

ICPS newsletter[®]

Will democracy survive in Ukraine? What the experts say

The adoption and publication of the Law on the Cabinet of Ministers has confronted Ukrainian society with a critical problem, say ICPS analysts Viktor Chumak, Ivan Presniakov and Oleh Myroshnichenko. The Verkhovna Rada is deliberately passing laws that contradict the Constitution. In the heat of political competition, politicians have been ignoring the principle of rule of law in an ever-more blatant manner. This means the preservation of democracy in Ukraine will now be guaranteed, not by laws, but by the goodwill of political leaders. As the coalition and the Government show little respect for the law, there is no guarantee that they will not curtail other political institutions whose responsibility is to oversee the Government and to criticize it—the opposition, the media and civil society

The balance of power is being disturbed

In H2'06, the cohabitation of a "strong" President and a "strong" Government, both of whom had significant Constitutional powers but came from different political camps, allowed a certain balance between the two government institutions. As in other countries, this kind of cohabitation blocked the implementation of systematic policy at the state level.

However, finding it impossible to implement policy on a unilateral basis, the various players had to seek compromise and make concessions to each other at least regarding such issues as Ukraine's accession to the WTO and the adoption of the State Budget. This balance contributed to a relatively democratic political situation.

But the Verkhovna Rada coalition and one of the opposition factions proved ready to override a Presidential veto on a Cabinet Law that re-distributed powers from the President to the Cabinet of Ministers. Moreover, this was done in a manner whose compliance with the Ukrainian Constitution is in serious doubt, demonstrating how instable the political balance in Ukraine really is.

The Verkhovna Rada majority shows every intention of continuing along this course—adopting laws that expand its powers and those of the Government and curtail the powers of the President, regardless of any problems with the

consistency of these laws and their compliance with existing legal norms. Similar initiatives include a Bill on the President and amendments to the Law on the National Security Council.

Recent decisions harm democracy

The Government and the Rada majority insist that the purpose of this process is to move towards a parliamentary republic. But the means used to achieve this goal raise serious doubts whether the result will be democratic.

Firstly, the rules that govern relations between the President and the Cabinet have become more contradictory, not less. Having a choice between ordinary laws and the Constitution, political players will begin even more to base their decisions on regulations whose legitimacy they uphold or regulations that benefit them. The Cabinet of Ministers will follow the Law just passed, while the President will be driven by his understanding of the Constitution, which is the highest direct Law of the land. In practice, decisions will be implemented in those instances where the decision-maker has direct power over those who must carry out the decision. This situation will weaken the legitimacy of nearly all government decisions derived from newly adopted laws.

Secondly, there is no guarantee that the practice of ignoring the Constitution will not now be repeated. If the country does not adhere to the principle of rule of law, nobody can be sure that their powers are

By the way...

- ICPS is launching a series of analytical seminars for employees and partners of the Centre. These seminars will run twice a month. The second seminar took place on 9 February, called "Analysis of the Current Situation. What Does it Mean for Ukraine?" On 26 January, ICPS Director Volodymyr Nikitin held the first seminar, devoted to covering the key training objectives and the first seminar topic, "Mega-trends." Participants in this first seminar included the Centre's experts and Honorary Chair of the ICPS Supervisory Board Vira Nanivska.
- As part of the "Building Support for a Comprehensive Approach to Security Sector Reform in Ukraine" project, a workshop called "Comprehensive Survey of the Security Sector Reform" took place on 30 January. The Centre's specialists and specialists from Government agencies and other think-tanks analyzed the state of reforms in the security sector. They identified key current and potential problems and the positions of stakeholders, and discussed the advantages of effective reforms, that is, as an integrated and systematic process.

protected. There is no way to be certain, now, that the Rada opposition, independent media or the other institutions needed for democracy to function will not become the next victims whose wings are clipped after the President.

The judiciary cannot guarantee rule of law

The adoption of laws that are legally suspect can be corrected when an independent judiciary does its job properly. Balance of power can, for instance, be restored through the Constitutional Court, according to procedures specified in law.

But there are serious doubts whether Ukraine's Constitutional Court will be able to quickly decide whether new legislative norms comply with the Constitution. At the moment, as much as 4–5 months can pass from the time a law comes into force to the time when the Court cancels any illegitimate act. To give an idea of how long it takes to wait for a Constitutional Court ruling, the Court began hearing one appeal that was submitted on 20 September 2006 only on 18 January 2007—four months later. If the coalition makes new decisions that are questionable as to their Constitutionality during this time, the Constitutional Court will not be able to quickly evaluate these new decisions. This will leave relations among government institutions in legal limbo, if not outright chaos in the meantime.

