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By Viktor Yushchenko

OPINION

## Ukraine needs constitutional change

**Ukrainian President Viktor Yushchenko insists his country urgently needs constitutional amendments in order to deal effectively with the needs of the post-Orange Revolution period**

In December 2004, the world discovered a new Ukraine. Ukrainians united to powerfully but peacefully express their desire to defend the right to elect the top state leadership freely and independently.

A year earlier, global citizens had witnessed the inspired faces of Georgian citizens during the Rose Revolution. These “color” revolutions were a logical continuation of the anti-Soviet liberation movements of 1980s, known in Eastern Europe as “velvet revolutions.”

But global political changes, however glowing and inspirational, always have complex roots and nuances. These often remain in the shadows while having a direct impact on the nation at hand.

So what happened in Ukraine in December 2004, behind the scenes of the Orange Revolution?

At the time, outgoing officials agreed to accept the people’s demands, but only on the condition that the constitution was amended. The amendments were therefore passed in haste, without the involvement of experts and scholars, and without being considered by the parliament.

In truth, the authors of the constitutional amendments flipped the switch on a “time bomb.” Their aim was not to improve the political system, but quite the contrary — to unbalance it. The presidency was stripped of power, parliament was made unaccountable to the executive, and overdue promises regarding the reform of local self-government were postponed indefinitely.

Later it became known that this political chess game had been preplanned to ensure overwhelming chaos in the political system and deprive Ukraine of any chance for real change.

Despite numerous attempts to ensure unity among the authorities, I was left with no choice but to initiate constitutional reform. We set up a national constitutional council to which all political forces, including members of the opposition, lawyers, scholars and constitutional law experts were invited.

Later, following lengthy, difficult and often hindered negotiations, my team drafted a new constitution. In late March 2009, I submitted it to parliament for consideration and suggested that not only lawmakers but also the whole Ukrainian nation discuss it.

These are long-awaited reforms in all areas of the political and public life of our state.

The fundamental aspect of the revised constitution is the observance of human and civil rights and freedoms. The equality of all citizens before the law is restated. The constitutional protection of children will be reinforced. A new article regarding the rights of people with disabilities was proposed.

The constitutional proposals were prompted by the need to reform the judiciary and the law enforcement system, including, for example, by stripping the prosecutor’s office of the Stalinist right to conduct pretrial investigations and introducing a Justice of the Peace system instead.

The direct sovereignty of the people will be considerably reinforced, particularly as regards the right to legislative initiative. As an example, we used the democratic models widely adopted in many EU countries, namely Austria, Italy, Spain, Lithuania, Latvia, Poland, Portugal, Hungary and others.

If the electoral legislation is amended, we will make the authorities more authoritative and lawmakers more responsible for their promises to voters.

Following the experience of other countries, I suggested establishing a bicameral parliament which would unite the representation of political forces with communities and territories.

It was suggested that, firstly, the number of parliamentarians be reduced from 450 to 380, with 300 in the lower house and 80 in the upper one, and, secondly, that their unlimited immunity from prosecution be abolished. The matter is that the absolute legislative immunity enjoyed by lawmakers leads to permissiveness and, as a result, to impunity.

The lower house, the Chamber of Deputies, will be a body of the people’s political representation. Its members will be elected directly on a proportional basis from open party lists. This means that voters will vote both for a party and for its particular candidates. Nowadays parliamentary elections in Ukraine are held on a closed list basis, with parties informing voters only about the



first five candidates on their lists.

The upper house, the Senate, will comprise senators elected directly on a majority basis. Each region will elect three senators. The Senate will represent their interests, will be empowered to approve non-cabinet appointments and will also approve the Ukrainian president's decisions regarding defense and national security.

A bicameral parliament will make it possible to separate political influence from appointments to state posts. Such amendments are designed to strengthen political stability.

In the EU, membership of which is Ukraine's strategic goal, nearly two-thirds of the countries have a bicameral parliament, among them such unitary states as Italy, Ireland, Spain and France. After the fall of communism, such a system was introduced in Poland, Romania, Slovenia and the Czech Republic.

The new constitution stipulates that the Ukrainian president, elected directly by the people, will preserve his status as guarantor of state sovereignty, security and territorial integrity, as well as of the observance of the constitution and human and civil rights and freedoms.

The Cabinet of Ministers will be granted independence to perform executive state functions and will be formed by parliament. It will be responsible for everyday foreign and domestic policies.

Local self-government reform will complete the formation of the balance of power. We will make communities primary elements of the state structure, from which we shall build a district and then regions. By the way, we can see the successful implementation of such a project in Poland, where the "gmina" - a primary local community, appeared after the fall of the Communist regime. As a result, the country's financial and electoral resources are used more efficiently.

Recently I have sent the draft of the new Constitution to the European Commission for Democracy through

Law (Venice Commission). I want this draft to be based on European traditions and be consistent with international law.

The parliamentary political forces, which are competing aggressively with one another, have responded to my initiative in an unusual manner - by calling an early presidential election for October 2009. It is difficult to judge but one cannot rule out the possibility of them being afraid of dialogue not only with the president but also with the people, since in the past several years the nation has affirmed its commitment to democratic values and increasingly more often demands that the political elite be shaken up.

However, the decision by my opponents to call the early election has failed to produce the desired effect. I am not clinging to power. I have never viewed power as an end in itself - but as a tool to serve the most important things in my life, my fellow citizens and Ukraine.

Ukraine needs new quality of politics. This is why I keep going further and suggest that early presidential and parliamentary elections be held simultaneously.

However, to ensure that the elections produce new quality, it is vital to fulfil the following conditions necessary for Ukrainian democracy: changing the electoral system (parties should offer open electoral lists so that the people could elect particular candidates who are both politically and personally responsible to them) and abolishing the unlimited legislative immunity enjoyed by members of parliament - so that parliament should be a place where laws are passed, rather than a place where one can hide from laws.

So my top priority is to cement Ukraine's democratic gains and ensure real justice for the people.

My ultimate ambition is to open a path to a better life for Ukraine and establish forever in our country a just law - a constitution of liberty and progress.