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MASTER THESIS

§

“WAYS OF POLITICAL CORRUPTION ALLEVIATION IN UKRAINE”

(Perspective of constitutionalism)

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“...Therefore he who bids the law rule may be deemed to bid God and Reason along rule, but he who bids man rule adds an element of the beast, for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of man. The law is reason unaffected by desire.” (Aristotle)

CHAPTER I. Introduction to the Research

The aim of this chapter is to show the auxiliary conditions for evolution of political corruption in Ukraine at the period from collapse of the Soviet Union till 2008. There is supposed how the processes, which started in Ukrainian politics right after Ukraine became independent, might have supported evolving of political corruption and acceptance of lawlessness in politics by Ukrainian people.

There is also represented a view that political corruption may be facilitated when public officials are able to abuse power and this abuse may result in illegal acts, committed to achieve private benefits. There is also supposed that constitutional reform in Ukraine which happened in 2004 and came into force in 2006 may be a relevant object to study evolution of power abuse in Ukraine.

The chapter provides arguments why the constitutional reform may be analyzed to answer the main research question: *“What are the possibilities to prevent branches of Ukrainian government from abusing the power?”* Those arguments are based on assumption that the new variant of constitution puts a great deal of confusion in responsibilities of the main sources of power in Ukraine and this might have given them legal indirect right to seek ways for abusing it. Thus, there appears to be a breakdown of The Rule of Law altogether with imposing of the new legal institutional changes which are aimed to pursue private interests of political elite.

At the end of the chapter there are introduced research questions which shape the framework of analyzing the constitutional reform in Ukraine and help to answer the main research question.

§ Background, specifics and examples of political corruption in Ukraine

This paragraph shows how keen the problem of political corruption in nowadays Ukraine is. It describes evolution of Ukrainian politics and its specifics from the time when Ukraine became independent till now. There are also given real examples of political corruption to convince the reader in a real scale of the problem and its importance.

Implications of the Soviet Union collapse on political processes in “young” independent Ukraine

The phenomenon of political corruption in Ukraine has common features within the most of post-Soviet countries. Despite of the standards of behavior for public officials are stipulated in legislation of each country they appear to be significantly violated. What could be the reasons for that? The possible answer may be found if we look at the political and economical processes that took place in early post-Soviet period.

Through all the history of independent Ukraine, since 1991, its political situation has always been characterized as unstable. This was a result of that early period of democratic Ukrainian state formation. Right after collapse of the Soviet Union all important resource interrelationships, which existed between the Soviet countries, were broken. There was no strong central government anymore, state institutions were weak and economy was down on its knees. Those times where the times of “wild capitalism”. While Ukraine was trying to strengthen its state institutions, to create its own laws and chose vectors of future development it was still weak to control the process of primary accumulation of the capital which ended up in establishing of strong oligarchy layer in the society after all.

Unfair privatization process was totally under control of oligarchy. The most profitable factories and plants in Ukraine became a property of limited group of people. However, the main goal of any entrepreneur is to increase income in any possible way, and the best way to achieve this is to lobby interests of private business in politics. The specific of the political corruption problem in Ukraine starts at this point, when government appears to be interlaced with business.

Nowadays, state institutions in Ukraine are represented mostly by oligarchy which has the main goal to get more power for more successful representation of its own interests and to control state regulatory mechanisms. The main question for the Ukrainian politicians these days, as also for their colleagues in the post-Soviet countries, is a question of their power extent.

Political corruption in nowadays Ukraine; Examples

According to the data of international anticorruption organization Transparency International, Ukraine was ranked with 134th position in the list of 180 countries regarding its index of corruption perception in 2008. This index is measured within the scale from 0 (highest level of perception) to 10 (no perception). For Ukraine this index is 2,5 for 2008, but, for 2007 it was 2,7 and for 2006 – 2,8. This means that there is a phenomenon of “galloping corruption” which makes severe damage to image of the country on international arena in terms of weak institutional system and unattractive investment climate.

Political corruption is a large component in a whole range of corruption processes taking place in Ukraine. Low political culture of the Ukrainian population (resulting from their indifference to politics in general) and its discrepancy to the formal level of democracy achieved in the country gives a boost for political corruption to flourish.

Despite of there appears to be a democratic constitution in Ukraine, which provides citizens with their rights and freedoms, there are still prevalent elements of “patriarchic” and “subordinate” culture in the society. In such conditions democracy exists only formally in constitution.

For the last 15 years, and especially after the “Orange Revolution” which took place in 2004, the mass media have been full of information concerning Ukrainian politicians and public officials who are accused of bribery or abusing their status in the name of private interests. The most popular messages are about parliamentarians who were paid for voting in favor of certain draft-laws or other important decisions.

The topic of bribery among politicians is the most discussed after each election when it comes the time to form a coalition in the Parliament. Nevertheless, discussing of such issues is not only a prerogative of mass media. Even high rank politicians officially accuse each other. For example, the Chairman of The Verchovna Rada of Ukraine (the Parliament) once blamed The President for facilitating political corruption in the Parliament by proposing influential positions to the parliamentarians for being loyal to him: “Political corruption is coming back to the Parliament”, – he says (Lytvyn, 2007). This quotation is remarkable because it shows that political corruption was considered to be in the Parliament not only back then but also before.

It became a part of the Ukrainian politics to play a game “who blames who”. On the other hand there was never shown any clear evidence of bribery. Though, no one from politicians says that there is no corruption. They do admit on public that it is present!

One of the most famous cases of political corruption which was widely discussed in Ukrainian mass media happened in 2004 with Yuliya Tymoshenko, that time she was the Head of political alliance named after her (BYT). The case was about the video where Yuliya Tymoshenko offers to bribe judges with 125000\$ to adopt a decision which was important for her (Voice of America, 2004). On that video a woman who looks like Yuliya Tymoshenko and has similar voice offers to make a deal of such kind. However, the video was not clear enough to see distinctively if it was really her. So, it became a subject to huge discussions in Ukrainian society but with no convincing evidence.

The office of Prosecutor General made an investigation if the video was authentic. Its conclusion was that it is not possible to say at 100% if the woman on that tape is Yuliya Tymoshenko or not. However, the voice was supposed to be authentic. In general, there had to be done complete investigation and the truth should have been revealed but for some reason it hadn't happened.

Actually, even if that video was a fake one it is still a good example of how political corruption works in Ukraine because it compromises a political figure on the national scale and this can be a part of unfair political competition with involvement of political corruption to use resources for making this case a national wide subject to discuss with intention to change public opinion in favor of other political forces which raised the case.

The main threat of political corruption in Ukraine is that it is almost legitimate. Rudyk O. (2006) writes that Ukrainians consider politics to be a dirty business. That's why Ukrainian society accepts political corruption as an integral part of it. For politicians political corruption is legitimized through the established norms of political management in present time, when politicians belonging to the specific political force or political alliance consider their vision of strategic issues as the only right one. However, there is also and good thing. Ruinous influence of political corruption on social-political processes is recognized by everybody.

Political corruption makes a values' shift in the system of goals setting and goals achieving by Ukrainian politicians. Political corruption is also possible because the benefits obtained with its help are subjects for criticism from the view that they pervert democratic principles of state building but it is not a subject to legal liability.

Another aspect of political corruption is a stereotype created in the minds of Ukrainian people in the post-Soviet times. It is about interrelation between undeveloped democracy and political corruption. Connection between these two components can be made if we consider that in Ukraine functions representative democracy which has political competition as its main principle. In this case, struggle for voters becomes essential activity of politicians and it creates specific political market where politicians are viewed as entrepreneurs and managers. It presupposes that they should act like that. Thus, political corruption is a perfect match to such system of values, because it helps to achieve the main goal. Also, if we take into consideration that vast majority of Ukrainians consider political corruption an integral part of the politics then it is easy to conclude that this stereotype has good chances to exist for a very long period of time.

Political corruption appears in different forms and political processes. Taking into account versatility and specifics of political corruption manifestation in electoral process there also can be distinguished specific kind of political corruption – electoral corruption (Rudyk, 2006). It is possible to define it as bribery of voters and those ones who are voted. Thus, power becomes something you can simply buy if one possesses financial, material of informational resources.

One of the explanations why mandate of a deputy may lead to corrupt actions is because it has a temporary status. According to view of the experts Ukrainian deputies are usually faced with dilemma: to keep political support from voters and in such a way to guarantee re-election or to receive financial support from lobbyists and ensure private financial prosperity.

Now, to make a complete image of Ukrainian politics regarding political corruption, we are going to discuss its' the most outstanding case in modern history of Ukraine. This case became famous world-wide and it is still a subject to investigation with no clear results so far. It is about murder of Ukrainian journalist Georgiy Gongadze and accusation of the former Ukrainian President Leonid Kuchma for this.

Georgiy Gongadze was a journalist with a critical view on activities of the former Ukrainian President Leonid Kuchma. He was one of the founders of analytical internet news agency "Ukrainska Pravda"¹ which covers the main political events and provides political analytics on a

¹ <http://www.pravda.com.ua/>

daily basis. It is the most popular Internet-site of such focus among Ukrainian internet users who are interested in politics.

In September 2000 Georgiy disappeared. Two months later there was found a dead body in the region of Tarascha which is not far from Kiev. This body looked like him. Genetic analysis showed that the probability for this body to be Georgiy was 99,6%, but it was impossible to identify it in 100%. At first this case was qualified as an act of hooliganism. However, later it was discovered that Georgiy was killed by three policeman who received that order from high position police officer who was arrested but set free in a while for no reason.

This case could remain like a simple murder. Nevertheless, on November 28th, 2000 big political scandal took place. The leader of the Socialists' Party Olexandr Moroz (who is also famous as initiator of the Ukrainian constitutional reform in 2004) presented to mass media digital voice records made in the cabinet of Leonid Kuchma (former Ukrainian President) by one of his bodyguards. Those records contain hundreds of hours of private conversations held by Kuchma with high officials. In one of the conversations it was clearly evident that the order to kill Georgiy Gongadze was given to the Head of the Ministry of Internal Affairs of Ukraine Yuriy Kravchenko directly by Kuchma. The records were made digitally and it appeared difficult to prove if they were authentic or not, but later some officials approved that they had that conversations with The President. Nevertheless, there was no proving in 100% about authenticity of the major part of conversations including the one about Georgiy's murder. The scandal around this case was so big that it was enough to begin a "war" for power in Ukrainian politics.

Olexandr Moroz who presented the records became a leader of big opposition movement "Ukraine without Kuchma" which was supported by people who believed in authenticity of records and were not satisfied with policies of the government. The aim of the movement was to remove Kuchma from the post and to elect a new President, for example, Olexandr Moroz.

Death of the prominent Ukrainian journalist became only a motive for political games. His family still doesn't know the answers they want to know. Georgiy became a victim of the dirtiest case of political corruption in Ukraine.

We can just imagine how deep the processes of political corruption in Ukraine are if to consider that it was possible to take records in the private cabinet of The President by his bodyguard and somehow those records appeared in hands of the opposition party leader who announced them right in the moment when it was necessary. Through all these years, beginning from September 2000 till now, this case has not been solved. Only executors were punished but the ones who organized that murder are not identified in the legal way.

It is quite distinctive that when politicians or high rank officials are suspected in some violation of legislation an investigation on that case has no chances to be carried out properly and being not blocked. This is a result of Law supremacy dysfunction in Ukraine. The one who is in power can control or violate the Law. It is like to possess an ultimate power if you are in power.

Institutions of democracy are weak in Ukraine because of the Law dysfunction. The principle of accountability for the ones who are elected to represent interests of the citizens is violated. They become unreachable for the legal mechanisms of accountability which they actually create.

The paragraph paid attention to the specific conditions which played crucial role in formation of the political corruption phenomena in Ukraine. Also, it provided examples which act as evidence of undemocratic processes taking place in Ukrainian politics. The next chapter illustrates how those processes evolved and what is the relevance of Ukrainian constitution in this case.

§ The problem of power abuse in Ukrainian politics. Evolution of abuse: from authoritarian rule of one man to constitutionally legalized possibility

Below it is described how Ukrainian constitution was created and what the situation in Ukrainian politics at that time was. This paragraph uncovers hidden side of the constitution building process which is the first step to understand how a constitution can be an instrument to get more power and abuse it in a legal way.

Ukrainian constitution of 1996 and its reform in 2004 – race for power

The image of the former regime in Ukraine, headed by The President Leonid Kuchma who had been in power since 1994 till 2004 when he was changed by Viktor Yushchenko after the “Orange revolution”, could be described as monopolizing of power. Kuchma came on his post when Ukraine didn’t have its own constitution. That time Ukraine lived according to the laws created in the Soviet times and the first thing which needed to be done for the Ukraine to be considered as an independent country was adoption of constitution which could act like a corner-stone for the Law supremacy in Ukraine. The constitution was adopted on direct initiative of Leonid Kuchma on June 28, 1996. However, transitional processes in the country that had been taking place in Ukraine since 1991 perverted the idea of constitution designation.

This happened because by 1996 there appeared to be formed a cult of power in Ukraine. The oligarchy which controlled almost all strategically important industrial property in the country found out a long before that in order to defend private interests and have huge incomes they have to control state policies in the specific areas and the best way to do that is lobbying in the Parliament.

During the time when Kuchma was in his term of office, oligarchy had large influence and support from the regime. In that time politicians became apparent representatives of those people who elected them. Thus, “political will” was conditioned by the strong interrelation of business and politics. This became a tradition (some kind of rule of the game) which parliamentarians had to play, because most of them were direct representatives of big business but not simple Ukrainians who suffered from weak economy and low social standards. Patriotism and pro-Ukrainian ideas became only words which were addressed to the public but the real intentions were hidden under lobbyism and bargaining which became an image of the Ukrainian Parliament.

The Parliament became desired place for everyone who wanted to get authorities which he could use in the name of private interests. This deepened democratic crisis in Ukrainian society. Everyone saw that there is something wrong happening but nobody could influence or change that.

Market rules substituted the Rule of Law for politicians, parliamentarians and high rank officials. This became a norm for the politics. And it really became like that because people started to associate politics with corruption. It became like a social rule.

So, when the constitution was adopted in 1996 there had already been formed a huge gap between the powerful and the poor. The Law couldn’t function in such conditions, because market rules became dominant, you pay – you buy everything. However, this entire situation was not openly discussed, though everybody knew it. This was the main characteristic of the former regime – political corruption existed but was hidden.

The constitution of 1996 was a good start for Ukraine as an independent state and everyone realized it. However, the fundamental principles of power division and their balance, stipulated in the constitution, didn’t fit to the system of power that had been already formed and functioned in Ukraine. Power was very centralized.

Adoption of Ukrainian constitution made Ukraine recognized in the world as a democratic county. Its constitution was made on the basis of the German one and that time it was considered the best written democratic constitution in Europe. However, that constitution appeared to be only a

paper document which showed to the world what it wanted to see. In spite of Ukrainian constitution included the best democratic practices ever it was like a dream to see, but not the way to live.

If to look at the Ukrainian constitution of 1996 from another angle then it could be seen as an attempt to hide the real political situation under nice mottos which have no effect in real. It seems completely outrageous that things were like that, but it all resulted from the “wild” processes that took place after collapse of the Soviet Union. In that time there were no laws and no rules but only “wild capitalism”. Only strongest and the most ambitious survived. That’s when there were created those rules of political game which involve bargaining and corruption. But these rules are not like any other in the world. The post-Soviet countries, like Ukraine, revealed the most evil side of politics which include total usurpation of power and despotism. But at the same time they try to look nice and democratic.

If to make a general conclusion from the things we have written above then the constitution of 1996 is remarkable for making Ukraine a democracy on one side, but on another side it served like a cover for the perverted side of Ukrainian reality.

There is quite a strange fact about Ukrainian constitution of 1996. It was adopted during the only one night on June 28, 1996 after 5 years as Ukraine have already been an independent country! The former President Leonid Kuchma said that he would dismiss the Parliament if it wouldn’t adopt the constitution that very day. Parliamentarians had to stay in the Parliament for as much time as was necessary and couldn’t leave it until the constitution was adopted!

It was a demand of time, because Ukraine couldn’t postpone presenting its fundamental law to the world-society and staying a white spot for such a long period. Thus, now we can see the result: Ukraine received constitution which was good but didn’t correspond to the real situation with democracy in Ukrainian society and politics.

Reasons for the Ukrainian constitutional reform in 2004: Improving the system of power or misbalancing it with a purpose of getting private benefits?

