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КОНСТИТУЦІЙНЕ ТА МІЖНАРОДНЕ ПРАВО

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Marcin Golebiowski
Marie Curie-Sklodowska University,
Assistant professor of the Department of Constitutional Law,
Faculty of Law and Administration
Lublin, Poland
marcin.golebiowski@umcs.pl
ORCID 0000-0002-6699-0612
Maya Pyvovar
Lviv Polytechnic National University,
Assistant Lecturer of the Department of Theory
and Philosophy of law,
Constitutional and International law
Institute of Law, Psychology and Innovative
Education
Lviv, Ukraine
law.maya233@gmail.com
ORCID: 0000-0001-5495-5361

THE LEGAl STATUS OF THE PARLIAMENTARY OPPOSITION IN UKRAINE AND THE REPUBLIC OF POLAND: A COMPARATIVE LEGAL ANALYSIS

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The mechanisms of interaction between state power and opposition in European countries have passed through various channels of formation and development. According to this criterion, the states of Europe can be divided into stable democracies with long traditions and young democracies, the formation of which took place at the turn of the 80-90s of the twentieth century respectively. The first group includes France, Spain, Portugal, Great Britain, the Benelux countries and the Scandinavian countries. To the second – the states of Central and Eastern Europe: Poland, Slovakia, Romania, Bulgaria, Hungary, the Baltic states, and the Czech Republic. Among the countries of Central and Eastern Europe that have embarked on the path of democratization, the Republic of Poland stands out first.

This article analyses the legal status of the opposition in Ukraine and the Republic of Poland. Noteworthy, the authors of this article also studied the peculiarities of the legislative regulation of the opposition in the Federal Republic of Germany in the context of the experience for these states.

Special attention is focused on the fact that the legal regulation of the mechanisms of interaction between the state authorities and the opposition takes place mainly at the level of Standing Orders or Rules of Procedure, which regulate the status of a minority. It has been established that in Ukraine and the Republic of Poland there is no legislative regulation of the status of the opposition and opposition activities at the level of a specially adopted law but the opposition receives state support from the official state authorities.

It has been proven that a properly institutionalized opposition with a clear legal status and appropriate constitutional and legislative guarantees will enable the introduction of quality relations in cooperation with public authorities. The authors of this article focus on the fact that in Ukraine and the Republic of Poland it is necessary to clearly enshrine at the legislative level the legal status of the opposition at the level of a special law. The authors prove that the political and legal mechanisms of interaction between the government and the opposition are: 1) negotiations, including through politicians of foreign countries and representatives of international organizations; 2) round tables; 3) political consultations; 4) conclusion of political and legal agreements (agreements, memoranda, universals); 5) appeal to international institutions (Venice Commission, Council of Europe, OSCE, etc.).

Key words : the state power, parliamentary opposition, democratic transformation, Venice Commission, the legal status.

Formulation of the problem. The institution of political opposition is a necessity for the development of a democratic and civil society in a period of democratic transformation. Not only is the opposition called upon to protect the rights and freedoms of citizens, represent the rights and interests of minorities but also to ensure a balance between representatives of political parties.The lack of legislative framework of a legal nature for the basis of interaction between the state and the opposition led, at one time in practice in different countries to the use of political and legal mechanisms that did not meet the requirements of the society. A similar situation developed in Ukraine during the political crisis between 2013–2014. Today, in Ukraine as well as in the Republic of Poland, the constitutional and legal status of the opposition is not sufficiently regulated, as there is no legal framework for the operations of the opposition in these countries. Opposition activities in these states are regulated at the level of standing orders adopted by the legislative bodies.

Analysis of the problem research. The opposition is inextricably linked with the government. A large number of scholars from various fields of knowledge and specialties addressed the issue and problems of interaction between the government and the opposition in their doctrinal studies, which indicates a fairly high degree of scientific study of the opposition and its legal nature. Among them are well-known Ukrainian scientists, such as: S. Bondar, N. Zhuk, I. Zarytska, D. Zubrytska, L. Kochubey, O. Kukuruz, O. Sovgirya and Polish scientists: S. Bożyk, G. Koksanowicz, A. Szmyt.

