of the two main State powers – the President of the Republic and the *Verkhovna Rada* – and of their relations, as well as the relations with the Government, shapes a peculiar mutual interlocking. At the same time, the institutional architecture grants the President of the Republic a position that moves him closer to «Crown-Presidentialism»²⁶, even though this model never took hold in Ukraine in practice both for institutional and for political reasons.

Constitutional provisions are characterized by a certain level of ambiguity, being open to multiple interpretations. This follows a lack of technical finesse and is also a consequence of constitutional arrangements being a compromise needing further legislative implementation. Since its inception, the presidential or rather parliamentary leaning of the semi presidential regime is thus not clearly settled²⁷.

Besides acting as Head of State and «guarantor of state sovereignty and territorial indivisibility of Ukraine, the observance of the Constitution of Ukraine and human and citizens' rights and freedoms»²⁸, the President is endowed with a wide array of powers²⁹. First and foremost, these are powers that directly affect other constitutional bodies: calling for legislative and constitutional referenda without countersignature (power that sparked the constitutional crisis in April 2000)³⁰, nominating the Prime Minister based on the *Rada*'s proposal who then formally appoints him³¹ and dissolving the *Rada* under specific conditions³². Yet, symmetrically the *Rada* is also assigned the

²⁶ W. Partlett (2022), «Crown-Presidentialism», *I-Con*, 1, pp. 204-236. A good example of the crown-presidentialist leaning are the power to suspend the operation of acts of the Cabinet and to revoke decisions of local authorities and acts of the Council of Ministers of the Crimean Republic (Articles 106 and 118), which give him a function close to that of the Constitutional court.

²⁷ N. Gallina, «Ukraine», cit. p. 498.

²⁸ Article 102.

²⁹ Article 106.

³⁰ O. Protsyk (2005), «Constitutional Politics and Presidential Power in Kuchma's Ukraine», *Problems of Post-Communism*, 5, p. 26.

³¹ Ministers are then appointed based on the Prime Minister proposal.

³² Article 90 of the Constitution of Ukraine stipulates that the President of Ukraine has the right to prematurely terminate the powers of the *Rada*, if, first, within one month, a coalition of parliamentary factions has not been formed in the *Rada* in accordance with Art. 83 of the Constitution; secondly, within 60 days after the resignation of the Cabinet of Ministers

power to invoke the popular will, proposes its candidates as Prime minister and other ministers, and has a power to impeach the President³³.

In relation to executive powers, the President conducts foreign policy, which also entails the nomination of the Minister of Foreign Affairs and the Minister of Defence (then appointed by the Parliament). The President appoints heads of diplomatic missions and has powers relating to the declaration of the state of war. However, principles of (domestic and) foreign policy are set by the *Rada* and the Government bears responsibility for the «implementation of [...] foreign policy [...] the defence potential and national security [and] foreign economic activity»³⁴.

Furthermore, the Cabinet is not only responsible to the President but is also guided by its acts. Yet the Cabinet is also *responsible and accountable* (through confidence vote) to the *Rada*³⁵ and under its control, guided by its resolutions, while the Prime Minister directs «the implementation of the Programme of Activity of the Cabinet of Ministers of Ukraine adopted by the *Rada*»³⁶. However, the Constitution provides for the absolute majority of the *Rada* to approve a no-confidence resolution and poses strict conditions to the adoption of such³⁷.

Again, the President declares the state of emergency, under confirmation of the *Rada*. It has a role in appointing and dismissing State officials such as the General Prosecutor, under approval of the *Rada*³⁸, the Head of the Security Service, prefects. It appoints one-third of the Constitutional court judges (after 2016, based on a competitive process), half of the members

of Ukraine, its personal composition was not formed; thirdly, during 30 days of one regular session, plenary sessions cannot start.

³³ Under the Ukrainian Constitution (article 111), the impeachment procedure is initiated by the majority of MP. The *Rada* then «establishes a special temporary investigatory commission whose composition includes a special procurator and special investigators». Based on the commissions conclusions, the *Rada* adopts by two-thirds a decision on the accusation of the President'. Finally, the decision to remove the President requires a majority of three-quarters of MP, after the opinion of the Constitutional Court on the constitutionality of the procedure and the Supreme Court on whether or not the alleged acts contain elements of state treason or other crime.

³⁴ Articles 116 (1) (7) (8).