December 2004 became a remarkable date in Ukrainian history because then there was a beginning of the most famous event in the modern history of Ukraine – “Orange revolution”. It was a time of presidential elections which in fact became a battlefield for two major political forces with completely different views on vectors of geo-political future of Ukraine: pro-Western (European) and pro-Eastern (Russian). On behalf of pro-Western forces was nominated Viktor Uschenko and on behalf of pro-Eastern Viktor Yanukovych who was supported by the former regime, headed by Leonid Kuchma, which controlled mass media and financial resources in Ukraine. That is why Viktor Yanukovych was already sure he would win the elections. However, this was a big mistake because former regime leaders couldn’t even suppose that Ukrainian people raise their voices against forgery in favor of Yanukovych which took place during the second round of the presidential elections. So, “Orange revolution” ruined plans of the former regime elite to stay in power after the elections.

Nevertheless, “Orange revolution” has shown that people are not blind anymore but it couldn’t solve the whole issue with elections because pro-Eastern forces (which had great resources and tacit support of the former Russian President Vladimir Putin) were still powerful and didn’t want to give up their positions. Though, they realized that they don’t have support from the majority of Ukrainian people and it was not possible for them to get it with the help of forgery anymore.

On December 3, 2004 the Supreme Court of Ukraine gave a judgment in which it was recognized that during the second round of presidential elections occurred a forgery and it’s not possible to consider results of the second round legitimate. Thus, the final third round was needed.

The team of Viktor Yanukovych realized – that time they will definitely lose and then they came up with the idea of constitutional reform. The constitutional reform was the only way to resolve confrontation between those two major political forces in opposition. It was something like

a compromise between confronting political forces. Yanukovich agreed to allow Yushchenko to become a President only if his team accepts the reform.

This was another way for the former regime to remain in power as far as the aim of the reform was to change Ukraine from presidential-parliamentary republic to parliamentary-presidential. This means The President is not that important and authoritative anymore and opposition which was widely represented in the Parliament could still have influence in deciding what the politics in Ukraine has to be. All what we described shows that constitutional reform in Ukraine was held not as a result of intentions to improve something in the constitution but it happened as a result of simple desire to keep power and have political influence. The constitutional reform was launched on December 8, 2004 and came into force on January 1, 2006.

It was all about political bargaining with the main intention to keep as much power as possible and not to give opponents more than the less they could have. Nobody thought that time about the consequences of the reform.

The paragraph presented what were the reasons to amend Ukrainian constitution in 2004. As far as they occur to be dealt with imposing of private preferences to achieve private benefit we can focus of the studying of amendments to see how they influenced Ukrainian politics regarding political corruption.

§ Studying constitutional reform in Ukraine on the matter of legalized possibilities for power abuse, resulting in political corruption

This paragraph presents research questions which are aimed to shape the research in order to study constitutional reform in Ukraine with the purpose to find out if the changes resulted in increasing of political corruption level or not. Each question is introduced. Their relevance and general approach how to answer are also explained. Also, there is provided an outline of the research, which finalizes the paragraph.

Research questions

Overlapping of responsibilities between branches of power is the main problem of constitutional reform in Ukraine. Division of power into separate brunches is aimed to prevent power abuse with the help of the mechanism of checks and balances. If executive, legislative and judicial powers are in ones hands then there is likely to be an abuse of them, but when these powers are separate then they can perform a function of mutual control and prevent abusing. In Ukraine these powers are proclaimed to be separate but in fact it can be supposed that they are dependent and controlled with the help of illegal mechanisms involving political corruption. That's why the ones who are in power may appear to have an ultimate control of it. Rare cases of intentions to reinforce accountability issue for high officials are initiated only by the political parties or some other officials who use it in the name of their own interests. We suppose that those illegal mechanisms which delimit governmental powers evolved even more after the constitutional reform. Hence, the main question for my research can be formulated in the way of:

“What are the possibilities to prevent branches of Ukrainian government from abusing the power?”

This question we are going to answer with the view of constitutional reform which took place in 2004 in Ukraine. As it was previously discussed in this chapter, this reform was also an example of political bargaining and fight for power between two major political forces in Ukrainian politics of that time. However, the provisions that were changed in constitution according to the reform became widely discussed in public because of their inclination to support flourishing of political corruption as far as after the reform mostly all important decisions became to be made by the Parliament and the Cabinet. So, there appeared more actors responsible for the decision-making at the national level and issue of power abuse and political corruption became very keen.

Under possibilities for preventing branches of Ukrainian government from abusing the power we understand necessary measures which have to be taken to fix the situation if in the end of our research we can prove that constitutional reform caused more options to abuse power for the government. Thus, for fixing the situation there has to be constituted the process of constitution building to introduce new changes which will put more limits on governmental power and in such a way the level of political corruption will be also decreased.

The answer to this question will be based on the answers obtained after analysis of the three sub-questions presented below. They reveal component parts of the power abuse problem in Ukrainian politics which were embedded in changed articles of Ukrainian constitution. Also, for providing the answer to this question there will be used theoretical concepts which are going to be described in the Theoretical framework.

If to suppose, that changes made in constitution gave more space to abuse power and to consider that abuse of power is usually accompanied by illegal acts with no further responsibility for them, then there occurs penetration of the legal liability for the government. In Ukraine it is almost became a norm that common Law is applicable to the deeds of the governmental officials only in theory but not in practice. This makes us to think that with constitutional reform there could be made some legal institutional shifts which made parliamentarians and high official feel even freer to commit illegal acts (to lobby private interests etc.) Thus, we can have a problem with functioning of The Rule of Law. That is why it would be reasonable to introduce the following sub-question for our research:

“What kinds of legal institutions embedded in the constitution of Ukraine, within the framework of constitutional reform or already existed, prevent The Rule of Law from functioning in Ukrainian politics?”

The answer to this sub-question is going to be based on analysis of such legal institution, embedded in the constitution of Ukraine after constitutional reform, as imperative mandate. However, to make a full picture of all elements contributing to the legal institutional shift that happened after the constitutional reform we have to analyze also parliamentary immunity as a very powerful catalyst which may facilitate power abuse in combination with other components which were subject to the constitutional reform.

We assume that these legal institutions may provide parliamentarians and high officials with indirect possibilities to act not according to the law but on their own will. Thus, a breakdown of The Rule of Law may occur and power abuse may appear to increase in scale. The subject to analysis of this sub-question will be comparison of Ukrainian constitution provisions dealing with parliamentary immunity and imperative mandate and the same provisions from constitutions of the countries considered to have developed democratic traditions of constitution building and those which have such traditions less developed. Also, ideas of Ukrainian scholars and official statements of Ukrainian politicians will be included as “add-factor” to amplify our conclusions.

However, if The Rule of Law functions and imposes good accountability mechanisms for the government it doesn't mean that government can act without any limits for its powers because if there occurs overlapping of responsibilities between the branches of power (this already exists in the new version of the constitution) then there is nothing strange that they start fighting for being the first in making key political decisions. Thus, such situation may result in attempts to usurp and abuse power. This means, that there may occur violation of the constitutional mechanism of checks and balances which sets specific limits for governmental powers. So, the next sub-question for our research is:

“Why do present constitutional mechanisms not keep the governmental powers limited in Ukraine?”

We are going to approach this sub-question in a way of considering changes made according to the constitutional reform in provisions dealing with the mechanism of checks and balances. Our aim is to show if governmental powers became less limited after the constitutional reform or not. For analysis of this question we also take provisions of Ukrainian constitution regarding the mechanism of checks and balances and similar provisions from the constitutions of the countries considered to be developed democratic traditions of constitution building and those which have such traditions less developed. Articles of Ukrainian scientists and official statements of Ukrainian politicians will be included as “add-factor” to amplify our conclusions.

The main aim of the constitutional reform of 2004 was to change balance of powers between the President, the Cabinet and the Parliament. As it was said previously, that was a big political game for control of power. This game also involved abuse of power by political actors and unconstitutional acts which were severely criticized by the opposition parties but weren't subject to legal liability. Provisions of the constitution were agreed by the party leaders on the basis of private interests regarding amount of power they wanted to obtain in result and dramatic political situation that time. Future President of Ukraine Viktor Yushenko had to agree to cut Presidential authority to become a President. This caused changes in mechanism of power distribution. As many experts agree, the constitutional reform was not necessary because now responsibility for the reforms and direction of development in Ukraine is shared among many political forces. Thus, everyone can blame everyone for anything, and seeking of political support is supreme. This may be a good condition for political corruption to exist in such a big scale. Therefore, if the mechanisms of power limitation appear to be weak then it has to be changed in Ukrainian constitution. In this place we would like to put one more sub-question for our research:

“Which changes in Ukrainian constitution are needed to keep governmental powers limited and to reinforce The Rule of Law in Ukrainian politics?”

To answer this sub-question it is necessary to think of advice on the next steps in constitution building process which are necessary to be done in Ukraine to reinforce The Rule of Law and alleviate political corruption. This sub-question results from the two previous ones. It closes the link between the power abuse, which may appear to be a result of misbalance of governmental powers, plus unaccountability of parliamentarians and high officials caused by parliamentary immunity and imperative mandate.

Answering those three sub-questions is our strategy to approach the main question and find the ways of political corruption alleviation in Ukraine.

Our aim is not to study political corruption itself, it is taken for granted that level of political corruption grew up after constitutional reform. Our aim is to show how change of constitution

caused by the reform, initiated in the name of personal interests, lead Ukrainian political system away from desired conditions of functioning of The Rule of Law, thus, causing harmful legal institutional changes and facilitating abuse of power resulting in flourishing of political corruption. Political corruption is impossible to root out. It is only possible to control it. So, in this research we are going to dwell only on conditions considered to be desired for The Rule of Law to prevail in politics. This will be done with the help of the constitutionalism perspective which we are going to discuss in the next chapter.

Outline of the research

The practical activities which we are going to undertake to answer the main research question will include study of the Ukrainian constitution provisions which were changed during the constitutional reform in 2004 and the Laws of Ukraine issued by Ukrainian Parliament (The Verckhovna Rada of Ukraine) in parts which contain information about imperative mandate and mechanism of checks and balances (authorities of The President of Ukraine, the Cabinet of Ministers of Ukraine and Ukrainian Parliament). The legal institution of parliamentary immunity embedded in Ukrainian constitution will be also analyzed as a component part of the legal institutional shift which happened after the constitutional reform.

Then we are going to study constitutions of some other countries on the same issues. Those constitutions will also be divided into two categories: a) the ones which represent countries considered to have developed democratic traditions of constitution building; b) the ones which have such traditions less developed. In such way we can see the trend of changes in Ukrainian constitution and where they lead: to democracy or to centralization of power. Another aspect of such study is possibility to conclude after the analysis: if the legal institutions mentioned above (parliamentary immunity, imperative mandate) and the mechanism of checks and balances caused more options to abuse power in Ukrainian politics. Increased opportunities for abuse of power we consider to be the cause of political corruption facilitating.

In analysis of the changes made in Ukrainian constitution there will be included an “add-factor” which will provide us with some additional views on the issues which we consider. This “add-factor” is official statements of political leaders and critical assessment of independent analytical experts on parliamentary immunity, imperative mandate and the mechanism of checks and balances. With the help of the “add-factor” we hope to amplify credibility of our conclusions.

Answer to the main research question will be based on findings which we a going to obtain after the analysis of parliamentary immunity, imperative mandate and mechanism of checks and balances on the matter of power abuse opportunities and theoretical concepts (“correct” and “perverted” constitution, “the rule of reason” and “the rule of man”, legal institutions) which we chose to describe power abuse as the cause for dysfunction of The Rule of Law resulting in increasing of political corruption level.

The paragraph contributes to the research by showing what are its principal idea and way of conduct with the help of research questions. It narrows study of political corruption in Ukraine to the key issues which are going to be a subject to the future analysis.

Conclusions Chapter I

This chapter described present situation and examples of political corruption in Ukraine. It also stresses that abuse of power was typical for Ukrainian politics through all the history of independent Ukraine. Thus, we decided to make a research which aim is to prove or disprove if constitutional reform that was held in Ukraine in 2004 was a result of this inclination and in such a way contributed to increasing of political corruption level.

The problem of power abuse is proposed to be studied through the analysis of constitutional reform within the framework of research questions which represent the key elements that are to be analyzed (parliamentary immunity, imperative mandate and mechanism of checks and balances) on the matter of their complicity in a breakdown of The Rule of Law in Ukrainian politics and increasing of political corruption level. The key elements appear to be legal institutional changes and our analysis of those changes is going to be based on assumption that they were embedded in constitution to keep power abuse as the main goal in Ukrainian politics. After we accomplish the analysis it will be possible to say if the assumption is true or not.

As far as this chapter represents an assumption that political corruption can be connected to abuse of power then we have to define in the next chapter what political corruption is and how to conceptualize it for the purpose of the research.

CHAPTER II. Theoretical framework

The main idea of the presented theoretical framework is to try to conceptualize political corruption as a breakdown of The Rule of Law resulting from abuse of power that becomes possible through the legal institutional changes embedded in constitution with the aim to achieve “private” but not “common” advantage. Thus, constitution turns out to be not “correct” but “perverted”. This increases possibility for power abuse and at the same time it means that possibilities for political corruption are also increased as far as power abuse is understood as imposing of the private will in the name of private interests.

In order to conceptualize political corruption in the way it was described above this chapter sets what to understand under political corruption and represents interrelation of the key concepts, which reflect the perspective of constitutionalism. It also explains relevance of all concepts and how they are going to be used in present research. Those concepts give the views of ancient and modern scientists on what are desired conditions for the functioning of The Rule of Law in society and politics.

There is also emphasized the role of a constitution as a cornerstone of the legal system and shown how changes in constitution, that deviate from the key concepts described in the chapter, affect functioning of The Rule of Law.

§ Notion of political corruption: violation of public trust in the name of private interests caused by abuse of power

*This paragraph defines that for the purpose of this research **abuse of power in the name of private interests** is to be understood as the cause of political corruption. This is very central point for the research because it serves as a basis for all the research activities to be taken later.*

There exist a great number of definitions on what is “corruption”. It is important to mention that there are differences in interpretation of this phenomenon as it is defined by the national laws, by public opinion and by the actors who are involved in it, directly or indirectly.

However, there is a definition of corruption which is the most spread among scholars. It was produced by political scientist Joseph S. Nye. He defines corruption in the following way: it is “behavior which deviates from the normal duties of a public role because of private-regarding (family, close private clique), peculiarity or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behavior as bribery (use of rewards to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses)” (Nye, 1967: 966).

This definition implies that corruption is about private gains which can be obtained by someone as a result of conscious violation of the rules prescribed by his public role. In political sense public officials who have authority to influence law-drafting process or decision-making in some sphere may deviate in their behavior in the name of private interests or interests of the third party who motivate this deviant behavior by bribes or other means. This causes violation of public role of the person who is in a position of trust. If to speak about political corruption, such violation can be considered as an essential element for its conceptualization. According to Heidenheimer J. and Johnston M. (2002) political corruption can be recognized where public officials knowingly act contrary to the accepted rules and standards of conducting public office and violate the trust placed in them by public in the manner that harms public interests to create benefits which the third party would not obtain otherwise. This definition raises a question of importance of control over public officials. How to prevent politicians and public officials to violate their public roles? This question

can be addressed to lawyers who have to set what criteria are to be used to establish the standards of behavior for political actors. Then it can be possible to consider deviation from those standards in terms of political corruption.

From the described above we can see that political corruption has a lot to do with abuse of power. Abuse is a result of violation of the public trust and deviation of prescribed public roles. When power became abused and used in the name of private interests then there appears a breakdown of such an important institution as Law. Thus, we can say that **abuse of power in the name of private interests** is our way to understand political corruption.

When the Law does not work then principle of equality for everyone starts to be violated. Those who have power become unreachable for the Law. Weak mechanisms of accountability for the government officials are a good ground for the political corruption to grow. To put government under control there should be a legal mechanism of limiting its powers. That is a problem, indeed, because government is the one who creates laws, so, how it can be limited? The question of limiting powers of the government is inherent in the main question of this thesis and it represents perspective of constitutionalism which is central for my research.

To understand better what the theory of constitutionalism is about and how it is relevant to the main question of the research it is better to frame a set of sub-questions which can uncover basic elements of constitutionalism and let us to understand its concept and relevance.

As far as this paragraph defined how political corruption has to be understood for the purpose of this research it is possible to discuss theoretical concepts which are supposed to conceptualize this phenomenon.