At the level of courts of general jurisdiction, this situation can raise conflicts as a result of a wave of claims filed by ordinary citizens and civil servants based on legal acts at various levels—the Constitution and amended laws on the Cabinet of Ministers, local administrations, and so on.

Soon, Ukraine is likely to witness “raiding” of a new type. Having armed

themselves with mutually contradictory court decisions on the legality of a particular appointment by the President or the Government, candidates for positions of deputy ministers or deputy governors of local administrations will assault executive buildings and take higher offices by force. The example of the Mukacheve court banning the publication of the Law on the Cabinet of Ministers is only the first sign.

What can be done?

The main condition for democracy in Ukraine to be stable is to immediately enforce the principle of rule of law. The main instruments of this must be a strong, impartial judicial system and an effective, independent Constitutional Court.

As with all strategic goals, this goal cannot be achieved easily or rapidly. It will require a lot of time, which means that the President, the opposition and the Government should begin to work on it right now.

The vigor with which the President and his Secretariat are fighting over the Law on the Cabinet would yield more results if they focused on lobbying for reform of

the judiciary and of law enforcement bodies, especially as Concepts for these two sets of reform were developed long ago. In addition, with an instrument like the National Security Council, this issue can be raised at an NSC meeting and the necessary Decrees issued that are binding on the Government.

The Verkhovna Rada opposition could bring equally worthwhile benefits to Ukrainian society, if, at when debating the 2007 State Budget, it would ask aloud how much money the Budget has allocated to implement these reforms instead of vaguely reproaching the Cabinet for its “anti-social” Budget.

One effective measure would be a campaign among ordinary Ukrainians and think-tanks oriented on jurisprudence for a legal evaluation of the legality of government decision-making, involving wide media coverage of the issue of the failure of government bodies to adhere to the rule of law. ■

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Consumer Confidence: Holiday season fails to lift consumer mood

In December 2006, the traditional improvement in the consumer mood in the run-up to the holiday season failed to materialize. The Consumer Confidence Index (CCI) even slipped slightly in December, to 90.6, which is 0.6 points below the CCI value registered during the previous poll in October 2006

Short-term economic expectations among Ukrainians continue to be extremely pessimistic: this index x3 was 81.9 in December 2006. Long-term economic expectations also deteriorated over October–December. The index x4 fell 6 points over this period, to 90.2. The reason for this is evidently disappointment among Ukrainian consumers over the country's economic policy.

Despite pessimistic economic expectations, the number of Ukrainians who expect that their financial standing to improve over the next six months actually grew over October–December. The index x2 climbed 4.9 points over this period, to 89.2. The readiness of consumers to purchase large household items continues to be strong: the Index of Propensity to Consume (x5) was 107.3 in December 2006. A value above the

100-mark shows that the majority of Ukrainians think that now is generally a good time to purchase durable goods. The highest propensity to consume was registered in Kyiv. Its index x5 rose to 125.0 in December 2006, 11.7 points above the value registered in October.

At the same time, economic expectations were worse among Kyiv residents than in any other region. In December 2006, the Index of Economic Expectations (IEE) in Kyiv was 60.0, a striking 21.7 points below the national average. Extremely negative economic expectations among Kyiv residents are possibly related to steep rises in utility rates in the capital, against the background of public controversy over the legitimacy of these rate increases, and also lack of confidence in the Mayor and the municipal administration. As a result, inflationary expectations in Kyiv were

also the worst: the Index of Inflationary Expectations (IIE) was 196.7 in December 2006, 10.3 points above the national average.

Consumer confidence in other major cities improved noticeably. In December 2006, their CCI was 112.6, 17.7 points above the value registered in October. The propensity to consume in large urban areas also grew sharply: this index x5 was 132.3, a healthy 21.5 points above the value registered in October.

Consumer confidence deteriorated among low-income Ukrainians and older consumers, those aged 46–59. From October to December 2006, the CCI for Ukrainians with below-average incomes fell 7.5 points to 66.9, while the CCI for older Ukrainians dropped 6.4 points to 74.8. This deterioration was mainly because of growing negative economic expectations. ■

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