

## **ROUNDTABLE “LESSONS OF DEMOCRACY: WORLD PRACTICE FOR UKRAINE”**

### **Ambassador Extraordinary and Plenipotentiary of Finland to Ukraine H.E. Mrs. Laura Reinila**

Thank you very much for the introduction. I've learned a lot of things from you that I didn't know beforehand. In Finland, our system is quite simple. We didn't ask all the questions that you are asking yourselves now.

There are two issues that I would like to raise. The first is related to the election law. And then I can comment on the formations of the coalition.

In Finland, we have always had coalition governments. There are a lot of parties. Three of them are major.

The first 50 years after independence, we had been experiencing a high rotation of governments, as you are now experiencing in Ukraine. But through the years, we have learned to create practices that would ensure the government would last longer. Nowadays, these rules of the game have been put into the constitution. But before that, they were in practice for many years.

The outcome of this year's (March) parliamentary elections in Finland was a surprise. The party that for 30 years was the biggest party in parliament lost its leading position. The new government had to reflect the will of people. Fortunately, before the elections, the parties had agreed how to conduct negotiations on forming a coalition. They had agreed on a timetable. And in spite of the expectations of big dramatic changes, the timetable was kept.

It was a common practice. It is the leader of the biggest party who first starts the negotiation process with other party leaders.

After a certain time he has to report on his findings on the possibility of building a coalition with other parties in parliament. Of course, it is a complicated task. Parties have different orientations and different programs they have to fulfill in order to maintain support.

So, after the report and the general agreement that the government will be formed by these parties, they can launch real negotiations. In two weeks, they have to agree on a program for the next four years.

And having agreed on a program, they decide how to divide the portfolios. Only after that there is a nomination of ministers.

This takes no longer than a month.

For the first time (since the war), the president has enough assistance.

The government is formed by the members of parliament because we think the government has to have political experience in how to work with parliament. This is important because the government has close relations with parliament.

The aim of the prime minister was to assure the people that the government has 50/50 ratio of women and men. And because parties wanted to be good, this led to the current situation, in which we have 20 members of government with 8 men and 12 women. There were no quotas and it functions very well. So, women are needed in politics.

It has been said that, in Sweden, governments survived longer if they had longer discussions on their government programs. We exercised government programs more often and that is why negotiations usually don't take a lot of time in our case. This is because you already know the old positions of parties and major urgent reforms. So, it is more a question of which order you put them in or how much focus you would give to them. So, it is not so dramatic when, in 10 days, you can't make a program because there are the party functioners who are doing those things and discuss them anyway. It is not ready as soon as it was put on paper.

Another thing I would like to comment on is communication within the government. It is important to have a tradition of communication between the president, prime minister and parliament. It is natural when the president leads foreign policy and is in contact with the foreign minister. It is good when there are such traditions as meetings without urgency that are created to ensure institutions know what they are doing. I don't know how often they meet. But they meet in order to be informed and ensure transparency to prevent different actors from doing things that could lead to uncertain outcomes or problems.

So I encourage creating this kind of system.

### **Ambassador Extraordinary and Plenipotentiary of Sweden to Ukraine Jon-Christer Olander**

For us, it has taken 500 years to create a parliamentary system. And it is constantly under discussion. For Ukraine, it is a challenge to make such changes in a short transition time. I have been here for three years and I find it very positive that there is a free discussion about the different challenges and options you have in front of you.

I would like to comment on the coalition and opposition issues. It is rather unique that, in Sweden, we have had a social-democratic government for almost 50 years (after the WWII). It is most important that the opposition function in a democratic way. Last September, we had elections and got a coalition government. It was a shock for social-democrats. The former government had agreements with the left parties (communist and green). They didn't want to accept them into the government, but they had a very precise agreement on how to satisfy their demands. The agreement was reached during the budget process. You will get this and that, but you have to promise to support us in parliament. And that functions very well because those parties had no options and had to choose if they want to have an influence or not. They wanted to have an influence, so they made such an agreement with the government, which was a one party government.

Now, since September, the central-right parties are backing power. It was more than 10 years ago they were in power. In our system, the responsibility to form the government lies within the parties. The parliament just has to accept it by supporting the person who is proposed for a government position. Before that, the speaker consults with all the parties to find out where there is a majority. Normally this task is given to the largest party. In many countries, this procedure is common – first you ask the leading party if it can form the coalition that will have the support of parliament. The coordination is made in prime minister's office where all parties have a state secretary who has access to the prime minister all the time and contact with party leaders and party members.