§ Theoretical concepts

Below are described theoretical concepts which considered being essential for the research. All of them constitute theoretical background for understanding the problem of power abuse. They represent views of ancient and modern the scientists on what we should understand under Constitution, The Rule of Law and Institutions.

Origins of Constitution.

Concept of “correct” and “perverted” constitution

A government functions according to the fundamental rules and principles which define its structure, duties and powers. A set of those rules and principles is usually referred to as a constitution. Looking at the examples of the developed states it is possible to see that The Rule of Law is one of the key factors of sustainable development and functioning of democracy and it is difficult to overestimate the role of well-written constitution in this case.

A constitution itself is a scope of legal acts or constitutional customs which first of all define rights and duties of the citizens, social order and government. It's an overall law which is supreme comparatively to other laws. The main feature of a constitution is that it gives specific powers to institutions that are created according to its principles. Any powers that are exercised by the institution beyond the powers given by constitution are considered unconstitutional. This also refers to public officials and politicians. If they commit acts beyond powers granted by constitution then it is considered that they are acting unconstitutionally because they exercise powers which they don't have. Even when there is a law that was made not according to principles of law-making stipulated in constitution then this law also is considered as unconstitutional and cannot be put into force.

Constitution regulates relations of power and divides it into three branches – legislative, executive and judicial. These three branches together make triangle of power where each element supports existence of others, in terms of non-abusing of power.

Constitution as a single written document or a set of multiple laws is vitally necessary for each single state. We can make a conclusion about importance of a constitution from the work of Aristotle “The Politics”. According to Aristotle’s view a state is a kind of political association which exists by nature. He explains his idea in the way of tracing how a state is created. First, he looks at the natural process of formation “pairs” husband-wife and master-slave. Then this pairs create a household, a number of households create a village and a number of villages create a state. Aristotle claims that “just as an individual man is the natural end of the process of human coming to be, so too the state is the natural end of culmination of the other and earlier association, which were themselves natural”. (Sinclair & Saunders, 1981: 55).

Aristotle also conclude that a state as an association that is created with the aim to pursue some “good”, as everything that man does is considered to be done as something that is good for him. As far as a state is viewed as an association it is supposed to have specific level of sharing. This is a key point in understanding origin of a constitution. The level and extent of sharing should be defined for each association. Do people need to share all the things, or some of them or none? Is it appropriate to share children wives and property as it was proposed by Plato in his “Republic” or there should be defined another objects to share? Constitution in general sense stipulates what is shared by the citizens inside an association. It can be territory shared by citizens, rights, freedoms and responsibilities. It is not possible to share everything in a state, like it is according to Plato’s views. However, sharing is needed to keep up an association.

Taking into account that if a state exists by nature and is considered to be an association then it is possible to suppose that constitution is also naturally needed as far as it defines what and to which extent is shared by the citizens who constitute that association. Nevertheless, we should not mix the things that are shared to form up an association and the things shared to make it run. This means that there are distinctions between constitutional and ordinary law. This was also pointed out by Aristotle in “The Politics”. He also tried to explain what the best constitution according to his view is. He made a conclusion that it should include elements from different systems like monarchy, aristocracy and democracy.

Now we know what a constitution is about and why it is needed for a state. However, does every single constitution serve for the reason of good? This is important to know for our research. As far as we consider constitutional reform in Ukraine in terms of possibilities for abuse of power, so, under that we mean some change which happened as a result of constitutional reform. Thus, designation of the constitution might have been changed.

In respect to the above mentioned we are going to elaborate on the distinction which Aristotle made between “correct” and “perverted” constitution. He says that “correct” constitution is the one which “seeks” for a common advantage and perverted constitution “seeks” for the advantage of the ruler.

Robinson R. and Keyt D. (1995) provide their interpretation of that Aristotle’s concept. They say that if to understand it concretely then it should mean that “a set of persons politically organized as a sovereign city are a “correct” constitution when their rulers do in fact aim at the common advantage, and a “perverted” constitution when their rulers do in fact aim at the private advantage, so that a constitution might change from correct to perverted simply by the rulers’ changing their intentions...” (Robinson & Keyt, 1995:21)

Division of the constitution by Aristotle into which do or do not aim at the common advantage recalls the idea of their proceeding according or against the Law.

Thus, we may suppose that if constitutional reform in Ukraine was held in the name of preserving some political interests of the party leaders which pursued “private advantage” as a

result of the reform, then it is possible to speak of “perversion” of Ukrainian constitution and violation of The Rule of Law in this case.

Concept of The Rule of Law – “the rule of reason” instead of “the rule of man”. Functioning of The Rule of Law

Existing of the constitution implies existence of the certain rules that are commonly shared by all the citizens. These rules are in the form of Laws, which according to Montesquieu are “necessary relations arising from the nature of things” (Montesquieu, 1794: 1) There is always a prime reason for everything and laws are representing relation between it and intelligent being. Before the laws were made by intelligent beings they had another ones based on the relations of possible justice. This means those ones where some kinds of Laws which existed naturally.

Tamanaha B. (2004) writes that, however, the world of intelligent beings is too sophisticated to be governed by the natural laws. A human tends to be free in his acts deeds and thoughts. That’s why there should be created rules which impose regulative measures in different spheres of human activities. It is necessary because citizens of the state are considered to be equal. That is not quite natural, so the Rule of Law is preferable in this case. As far as a state exists by nature and involves diverse relations between individuals who are viewed as equal to each other, then, consequently, there should be a set of rules according upon which everyone should act when it comes to specific relations which are a subject to regulation. In the views of Aristotle law should pursue good for community and promote moral virtue of the citizens. If law meets this criterion it should be supreme.

The idea of Aristotle that the Rule of Law is viewed as reason and the Rule of Man is viewed as passion allowed him to conclude that the main condition for the Rule of Law “is the character one must impute to those who make legal judgments...It is part to such character to reason syllogistically and to do so his passions must be silent” (Tamanaha, 2004: 9). The one who governs should be only the guardian or minister of the law.

The concept of the Rule of Law raises the issue of obedience. The law is important for social order and that is why question of general obedience is important. If there is no obedience to the law the state is ruined almost at once. That’s why obedience to unjust law can be viewed as acceptable.

Those who claimed that there shouldn’t be the Rule of Law but the Rule of Man explained their idea by inability of law to react to possible situations and cannot take decisions in advance. However, as far as human has inclination to make errors the Rule of Law is better option. The Rule of Law is inherent in the concept of democracy but it still raises two different views on it. According to one of them it is a restriction on democracy to prevent usurpation of government by tyrants, according to another one it provides ability for the citizens to participate in raising the law. These, actually can be the reasons why the Rule of Law should function.

In first case it is about limitation of the government, which really matters because limitation acts like protection of the citizens from abuse of powers by the government. Thompson E. P. describes it like “the Rule of Law itself, the imposing of effective inhibitions upon power and the defense of citizens from power’s all-intrusive claims, seems to me to be an unqualified human good” (Tamanaha, 2004: 137). Such limitation prevents concentration of powers in ones hands and, thus, prevents its usurpation.

In second case we can see the idea that the law is a product of self-government. This idea stands for democratic tradition of participation by enabling citizens to decide, by the means of the Rule of Law, what the laws should be. Participation of citizens can be viewed as a prerequisite of supremacy for such laws.

Another reason for the Rule of Law to function is an accountability issue. To prevent abuse of power by the government there should be established some legal mechanisms of control. Government should not only be limited but it also has to be accountable to the citizens. Government officials should also be a subject to the law.

However, there needed specific conditions for the Rule of Law to work. The law is supposed to maintain social order, so one of the conditions for the social order, set up by law, to exist is general obedience to the law. Nevertheless, obedience is more a subject to the moral issues of individuals. The Rule of Law cannot exist being based only on self-consciousness of individuals because people are weak and their moral grounds are different. So, this is more a function of the state to ensure proper functioning of the Rule of Law.

There are to be created institutions which task is to create, apply and supervise application and execution of the laws. This presupposes division of state power into legislative, executive and judicial. This division is very important because it helps to keep balance between powers and doesn't give possibility to each of the powers to usurp the whole power in ones hands (mechanism of checks and balances). It can be explained on the example of isoscales triangle. Each side is equal to the others and there is no possibility for any side to be more long than others because to others keep it in balance. Division of state power is fundamental for democracies and it should be stipulated in constitution.

Thus, we see that a constitution creates basic mechanism for The Rule of Law to function, because it gives to citizens their rights and freedoms on the one hand and limits government on the other hand. However, constitution doesn't ensure itself that The Rule of Law will prevail in society.

In Ukraine The Rule of Law does not function because the mechanism of accountability is not working as far as institution of judiciary is weak. The Rule of Law cannot be enforced if it is impossible to control its functioning.

Political corruption is totally uncontrolled in Ukraine by judiciary. There is simply no mechanism to do this. Politicians and high officials protected themselves from responsibility with the constitutional right to have immunity. However, as we will see later in analytical chapter the way immunity is exercised in Ukrainian politics is different than in other democratic countries as far as there immunity is bounded and there exist mechanisms of making officials and parliamentarians accountable. This is ensuring The Rule of Law to function in politics. In Ukraine there is another situation. Parliamentarians and high officials are fully protected from the legal liability through the institution of immunity which is embedded in Ukrainian constitution, weak judiciary which cannot do anything even in the case of evident violation of the laws by the ones who are in power and mutual protection existing in political sphere.

Thus, there are all preconditions for "the rule of man" to function in Ukrainian politics instead of "the rule of law". Constitutional reform even rooted more possibilities for resistance of Ukrainian politics to The Rule of Law by introducing "anarchy" in the mechanism of power balance. We will consider this issue later in analytical part.

However, let's consider now theoretical concept of the basic structure elements which are essential for the functioning of The Rule of Law – legal institutions. As far as The Rule of Law can be recognized as a system of established and prevalent social rules, thus, we can identify it as an institution, a structure of social order. The rules are to be accepted by people, so let's take a look what are the reasons for the people to accept them or not. Thus, we can make a conclusion how political corruption became institutionalized in Ukrainian society and Ukrainian politics, and how legal institutions are involved in this.

Formation of institutions. Legal institutions

Institutions are “the rules of a game in a society or, more formally, are the humanly devised constraints that shape human interaction” (Douglass, 1990: 3). Institutions are aimed at facilitating of human exchange in different spheres. They constrain and enable behavior at the same time. The main feature about them is that they enable order through imposing concrete norms on behavior. Those norms exist in the form of rules which according to Douglass are “socially transmitted and customary normative injunction or immediately normative disposition” (Douglass, 1990: 3). He described rules as something that can be codified. If there is codification then it is easy to identify violation of the rule.

It is extremely important for the institution of The Rule of Law that its rules really function in the society, as far as it shapes patterns of behavior and makes obedience to the Law customary. This is a precondition for the laws to become rules. If laws are not customary then they are not rules any more. So, there is important question: “What makes institutions function?”

The first, we have to see what makes people to accept rules. Douglass N. (1990) argues that people follow rules if they are embedded in shared habits and a habit appears as a result of constantly repeated behavior. Acquisition of habit has psychological roots and is a ground for following the rules. Habits that are shared become customs and that means they have a function of rules.

Reinforcement of institutions occurs through the feedback of individuals who participate in activities which are constrained and molded by institution. “Institutions depend for their existence on individuals, their interactions, and particular shared patterns of thought” (Hodgson, 2006: 7) Institutions reflect aspiration of human to the idealistic appearance of things. They represent relation between what the real and desired situation are. People are born in the world which is already full with different institutions and it is a matter of social human interaction or socializing process that the one who lives in specific conditions accept one institutions when another one who lives in completely different conditions accepts another but not those.

There is a very nice analogy that institutions are like some kind of buildings with their own set of rules and regulations, and people are recognized as tenants in those buildings only if they conform to those rules. Institutions are not designed or created by someone. They are result of human relations and aspirations. In the very heart of institution’s establishing are habits, and when habits change then there occurs institutional change.

Thus, now we can see how corruption became institutionalized in Ukraine. The mechanism of constantly repeated behavior, resulting in sustainable habit, symbolizes an institution. For Ukrainians who have been living in conditions of permanent necessity to bribe officials to solve their problems it became a norm. If a norm exists in the society then it spreads in all its spheres: education, law machinery, politics etc.

If to speak about political corruption then there should be some legal institutions which enable it to exist. Legal institutions also need to have a supreme force over the state institutions existing for enforcing of The Rule of Law. Those legal institutions can be characterized as “distinct legal systems governing specific forms of social conduct within the overall legal system” (Willem & Ruiter, 2001: 71)

Legal institutions are parts of the legal rules of the legal system. They are created in the legal system to deal with some concrete social or political phenomena. In such a way those phenomena become institutionalized.

In our research we are going to deal with such legal institutions as parliamentary immunity and imperative mandate which were embedded in Ukrainian constitution as a result of constitutional reform. In our view the reasons why they were embedded as a part of legal constitutional system have a lot to do with possibilities to abuse power in the name of private interests. And we suppose

that they were introduced on that purpose. Initiators of constitutional reform consider them necessary to realize their intentions to get more power after the “Orange revolution”.

Legal institutions do not arise at once “the concept of legal institution is prior to its instances, for there inevitably lays a certain space of time between the moment at which a certain legal institutional concept is admitted to the legal system and the moment of creation of its first instance” (Willem & Ruiter, 2001: 71). This means that if our assumption, that those legal institutions were embedded in constitution to get more power, is true then it becomes obvious that desire for power exists permanently in Ukrainian politics as far as intention to embed them appeared longer before.

Legal institutions which were created with another aim then to develop the legal system for the “advantage” of society make serious trouble to the functioning of The Rule of Law. One legal institution may cause dysfunction of others. In our research we are going to show how legal institutions such as parliamentary immunity and imperative mandate made it possible for the politicians and high officials to feel unaccountable before judiciary and caused dysfunction of this key institution necessary for The Rule of Law enforcement.

There was took a detailed view in this paragraph on all the theoretical concepts which are to be used to study constitutional reform in Ukraine on the matter of increasing possibilities for abuse of power for the government. Next what has to be done is to place them in the context of the research with the help of explaining how they are relevant to it.

§ Interrelation and relevance of the theoretical concepts for the present research

This paragraph conceptualizes political corruption as power abuse in the name of private interests through establishing interconnection between the concept of legal institutions, the concept of “correct” and “perverted” constitution and the concept of The Rule of Law. Also it proves applicability and relevance of the theoretical concepts for the research.

The theoretical framework, which we have already described in this chapter, was chosen to help us to conceptualize political corruption in Ukraine. The concept of political corruption has to be developed on the basis of represented relations between the theoretical concepts we use and notion of political corruption (the way we chose to understand it for the purpose of our research).

In our research we see political corruption as abuse of power in the name of private interests. The reason why we decided to do this research was officially recognized increase of political corruption level in Ukraine. Thus, the aim of our analysis is to define what caused more possibilities for abuse of power in Ukrainian government. With this purpose we supposed that it maybe the constitutional reform which was held in Ukraine in 2004, which created some conditions for more possibilities to abuse power for Ukrainian government.

Therefore, the subjects to our analysis are changes which were made in Ukrainian constitution. We have to find the way to see if they resulted in more possibilities for abuse of power or not.

The abuse of power we associate with the breakdown of The Rule of Law concept, as far as “to abuse” means to impose private will, and the concept of The Rule of Law says that in order to keep democratic traditions of governance government should be limited and act only in the name of some reason but not private will (The Rule of Man). That is why abuse of power means the breakdown of The Rule of Law.

Now, we have to define which criteria we have to use to consider changes in constitution as the ones that result in breakdown of The Rule of Law or not. For this purpose we have to consider what is the impact of the changes on constitution? Which changes are supposed to make constitution better or worthier? According to the concept of “correct” and “perverted” constitution proposed by Aristotle only changes which peruse “common advantage” instead of “private advantage” result in “correct” constitution, but otherwise constitution becomes “perverted” (the one that represents advantage for the ruler). So, we may conclude that all the changes in Ukrainian constitution that were made in the name of private interests (“private advantage”) cause “perversion” of constitution and result in the breakdown of The Rule of Law.

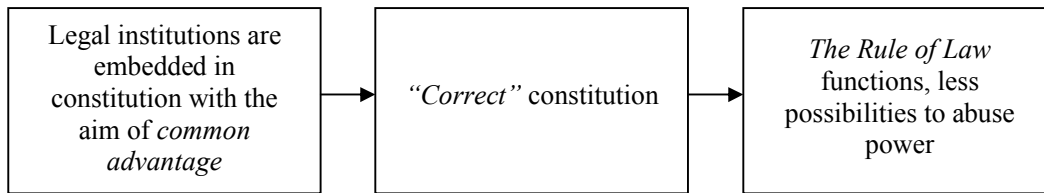
As far as we are talking about constitution and its changes we have to consider what do these changes actually change in constitution? In fact they are changing a system of rules which appear to be specific forms of conduct within the overall legal system. (Willem & Ruiter, 2001: 71). Thus, according to Willem D. and Ruiter P. these changes represent embedding of new or changing of old legal institutions.