³⁵ Upon the proposal of the President or at least one-third of MPs; before that, the President could dismiss the Prime Minister (Article 114), and elections did not entail automatically a new Government, whereas the election of a new President automatically led to the resignation of the Government (Article 115). A. Wilson, "Ukraine", cit., p. 270.

³⁶ Articles 113-115.

³⁷ Article 87. This is a set of provisions that can be considered functionally equivalent to the German constructive vote of no confidence, A. Wilson, "Ukraine", cit., p. 271.

³⁸ Before 2004, the President could dismiss the Prosecutor General on its own.

of the Council of the National Bank, of the National Council of Ukraine on Television and Radio Broadcasting – yet again, the *Rada* enjoys specular powers here too³⁹.

In turn, President's powers impinge on the exercise of the legislative function through a right of initiative and a right to veto (non-constitutional) laws adopted by the Rada, reinforced by the power to refer laws to the Constitutional court. Also, the President exercises normative powers more broadly, through presidential decrees, for the execution of both the Constitution and laws of Ukraine (but within the limits set by article 92). In practice, as we will see, the President made extensive use of these powers. Connected to this, is the possibility to create, within the limits of the funds stipulated in the State Budget, an administrative structure to assist the President.

In short, instead of balancing the branches of government, the Constitution establishes a system of “mutual inviolability”. All considered, such interlocking with a presidentialist flavour is intended to force compromise between the two main State powers, but also presents the risk of stalemate and insolvable conflict. This stems clear from provisions relating to the Government «sandwiched between Parliament and President»⁴⁰, i.e. subject to a double line of dependence, being «guided in its activities by the Constitution and laws of Ukraine [...] and resolutions of the Rada» and by presidential decrees.

4. From *de iure* to *de facto*: the practice of the Ukrainian semi presidential system

Based on the described unstable design, the practice of Ukrainian semi-presidentialism displayed recurrent features. Two of them are notable: the widening of Presidents' areas of intervention and outshining of the Government, with episodes of constitutional encroachment possibly overflowing the legislature's boundaries, and the ability of a fragmented Parliament to limit the use of President's powers. However, such ability did not result from the existence of a structured opposition.

Even though there might be differences in the extent to which these features emerge according to the period, they all characterize the consolidation phases of the system between 1991 and 1996 (Kravchuk and first Kuchma's presidencies) and between 1996 and 2004 (Kuchma's presidencies), as well

³⁹ Article 85.

⁴⁰ A. Wilson, “Ukraine”, cit., p. 270.

as the subsequent periods between 2005 and 2010 (Yushchenko presidency), 2010 and 2014 (Yanukovych presidency), 2014 and 2019 (Poroshenko's presidency) and after 2019 (Zelensky presidency).

4.1. Assertive Presidents and weak Governments

The practice of Ukrainian semipresidentialism is characterized by assertive Presidents (Leonid Kravchuk being the sole exception)⁴¹. This is not surprising, considering the President's popular legitimacy and his constitutional powers. Such assertiveness has two distinct dimensions. First, it is the widening of presidential powers as they are formally set in the Constitution, which is to a certain extent a normal dynamic. Second, the fact that «presidency [...] has fallen prey to autocratic tendencies» to expand the reach of its powers⁴², entailing ruptures of the constitutional framework, which happened under both subtypes of semi-presidentialism⁴³.

As mentioned, the Constitution itself endows the President with a wide array of powers and is ambiguous in delimiting the relative share of power of the President and of other State bodies. Within this setting, Parliament's fragmentation and inefficiency entailed a competitive advantage for the President in appropriating executive powers (outshining the Government) and even legislative powers. Autocratic tendencies were in turn a structural consequence of the conundrum between modernization and democratization in a transitional setting.

A good example of the Presidents' ability to impinge on the legislative function is the use of veto powers. Veto was quite frequent and very difficult to overcome for the *Rada*, due to the two-thirds majority requirement. It even happened that the President refused to sign laws that were re-approved by a two-thirds majority. This included important constitutional laws such as the

⁴¹ This was due to the potential instability of a nascent democracy keeping him away from any attempt of radical State reform, but also by the economic breakdown Ukraine experienced in those years. This was to change with Leonid Kuchma, whose assertive role allowed to achieve transition goals such as the 1996 Constitution and economic stabilization but also stretched very much the constitutional framework itself. Then, during the first confrontation with the Parliament in 1995, the President of Ukraine L. Kuchma managed to consolidate power in his hands due to the effect of the early post-Soviet "red director" syndrome.

