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By Tammy Lynch

Contrary to popular sentiment, if it walks like a duck and talks like a duck, that doesn't mean it is a duck. In Ukraine today, there is an institution that toils like a parliament and sounds like a parliament, but clearly is not a parliament.

Instead, Ukraine's once vibrant, dynamic legislative body has begun to resemble a rump debating club, except that everyone agrees with everyone else, and no one outside the club is listening. Moreover, as this “debating” continues, Ukraine's highest political leaders snipe, grumble and point at each other, creating a cacophony of noise that makes it nearly impossible for the average person to understand what is going on. When asked about their parliament or their government in general, average Ukrainians shrug or sigh, while international political observers worry that the country’s reputation has suffered significantly.

The sighs increased in the last two weeks, as 255 members of the parliament continued meeting and voting, even though over 150 opposition MPs had resigned, thus making the body constitutionally illegitimate. According to a political agreement signed by President Viktor Yushchenko, Prime Minister Viktor Yanukovych and Parliamentary Speaker Oleksandr Moroz on 27 May, these resignations should have triggered the parliament to dissolve itself, in anticipation of new elections on 30 September.

But, as has become very clear in the last several years, signed agreements in Ukraine mean very little. Moroz and Yanukovych have refused to dissolve parliament, leading to a war of words, with both sides accusing the other of
violating the constitution. It is a disappointing turn of events in the country that captured the world’s attention during the Orange Revolution.

**What happened?**
This crisis is the latest in a string of crises that has stalled or slowed the work of state institutions for more than a third of Yushchenko’s nearly two and a half years in office. Fully 10 out of 28 of those months have been engulfed by political crises, with other months also affected to varying degrees.

On 2 April, Yushchenko issued a decree dissolving parliament, because of what he called the “unconstitutional process in the formation of the parliamentary majority coalition.” (1) He suggested that this process violated the mechanisms, articulated in Article 83 of the Constitution, regarding majority formation. Specifically, the president suggested that inclusion of individual deputies in the majority coalition violated the Article’s requirement that majorities only include full factions and that the majority be created within one month after the election.

Of most concern to Yushchenko was the fact that the parliamentary majority had grown quickly from 232 members to at least 250. The President faced the real possibility that the majority would be enlarged to 301 (based on member defections from factions), the number needed for overrides and constitutional amendments.

Additionally, Yushchenko and opposition activists had become concerned at what they viewed as a return to some of the tactics used prior to the Orange Revolution. These included police investigations of political opponents, legal and physical pressure on the media, and the alleged intimidation of parliamentary deputies to either change their factions or their vote.

Opposition leaders had become especially alarmed after representatives from the Prosecutor-General’s Office (PGO) suddenly searched the apartment of
former Interior Minister and former Orange Revolution organizer Yuriy Lutsenko and then accepted a request from the parliament to examine opposition leader Yulia Tymoshenko’s dealings as head of a gas intermediary in the mid-1990s. Both Lutsenko and Tymoshenko had announced that they would lead major protest actions against the government.

At the same time, the Ukrainian National Television Channel 1 cancelled its only political debate program, “Toloka,” after Tymoshenko and Vyacheslav Kyrylenko of Yushchenko’s Our Ukraine bloc appeared on the program. (2)

The root of the problem, though, stems from constitutional amendments hastily adopted during the tail end of the Orange Revolution. The amendments create a perpetual struggle for control between the presidency and the premiership by not delineating spheres of responsibility in some areas, and by assigning duplicate responsibilities to both offices in other areas.

In May, the recent crisis expanded frighteningly beyond the bounds of normalcy even for Ukraine, when each side mobilized troops or police and attempted to take control of the Office of the Prosecutor General. It was at this point that Yushchenko, Yanukovych and Moroz defused the crisis by signing an agreement to hold new elections on 30 September.