Taking into consideration what we just discussed leads us to the final conclusion which allows us to develop a concept of political corruption which includes theoretical concepts that we chose. Thus, to study constitutional reform in Ukraine on the matter of increasing possibilities for political corruption we have to see if legal constitutional changes that were embedded in constitution, as a result of the reform, were done in the name of “private” or “common” advantage.

If they were done for “common advantage” then constitution remains “correct” and The Rule of Law functions with no changes. (Figure 1)

Figure 1

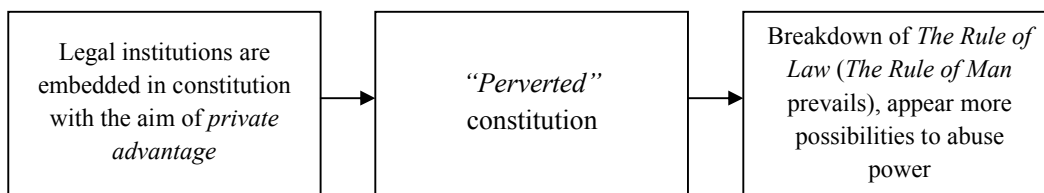
Constitutional reform does not result in increasing of possibilities for political corruption according to the theoretical framework



However, if they were done for “private advantage” then constitution became “perverted” and the breakdown of The Rule of Law occurs. (Figure 2)

Figure 2

Constitutional reform does result in increasing of possibilities for political corruption according to the theoretical framework



This paragraph explained practical value of the theoretical framework for the research by making clear its role and relevance for explaining results obtained in the process of constitutional reform analysis.

Conclusions Chapter II

This chapter puts theoretical ground for understanding of power abuse through the constitutional mechanism as legal institutional changes imposed in the name of “private advantage” (The Rule of Man).

Relevance of the chapter lays in possibility to answer sub-questions of this research taking into account theoretical approach by making it clear what to understand under political corruption in the view of constitutional reform and how it has to be viewed regarding its influence on the functioning of The Rule of Law.

As far as this chapter provides us with the well grounded concept of political corruption which is based on the theoretical concepts included in Theoretical framework we can make the next step in our research, to develop the criteria how we are going to understand if the changes in constitution can be regarded as having “private advantage” or “common advantage”. It is very important to set up those criteria in the Methodology chapter because they are supposed to serve as a connection between the theoretical concepts and their possibility to be applied for explaining the results of empirical analysis of constitution which we are going to conduct. At once the criteria is defined we can construct the answers to our sub-questions by using the theory to identify if embedding of specific legal institutions may result in breakdown of The Rule of Law or may not. In such a way we can also reach the answer to the main research question because for this we have to identify which legal changes had negative influence on functioning of The Rule of Law, so then we can propose measures to fix the situation.

CHAPTER III. Methodology

This chapter presents practical approach which is a guideline for answering the research question with the help of sub-questions. There is clarified the role of each sub-question in finding the answer to the main research question and the way to answer them in connection to the theoretical concepts introduced in the Theoretical framework.

As far as this chapter defines our research as qualitative there is described what kinds of qualitative information it is necessary to collect for processing analytical part of the research. With the purpose to collect such information there is introduced preferred method of qualitative data collection which is a combination of two different methods (document review and secondary sources data review) and shown how it can be helpful in getting relevant information available from the sources: Ukrainian constitution, constitutions of other countries, critical articles of the scientist, official statements of Ukrainian political leaders and other documents including the ones which are available on the internet.

Another focus of this chapter is on the method of qualitative data analysis which is represented as concrete steps needed to be done to find answers to the sub-questions and the main research question after all.

§ Why do we choose this research to be a qualitative one?

In this paragraph are described advantages of the qualitative research over quantitative and which key features of it are considered to be useful for the present research.

Discussing the problem of political corruption in terms of power abuse we raised the following research question in the Introduction part: *“What are the possibilities to prevent branches of Ukrainian government from abusing the power?”* It is followed by the sub-questions which let us go deeper into the problem to understand what can be the answer to the research question. These sub-questions are: *“What kinds of legal institutions embedded in the constitution of Ukraine, within the framework of constitutional reform or already existed, prevent The Rule of Law from functioning in Ukrainian politics?”*, *“Why do present constitutional mechanisms not keep the governmental powers limited in Ukraine?”*, *“Which changes in Ukrainian constitution are needed to keep governmental powers limited and to reinforce The Rule of Law in Ukrainian politics?”* All the sub-questions require from us “reach” answers. This brings us into the domain of qualitative research which requires qualitative research methods for its conduction.

The key importance of the qualitative research, in our case, is its flexibility. While quantitative research requires perfect understanding of the questions being asked and the range of possible responses, qualitative research allows spontaneity and variety of interactions between researcher and study issue. With this kind of research “open-ended” questions are asked. This means that the answer will not be like “yes” or “no”, but it will be constructed to tackle multiple important aspects which are not possible to consider in quantitative approach.

In our research we need to ask “why” and “how” questions to identify all the relevant links between the problem of political corruption in Ukraine and possible solution. This will give us possibility to probe where the “true” answer may be. Such probing demands more flexibility and diversity from the method we use. These characteristics are inherent in qualitative research.

Sanghera B. (2003) describes shortly but in very good way the relevance of the quantitative approach which can be applicable in our case. He writes: “Basically, quantitative research is objective; qualitative is subjective. Quantitative research seeks explanatory laws; qualitative research aims at in-depth description. Quantitative research measures what it assumes to be a static reality in hopes of developing universal laws. Qualitative research is an exploration of what is

assumed to be a dynamic reality. It does not claim that what is discovered in the process is universal, and thus, replicable.” (Sanghera, 2003).

The “exploration of what is assumed to be a dynamic reality” is what our research, generally, is about. With the help of the research questions and relevant qualitative data we are going to investigate legal institutional changes in Ukraine, resulting from constitutional reform, which facilitated political corruption. However, it does not imply that changes that caused increasing of political corruption level are universal causes of political corruption and dysfunction of The Rule of Law.

With this paragraph it was shown that present research is going to be done in very detailed manner to find well grounded answers to our “open-ended” questions which are raised.

§ Data collection

This paragraph leads the reader through all the details and specifics of the data collection techniques which are chosen for the research. It explains which data is needed, why it is chosen and how it has to be ordered.

Sorts of data to be collected, data collection method

In order to answer sub-questions of the research our study has to be supported by the proper data collection which is an important aspect. If the collected data is not relevant it affects the results of the analysis and makes the study invalid.

Data collection is what necessary to be done to address critical questions which were identified previously in the research. Process of data collection is usually complicated by availability of the sources of relevant information. That’s why while planning data collection it is better to keep in mind research questions and available sources of information. Collected information appears to be evidence that makes it possible to answer those questions. Karen T., et. al. (1998) distinguishes between “poor evidence” and “good evidence”. “Poor evidence” is information which cannot be trusted, is scant, or simply is not relevant to the questions asked. Good evidence is information that comes from reliable sources and through trustworthy methods that address important questions” (Karen et. al., 1998).

In our research we are going to collect two sorts of information: descriptive and judgmental.

Lynos J. 1977 writes that descriptive information, or in other words factual information, provides a view on what is the actual state of affairs. Judgmental information represents respond to or assessment of some state of affairs. We need both of these two kinds of information as far as our research is a qualitative one and this implies using not only facts (descriptive information) for the analysis but also some judgments (judgmental information) about those facts.

Descriptive information which represents concrete facts may be accepted as it is, because it is objective “evidence” that belongs to the issue we analyze. The criteria of relevance for descriptive information may be its ability to present “descriptive evidence” that confirms fact of legal institutional changes regarding the issue of the research questions. If it is possible to prove the connection between the described facts and the research question then such information can be considered as relevant and possible to be used for the purpose of the research.

However, if to speak about judgmental information then we need to set up some other criteria of relevance for such information as far as this is subjective “evidence”. The importance of

introducing the criteria of relevance comes out of huge amount of information patterns representing misleading judgments on the issues we have chosen to be subjects to our analysis.

What kind of judgmental information we can consider to be “good evidence”? It is quite obvious that it’s not the information one said on the street. In our opinion such information should have at least some level of expertise in it. Thus, we may consider information regarding issues that we rise which is gathered through critical articles which can be found on the official internet sites of the news agencies, official statements of politicians, scientific debates, and other sources that involve some scientific ground or determinative political view in the judgment.

Judgmental information from the mentioned sources is very important because during the debates or critical assessment usually come up the ideas or views on the issue which represent completely different perspectives and this is their value. The criteria we discovered will allow us not to go deep in investigation of reasonless arguing but to pick “good judgmental evidence”.

Combination of descriptive and judgmental information seems to be relevant because “description”, in our case, represents the facts of changes and “judgment” reflects the respond to these changes.

In order to collect descriptive and judgmental information we need to use methods of qualitative data collection. They are aimed at finding that “good evidence”. However, to use the only one source of data and the only one method of data collection could be not efficient for every research.

D. Leeuw (2005) argues that the goal while designing a research is to optimize data collection procedure to reduce research errors within the available time. He supposes that for this purpose optimal data collection method is the perfect solutions. In his view optimal data collection method is a combination of two or more methods of data collection. Thus, scientists who work on their researches prefer to choose mixed methods, because mixed methods give an opportunity to compensate weaknesses of each individual method. In our research we are also going to use this strategy.

Methods of qualitative data collection which we are going to use in our research are: document review and secondary sources data review. We decided to combine these methods as far as they suit the best for the purpose of collecting descriptive and judgmental information. This combination can make us benefit in finding “good evidence” which makes the research to answer the questions in a “broader” and “richer” sense.

Document review method will be the main source of descriptive information which provides us a starting point for understanding of the impact caused by the reform on the actual functioning of The Rule of Law and weakening of other institutions that are “guardians” of the norms and rules preventing political corruption from flourishing.

Secondary sources data review method is about considering sources and data which are not directly subject to the research but can be valuable for evaluation of the issue. One of the challenges that are needed to be taken into account while working with judgmental information is that it “may on occasion completely override values predicted by the model relationships” (Llewellyn et. al., 1985).

Llewellyn G., et.al. (1985) also argues that it can typically be brought in the research as an “add-factor” or completing adjustment. We will pay a special attention to this challenge in our research. However, we do need to collect judgmental information in the form of assessment of the Ukrainian constitutional reform by the scientists or even politicians that sometimes bring valuable arguments which are worthy to be considered as “add-factors”.

So, it seems to be a reasonable approach when we combine two methods of qualitative data collection document review and secondary sources data review. Its relevance comes out of the combination of the real facts (changes in constitution) and diversified judgments about them (critics and pro or contra argumentation) which will help us to establish relation between changes in constitution and increased possibilities for political corruption to flourish.

Application of the data collection method

As far as we are interested in analysis of the legal institution of parliamentary immunity in Ukraine and changed provisions of Ukrainian constitution which appeared to deal with the legal institutions of imperative mandate and regulation of authorities and responsibilities of The President of Ukraine, The Prime-Minister and The Parliament (the mechanism of checks and balances) we collected necessary documents for the purpose of our research with the help of the above mentioned methods document review and secondary sources data review.

These documents are divided into three categories which are ordered in the following way:

Sources of information on parliamentary immunity

- Legal acts of Ukraine where provisions on parliamentary immunity are stipulated
- Legal acts of other countries used to compare provisions on parliamentary immunity
- Official statements of Ukrainian politicians concerning parliamentary immunity
- View of independent analytical experts on the parliamentary immunity

Sources of information on imperative mandate

- Legal acts of Ukraine where provisions on imperative mandate are stipulated
- Legal acts of other countries used to compare provisions on imperative mandate
- Official statements of Ukrainian politicians concerning imperative mandate
- View of independent analytical experts on the imperative mandate

Sources of information on the mechanism of checks and balances

- Legal acts of Ukraine where provisions concerning mechanism of checks and balances are stipulated
- Legal acts of other countries used to compare provisions on the mechanism of checks and balances
- Official statements of Ukrainian politicians concerning misbalance of checks and balances mechanism, as a result of constitutional reform
- View of independent analytical experts on the present situation with checks and balances mechanism in Ukraine

Such ordering gives us ability to go into detailed analysis of the legal institutions which we are interested in and provide with possibility of critical assessment of the present-day situation around the issues we discuss. It also provides us with preliminary structure of our analysis as far as each category of the information we collected corresponds to the concrete research sub-question.

We have chosen legal acts of Ukraine and other countries as sources of information for the purpose of analysis because in such a way we can see the issue which we analyze from the different sides. With their help we can oppose the situation in legal sphere in Ukraine with such a situation in legal spheres of other countries. The view of the independent analytical experts is also very important in our case as far as it may serve as a “litmus paper” for us not to be prejudges in conclusions. Experts bring into our research constructive critics which will make us to consider all details but not to stick our view to some single point of view. Also official statements of Ukrainian politicians are included as an “add-factor” which shows intentions inside the politics on the highest level. It shows if they accept present situation about the issue or not. However, such information plays only supportive role as “add-factor” but cannot be determinative for our conclusions.

In the collected data we are going to find signs of deviation of the legal acts of Ukraine from tendencies of democratic way of constitution building. In order to make more focus on studying of the deviation of the constitution building process regarding inclination to abuse of power by the government we have chosen to analyze legal institutional changes resulted from the constitutional reform of 2004. The “meaning” of the changes we are going to understand through the comparison of the legal provisions that were changed in Ukrainian constitution with the same legal provisions from the constitutions of the different countries and application of the “add-factor” (official

statements of the Ukrainian political leaders and views of the independent analytical experts on the issues we discuss).

The full list of ordered data which was collected for the purpose of the research looks as the following:

Sources of information on parliamentary immunity

Legal acts of Ukraine where provisions on parliamentary immunity are stipulated

- The Constitution of the Republic of Ukraine adopted at the Fifth Session of The Verkhovna Rada of Ukraine on June 28, 1996. Available in English² and Ukrainian³

Legal acts of other countries used to compare provisions on parliamentary immunity

- The Constitution of the Russian Federation available in English⁴
- The Constitution of the Czech Republic available in English⁵
- The Constitution of the Republic of Germany available in English⁶
- The Constitution of the Kingdom of Denmark available in English⁷
- The Constitution of the United States of America available in English⁸
- The Constitution of the Kingdom of Belgium available in English⁹
- The Constitution of the Kingdom of Norway available in English¹⁰
- The Constitution of the Republic of Ireland available in English¹¹
- The Constitution of the Republic of the Philippines available in English¹²
- The Constitution of the Republic of Argentina available in English¹³

Official statements of Ukrainian politicians concerning parliamentary immunity

- In the TV speech on The First national TV Channel announced on June 20, 2007 The President of Ukraine Viktor Yuschenko says: “Parliament has to create laws but not to be the place to hide from them. For sure, it is necessary to stop abuse of the parliamentary immunity. Society is fed up with seeing downright demonstration of impunity and arrogance towards the Law and people. Cancellation of parliamentary immunity is a key to combating corruption in the parliament” (Romashova, 2007).

View of independent analytical experts on the parliamentary immunity

- Kushniruk B. (2007) writes that parliamentary immunity was the main reason for the businessmen to become deputies in the middle of 1990th, as far as they realized that immunity guaranties perfect abilities not only for saving private property but also for increasing it.