⁴² S. Choudhry, T. Sedelius, J. Kyrychenko, *Semi-Presidentialism and Inclusive Governance*, cit., p. 10.

⁴³ To be sure, the two mentioned dimensions are partly connected, J. Blondel, "Presidentialism", cit. p. 9.

law on the Cabinet, rejected eight times by Kuchma⁴⁴, who failed to fulfil a constitutional obligation and displaying autocratic tendencies.

Frequent (ab)use of dissolution powers is also documented, as well as presidential attempts (notably under Kuchma's rule) to extend such powers, the matter being part of the contentious referendum of 2000 and 2004 amendments finally extending them. Notably, Yushchenko resorted to dissolution during the political crisis of 2007 due to major disagreements in shared appointments (but Yanukovich refused to countersign the decree); Poroshenko included dissolution in his election program and once elected, after the collapse of the coalition in 2014, dissolved the Parliament; more recently, Zelenskyy during his 2019 post-election speech announced the intention to dissolve the Rada due to the lack of a parliamentary majority, and its decision was then appealed to the Constitutional Court⁴⁵.

On the executive side, the President became de facto the main head in both foreign and domestic policy. This goes together with him often trying to influence the Prime minister and other cabinet members' appointment – not only during president-parliamentary phases of government, but also during premier-presidential ones. For instance, Yushchenko was never «a passive conveyer of the parliamentary will» and kept playing «an independent role in the appointment of the Prime minister simply because parliamentary elections do not necessarily produce a definite “will” and majorities take shape in various ways»⁴⁶. The weight of the President's role in judicial appointments and dismissals is also widely documented⁴⁷ (court presidents and deputy presidents notably) fostering control supreme of jurisdictions at given moments⁴⁸.

More in general, there is a common practice of all Presidents to resort to normative decrees⁴⁹. Such powers' widening came together with the creation of a large presidential administration, also for those policy areas that the Constitution does not endow explicitly to the President (notably, in the field of domestic policy, spilling over reforms, legal policy, law enforcement and anti-corruption; humanitarian policy; domestic policy; information policy;

⁴⁴ O. Protsyk, *Constitutional Politics and Presidential Power*, cit., p. 26.

⁴⁵ New elections resulted in a strong majority of the newly created presidential party Sluha narodu.

⁴⁶ K. Matsuzato, “Semi-Presidentialism in Ukraine”, cit.

⁴⁷ M. Popova (2012), *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine*, Cambridge University Press, Cambridge.

⁴⁸ S. Choudhry, T. Sedelius, J. Kyrychenko, *Semi-Presidentialism and Inclusive Governance*, cit., pp. 18 e 37.

⁴⁹ Ivi, p. 56.

access to public information; and local government and decentralization)⁵⁰. This technostructure is necessary for the President to effectively shape policy agendas.

Presidents' protagonism also concerned initiation of constitutional reforms. The 1995 Constitutional Agreement, which paved the way to the 1996 Constitution, itself reflected the attempt to widen presidential powers (an attempt that only partially succeeded due to parliamentary resistance). The 2000 referendum witnesses Kuchma's (failed) attempt to force constitutional reform, and in some instances 2004 and 2009 reforms are themselves the result of presidential use of constitutional politics for self-empowerment.

Outshined by presidential protagonism, Governments rarely played a central role being «too often politically opaque, organizationally passive, and lacking in any stimulus to action»⁵¹. This reflects on the profile of Prime Ministers, which with few exceptions (see *infra*) have been technocrats in power for rather short mandates, lacking party support. Prime ministers worked thus as fuses to shield presidential responsibility for enacted policies, with the President removing the Prime minister on his own discretion or more often as an indirect consequence of a vote of no confidence⁵². This is reflected in cabinet instability⁵³.

4.2. The limits on presidential superpower and institutional conflict

Notwithstanding such potential for Presidents' domination, a second major feature of Ukrainian semipresidential practice is his inability to control a fragmented Parliament, which in turn derived from a fluid party system, weakly institutionalized parties and the related absence of a presidential party. Parliament's strength did not result from the existence of a structured opposition. This entailed the endemic conflict, with the Speaker of the Parliament playing an important role in this regard.