**The latest political agreement**

The agreement included a provision for the dismissed parliament to return to work for two days, in order to pass legislation to finance an election, as well as several other essential economic measures. Upon completing these bills, the opposition factions were to dissolve themselves, thereby removing the parliamentary quorum and triggering a new election. The opposition Our Ukraine and Yulia Tymoshenko Bloc factions did so on 2 and 3 June, while also “zeroing” the bottom of their election lists to remove the possibility of replacements.
Then, Speaker Moroz suddenly refused to accept that the opposition had resigned, while also refusing to accept that the president had dissolved the parliament again by decree. Moroz suddenly introduced new administrative procedures dealing with deputy resignations—procedures not voted on by the parliament—and claimed that the 30 September agreement had been “completely misinterpreted.” (3) He alternatively claimed that he hadn’t received the requisite 151 resignations at all, and then stated that the resignations were completed inappropriately. Finally, he claimed opposition deputies had been forced to resign and had privately recanted their resignations. He repeatedly claimed that these deputies would soon make public their recantations, but as of yet, none have done so.

In reality, according to the constitution, it doesn’t matter what Moroz says or does.

Article 81 (Point 6) of Ukraine’s constitution states (in full with emphasis added):

“Where a National Deputy of Ukraine, as having been elected from a political party (an electoral bloc of political parties), fails to join the parliamentary faction representing the same political party (the same electoral bloc of political parties) or withdraws from such a faction, the highest steering body of the respective political party (electoral bloc of political parties) shall decide to terminate early his or her powers on the basis of a law, with the termination taking effect on the date of such a decision.”

Each opposition deputy, therefore, withdrew from his/her faction. The “steering body” of both blocs then voted to terminate the powers of those who had withdrawn, thereby immediately removing their deputy mandates and eliminating the parliamentary quorum.

This is clearly a complicated and potentially dangerous provision (theoretically allowing any opposition to easily trigger new elections) but it is, nonetheless, a
constitutional point. The parliament is provided no constitutional right to interject itself into the decisions of the factions in any way.

The parliament’s administrative office seemed to understand this constitutional issue better than Moroz. On 7 June, the office confirmed to The Yulia Tymoshenko Bloc that it had received and validated 103 resignations from its faction. (4) This, plus 66 resignations from the president’s Our Ukraine bloc, clearly makes the body illegitimate, or not “plenipotentiary,” in the words of the constitution (Article 82).

Lacking legal basis, Moroz’s actions then seem to be based solely on polls showing that his Socialist Party will be kicked out of parliament in the upcoming election. What his stance is doing to the country, however, is of most concern to those following the country’s political transition from a semi-authoritarian to democratic state.

The courts and highest Ukrainian institutions have shown themselves unable to solve the political crisis. Judges have been dismissed, pressured and investigated (often for good reason). Lawmakers report significant intimidation and offers of “compensation.” The media has shown itself unable to clearly delineate what is happening, although they continue to criticize and examine the work of their politicians.

This country that aspires to join Europe’s institutions has demonstrated very little of the political sophistication necessary to do so.

Despite Moroz’s opposition, however, it is likely the election will occur on 30 September. Tymoshenko recently said her bloc would meet any of Moroz’s new rules in order to ensure that the election takes place as planned.
When it does, polls show that a coalition supporting Yanukovych and a pro-presidential coalition led by Tymoshenko will finish neck-and-neck. Perhaps it is for this reason that Yanukovych reportedly now is urging his party members to stop their parliamentary jostling and go out into the regions to campaign. They undoubtedly will do so when Moroz finally lets them.

Source Notes:

(1) Press office of President Victor Yushchenko, 21:18 CET, 2 Apr 07.
(2) For further details, see “Kuchmism 2: Backtracking on reform in Ukraine,” The ISCIP Analyst, 29 March 2007 via (http://www.bu.edu/iscip/digest/vol13/ed1310.html#western)
(3) “600 MPs Are Ready to Revitalize Parliament,” Ukrayinska Pravda, 1649 CET, 12 Jun 07.

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