² <http://www.rada.gov.ua/const/conengl.htm>

³ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

⁴ <http://www.constitution.ru/en/10003000-01.htm>

⁵ http://www.servat.unibe.ch/icl/ez00000_.html

⁶ <http://www.iuscomp.org/gla/statutes/GG.htm>

⁷ http://www.servat.unibe.ch/icl/da00000_.html

⁸ <http://www.usconstitution.net/const.html>

⁹ http://www.servat.unibe.ch/icl/be00000_.html

¹⁰ http://www.servat.unibe.ch/icl/no00000_.html

¹¹ http://www.servat.unibe.ch/icl/ei00000_.html

¹² <http://www.chanrobles.com/philsupremelaw1.htm>

¹³ http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_ingles.pdf

Sources of information on imperative mandate

Legal acts of Ukraine where provisions on imperative mandate are stipulated

- The Constitution of the Republic of Ukraine adopted at the Fifth Session of The Verkhovna Rada of Ukraine on June 28, 1996. Available in English¹⁴ and Ukrainian¹⁵
- The Law of Ukraine “On amending the constitution of Ukraine” adopted by the Verkhovna Rada of Ukraine on December 12, 2004. Available in English¹⁶ and Ukrainian¹⁷
- The Law of Ukraine “On amending some laws of Ukraine on status of the deputies of The Verkhovna Rada of Ukraine, Autonomous Republic of Crimea and local radas” adopted by the Verkhovna Rada of Ukraine on January 12, 2007 available in Ukrainian¹⁸

Legal acts of other countries used to compare provisions on imperative mandate

- The Constitution of the Republic of France available in English¹⁹
- The Constitution of the Republic of Italy, available in English²⁰
- The Constitution of the Kingdom of Spain, available in English²¹
- The Constitution of the Republic of Cuba, available in English²²
- The Constitution of the People’s Republic of China, available in English²³
- The Constitution of the Socialist Republic of Vietnam, available in English²⁴
- The Constitution of the Republic of India, available in English²⁵
- The Constitution of the South African Republic available in English²⁶

Official statements of Ukrainian politicians concerning imperative mandate

- The former leader “orange” coalition in the Ukrainian Parliament Borys Tarasiuk said that it is true that imperative mandate itself doesn’t correspond to the norms of European democracy, “but, if to take into consideration substandard behavior of some of the politicians and political forces (here he means political corruption), then, in such conditions, it is reasonable to impose imperative mandate on the temporary basis” (“Forpost”, 2008).

View of independent analytical experts on the imperative mandate

- Lemak V. (2007) explains that despite of imperative mandate is not only unrecognized in the constitutions of all European countries but directly forbidden due to contradiction with “free and independent mandate of the deputy, who cannot follow their convictions afterwards”, Ukrainian initiators of constitutional reform still insisted on it. As a result, there was adopted constitutional right for the highest party leaders to deprive deputies of their mandates who left faction.
- Vaskova L. (2007) writes that principle of responsibility of the deputy cannot be reinforced through imperative mandate as far as it becomes apparent not only through

¹⁴ <http://www.rada.gov.ua/const/conengl.htm>

¹⁵ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

¹⁶ <http://zakon1.rada.gov.ua/cgi-bin/laws/annot.cgi?nreg=2222-15>

¹⁷ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2222-15>

¹⁸ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=602-16>

¹⁹ http://www.servat.unibe.ch/icl/fr00000_.html

²⁰ http://www.servat.unibe.ch/icl/it00000_.html

²¹ http://www.servat.unibe.ch/icl/sp00000_.html

²² http://www.cubanet.org/ref/dis/const_92_e.htm

²³ <http://english.peopledaily.com.cn/constitution/constitution.html>

²⁴ <http://www.international.ucla.edu/eas/documents/VN-cons.htm>

²⁵ <http://www.astro.virginia.edu/~sk4zw/india-const/const.html>

²⁶ http://www.servat.unibe.ch/icl/sf00000_.html

recognition of the imperative mandate but also through the duties and legal liability of the deputies to the Parliament and a court. This is why we can argue that widely shared assertion that exists in the science of the law is wrong in its essence. The assertion says that free mandate of the deputies results in their irresponsibility when imperative mandate is the only tool to put them under control.

Sources of information on the mechanism of checks and balances

Legal acts of Ukraine where provisions concerning mechanism of checks and balances are stipulated

- The Constitution of the Republic of Ukraine adopted at the Fifth Session of The Verkhovna Rada of Ukraine on June 28, 1996. Available in English²⁷ and in Ukrainian²⁸
- The Law of Ukraine “On amending the constitution of Ukraine” adopted by The Verkhovna Rada of Ukraine on December 12, 2004. Available in English²⁹ and Ukrainian³⁰
- The Law of Ukraine “On the Cabinet of Ministers of Ukraine” available in Ukrainian³¹

Legal acts of other countries used to compare provisions on the mechanism of checks and balances

- The Constitution of the Republic of Poland available in English³²
- The Constitution of the Republic of France available in English³³
- The Constitution of the Republic of Italy available in English³⁴
- The Constitution of the United States of America available in English³⁵

Official statements of Ukrainian politicians concerning misbalance of checks and balances mechanism, as a result of constitutional reform

- The President of Ukraine Viktor Yushenko said: “At this point it is obvious that the model which is put in the new version of the constitution appears to be unconstructive and government is only overhauls authorities. The mechanisms of the governmental powers have to be improved. I consider this task as a priority one” (“Ukrainska Pravda”, 2006).

View of independent analytical experts on the present situation with checks and balances mechanism in Ukraine

- Radchenko O. (2008) writes that essential characteristics of the nowadays constitutional mechanism of power balance are: 1) discrepancy between functions and responsibilities in the sphere of the main institutions of power – The President, The Cabinet and The Parliament; 2) indistinct division of the responsibilities between The President and Prime-Minister in sphere of executive power; 3) unregulated functioning of majority and opposition institutions.

²⁷ <http://www.rada.gov.ua/const/conengl.htm>

²⁸ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

²⁹ <http://zakon1.rada.gov.ua/cgi-bin/laws/annot.cgi?nreg=2222-15>

³⁰ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2222-15>

³¹ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=279-17>

³² <http://www.senat.gov.pl/k5eng/dok/konstytu/konstytu.htm>

³³ http://www.servat.unibe.ch/icl/fr00000_.html

³⁴ http://www.servat.unibe.ch/icl/it00000_.html

³⁵ <http://www.usconstitution.net/const.html>

A complete description of the data collection procedure, that was made, makes it possible to describe the next step in methodology – method of data analysis. It implies that data is properly collected and ordered for the purpose of the analytical part of the research.

§ Method of data analysis, application of the Theoretical framework

This paragraph introduces concrete steps which are going to be undertaken on the way to find answers to the sub-questions of the research. Each step is going to be properly explained including application of the theoretical concepts which are used. All this is going to be done to make the procedure of analysis as clear as possible.

Data analysis is further step in research after data collection. Bogdan R. and Biklen S. (1992) define qualitative data analysis as following: It “is the process of systematically searching and arranging the interview transcripts, field notes, and other materials that you accumulate to increase your own understanding of them, and to enable you to present what you have discovered to others. Analysis involves working with data, organizing them, breaking them into manageable units, synthesizing them, searching for patterns, discovering what is important and what is to be learned, and deciding what you will tell others” (Bogdan & Biklen, 1992: 157).

From this definition we see that qualitative data analysis is about organizing, ordering and synthesizing collected data. This is actually a challenge in doing qualitative research because it is very important how data is ordered or categorized as far as it is mostly contains words which are to be interpreted into content.

Hutch A. (2002) argues that data analysis is a systematic search for meaning. He also says that “analysis means organizing and interrogating data in ways that allow researchers to see patterns, identify themes, discover relationships, develop explanations, make interpretations, mount cirques, or generate theories”.

There are no strict rules and steps of data processing in qualitative analysis. Babbie E. (2007) says that it “is as much art as science” (Babbie, 2007: 384). This gives us an opportunity to adjust the process of data processing to the specifics of phenomena we discuss.

Nevertheless, there are some concepts which belong to the theory of qualitative data processing which we will use. This process includes careful reading of the information, categorizing the main themes or patterns in the information.

The aim of our analysis is to find answer to the main research question with the help of sub-question. To reach the answer to each sub-question we are to interpret the data that we have according to the theoretical concepts we discussed in the Theoretical framework. To do this we have to clarify what we see behind the constitutional reform according to the perspective of constitutionalism.

The aim of constitutional reform was to change existed or to embed new legal institutions. We suppose that after the reform those legal institutions appear to stand for private benefit of political leaders but not for common advantage. Thus, we may see violation of Aristotle’s concept of “correct” constitution which emphasizes priority of common advantage over private. In such a way constitution appears to be “perverted”. From all of this may come out the breakdown of The Rule of Law as far as passion of politicians to have more power replaces “the rule of reason” with “the rule of man” causing all the negative consequences that prevent democratic processes from taking place in the country.

With the purpose to obtain “reach” answers to the sub-questions and then to make a general answer to the main question including discussed theoretical concepts from Theoretical framework we propose concrete steps which are needed to be done.

Answer to the sub-question “*What kinds of legal institutions embedded in the constitution of Ukraine, within the framework of constitutional reform or already existed, prevent The Rule of Law from functioning in Ukrainian politics?*” requires the following steps to be undertaken:

- First step. To read through the new version of the Constitution of Ukraine and constitutions of other countries to mark out provisions concerning parliamentary immunity and imperative mandate. For each of the issues we have already defined certain documents to work with.
- Second step. To compare how provisions from the new versions of the Constitution of Ukraine correspond to same provisions the constitutions of the other countries of developed and less developed democratic traditions of constitution building, regarding parliamentary immunity and imperative mandate.
- Third step. To consider the views of the Ukrainian political leaders and independent analytical experts on parliamentary immunity and imperative mandate. Do they coincide or not and to what extent?
- Fourth step. On the basis of comparison of the legal acts and views of the political leaders and experts to make a conclusion if those institutions were embedded for the “private” or “common” advantage. If the provisions about parliamentary immunity and imperative mandate correspond to the same provisions of the constitutions of the countries considered to be developed democracies then they were embedded for the “common” but not “private” advantage. Otherwise they prevent The Rule of Law from functioning in Ukrainian politics by “perverting” constitution and personifying “The Rule of Man” (eliminating accountability of politicians for their deeds and providing more possibilities to usurp power in the Parliament).

Answer to the sub-question “*Why do present constitutional mechanisms not keep the governmental powers limited in Ukraine?*” requires the following steps to be undertaken:

- First step. A) To study the mechanism of checks and balances the new version of Ukrainian constitution by considering changes introduced within the framework of constitutional which deal with authorities of The President, the Prime-Minister and the Parliament. The changes are indicated in the The Law of Ukraine “On amending the constitution of Ukraine” adopted by the Verkhovna Rada of Ukraine on December 12, 2004. B) To study the mechanism of checks and balances in constitutions of other countries which were chosen for this purpose by considering authorities of the Presidents, the Prime-Ministers and the Parliaments
- Second step. To compare how changed mechanism of checks and balances in Ukrainian constitution corresponds in principle with the same mechanisms existing in constitutions of the countries considered to be developed democracies. For this we have to make concrete examples from the constitutions we consider.
- Third step. To look through the views of the Ukrainian political leaders on the issue of the changed mechanism of checks and balances and compare them with the views of independent analytical experts. If they coincide or not?
- Fourth step. A) On the basis of the comparison to make a conclusion if the mechanism of checks and balances is misbalanced in new version of Ukrainian constitution comparatively to such mechanisms existing in other countries. B) If this mechanism appears to be misbalanced and it does not correspond to the democratic traditions of constitution building, then legal institutional changes were made for the “private” but not “common” advantage, resulting in breakdown of The Rule of Law and of vanishing definite limits for governmental powers. This indirectly makes it

possible for them to usurp power and in such a way to abuse it. In this case, on the basis of comparison of constitutions, views of political leaders and independent analytical experts, to conclude which authorities of which governmental powers have to be changed to eliminate indirect possibilities fighting for authorities between governmental powers and turn constitution to be “correct” but not “perverted”.

Answer to the sub-question “*Which changes in Ukrainian constitution are needed to keep governmental powers limited and to reinforce The Rule of Law in Ukrainian politics?*” requires the following steps to be undertaken:

- First step. We identified political corruption as a breakdown of The Rule of Law resulting from abuse of power in the name of private interests, and abuse of power by the governmental branches is possible through embedding of legal institutions which serve for private interests (eliminating of accountability and control of power) and misbalance of the authorities of governmental powers. Thus, to find the way to keep governmental powers limited and to reinforce The Rule of Law in Ukrainian politics we have to consider the answers to the previous two sub-questions.
- Second step. If the parliamentary immunity, imperative mandate and the mechanism of checks and balances appear to prevent The Rule of Law from functioning in Ukrainian politics then to make a conclusion if is better to change them according to the examples of the constitutions of the countries considered to have developed democratic traditions of constitution building or to abolish.

After finding answer to all of the sub-questions we can generalize all the answers in the final conclusions to answer the main research question “*What are the possibilities to prevent branches of Ukrainian government from abusing the power?*” Answer to this question will include our findings on how to reinforce The Rule of Law in Ukrainian politics and how to make governmental powers limited.

Detailed explanation of the data analysis procedure, represented in this paragraph, makes it a powerful tool for conducting analytical part of the research. With the help of the described steps the data will be analyzed in the way to obtain “reach” answers to the sub-questions of the research.

Conclusions for Chapter III

With the help of this chapter we made a pre-step to accomplishing the analytical part of the research by describing the way it has to be done, as far as there is defined which kind of information we need to answer research question and how we are going to analyze it.

This chapter is very important as far as there do not exist concrete steps how to conduct a qualitative research, thus, we had to show our way to find the answers to the questions we raised according to our own approach. In our case, the way of answering research question goes through finding “good evidences” which provide sufficient ground for the analysis and answer to each sub-question. Those “good evidences” are to be found in documents and secondary sources which we defined. Then, all the “good evidences” have to be analyzed in detail according to the steps which we described in the paragraph on the method of data analysis including concepts of Theoretical framework as well. In final conclusions findings have to be interpreted to show what is wrong (why there is a breakdown of The Rule of Law and which legal institutions are responsible for that) and how the situation can be fixed in order to reduce possibilities for the branches of government to usurp power and, thus, alleviate the level of political corruption in Ukrainian politics.

CHAPTER IV. The Analysis

The chapter describes procedure of analyzing the data which was collected in order to answer research sub-questions. This procedure involves steps developed in the Methodology chapter for this purpose. We are going to apply these steps for each object of our analysis (parliamentary immunity, imperative mandate and mechanism of checks and balances) in the way how it was described in the Method of data analysis.

As an outcome of the analysis we expect to find: 1) What is the impact of the legal institution of parliamentary immunity, legal institution of imperative mandate and changed mechanism of checks and balances on functioning of The Rule of Law in Ukrainian politics. With this purpose we are going to apply the concept of political corruption (developed in the Theoretical framework) to the findings which we obtain after the analyzing mentioned objects. These findings are conclusions about the objects: if they were embedded in Ukrainian constitution with the aim of “common” or “private” advantage. In first case they are supposed not to cause breakdown of The Rule of Law (according to the concept of political corruption) in the second case they does; 2) If constitutional reform can be considered as a catalyst for increasing of political corruption level in Ukrainian politics. It will be possible to know after application of the theoretical concept of political corruption to the findings on imperative mandate and mechanism of checks and balances; 3) What are the answers to the sub-questions of the research. We are going to find them after performing all the steps of analysis. They will be presented in concluding paragraph of this chapter.

However, the main practical value of this chapter is that we will be able to answer the main research question after we consider all the findings resulting from the procedure of analysis.

§ Analysis of the legal institution of parliamentary immunity in Ukraine

The aim of this paragraph is to prove that legal institution of parliamentary immunity in Ukrainian constitution serves for the reasons of “private” advantage for the parliamentarians, thus causing a breakdown of The Rule of Law in Ukrainian politics.

To find the proves it is the following steps are taken: 1) The approaches to parliamentary immunity in Ukrainian constitutions and in constitutions of the countries considered to have developed democratic traditions and those which have these traditions less developed were compare; 2) As far as it was proven that the way how parliamentary immunity is interpreted in Ukrainian constitution deviates from the democratic traditions of constitution building, such interpretation was studied on the matter of hidden possibilities for power abuse with help of the “add-factor”.

After reading through the Ukrainian constitution we found that legal institution of parliamentary immunity is embedded in the Article 80 of the Chapter IV named The Verkhovna Rada of Ukraine. This article contains three parts which say:

- National Deputies of Ukraine are guaranteed parliamentary immunity.
- National Deputies of Ukraine are not legally liable for the results of voting or for statements made in Parliament and in its bodies, with the exception of liability for insult or defamation.
- National Deputies of Ukraine shall not be held criminally liable, detained or arrested without the consent of The Verkhovna Rada of Ukraine.

From these three parts of the Article 80 we see that the National Deputies of Ukraine are not accountable to anybody for anything they do, except for if The Verkhovna Rada of Ukraine (The Parliament) gives the consent to conduct an investigation on facts of illegal actions of the National

Deputies of Ukraine. To make a conclusion if such interpretation of the parliamentary immunity corresponds to the democratic traditions of the constitution building or may hide possibilities for some “private” advantage for parliamentarians, we have to consider if the provisions of the parliamentary immunity have the same interpretation as such provisions in another countries. So, let’s consider what the constitutions of the other countries say on the matter of parliamentary immunity.