Conflicts with Parliament happened in both the legislative and the executive domains. We mentioned the frequent use of veto power entailing inefficient legislative process. In turn, the Parliament also hindered presidential policies by not considering a number of draft laws, starting from Kuchma up

⁵⁰ Ivi, p. 37.

⁵¹ A. Wilson, "Ukraine", cit., p. 270.

⁵² Ivi, p. 271.

⁵³ Ivi, p. 263.

to Zelenskyy (who for this reason dissolved Parliament in 2019)⁵⁴. On the other side, appointment and control over the “presidential ministers” – the Minister for Foreign Affairs and Minister for Defence – were often contested, notably under Yushchenko’s presidency⁵⁵.

According to Matsuzato, the President is thus an «an idol with feet of clay», no longer disposing, as a popularly elected official, «over the former “party apparatus” to relay his decisions at all levels, and have them implemented». In that sense, the same author refers to the Ukrainian case as «disintegrated semipresidentialism», where «coordination between the President and Parliament is almost absent»⁵⁶. The Presidential advantage in formal constitutional provisions thus did not concretize in practice. To be sure, Presidents attempted to build coalitions to support their agenda, which features Ukraine as a case of «coalitional presidentialism»⁵⁷. This at times allowed the implementation of presidential agenda.

Also, the *Rada* voted motions of no confidence against the Prosecutor general in 1995, 2000, 2001, 2004, 2005, 2007, 2014, causing in some cases his resignation, and appointment in 2016 was controversial.

As it is well known, following the Euromaidan protests, the *Rada* impeached President Yanukovich in February 2014, but through a process that departed from the one specified by the Constitution⁵⁸.

Coordination between President and Government was also problematic. Again, this holds for the periods of President-parliamentarism – during Kuchma and Yanucovich presidencies – as well as for periods of premier-presidentialism – during Yushenko, Poroshenko and Zelenskyy presidencies. Conflicts were favoured by the blurring of the relevant competences and, in the conditions of such “dualism”, encouraged by their status as

⁵⁴ N. Gallina, “Ukraine”, cit. p. 501.

⁵⁵ S. Choudhry, T. Sedelius, J. Kyrychenko, *Semi-Presidentialism and Inclusive Governance*, cit., p. 22.

⁵⁶ K. Matsuzato, *Disintegrated Semi-Presidentialism*, cit., p. 192.

⁵⁷ P. Chaisty, S. Chernykh (2015), “Coalitional presidentialism and legislative control in post-Soviet Ukraine”, *Post-Soviet Affairs*, 3, p. 177-200.

⁵⁸ The legal basis for this move was the Rada’s resolution on 23 February 2014, which determined that President Yanukovich had ‘withdrawn from performing his constitutional duties’ through his departure from Kyiv the day before, and on that basis conferred the powers of the President to the Chairman of the Parliament (Resolution No 764-VII 23, February 2014). The requirements of article 111 were not met: the President was not formally charged with a crime or constitutional violation, there was no review by the Constitutional Court and the final decision did not reach the required three-fourths majority (318 votes in favour, short of the 338 votes needed).

almost equal political functionaries in terms of formal powers⁵⁹. Yet, they only broke out when Presidents faced first-line Prime minister (some of them becoming Presidents afterwards)⁶⁰. This is the case notably of Kuchma under Kravchuk's mandate, Yushchenko under Kuchma's mandate, Timoshenko and Yanukovich under Yushchenko's mandate⁶¹.

As it has been said, «no constitutional solution has been able to bring to the country the necessary constitutional stability. The power ambitions of the respective presidents were too strong»⁶². The standard situation is thus one in which there is no prevailing force in the system. This creates conflicts and stalemates, which tend to be solved by popular pressure or through extra-constitutional agreements partially satisfying each relevant actor (so-called IKEA catalogue compromises). The Orange Revolution and its outcome well portraits such a situation: Yanucovich's attempt to dominate election through irregular procedures was followed by popular demonstrations, then by the compromise between Yanucovich and the opposition trading a third round of elections with the approval of the constitutional reform. In a similar vein, the Euro-Maidan impasse, that was caused by a sensitive foreign policy decision by President Yanucovich going against the directions set by the *Rada*, could only be solved through popular demonstrations⁶³.

5. Questioning the effects of the Ukrainian semi presidential system of government on democratic consolidation: is the problem the semipresidential template or its design?