It is important that, within a coalition, each minister has to be responsible for his ministry and doesn't interfere in other ministries. The decision of the government is a collective decision. But in Sweden, things don't always go according to the text book. Parties want to be individuals and usually give suggestions that will cause debate among other members of the coalition. Of course, this damages the unity of the coalition, but such is political life in Sweden. Each party wants to have their own profile.

And now, briefly about the opposition. We have no written rules about the opposition. This has been developed through tradition. Of course, those traditions have to assure the right of opposition to express opinions in parliament and give suggestions to the committees. There is a division of the presidency of all the committees before the parliament is launched. This is done through the simple calculation proportionally to the number of party members in parliament. But also there is a political discussion. For example, the strongest party always gets the committee of finance – one of the most important committees. The opposition can make their propositions.

What is more, according to unwritten practice, the opposition has to be consulted when large decisions are to be made. They are always consulted about foreign policy issues. It is very important for a small country to be unanimous in foreign policy.

And to summarize, I would like to say something that I always say to Ukrainian friends. The most important in party life is party discipline. Once you have reached an agreement within the party,

you stick to it. If you can't stick to it, you have to leave the party. You vote according to the party line and not your personal conscious. If you go against the party you will experience sanctions – you will not be on the party list in the next elections.

Party discipline, mutual trust and mutual respect – these things were brought about by written and unwritten rules and they are very helpful for parliament.

### **Ambassador Extraordinary and Plenipotentiary of Romania to Ukraine H.E. Mr. Traian Laurentiu Hristea**

In order for you to understand better how things work in Romania, I would like to start by presenting a few issues that are related to constitutional particularities. These issues were in a high relevance when we had a change of governments. There really exists a mechanism (even without elections) of changing one government for another, some political actors, parties within the same coalition when part of them go to opposition. It is very rare, but it happened once.

The Romanian president is elected by a general secret vote in a universal election. The candidates are submitted by the parties. Once he is elected, the president is obliged to give up his membership in a party to become the president of all citizens and have no connection with any party. In addition, his constitutional prerogatives are not the same as the French presidential model. Romania is a presidential republic, but the president is more likely the king in western countries being only the guarantor of the constitution, head of the council of national defense and the main inspirer-guarantor of foreign affairs. All other executive prerogatives are implemented by the prime minister. The only link here with the government is that the president appoints the prime minister. From that moment, it is the responsibility of the prime-minister to form the government. And the coalition has to decide how to divide prerogatives according to the election results. The same situation with the parliamentary committees.

This has consequences on party discipline. You might be allowed to vote according to your own conscience, but you will become an independent representative in the parliament with no right of legal initiative. The constituency will automatically have a problem if you don't have initiative in the parliament.

I would like to come back to coalition issues. Once the prime minister is elected, he conducts the negotiations of forming the coalition. Basically, he selects members of the coalition from those parties that at least were not against the winning party.

In our history, we experienced similar events before WWII and we have it after a revolution experiencing the mono-color government with the party which is in minority nowadays.

The period of cohabitation was an interesting period. Not very long. The first experience was during the period of 1996-2000 when we first formed a coalition government from four parties. There were parties that signed a pre-election bloc to be together in case they win the elections. So, it was easier at the beginning, because they had in this pre-election agreement agreed on ministerial and committee portfolios and the main package of reforms laws or laws that have to be submitted to the parliament in order to implement their program.

The mechanism of handing over power from the social-democrats to the democratic coalition formed in 1996 was very simple. It was the general secretary of the government who was attending each and every meeting in each and every ministry when the previous ministers and new ministers met each other and handed over the main papers. Usually this was done with the presence of the media.

Another interesting thing is that during the change of government, the former minister became a caretaker minister until a new minister pledge in front of the parliament or the president subsequently. So the new minister can not implement big policy changes during his caretaking mandate, but has to go through current affairs. He has no right to change the budget, major politics. He has no right to change the personnel. The only thing that he can do is implement the ongoing programs that provide for continuity from one government to another.

Moreover, in the ministries, we don't have any political appointees, but for the minister and one or two state secretaries. Others are all the civil servants and they are not a subject of change from one government to another.

Major changes can be made only after the new minister takes over a portfolio. And only then can the new government implement its political program. Such a practice was implemented by keeping in mind the dictatorial period of Ceausescu, which is very fresh in the minds of politicians. And they are very well aware and careful not to give anyone the opportunity to centralize power in one hand.

When it comes to cohabitation between the president and the opposition that won the election, I can say that now we are experiencing the same situation of how these things function in Romania. Of course, the main reference points remain the prerogatives of the constitution.