Constitutions of the countries, considered having developed democratic traditions of constitution building, on parliamentary immunity:

- Section 6 of the Article 1 of the Constitution of the United States of America says:
“They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place”.
- Article 59 of the Constitution of the Kingdom of Belgium says:
 - 1) No member of either of the two Houses can, during the duration of a session, be arrested or prosecuted for repression, except with the authorization of the House of which he is a member, except in cases of flagrante delicto.
 - 2) No imprisonment for debt can be undertaken against a member of either of the two Houses during a session, except with the same authorization.
 - 3) The detention of or a lawsuit against a member of either of the two Houses is suspended during a session and for its entire duration, if the House so requires.
- Article 66 Constitution of the Kingdom of Norway says:
“Representatives on their way to and from the Parliament [Storting], as well as during their attendance there, shall be exempt from personal arrest, unless they are apprehended in public crimes, nor may they be called to account outside the meetings of the Parliament [Storting] for opinions expressed there. Every representative shall be bound to conform to the rules of procedure therein adopted.”
- Part 13 of the Article 15 of the Constitution of the Ireland says:
“The members of each House of Parliament shall, except in case of treason as defined in this Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.”
- Article 46 of the Constitution of the Republic of Germany says:
 - 1) At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account outside the Bundestag for a vote cast or for any speech or debate in the Bundestag or in any of its committees. This provision shall not apply to defamatory insults.
 - 2) A Member may not be called to account or arrested for a punishable offense without permission of the Bundestag, unless he is apprehended while committing the offense or in the course of the following day.
 - 3) The permission of the Bundestag shall also be required for any other restriction of a Member’s freedom of the person or for the initiation of proceedings against a Member under Article 18.
 - 4) Any criminal proceedings or any proceedings under Article 18 against a Member and any detention or other restriction of the freedom of his person shall be suspended at the demand of the Bundestag.
- Article 57 of the Constitution of the Kingdom of Denmark says:
“No Member of the Parliament shall be prosecuted or imprisoned in any manner whatsoever without the consent of the Parliament, unless he is caught in flagrante

delicto. Outside the Parliament no Member shall be held liable for his utterance in the Parliament save by the consent of the Parliament.”

Constitutions of the countries, considered having less developed democratic traditions of constitution building, on parliamentary immunity:

- Article 98 of the Constitution of the Russian Federation says:
 - 1) Members of the Council of the Federation and deputies of the State Duma shall possess immunity during the whole term of their mandate. They may not be detained, arrested, searched, except for cases of detention at the site of crime. They may not be personally inspected, except for the cases envisaged by the federal law in order to ensure the safety of other people.
 - 2) The issue of depriving immunity shall be solved upon the proposal of the Procurator General of the Russian Federation to the corresponding chamber of the Federal Assembly.
- Article 27 of the Constitution of the Czech Republic says:
 - 1) A Deputy or a Senator may not be prosecuted for voting in the Chamber of Deputies or the Senate or their bodies.
 - 2) A Deputy or a Senator may not be prosecuted for statements made in the Chamber of Deputies or the Senate or their bodies. A Deputy or a Senator is only accountable to the disciplinary authority of the Chamber of which he or she is a member.
 - 3) A Deputy or a Senator shall be accountable for his or her misdemeanor only to the disciplinary authority of the Chamber of which he or she is a member, unless determined otherwise by law.
 - 4) A Deputy or a Senator may not be criminally prosecuted without consent of the Chamber of which he or she is a member. If the respective Chamber declines its consent, criminal proceedings are rendered impossible forever.
 - 5) A Deputy or a Senator may be taken into custody only if caught while committing a criminal offence or immediately thereafter. The responsible body is obliged to immediately notify of the detention the Chairman of the Chamber of which the detainee is a member; if the Chamber's Chairman fails to give his or her consent to handing the detainee over to court within 24 hours of the detention, the responsible body is obliged to set him or her free. The Chamber shall decide with final authority about the admissibility of the prosecution at its first following session.
- Section 11 of the Article 6 of the Constitution of the Republic of the Philippines says:

“A Senator or Member of the House of Representatives shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. No Member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.”
- Sections 68 and 69 of the Chapter III of the Second part of the Constitution of the Republic of Argentina say:

Section 68. No member of Congress shall be accused, judicially examined, or disturbed for opinions expressed or speeches delivered by him while holding office as legislator.

Section 69. No senator or deputy shall be arrested as from the day of his election until the expiration of his term, except when flagrantly surprised committing a crime deserving capital punishment or other infamous or serious punishment, in which case a summary report of the facts shall be submitted to the corresponding House.

According to the constitutions of The Russian Federation (Article 98), The Czech Republic (Article 27), The Republic of Germany (Article 46) and The Kingdom of Denmark (Article 57) parliamentary immunity exists but the deputies can be arrested if they are caught on the act or right after committing illegal act. This norm significantly limits parliamentary immunity and ensures some level of accountability. Such a norm does not exist in Ukrainian constitution.

However, there is another interesting practice in the world. In the countries which have fostered democratic traditions for a long time: Belgium (Article 59), USA (Section 6 of the Article 1), Ireland (Part 13 of the Article 15), Norway (Article 66) parliamentary immunity is in force only during plenary sessions. This approach may guarantee that the deputies will not turn their parliamentary immunity into the source of self enrichment and committing corruption acts, as far as after the plenary session there can be initiated criminal investigation. This option is also missed in Ukrainian constitution.

Another example is a country with a completely different practice. In Argentina (Sections 68 and 69 of the Chapter III of the Second part) parliamentary immunity can't be withdrawn from the deputy in any case during his term in office, as far as there is no procedure described in the constitution on how to do this and in which case. According to the Section 69, even in the case "when flagrantly surprised committing a crime deserving capital punishment or other infamous or serious punishment", there is only recommended to send a report to the corresponding House.

Comparatively to all the constitutions of the countries which we described (except for Argentina that is quite the same as Ukraine in this case) Ukrainian variant of parliamentary immunity is the most difficult to consider as the one which can make the issue of accountability to work in practice. It is very difficult for the Law machinery to do something because constitution gives the final word to the Parliament which consists of politicians who used to take only political decisions.

Thus, we have proven that the way how parliamentary immunity is embedded in the constitution of Ukraine appears not to correspond to democratic traditions of the constitution building. The next step in our analysis of the parliamentary immunity is identify what can be the hidden meaning embedded in the Article 80 of the Ukrainian constitution about parliamentary immunity. At this point let's analyze the "add-factor" which we included in our analysis with this purpose. For representing the "add-factor" we have to consider views of the Ukrainian political leaders and independent analytical experts on the parliamentary immunity.

The "add-factor" on parliamentary immunity

After the "Orange revolution" the new President of Ukraine Viktor Yuschenko recognized harmful consequences of parliamentary immunity. In his TV speech on The First national TV Channel announced on June 20, 2007 he says: "Parliament has to create laws but not to be the place to hide from them. For sure, it is necessary to stop abuse of the parliamentary immunity. Society is fed up with seeing downright demonstration of impunity and arrogance towards the Law and people. Cancellation of parliamentary immunity is a key to combating corruption in the parliament" (Romashova, 2007). From these words of The Ukrainian President we may conclude that parliamentary immunity in Ukraine is a very powerful tool for the National Deputies of Ukraine to be protected from legal liability for illegal actions.

There is a very bright example of the real importance of that tool. It describes an attempt to make it ultimate – completely unlimited. This example happened in 2000 when there was initiated a national wide referendum by the leaders of the Parliament, and one of the questions was: "Are you agree to limit parliamentary immunity and to exclude part 3 from the Article 80 of the constitution?" People of Ukraine voted for this positively as far as they thought that this change would really help to put deputies under control but in reality this change could have provided deputies with unlimited immunity, because part 3 of the Article 80 says:

- National Deputies of Ukraine shall not be held criminally liable, detained or arrested without the consent of The Verkhovna Rada of Ukraine.

If to exclude this part then Ukrainian deputies wouldn't have any legal liability to anybody! There would be left only first two parts of the Article 80:

- National Deputies of Ukraine are guaranteed parliamentary immunity.

- National Deputies of Ukraine are not legally liable for the results of voting or for statements made in Parliament and in its bodies, with the exception of liability for insult or defamation. Fortunately, the results of the referendum which was held on the April 16, 2000 were not implemented due to different reasons which are not a subject to be discussed now.

Another consistent part of our “add-factor”, helping to discover possible hidden meaning embedded in the Article 80, we are going to find in the words of the independent Ukrainian analytical expert Borys Kushniruk. He writes that parliamentary immunity was the main reason for the businessmen to become deputies in the middle of 1990th, as far as they realized that immunity guaranties perfect abilities not only for saving private property but also for increasing it. Kushniruk B. (2007) supposes that parliamentary immunity insures for Ukrainian parliamentarians ability to adopt beneficial laws, to take part in “right” allocation of budgetary funds, to exchange their votes’ preferences while voting for governmental draft-laws, to get positive decisions of government for the benefit of the deputy, to make pressure on law machinery and judges with the aim of getting positive decisions on usurpation of state property, provides deputies with resources to make themselves multimillionaires. “Serious” people become deputies to solve “serious” problems says Kushniruk.

If to combine what Kushniruk says with the fact that according to the Ukrainian laws it is illegal to search the deputy his personal belongings or luggage, transport, living quarters or offices, to tap deputy’s phone or undertake another actions that limit deputy’s freedom, then the back side of parliamentary immunity becomes even more explicit.

Performed analysis of the parliamentary immunity in Ukrainian constitution has shown that there are all reasons to suppose that this legal institution provides the National Deputies of Ukraine with possibilities to abuse their status. In the final paragraph it will be described how such situation with parliamentary immunity in Ukrainian constitution contributes to the breakdown of The Rule of Law in Ukrainian politics.

§ Analysis of the legal institution of imperative mandate in Ukraine

The aim of this paragraph is to prove that legal institution of imperative mandate (embedded in Ukrainian constitution within the framework of constitutional reform) serves for the reasons of “private” advantage for Ukrainian politicians, thus causing a breakdown of The Rule of Law in Ukrainian politics.

To find the proves the next steps are taken: 1) The approaches to imperative mandate in Ukrainian constitutions and in constitutions of the countries considered to have developed democratic traditions and those which have these traditions less developed were compared; 2) As far as it was proven that imperative mandate is a deviation from the democratic traditions of constitution building, the implementation of this norm in Ukrainian constitution was studied on the matter of hidden possibilities for power abuse with help of the “add-factor”.

The legal institution of imperative mandate for Ukrainian deputies was introduced in Ukrainian constitution as a result of the constitutional reform in 2004. The norm of imperative mandate is stipulated in the Point 6 of the Article 81 of the Ukrainian constitution dealing with termination of Deputies’ authorities in the case of: “not participation of the National Deputy of

Ukraine, elected from political party (alliance of the political parties), in the structure of the faction formed by this political party (alliance of the political parties) or in the case of disaffiliation of the National Deputy of Ukraine deputy from such faction”. The norm of imperative mandate came into force when on January 12, 2007 Viktor Yuschenko signed the Law № 602-V “On amending some laws of Ukraine on status of the deputies of The Verkhovna Rada of Ukraine, Autonomous Republic of Crimea and local radas” which put this norm into force.

Official explanation of the necessity to introduce a norm on the imperative mandate within framework of the constitutional reform was the following. Before constitutional reform it was very easy for the National Deputies of Ukraine to change factions. However, in such a case the whole structure of coalition in the Parliament could be ruined. This is what actually was happening very often when the key political decisions were to be adopted, and opposing political forces were doing all their best to block any opportunity for the competitors to adopt necessary political decisions. Gaining of the deputies over by opposing political parties was the best approach in such case. From the point when the norm on imperative mandate came into force, leaders of political factions and parties became able to control behavior of their deputies in indirect way. On one side it was good, because it was like a guaranty that the key decisions approved by coalition will be adopted without betrayal in the last moment, but on the other side this also gave power of decision making to the hands of the party leaders.

At this point, let’s see if the norm of imperative mandate corresponds to the democratic traditions of the constitution building or has as its aim some “private” advantage. So, let’s consider what the constitutions of the countries considered say on the matter of imperative mandate. First, we have to mention that in all countries that are members of the European Union imperative mandate directly forbidden due to contradiction with “free and independent mandate of the deputy, who cannot follow their convictions afterwards” (Lemak, 2007).

For example:

- Part 1 of the Article 27 of the Constitution of the Republic of France it is written: “All mandatory instructions shall be null and void.”
- Article 67 of the Constitution of the Republic of Italy says: “Members of parliament represent the nation; they are free from imperative mandate.”
- Part 2 of the Article 67 of the Constitution of the Kingdom of Spain stipulates: “The members of the Parliament are not bound by an imperative mandate.”

Now, let’s see what say constitutions of the countries with less developed democratic traditions of constitution building:

- Article 85 of the Constitution of the Republic of Cuba says: “The mandate of the deputies to the National Assembly of People’s Power may be revoked at any time, in the ways and for the causes prescribed by law.”
- Article 77 of the Constitution of the People’s Republic of China says: “Deputies to the National People’s Congress are subject to the supervision of the units which elected them. The electoral units have the power, through procedures prescribed by law, to recall the deputies whom they elected.”
- Point 2 of the Tenth Schedule the Constitution of the Republic of India explains: “A member of a House belonging to any political party shall be disqualified for being a member of the House:
(a) if he has voluntarily given up his membership of such political party;
(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such

political party, person or authority within fifteen days from the date of such voting or abstention.”

Thus, we can conclude that the norm of imperative mandate was introduced within the framework of the constitutional reform not in accordance with standards of democratic constitution building. So, it seems that Ukrainian constitution looks more similar in this case to the constitutions of China, India and Cuba but not to the constitutions of the European Union countries. This supposes that there may exist some hidden meaning embedded in the interpretation of the imperative mandate in Ukrainian constitution. Now, we will try to find it with the help of “add-factor”, which is a view of the Ukrainian political leaders and independent analytical experts on the issue of imperative mandate in Ukrainian constitution.

The “add-factor” on imperative mandate

The explanation of the reasons why imperative mandate was so necessary for Ukrainian parliamentarians can be also found in the words of one of the leaders of former “orange” coalition in the Parliament – Borys Tarasiuk. He says it is true that imperative mandate itself doesn’t correspond to the norms of European democracy, “but, if to take into consideration substandard behavior of some of the politicians and political forces, then, in such conditions, it is reasonable to impose imperative mandate on the temporary basis” (“Forpost”, 2008). Under “substandard behavior” of politicians Borys Tarasiuk meant illegal behavior, namely political corruption. Thus, imperative mandate should have served for the good reason, but in the end things became perverted, as far as political leaders received an opportunity to control decision making within the party or the factions.

The Law of Ukraine № 602–V “On amending some laws of Ukraine on status of the deputies of The Verchovna Rada of Ukraine, Autonomous Republic of Crimea and local radas” became a powerful source of total control of the political elite over deputies of their party and powerful tool to implement decisions they want. The Law formally obliged deputies of all levels to obey the will of the party leaders.

Vaskova L. (2007) writes that “principle of responsibility of the deputy cannot be reinforced through imperative mandate as far as it becomes apparent not only through recognition of the imperative mandate but also through the duties and legal liability of the deputies to the Parliament and a court. This is why we can argue that widely shared assertion that exists in the science of the law is wrong in its essence. The assertion says that free mandate of the deputies results in their irresponsibility when imperative mandate is the only tool to put them under control” (Vaskova, 2007).

So, if that assertion is wrong and works completely otherwise, then we can conclude that the norm on imperative mandate was introduced in Ukrainian constitution to serve for getting of “private” advantage by the political leaders. This “private” advantage could be the ability to impose private political will and it became possible as far as imperative mandate appears to be powerful tool to control the deputies and make them obey decisions created by the leaders.

Performed analysis of the imperative mandate in Ukrainian constitution has shown that this legal institution provides Ukrainian politicians with possibilities to abuse power. In the final paragraph it will be described how implementation of the norm of imperative mandate in Ukrainian constitution contributes to the breakdown of The Rule of Law in Ukrainian politics. Also, the finding which we just discovered in this paragraph provides us with scientific ground to conclude that constitutional reform in 2004 also increased possibilities for the power abuse in Ukrainian politics in its part on imperative mandate.