The analysis allows for some observations on the impact of Ukrainian semipresidentialism on democratic consolidation. While it is difficult to draw any straightforward or general conclusion, still it is possible to highlight the

⁵⁹ Kolyukh V. Parliamentary republic in Ukraine: prospects and obstacles. (2019) Bulletin of the National Technical University of Ukraine "Kyiv Polytechnic Institute", *Political science, Sociology and law*, 3, 43 pp. 176-180, <http://visnyk-ppsp.kpi.ua/article/view/198128/198373>; P. Burkovsky, O. Haran, "From Presidentialism to Parliamentarianism Strengthening or Weakening Democracy in Ukraine?", *PONARS Policy Memo*, 412, p. 2.

⁶⁰ J. Blondel, "Presidentialism", cit., p. 24.

⁶¹ S. Choudhry, T. Sedelius, J. Kyrychenko, *Semi-Presidentialism and Inclusive Governance*, cit., p. 35.

⁶² N. Gallina, "Ukraine", cit. p. 510.

⁶³ The Law "On the principles of domestic and foreign policy of Ukraine", adopted in July 2010, included European integration as an objective of Ukraine's foreign policy. Yet, as we have seen, the actual responsibility for foreign policy was not clearly set out in the Constitution.

positive and negative sides of the Ukrainian case study, which features for its exceptional character in the area⁶⁴.

On the positive side, under the difficult socio-political conditions of post-Soviet Ukraine, semipresidentialism allowed for a minimum degree of stability, thanks to the presence of a popularly elected President with fixed term of office, endowed with a certain amount of powers. One might argue that such stability would not be granted in a system where the executive fully depends on the Parliament's will. While a parliamentary system excludes (under similar political conditions) the surfacing of a strongman, the effects of its fragmentation and subsequent executive instability affect legitimacy and efficiency of the system in the long-run⁶⁵. There is no empirical possibility to test this hypothesis in the Ukrainian case, yet it has been observed that the switch from a semipresidential to a parliamentary system in Post-Soviet Moldova did not enhance democratization either⁶⁶.

In relation to this, a popularly elected President entails consequences for State – and Nation – building needs. Ukrainian presidents might indeed have carried out a symbolic function of institutional stability in a country endangered by its internal heterogeneity and by external threats especially after 2014 and even more so after February 2022.

At the same time, polarization and fragmentation of the *Rada* never allowed for President's domination as it happened elsewhere (e.g. Russia). Over time Ukraine experienced change in leadership and alternation after new elections. During the first phase of transition, even the indisputable authoritarian approach of Leonid Kuchma never resulted in bypassing of Parliament through decree to the extent this happened in Russia, not to speak of the shelling of Russian Parliament in 1993 that can be contrasted to the 1995 Constitutional Agreement⁶⁷.

In that sense, notwithstanding its authoritarian potential, Ukrainian presidential leadership is one of the few in post-Soviet area that can be said not being authoritarian⁶⁸. According to Partlett, Ukraine is even «a neglected example of a country with a semi-presidential design that has helped to promote democratic constitutionalism»⁶⁹. On the same vein, Wilson argues that,

⁶⁴ J. Blondel, “Presidentialism”, cit., p. 26.

⁶⁵ S. Choudhry, T. Sedelius, J. Kyrychenko, *Semi-Presidentialism and Inclusive Governance*, cit., p. 28.

⁶⁶ W. Partlett, “Crown-Presidentialism”, cit., p. 230.

⁶⁷ A. Wilson, “Ukraine”, cit., p. 265.

⁶⁸ J. Blondel (2012), “‘Presidentialism’ in the Ex-Soviet Union”, *Japanese Journal of Political Science*, 1, pp. 7, 22 e 32.

⁶⁹ For K. Matsuzato, “Semi-Presidentialism in Ukraine”, cit., p. 45, «harsh struggles between clans in Ukrainian politics often create a vacuum of initiatives, in which centrists

notwithstanding the negatives (see *infra*), the system contributed «to social stability by discouraging winner-takes-all majoritarianism»⁷⁰. Yet again, this is more a structural consequence of the context (need of and dependence from coalition building, lack of party discipline and structured parties, lack of a presidential party) and of institutional choices, rather than of political culture.