The additional very interesting issue to present here is a second instrument that is used to provide stability – the activity of the constitutional court. Once appointed, the court cannot be changed, regardless of the impeachment of the president, the dismissing of the prime-minister or the leave of absence of some members. The Romanian constitutional court is very prompt and active and its decisions are never commented or contested by political leaders. No one would even dare to comment. That will be a political minus because the court has great support among society.

Recently we had a case that led to a procedure aiming to suspend the president. This was on the initiative of the opposition party. The parliament voted to organize the referendum. As a result of referendum, the parliament's proposal was rejected. The president got back his power automatically.

The dismissing can be done by the government or by the parliament because people gave their vote of confidence to both. What happened was the party that was supporting the president at the referendum decided to give up its prerogatives and moved to the opposition. So now we have a minority government formed by the Liberal party and the National Democratic Union of Hungarians, which is supported by the social-democrats, the main opposition party. And one coalition member is in opposition now.

The hand over from one coalition to another was very simple. The Democrats' portfolios were automatically divided between Liberals and Hungarians. That doesn't mean that the social-democrats, who were in opposition, are in government now. They are formally not there. So, we have two parts of the opposition – social-democrats and former government democrats. Basically, the support for one government or not is formed in the parliament. And then their voting is based on a specific draft law. If it is a case when there are no agreements on a certain initiative by the government to be supported by the entire parliament, automatically we will have new elections to the parliament.

There is no regulation for a coalition and there is no draft law on an imperative mandate. Party discipline is important because there should be responsibility within the party for the positions they hold. And dialog between the parties is very important. We are very choleric when it comes to internal political life. We had to invent a mechanism that will ensure dialog among the parties.

And we moved from political dialog to a situation when we had monthly meetings of political parties organized by the president at the presidential administration. Even when parties don't like each other, but stability has to be provided in case power is transferred from one party to another as a result of elections.

This is a good opportunity for the president to put important subjects onto the agenda of those meetings.

Dialog provides the exchange of views among different political forces.

**Representative of the Embassy of Canada to Ukraine Nathan Taylor**

In Canada, the political system is a constitutional monarchy. Our head of state is Queen Elisabeth II. She is represented by a governor general. We have a parliamentary government. Our prime minister is head of the political party that has the most seats in the House of Commons. However this does not necessarily mean that the Prime Minister will control a majority seats. Our electoral system, which is a single member constituency system with 308 members in the current parliament, generally leads to a majority government situation. However, since 2004, Canada has been in the minority government situation. The current government controls 125 seats. The ruling party in Canada (the Conservative Party) is not in a coalition with any of the other parties.

In order to move a legislative agenda forward, the governing party has to reach consensus with one or more of the opposition parties. This consensus is reached on the issue by issue basis. So, on one issue, the ruling Conservative Party may enter into a consensus with the Democratic Party. On another issue – with another party.

In our parliamentary system, as opposed to other countries where the government must maintain majority control of the House, the term that we use in Canada, the government must maintain “the confidence” of the House of Commons. This is an important distinction because certain votes in the parliament are defined as confidence votes. This vote would be on the annual budget as always a confidence motion. Major legislation initiatives can be confidence motions. And the governing party can't define other motions as confidence motions. Or the governing party does have a choice where some topics have individual votes and no party discipline applies. In Canada, we do generally operate under a very strict party discipline. In one of the recent votes, the member of the Conservative Party voted against a confidence motion and was immediately expelled from that party. And found himself an independent.

Or a member of the opposition can “cross the floor” to the governing party. However such movements in our system are quite rare. And they are very heavily publicised in the media when they happen.

On an annual basis, the government prepares the “Speech from the Throne”, which sets out the government agenda for the current parliamentary session. In the case of the minority government, the speech has to be discussed with the opposition parties because the speech is a confidence motion. If the speech does not pass, the government would fall immediately. The prerogative will then go to the governor general to either ask the leaders of the opposition if they can form the government or would dissolve the parliament and call the general election.

Following the speech from the throne, a more detailed discussion of the government's agenda is put forward in an annual budget speech, which transfers the speech from the throne to specific initiatives and resources to these initiatives. And again the budget speech is a confidence vote. So, the governing party will enter into negotiations with one or more parties to assure the budget is passed. Otherwise, the government would fall.

An interesting development – our current administration has recently passed a Federal Accountability Act. This act was largely in response to accountability issues that were raised under the previous administration. Particularly, it related to political party financing and lobbying issues.

Canada does have a lobby registration act that governs lobbyists. Under the Federal Accountability Act, some key elements of government lobbying were improved. Senior public servants are now banned from lobbying for a period of three years after their resignation from their position. This prevents such individuals from using their previous contacts and knowledge of the internal work in the government to then influence the government. All the discussions with senior public servants are to be recorded and would be available for public scrutiny.