§ Analysis of the constitutional mechanism of checks and balances in Ukraine

This paragraph helped to find answers to the following questions: 1) Why present constitutional mechanism of checks and balances in Ukrainian constitution is not capable to perform its function of limiting governmental powers; 2) How changes made in the mechanism of checks and balances within the framework of constitutional reform in 2004 resulted in possibilities for the politicians representing different branches of government to abuse power. This answer is going to act as prove that changes made in the mechanism of checks and balances within the framework of the constitutional reform pursued some “private” advantage, thus causing breakdown of The Rule of Law in Ukrainian politics.

To answer the first question the next steps are taken: 1) There was accomplished comparative study of the examples taken from the present mechanism of the checks and balances in Ukrainian constitution and examples on the same issues taken from the constitutions of the countries considered having developed democratic traditions of constitution building. 2) After the analysis, there is made a conclusion if the present mechanism of checks and balances is misbalanced or not. As far as it was proven to be misbalanced then it appears to be a reason of its incapability to limit governmental powers.

To answer the second question there was considered the impact of the changes made in the mechanism of checks and balances on stability of the political system in Ukraine regarding pitfalls caused by overlapping of authorities of the branches of government. This is going to be done with the help of the “add-factor”.

Comparative study of the checks and balances mechanism in Ukrainian constitution and constitutions of the other countries

The aim of this subparagraph is to show concrete examples which prove misbalancing of the mechanism of the checks and balances in Ukrainian constitution as the result of constitutional reform in 2004. This is done with the help of comparing the approaches to keep balance of the branches of government in Ukrainian constitution and constitutions representing the countries considered to have developed democratic traditions of constitution building, which were chosen in Methodology chapter with this purpose.

After the constitutional reform Ukraine became parliamentary-presidential republic. This means that positions of the president became weaker than they were before and positions of Parliament became stronger. So, first, let's consider system of checks and balances between The President and Parliament.

Now the Parliament has the right to form and dismiss the Cabinet even without participation of The President in this process. Parliament also is empowered to put on positions and fire person in any position in the system of executive branch. It also can change any minister at any time which is absurd and only destabilizes government. Even in all parliamentary republics the majority is factual but not juristic. However, in spite of many changes that gives huge power to the Parliament and makes The President to stay out of from very important decisions new version of Ukrainian constitution in the Article 90 provides The President with the possibility to delegitimize (and then dissolve) Parliament almost on his own initiative. If to consider experience of other democratic countries in this case than we can see that there is no such country where a president has possibilities to delegitimize parliament on his own. In democracies president can only dissolve one of the two chambers of the parliament if it is bicameral or it cannot dissolve any if it was not initiated by the heads of those chambers, like in Italy or Poland.

Another thing that we can analyze in the view of checks and balances system between The President and Parliament is the procedure of impeachment of the president. O. Radchenko (2008) writes: "... in the Constitution of USA there is clearly described mechanism of The President resignation (Article 2, Chapter 4) for bribing, betrayal or other grave crimes. The President of Poland can appear in State Tribunal for violation of the constitution, law or crime (Article 145). In Italy (Article 90) and France (Article 68) president can be a subject to criminal trial only in the case of betrayal of the state. As we see, comparatively to the Parliament positions of The President of Ukraine are much stronger then in all the mentioned democracies, because constitutional mechanisms of impeachment are almost impossible to realize in practice. At the same time The President of Ukraine can solely delegitimize Parliament".

In this passage O. Radchenko meant Article 111 of Ukrainian constitution which says that the procedure of impeachment can be initiated only if it is voted by the 2/3 of the constitutional structure of the Parliament and the final decision has to be adopted not less than by 3/4 of the constitutional structure after the Supreme Court of Ukraine makes a decision that actions of The President contain signs of state betrayal or other crime. Actually, this article is only formal description of the procedure because due to trend of Ukrainian Parliament to bipolarization, no matter how many political forces are represented in it, it looks quite unrealistic to get 336 votes out of 450 for impeachment. Thus, it appears to be very difficult for the Parliament to control The President but he can make pressure on the Parliament as far as he has the right to "veto" laws adopted by the Parliament with turning them back for future changes (Article 106 of Ukrainian constitution). This right is valid for all the laws except for the laws on amending the constitution. Thus, The President can resist the Parliament (and this is happening quite often) in the way of putting "veto" on the laws which do not match his initiatives. Such situations also usually escalate the conflict.

More interesting and sophisticated looks the situation with system of checks and balances between The President and The Cabinet. According to the Article 106 of Ukrainian constitution The President introduces candidature of Prime-Minister to the Parliament in the period of 14 days as it was nominated by the coalition. Also after constitutional reform this article provides The President with the right to introduce, on his own choice, candidatures of the Minister of Foreign Affairs and the Minister of Defense. However, this article makes The President solely responsible for making the Cabinet work and if the President doesn't want it to happen he simply cannot to introduce the candidature of the Prime-Minister of two other ministers to the Parliament, and this condition becomes sufficient for the Cabinet not to be formed and nobody can do anything about it. The constitution is silent in this case. On the other hand, post of the Prime-Minister became very influential in Ukraine after constitutional reform. The framework of relations between The President and the Prime-Minister is complicated by many formalities that appeared in the new version of constitution. In fact, new framework proposes not the model of checks and balances but the model of confrontation, as far as the Prime-Minister became independent in personnel policy decisions but The President still has indirect influence over the Prime-Minister.

In developed democracies this problem is not as keen as in Ukraine, because a president, in most cases, exercises executive power in the way of appointing Prime-Minister. Thus, there are no legal conditions which can give them possibility to start a race for usurping power. However, Ukrainian constitution provides both of them with powerful indirect possibilities to influence each other.

Constitutional mechanism that can keep powers of The President and the Prime-Minister limited in the framework of checks and balances mechanism can be found in the constitution of the USA where The President fully exercises executive power, but his executive power is not spread over local governments it covers only state-wide affairs. The President of Poland (according Article 10 of Polish constitution) also exercises executive power, but not in that wide range as The President of the USA, he appoints to post Prime-Minister and other ministers. However, Prime-

Minister has to present to the Parliament his program and if the Parliament doesn't accept it then the government is automatically resigned. Then, Prime-Ministers and ministers are elected by the Parliament. In Italy, The President appoints Prime-Minister and ministers after advice of the Prime-Minister. Nevertheless, in this case The President has to have consent of the both chambers of the Parliament which can use check and balances system to control The President. In France The President appoints and dismisses all government. However, General assembly has to approve program of the government. If it is not approved then the Prime-Minister has to claim for resign (Articles 49-50 of the French constitution).

In Ukrainian constitutions things are much different from the experience of developed democracies we just described. According to the Part 8 of the Article 83 and Point 12 of the Part 1 of the Article 85 of the new version of constitution factual appointment of the Prime-Minister is done by the Parliament. This means that majority in the government becomes pro-governmental! This complicates the procedure of government's activities revision. According to the Part 1 of the Article 115 The President has no right to dismiss the Prime-Minister. This right belongs exclusively to the Parliament. Thus, The President has no more legal right to control the government. At the same time (according to the Points 12 and 12-1 of the Part 1 of the Article 85, Point 9-2 of the Article 116) the Prime-Minister obtains monopoly position in appointing of the high officials to the post in the system of executive power. The President now has no more direct influence in such decisions (except for proposing candidatures of the two ministers). The new version of Ukrainian constitution (Point 9-1 Article 116) empowers only government with the right to decide on all the issues regarding creation, reorganization or dissolution of ministries and other central bodies of executive branch. Thus, The President doesn't have any direct or indirect influence in personnel decisions by the mechanism of creation or dissolution of state bodies of executive branch.

Another interesting evidence of power usurpation, which also violates the system of checks and balances, which was embedded in the constitution by the initiators of the constitutional reform, is about possibilities for The President to influence directly activities of the government by issuing obligatory acts. In present constitution this right is violated. According to the Part 3 of the Article 113 the Government has to follow in its activities The Constitution of Ukraine and acts of The President of Ukraine. This norm also was in the previous edition of the constitution, but in the new version there was significant specification. Acts of the President have to be issued "according to the laws and the Constitution of Ukraine". However, at the same time the Part 10 of the Article 116 was changed. According to it acts of The President are no longer considered as subject to define functions of the Government.

One more important issue which we would like to discuss is the procedure of contra-assignment by the Prime-Minister and ministers of the acts of The President. This practice exists all over the world in democratic countries. This procedure, for example, is stipulated in the Article 19 in French constitution, Article 144 of Polish constitution and Article 89 of Italian constitution. For example, Article 89 of Italian fundamental law says: "None of the presidential acts is valid if it is not contra-assigned by the minister who is responsible for this act". On the other hand the draft law №1312 "On the Cabinet of Ministers of Ukraine" proposed by The President directly says: "Acts issued by The President accordingly to his responsibilities foreseen by the Points 5, 18, 21, 23 of the Part 1 of the Article 116 of The Constitution of Ukraine, are to be urgently signed by the Prime-Minister and the minister responsible for this act". On the contrary in Poland official acts issued by The President not only "are obligatory to be signed by the heads of the Council of ministers" but also have "only internal circulation and oblige only units responsible to the organ that issued the act" (Article 93 of the Polish constitution).

The comparative study which was undertaken in this paragraph explicitly shows that changes made in the mechanism of checks and balances within the framework of constitutional reform in Ukraine caused its misbalance, namely by mixing authorities of The President, The Cabinet and The

Parliament. Thus, branches of government became more unlimited in the result of the constitutional reform. This misbalance appears to be the reason why present constitutional mechanism of checks and balances do not keep governmental powers limited.

The “add-factor” on the mechanism of checks and balances

This short subparagraph shows personal reflection of The President of Ukraine and independent analytical expert Radchenko O. on how the stability of political system in Ukraine was influenced by the changes made in the mechanism of checks and balances within the framework of constitutional reform in 2004. The “add-factor” is needed to amplify our assumption that misbalance of governmental powers causes abuse of power by separate branches.

At the very beginning, when the constitutional reform only came into force in 2006, The President of Ukraine Viktor Yuschenko was already concerned with the problem of power abuse arising from the changed mechanism of checks and balances. In one of his speeches Viktor Yuschenko said: “At this point it is obvious that the model which is put in the new version of the constitution appears to be unconstructive and government is only overlaps authorities. The mechanisms balancing governmental powers have to be improved. I consider this task as a priority one” (“Ukrainska Pravda”, 2006). Thus, we see that Viktor Yuschenko who is considered to have true inclinations to lead Ukraine on the way towards democracy assumes that it is the problem number one to change the mechanism of checks and balances, then, it really could be very important, especially in the view of possibilities to abuse power by the branches of the government and stability of the political system in Ukraine.

The evidence proving that misbalance of the mechanism of checks and balances may cause power abuse is possible to find also in the article of the independent analytical expert Radchenko O. According to him the constitutional reform in 2004 resulted in ineffective and unbalanced model of governmental powers in Ukraine. This only emphasized political crisis. He writes that essential characteristics of the nowadays regime are: “1) discrepancy between functions and responsibilities in the sphere of the main institutions of power – The President, The Cabinet and The Parliament; 2) indistinct division of the responsibilities between The President and Prime-Minister in sphere of executive power; 3) unregulated functioning of majority and opposition institutions” (Radchenko, 2008). According to Radchenko these three characteristics fully reflect absence of the distinct limits for governmental powers. In such conditions there hardly ever can be possible to avoid intentions directed on usurpation of power by one or another branch. When there are no clear limits there starts another political game which aim is to take as much authorities as possible.

This subparagraph presents additional evidence that misbalance of the mechanism of checks and balances may lead abuse of power by the branches of government, thus causing breakdown of The Rule of Law in Ukrainian politics.

§ Impact of the constitutional reform on functioning of The Rule of Law in Ukrainian politics

This paragraph makes a link between the theoretical concept of political corruption which was developed in the Theoretical framework and practical findings which were obtained in the result of the analysis of legal institutions and the mechanism of checks and balances. On the basis of findings it shows “how” and “why” the changes made into the constitution within the framework of constitutional reform in 2004 resulted in breakdown of The Rule of Law in Ukrainian politics.

After analyzing legal institutions of parliamentary immunity and imperative mandate, and changed mechanism of checks and balances, as the result of constitutional reform in 2004, we can make a conclusion what is the impact of these changes on functioning of The Rule of Law in Ukraine.

Previously we defined that political corruption in our case is to be understood as “a breakdown of The Rule of Law resulted from abuse of power that becomes possible through the legal institutional changes embedded in constitution with the aim to achieve “private” but not “common” advantage.” (see Figure 1 in Theoretical framework). Thus, from everything that we described about the mentioned legal institutional changes made in Ukrainian constitution we can conclude that all of them were a result of desire to get some “private” advantage in political sphere. It is very important to mention again that changes were introduced as a compromise between pro-Western (European) and pro-Eastern (Russian) political forces for solving the crises in times of the “Orange revolution” that happened in 2004.

If to take into consideration a wide spread notion that “a compromise is when nobody is satisfied” then it becomes more obvious that there was no “common advantage” in those changes. Everyone tried to win a stake for himself. However, this conclusion is not quite a scientific prove of prevailing “private advantages” over “common”, though it is shared by everyone who followed that events. That is why we tried to analyze legal institutions of parliamentary immunity and imperative mandate, and mechanism of checks and balances to see what did they lead to in comparison with the same institutions and mechanism in different countries with taking into consideration of the views of the scientists and official statement of politicians as “add-factor” which is important for amplification of our conclusions after analyzing those institutions.

So, after considering legal institution of parliamentary immunity we found a big discrepancy of its formulation in Ukrainian constitution and constitution of the countries with developed traditions of democracy. In Ukraine deputies are quite well protected from the responsibility if they try to commit illegal act (political corruption, for example) being in office and after that. However, in Belgium, USA, Ireland and Norway deputies are not that invulnerable. These countries have the best solution for parliamentary immunity. It is valid only during sessions of the Parliament. Also as we saw, independent analytical experts say that parliamentary immunity has so high level of protection for the deputies that it can be the reason for them to go to the parliament to defend private interests. This opinion is also shared by the high state officials. Thus, we can prove that parliamentary immunity in Ukraine was embedded in Ukrainian constitution with a view on not democratic examples which exist in the world but with certain part of getting “private advantage”.

The same we can say talking about imperative mandate. The main reason why it was introduced within the framework of constitutional reform was obtaining total control by the party leaders over ordinary deputy. This made them solely responsible for adoption of key political decisions. However, this is also not quite scientific explanation, and we made comparison analysis of imperative mandate in Ukrainian constitution and its presence or absence in constitutions of the other countries. It will be almost enough to say for proving of our point that imperative mandate was introduced in the name of “private advantage” if to consider the fact that this norm is recognized as undemocratic tool in the countries that are members of the European Union.

Imperative mandate exists only in the countries with weak traditions of democracy. Independent analytical experts and high officials also agree that imperative mandate should be abolished due to the reason of its discrepancy to the democratic traditions of constitution building.

Talking about the mechanism of checks and balances we can see after the analysis that it has a lot to do with getting of “private” advantage by the initiators of the constitutional reform as far as it puts a great deal of confusion in responsibilities of the branches of power in Ukraine. We proved with our comparative analysis that now it gives branches of power (and namely political leaders who are on top of them) possibilities to usurp power by taking authorities which does not belong to it because of the mass that exists in present provisions of Ukrainian constitution after the reform. Such a situation is avoided in the constitutions of the countries with developed democratic traditions by carefully written mechanism of checks and balances in their constitutions. Also, independent analytical experts and political leaders see the situation with the mechanism of checks and balances as imperfect. Thus, we were able to prove that constitutional reform resulted in embedding and changing of the described legal institutions of in the name of “private” but not “common” advantage. According to our theoretical concept such a situation results in “perversion” of the constitution and this leads to breakdown of The Rule of Law which, in fact, results in increasing of the political corruption level in Ukraine.

At this point it is scientifically proven that the constitutional reform that was held in 2004 in Ukraine was a matter of achieving “private” but not “common” advantage. According to the theoretical concept developed in the Theoretical framework (see Figure 1) it also resulted in breakdown of The Rule of Law in Ukrainian politics which might have caused more possibilities to abuse power for the politicians. All this could have caused increasing of the political corruption level in Ukraine.

Conclusions Chapter IV

Having our analysis finished we obtained necessary findings to answer sub-questions of the research. Thus, now we can provide the answers one by one.