All the above is not to deny the shortcomings of Ukrainian semipresidentialism. It has been thus affirmed that «[t]he failures of semi-presidentialism in Ukraine were greatest during the periods of president-parliamentarism, but were also present during the premier-presidential periods»⁷¹. Among these failures, the parliamentary ability to weaken the President prevented effective and consistent legislation⁷² due to recurring institutional conflict among the President, legislature and Government, stalemating the political system, and enhancing an «unaccountable and populist Parliament»⁷³. Thus, the system in force «could not be said to have had productive consequences, at least in terms of regularized policy outputs»⁷⁴. Even though «Parliament was able to control the presidential power ambitions [...] whenever Parliament took power into its own hands, it proved poorly capable to do so»⁷⁵.

This is because Ukraine semipresidentialism is obviously very different from the paradigmatic French V Republic example, shifting from presidential to parliamentary phases of government and back, since «[n]either President nor Prime minister has ever really enjoyed a majority in Parliament in the true sense»⁷⁶. This is due to the lack of a viable party system, the weak democratic culture of the political elite and the influence of oligarchs and informal groups. In this regard, it has been hold that the semipresidential setting is able to undermine confidence in democratic institutions in transitioning countries where a democratic culture must still consolidate⁷⁷. The repeated instrumentalization of the Constitution might corroborate this view.

motivated by the logic of institutions and relatively independent from clans' interests play an important role. This is the reason why Ukrainian politics have overcome repeated attempts to shift to a more authoritarian regime, be it pure presidentialism or parliamentary oligarchy».

⁷⁰ A. Wilson, "Ukraine", cit.

⁷¹ S. Choudhry, T. Sedelius, J. Kyrychenko, *Semi-Presidentialism and Inclusive Governance*, cit., p. 17.

⁷² Ivi, cit., p. 6.

⁷³ A. Wilson, "Ukraine", cit.

⁷⁴ *Ibid.*; J. Blondel, "Presidentialism", cit., p. 21.

⁷⁵ N. Gallina, "Ukraine", cit. p. 510.

⁷⁶ A. Wilson, C. Filippini (1997), "Elementi presidenziali e parlamentari nelle Repubbliche della Comunità di Stati Indipendenti", in L. Pegoraro, A. Rinella, *Semipresidenzialismi*, Cedam, Padova, p. 215.

⁷⁷ P. Chaisty, S. Chernykh, *Coalitional presidentialism*, cit., p. 196.

On one hand, a popularly elected President hindered the development of a functional party-system and an effective Parliament⁷⁸; on the other interinstitutional conflicts may have caused distrust in the institutions of constitutional democracy. Overall, «the mixed constitutional system had the effect that power ambitions of the state presidents, single prime ministers [...] and the chairmen of Parliament destabilized the whole political system»⁷⁹.

To conclude, after more than 30 years of semipresidentialism in Ukraine, the question whether the problem lies on the semipresidential template or rather on the lack of its carefully well-thought design is still open. While any conclusion in this regard should be more deeply assessed, the analysis suggests that the latter is the main problem: «[t]he fact that the political forces in the country – in striving to get the most out of the constitution for themselves – did not decide on either a parliamentary or a presidential republic would turn into the main problem of Ukrainian constitution-making»⁸⁰.

The Ukraine case thus proves that the main obstacles on the way to building a functioning society and the rule of law are not so much related to making the Parliament or President “supreme”, and thereby elevating the role of the legislative or executive power, but to make the activity of the Parliament more effective and more correctly establish its interaction with the executive power, in order to bring them closer to the needs of the people.

The economic issue is clearly at the heart of the way out of the permanent political crisis. The problem of the redistribution of powers between the President and the Parliament is primarily due to the desire for influence on the allocation of state budget expenditures. This is based on the oligarchic groups that have established control over the resources of Ukraine since the 1990s. The strengthening of contradictions between the branches of power is the result of a hidden struggle for resources and financial flows of groups of influence. To achieve a proper institutional design, a clearer understanding of informal dynamics is thus essential.

⁷⁸ According to S. Choudhry, T. Sedelius, J. Kyrychenko, *Semi-Presidentialism and Inclusive Governance*, cit., p. 28, «if institutions are weak, a strong President may impede the development of political parties altogether, and is likely to be detrimental to the development of party institutions and programmatic cohesion». However, J. Blondel, “Presidentialism”, cit., p. 21 observed that the weakness of parties is a structural problem that could not be solved by a different system of government.

⁷⁹ N. Gallina, “Ukraine”, cit., p. 510.

⁸⁰ Ivi, p. 498.