With respect to financing political parties, the Federal Accountability Act has restricted corporate influence over political contributions and, in fact, has banned corporate and union donations. Individual contributions to political parties are limited to \$1,000 and cash contributions - to \$20. The purpose of this act is to strengthen accountability, transparency and oversight in government operations.

There is a broad number of other actions that has been taken within this legislation with respect to senior appointments to the government, with respect to our procurement process, with respect to access to information.

So these are the key elements of the Canadian system. Under the majority government situation, we would have elections every 4 to 5 years. Under our current minority government, we had elections in June 2004. We had another election in January 2006. Our next election will take place in 2011.

#### **Advisor of the Minister of Justice of Ukraine Nicolas Maziau**

The first comment I would like to make regarding the political regime is ask what type of regime do we want for a specific country? Should Ukraine adopt a parliamentary or presidential regime? It is important to keep in mind which regime is for what purpose.

It is important to raise this question any time. We have a long history. And we have tried almost all the types of regimes that exist. We have tried constitutional monarchy, parliamentary and presidential regimes, using the model of the United States. We also have tried the assembly regime. So, we have great experience with various constitutions.

The lesson we learned is that when we are questioning the type of regime, we first have to answer the question with what we are looking for and what background we have. You can't ignore history when you choose the political regime. France has stabilized after the constitution of 1958. We have chosen not an American type of presidential regime, but a presidential regime that is a kind of mix of the presidential and parliamentary regimes. But primacy is for the president.

We have made this choice because we are deeply convinced that we want a strong state with a strong president as head of the executive branch.

It is very important for Ukraine to answer the question whether it wants the American type (presidential regime with a strict separation of powers) or the United Kingdom model of regime (where the main role is played the government supported by the majority in parliament) or whether it wants to chose something in between, like the French system.

I also would like to comment on the question of cohabitation. We have had three periods of cohabitation from which we have drawn useful lessons. I can't say cohabitation is something normal. When the constitution was adopted, Charles de Gaulle could not even imagine that cohabitation can happen. The first period of cohabitation happened in 1996 and laid the foundation for the theory of cohabitation at France.

President Mitterrand's "constitution, all constitution and nothing but constitution", as you referred to in your presentation, is indeed very important for every country. Both heads of the executive branch must respect the constitution.

Of course, the first cohabitation was not peaceful, but in strict respect of the rules. If there was a different interpretation of constitution, it would be the president who is to interpret the constitution. He has the final word because he is the guarantor of the constitution. We have a constitutional court, but in this case it is not needed.

But the main reason why the system worked during those periods is that the prime minister was himself a candidate for the presidential office. If the prime minister is not a candidate for the next presidential elections, he has no interest to respect a compromise with the president. And the compromises were respected because the prime minister was not interested in weakening the president. If he is elected, he would weaken himself.

So, what we have learned is that cohabitation requests a compromise at the highest level.

The second point is the importance of administration. In our case, the administration is very powerful and absolutely loyal to the state with no political interference. The civil servants obey the prime minister or the president depending on the fields. Civil servants must respect political decisions. To assure a strong administration, you need strong relations within administration at the highest level, the procedures that have to be respected.

The government secretary is a civil servant, but not a political appointee. We have a government secretary for 10 to 15 years. They serve for different presidents and different prime ministers.

They may have political ideas, but they are loyal to the government of place. Even if you have an excellent constitution, it won't work without clear procedures. The constitutional system can not be separated from the administration. A strong administration is needed in order to ensure a strong political system. And a strong administration means a neutral administration. And this becomes extremely important during cohabitation. The government needs to be sure about the loyal support of the administration. The same rule is for the president.

### **Ambassador Extraordinary and Plenipotentiary of Finland to Ukraine H.E. Mrs. Laura Reinila**

Countries are very different. For example, in Finland we don't have a constitutional court, nor do we have lobbying problems. Still the country functions. The opposition doesn't have a formal role, but still it works effectively.

What kind of parliament do you want? We wanted to have a parliament that represents all the people from different parts of the country. That is why we have constituencies based on the regions.

We have party representatives, but we don't have party lists as you have here. People vote freely and can support different representatives. This leads to rotation in the parliament. New interest groups get their representation. Many young people get there.

The main message – give the regions an opportunity to be represented.

### **Representative of the Embassy of the U.S. to Ukraine Kent Longston**

I like the title very much – Lessons of Democracy. The United States has been working on that for 231 years and we still have not got it straight. This is a long process and, in fact, Ukraine has a very short history trying to work out these important questions. You have to create your own solution that makes sense for your society and your people.