The first sub-question is: *“What kinds of legal institutions embedded in the constitution of Ukraine, within the framework of constitutional reform or already existed, prevent The Rule of Law from functioning in Ukrainian politics?”* As a result of our analysis we proved that dysfunction of the The Rule of Law in Ukrainian politics is caused by the legal institutions of parliamentary immunity and imperative mandate which were embedded in Ukrainian constitution with the aim of getting “private” but not “common” advantage. According to our concept of political corruption developed in the Theoretical concept (Figure 1) if the “private” advantage prevails then it caused breakdown of The Rule of Law.

The second sub-question is: *“Why do present constitutional mechanisms not keep the governmental powers limited in Ukraine?”* After our analysis of the changed mechanism of the checks and balances in Ukrainian constitution we discovered that it became misbalanced after constitutional reform (authorities of the branches of government became overlapped) and such misbalance caused inability for the mechanism of checks and balances to keep governmental powers limited. It was also proven, that changes in the mechanism of checks and balances were made within the framework of constitutional reform in 2004 in the name of getting “private” advantage by the political leaders from the chaos which occurred in governmental authorities after changes came into force in 2006. Thus, these changes also caused breakdown of the rule of Law in Ukrainian politics.

The second sub-question is: “*Which changes in Ukrainian constitution are needed to keep governmental powers limited and to reinforce The Rule of Law in Ukrainian politics?*” As far as this sub-question results from the both previous ones and we proven that legal institutions of parliamentary immunity, imperative mandate and changed mechanism of the checks and balances caused breakdown of The Rule of Law (and it presupposes that they also “perverted” Ukrainian constitution), we can conclude that changes which needed to be done to reinforce The Rule of Law in Ukrainian politics and keep governmental powers limited include: exclusion of the norm of imperative mandate from Ukrainian constitution, changing mechanism of check and balances to its previous condition and also changing of the way how parliamentary immunity is interpreted in Ukrainian constitution (towards more possibilities for making the National Deputies of Ukraine accountable for their illegal acts).

At this point it is also possible to make a conclusion that as far as changes made in Ukrainian constitution in 2004 resulted in breakdown of The Rule of Law and, thus, increasing possibilities for political corruption to flourish, then the whole constitutional reform is a bright example of the successful intention of the political leaders to change constitution in order to achieve extended possibilities to abuse power in the name of private interests.

CHAPTER V. Conclusions

The chapter summarizes the research and provides answer to the main research question “What are the possibilities to prevent branches of Ukrainian government from abusing the power?”

The answer itself is based on the answers obtained after the analysis of the sub-questions of the research. Thus, there are generally discussed findings of the analytical part and explained how they are relevant in providing final answer. On the basis of such elaboration the final answer is discovered. Also, the chapter represents theoretically refraction of the research author on the answer found.

§ General answer to the main research question

This paragraph represents the final view on the research regarding role and meaning of the findings that were discovered. Then short explanation of the answers to the sub-question of the research is given to structure the answer to the main research question.

The aim of our research was to analyze constitutional reform which was held in Ukraine in 2004 on the matter of its impact on the level of political corruption in the country. We have chosen to analyze the constitutional reform on this matter because of the specific way of its implementation which is a unique in its essence.

This uniqueness comes out of the assignment which was inherent in this reform. It was held to solve political crisis in times of the “Orange revolution” when Ukraine was on crossroads of two completely different directions of future development, almost torn apart by two opposing political forces who wanted to make Ukraine go the way they prefer. No one of those political forces wanted to lose because if one had lost then there would be no chance to change anything back.

Constitutional reform was proposed by the political force that lost presidential elections and blocked in all possible ways the new President, who represented opposing political force, from coming in his term at office. As it was stated in the Introduction part it was a question of keeping power, and the only possible way to solve the crisis was found in implementation of constitutional reform which had to change Ukraine from presidential-parliamentary republic into parliamentary presidential. Only in such a way political party that lost presidential elections agreed to allow the new President to be inaugurated.

As far as there was no other way to solve the crisis, political force that was supporting Viktor Yuschenko had to agree to vote for in favor of the reform in the Parliament. Yuschenko was urged to solve the crisis by accepting unfair constitutional reform also because in that time of political crisis all the country stopped working in direct sense of this word and the consequences of such situation could become complete economic disaster.

However, to change Ukraine from presidential-parliamentary republic into parliamentary presidential was not the only reason of the constitutional reform. There was introduced the whole package of changes within its framework.

The main changes were about new distribution of the authorities between The President, the Cabinet and the Parliament. As our analysis showed, in the result of the changed mechanism of checks and balances there appeared a complete mass and overlapping of the responsibilities between the mentioned branches of power. So, there is nothing strange that all branches of power started to try finding ways to influence each other on the matter of implementing key decisions.

Another important change in Ukrainian constitution became implementation of the imperative mandate for the National Deputies of Ukraine and later for the deputies of local councils.

In our analysis it was also described that legal institution of imperative mandate lead to harmful consequences for the democracy in the legislative branch of the government. Deputies started to be controlled by the party leaders who now can solely approve all the key political decisions and ordinary deputies have just to vote for them with no objections. Thus, imperative mandate is a catalyst of undemocratic processes taking place in government which has no strictly defined limits for the authorities of its branches.

From all of this it appears that political processes taking in the Ukrainian government are severely influenced by the implication of personal will of the politicians which are abusing their power to try to influence political situation in their favor.

At this point comes out one more legal institution which existed in Ukrainian constitution from the very beginning but its contribution to the facilitation of power abuse is difficult to overestimate. We talk about parliamentary immunity. The way how it is interpreted in Ukrainian constitution makes a lot of concerns about its implication on the possibility to apply legal liability for politicians. With the way it is present now this is almost impossible.

So, it appears that top politicians who represent the branches of power in Ukraine are well protected from the legal liability for the illegal acts. They have power to implement their decisions with the help of imperative mandate because at the same time they are supported by the political parties in the Parliament. And the most important, all this gives them enough power to compete on the highest level. Abuse of power reveals itself there. That is why government in Ukraine is full of examples of power abuse which seems quite legitimate as far as constitution empowers political leaders to act like that.

As it was also discussed in our research abuse of power has a lot to do with political corruption which itself appears to be a result of power abuse in politics. According to the Theoretical framework political corruption is a breakdown of The Rule of Law resulting from power abuse in the name of private interests (which are desire to get more power and control in the sphere of politics).

So, as far as we explained the role of our findings regarding the issue of power abuse which is directly connected to the issue of political corruption, we can provide the answer to our main research question:

“What are the possibilities to prevent branches of Ukrainian government from abusing the power?”

According to what we mentioned, this question involves a lot of component parts which became subject to our analysis. Relevance of these components was proven in the analytical part of the research as far as they were inherent in the sub-questions of the research which were subject to the analysis. All of them contribute on the equal basis to the general answer to the main research question. So, we have to consider the answer received.

After analyzing the sub-question *“What kinds of legal institutions embedded in the constitution of Ukraine, within the framework of constitutional reform or already existed, prevent The Rule of Law from functioning in Ukrainian politics?”* we discovered that legal institutions of parliamentary immunity and imperative mandate were embedded in the name of private interests, and in such a way they “perverted” Ukrainian constitution in the relevant parts, causing breakdown of The Rule of Law. Harmfulness of the consequences resulting from existence of these legal institutions is in their possibility to act like catalyst for power abuse. They provide politicians with indirect ability not to be afraid for the illegal deeds and ability to implement important decisions with low resistance from the side of the deputies.

Answer to the sub-question *“Why do present constitutional mechanisms not keep the governmental powers limited in Ukraine?”* also gives valuable information contributing to the main research question. We identified that present constitutional mechanism of checks and balances does not keep governmental powers limited as far as after constitutional reform is not dividing but mixing authorities of the branches of government. This change of the mechanism of checks and

balances also appeared to be approved in the name of private interests. Now it enables governmental powers to interfere one another. The President of Ukraine, The Cabinet of Ministers of Ukraine and The Verkhovna Rada of Ukraine (The Parliament) are like in the state of war because of desire to have a stake in every more or less important political decision. Thus, power abuse again becomes an issue that has to be solved to eliminate private interests to take place in Ukrainian government.

Answer to the last sub-question: *“Which changes in Ukrainian constitution are needed to keep governmental powers limited and to reinforce The Rule of Law in Ukrainian politics?”* summarizes answers given to the both previous sub-questions and gives us ability to approach the main one. So, basically, we were able to prove that all the changes in Ukrainian were made not in accordance with democratic standards of constitution building but with inclusion of private interests. This makes a connection with our concept of political corruption developed in the Theoretical framework. “Private” advantage in the changes prevails over “common” advantage. The same we can say about the legal institution of parliamentary immunity which was embedded in the first version of Ukrainian constitution of 1996 and remains unchanged till now. Thus constitutional reform indeed might have increased possibilities for the political corruption to evolve in Ukraine.

Thus, what can be done to stop branches of government to abuse power?

At this point we found out that to reinforce The Rule of Law in Ukrainian politics we need to change provisions of the Ukrainian constitution concerning parliamentary immunity and imperative mandate, and to keep governmental powers limited we need also to change provisions of the Ukrainian constitution concerning the mechanism of checks and balances.

Speaking about parliamentary immunity we have to stress that reinforcement of The Rule of Law in Ukrainian Parliament requires changing of the legal norms of the legal institution of parliamentary immunity. Changes are needed to be introduced in the Ukrainian concept of parliamentary immunity to make it follow its assignment of protecting the freedom of the deputy but not defending him from the Law. Thus, we would like to propose for Ukraine to use experience of the countries which are considered to have developed democratic traditions of constitution building. However, taking into consideration struggle of political forces in Ukrainian Parliament, that is not an easy task. In our view, Ukrainian constitution can borrow approach to parliamentary immunity from Belgium, USA, Ireland, Norway and Philippines where it is in force only during plenary sessions. Then deputies will not be unreachable for law machinery on the permanent basis, as far as mechanisms of prosecution, which exists, don't work as they should be because General prosecutor office is not independent authority but are under political pressure.

If to talk about imperative mandate then we can only conclude that this norm has to be excluded from the Ukrainian constitution as far as it obviously contradicts the examples of democratic constitution building process. Vaskola L. (2007) writes that on the one hand, imperative mandate makes parliamentary routine easier by ensuring its predictability through reinforcement of party discipline, but on the other hand imperative mandate fetters initiative of the deputy and may result in dangerous bureaucratization of the Parliament.

According to the Law theory recall of the deputies should be accomplished by the voters. However, Ukrainian political leaders think that this right should belong to the parties and alliances of the parties. In such a way it is almost impossible to treat this as imperative mandate, because it looks more like implementation of “serfdom” for the deputies, who will become dependent from party leaders. So, it there any sense for the Ukrainian people to have representatives in the Parliament who cannot express their opinion?

The mechanism of checks and balances has also to be changed in Ukrainian constitution. Described examples in analytical part show how misbalance of governmental powers impedes development of democracy and results in power abuse inclinations.

From what we have written in analytical chapter we can see that current Ukrainian constitution gives The President possibilities for control over executive branch, namely by appointing heads of the local state administrations, exercising functions in the sphere of foreign policies, national security and defense, exercising the right to stop acts issued by the government.

On the contrary Prime-Minister can resist The President as far as he is empowered to decide solely on creation and abolishing of governmental authorities, appoint and dismiss people on high positions in the sphere of executive branch and the main possibility to resist lays in impossibility for The President to dismiss the Prime-Minister.

The Parliament and The President have also possibilities to resist each other. The President has no influence in appointing minister (except for two of them) and he also cannot do anything when the Parliament is going to make any personnel changes in the executive branch. But he has indirect right to delegitimize Parliament and “veto” its laws, and the Parliament cannot influence the President because constitutional procedure of impeachment is not possible to put in practice due to its discrepancy to political reality in Ukraine.

All consistent parts of the power abuse problem in Ukrainian government, which we just described, also influence the general way how government develops its policies and how it performs governance. Power abuse ends up in inconsistent decisions which decrease performance of the government. Its policies become bounded by desire to obtain some private preferences. Such policies are incapable to meet expectations of the citizens who want government to respond to their problems and needs. The role of citizens in the process of policy making turns out to be minor. Government becomes more distant from citizens and indifferent to NGOs and non-profitable organizations.

Except for citizens’ participation governance also requires fair legal frameworks. However, in conditions of power abuse the main political actors who are involved in decision making cannot ensure impartial enforcement of such legal frameworks. Decisions become to be taken with a lack of transparency. Another thing is, that to develop policies, according to the principles of good governance, government needs to mediate different opinions in the society in order to reach a consensus on what could be the best policy taken to solve some problem. However, in the case of power abuse political actors also not capable to co ensure reach consensus on the issue in discussion.

As far as we found that parliamentary immunity, imperative mandate and changed mechanism of checks and balances contribute to increasing of power abuse possibilities and in such a way create more conditions for political corruption, so, the constitutional reform in 2004 also indirectly caused problems for policy making and realization of the good governance components: participation, rule of law, transparency, responsiveness, orientation on consensus, equity, effectiveness and efficiency and accountability.

So, what can be the best solution to make all the necessary changes which we described?

There is solution which seems to be a very good one. It can help to cancel all the changes made within the framework of the constitutional reform.

Present provisions in the Ukrainian constitution on imperative mandate and mechanism of checks and balances are result of constitutional reform of 2004 in Ukraine. This means if there could be the legal way to recognize this reform as invalid then everything would stand on its places as far as before “Orange revolution” in the Ukrainian constitution there was no norm on imperative mandate and the mechanism of checks and balances was well written. If to say true there is such a possibility.

Indeed, it is possible to consider changes made in constitution in 2004 illegitimate, as far as the Article 5 of the Ukrainian constitution says that the only source of power and sovereignty in Ukraine are Ukrainian people, and only Ukrainian people can adopt and amend constitution through the wide-national referendum. This makes it possible to appeal to the Constitutional Court of Ukraine with request to cancel all amendments made in the framework of the constitutional reform, because there was no national-wide referendum in 2004 and Ukrainian constitution was simply changed in the Parliament.

If to speak about what to do to with parliamentary immunity then the only possible way to change the provisions of the constitution, in the way which would correspond more to the democratic standards of constitution building, is to hope for a political will of the Ukrainian deputies to solve this issue. After that, the national-wide referendum should be taken to make changes legitimate.

In general, constitution building process should be carried on in Ukraine but not in the way it took in 2004. According to Aristotle, the spirit of “reason” instead of the “passion of the rulers” should lead this process.

The answer to the main research question finalizes the research. To make this answer more explicit it is good to summarize it in short: The best possibility to prevent branches of Ukrainian government from abusing power is to cancel changes made in Ukrainian constitution within the framework of constitutional reform in 2004.

§ Reflection on the answer found

Studying of political corruption within the bounds of The Rule of Law concept was chosen for this research as far as this concept emphasizes supremacy of the Law above everyone and political corruption means that some public officials may have illegal private gains by abusing their status and violating public trust. Thus, there appears to be a dysfunction of the legal norms in this case.

Such a dysfunction of the legal norms is a problem of Ukrainian politics. It causes harmful consequences for the process of establishing democratic practices in the government. In this research we wanted to find out which measures could be taken to make the Law function and applied to everyone, this means to make The Rule of Law function in Ukrainian politics. With this purpose we chose to focus on Ukrainian constitution which itself is a cornerstone of the legal system because it sets fundamental rules that are to be recognized and obeyed by everyone. If it is so, then supremacy of the Law is ensured and The Rule of Law functions. However, sometimes the rules may appear to be created on the basis of the personal preferences of the ruler (the one who has power to create laws). In this case, the ruler appears to be above the law and starts to abuse the power in the name of private interests. That is why we decided to check if the constitutional reform in Ukraine contributed to establishing of the norms that provide politicians with additional possibilities to achieve some private advantages.

The results of our analysis proved that constitutional reform in Ukraine did cause more possibilities to abuse power for political leaders. We ended up with the conclusion that this reform was not needed as far as all the changes only made Ukrainian constitution “perverted”. The main idea of this answer is that “perversion” of the constitution results in making the status of politicians above the Law and in such a way the concept of The Rule of Law is violated. We were able to discover the link between the changes in constitution and breakdown of The Rule of Law in Ukrainian politics with the help of theoretical concepts which were used as the Theoretical framework for the present research. With their help we saw how legal institutional changes embedded in the constitution to secure some private benefits caused “perversion” of the constitution and a breakdown of The Rule of Law.

The answer we discovered makes us to think more about the real depth of the problem with dysfunction of The Rule of Law in Ukrainian politics because Ukraine is a country that declares its way of development to be towards establishing strong traditions of democracy and good governance. According to this, the constitutional reform which was held in 2004 in Ukraine looks more as a step back from such intentions rather than step towards them.

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