We do have a different system. We have a “winner-takes-all” system, we have a two-party system, a bicameral legislature. Most Americans have trouble discussing proportional systems of government, party lists. All these things are very alien to U.S. experience. But this does not make them any better or worse. It's just different for each country.

Open debate in Ukraine is the most important thing right now: people actively deciding what kind of system makes more sense here.

In our view, the main principles that are important are principles like the principle of transparency. The check and balance whether the cohabitation is between different branches of government against each other whether it is the regions and states. Checks and balances are very important to us as is having a direct connection to constituencies, somehow people can feel that their vote registered in the capital.

We worked closely with many parts of Ukrainian governments and the NGO community trying to share some of our experiences whether it is lobbying, primaries, transparency, bicameral or unicameral legislatures. And we are happy to continue working with our colleagues and we are open for any questions.

### **President of the National Academy of Public Administration under the President of Ukraine Vira Naniivska**

We should ask questions like:

Is the time for forming the government limited in different constitutions? Is switching parties allowed? What should bureaucrats and government officials know? What makes them independent and politically neutral? What makes courts independent? What ensures their independence?

And, of course, power issues... How is power ensured? Is it allowed for in various constitutions? Is there any tradition regarding penalties?

Why and in what way did Americans change their constitution after only six years of functioning?

What makes a democracy?

### **PORA leader Yevhen Zolotaryov**

I wonder if there were examples of the dissolution of parliament through deputies' vacating their seats. Also, I would like to get to know how primaries are organized.

### **Representative of the Embassy of Spain to Ukraine Pablo Ruiz Jarabo**

I would like to answer the question about when a huge number of deputies resigned. I was impressed by the fact that the president in Ukraine doesn't have a right to call for re-elections at any given moment. In Spain, the president can call for re-elections whenever he considers it necessary. It is a decision he is free to make.

### **Representative of the Embassy of Canada to Ukraine Nathan Taylor**

Not a precise example of the situation, but there was a precedent in Canada in late 2005. Our governor general had released a report that exposed some questionable practices. And the opposition had taken a vote of confidence against the government. Generally, the vote of confidence is referred to in the legislation, such as the budget or annual Speech from the Throne. But in this case, the opposition simply brought forward the emotion.

In our parliamentary system, the government controls the agenda of the House of Commons. There are specific days in parliament that allow the opposition to control the agenda. We call these opposition days.

That was the day when the opposition came in with the confidence vote and the government was dissolved.

I also would like to comment on the reference my Spanish colleague made. Our governor general also has the power to dissolve the House of Commons. Legally, the parliament could be dissolved at any time. But in our political culture, this power is exercised only in a very limited basis. The last time this power was used against the government's will was in 1935.

### **VR Deputy of the 5<sup>th</sup> Convocation Oksana Bilozir**

How does control work in your countries? Is there any responsibility tool? Who monitors all the events? Is this society itself or checks and balances?

### **Advisor of the Minister of Justice of Ukraine Nicolas Maziau**

There is a question that hasn't been raised yet, concerning the balance of powers between the president, parliament and government

The Ukrainian parliament seems to have very broad competencies, but with no capacity in the government to discipline its majority. And I'm not speaking about party discipline, but about the capacity of the government to impose its will on the parliament. In France, we have what we call the rationalization of the parliamentary system, which means that the parliament is under the control of the government, due to the fact that the majority in parliament has to respect the political impact.

In the Ukrainian constitution, you can not find any provision that would give technical powers to the government to impose its decisions on the parliament. Such provisions have to ensure that the government-proposed draft is adopted. The deputies have the right, equal to the right of the government, to propose their drafts. For example, you have three drafts on the same topic, but the government can't impose its draft to be adopted. The parliament can make amendments, but the government must be sure its draft was considered. Otherwise, the parliamentary system can not function.

### **Ambassador Extraordinary and Plenipotentiary of Sweden to Ukraine Jon-Christer Olander**

Sweden is a constitutional monarchy and the king is the head of state, but he has no political power. Most of the powers belong to the parliament. If the government made a proposal, but the parliament doesn't like it, the government has to resign. So, the government can't dictate what parliament should do.

So the parliament is not controlled. But public control – transparency and discussion – is equally important. All official documents are available to the public. Anyone can come to the ministry and ask for a copy of any document. Of course, some restrictions exist in the Ministry of Foreign Affairs.

We don't have a constitutional court. Some of its would-be functions are exercised by the parliamentary committee of constitutional affairs that controls governmental decisions. This is not a very strong point because sometimes the committee can be too vague.