The purpose of the article is to carry out a comprehensive and comparative analysis of the legal status of the opposition in Ukraine and in the Republic of Poland in terms of prospects for reforming and improving the legal framework of such interaction between government and the opposition.

The main material. One of the basic characteristics of modern developed democracies is the existence of a legal support framework for the opposition as a main counterweight to the possible seizure of state power.

According to the Polish Small Encyclopaedia of Political Knowledge, the term opposition denotes political groups or parties opposing the policy conducted by the government. There are two types of opposition – parliamentary opposition, made up of parties or groupings with representatives in parliament, and non-parliamentary opposition – which is not represented in parliament [1, p. 187].

The existence of the institution of political opposition is impossible without democratic transformation. Therefore, in 2008 a resolution was adopted at the level of the Parliamentary Assembly of the Council of Europe, which approved the procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament. According to the resolution, “political opposition, both inside and outside parliament, is an extremely important component of the effective exercise of democracy. Empowering the parliamentary opposition will contribute to the effectiveness of representative democracy and political pluralism, and enhance the support of citizens and their confidence in effectively functioning institutions.

It is worth noting that the above principles of interaction between the government and the opposition, in foreign countries, have long been an integral part of political life. For example, the states of the former Warsaw Pact, which were part of the so-called "socialist camp" orbit (Poland, the Czech Republic, Slovakia, Hungary, etc.) in which the implementation of these principles, during the transition to new forms of government, became the foundation of effective democracies. modern Europe. It is essential to agree with L. Shevtsova that "such a policy has become the main guarantor of post-totalitarian transformation, relieved tensions from still weak institutions, limited the level of conflict and contributed to the formation of a whole system of relations between the government and the opposition" [2, p. 82].

Despite the adoption of European standards on the legal framework of the opposition, in Ukraine and in the Republic of Poland there is no legislative regulation of its activities at the level of constitutions. The legal status of the opposition in these states is enshrined at the level of standing orders as normative legal acts.

The legal provisions of the Constitution of the Republic of Poland of 1997 do not directly refer to the institutionalization of the parliamentary opposition. However, on the basis of the constitutional principles, we can define the basic constitutional framework for the functioning of the opposition. The constitutional and legal principles of the functioning of the parliamentary opposition are determined by the principles of a democratic state ruled by law, representation, separation of powers and political pluralism. These principles guarantee the functioning of a political opposition in a democratic state ruled by law, both with parliamentary and non-parliamentary representation. The creation and functioning of political groups are also an indication of the principle of civil society and the legal representation of the nation through representatives, including the opposition, in the structures of the parliament. In the political science aspect, the functioning of the parliamentary opposition is also a reflection of the society's approach and political preferences.

One of the signs of the legal form of institutionalization of the parliamentary opposition in Poland is the right to create specific organizational structures in the form of parliamentary group in the Sejm of the Republic of Poland as well as senate group in the Senate of the Republic of Poland. The rules for the creation and operation of deputy and senatorial group are set out in the provisions of the Act of May 9, 1996 on executing of the mandate of deputy and senator and, the resolution of the Sejm of the Republic of Poland of July 30, 1992. Standing Orders of the Sejm and resolution of the Senate of the Republic of Poland of November 23, 1990 Rules and Regulations of the Senate. When analysing the legal provisions specifying the tasks of parliamentary group and their participation in the performance of the functions of the Sejm and the Senate, it should be assumed that opposition groups have the ability to influence the ongoing work of parliamentary chambers.

One of the de lege ferenda conclusions made by the Polish constitutionalist S. Bożyk is the inclusion in the fundamental law of the content concerning the existence of legal forms of deputies and senators' associations [3, p. 300]. It should be noted that granting a legal status to parliamentary and senatorial associations would provide a constitutional guarantee for the functioning of "minority" groups (oppositional groups) [4, p. 300]. Such a solution, in the case of high polarization of parliamentary forces, may constitute an effective mechanism of internal parliamentary influence of the opposition forces on the ruling party. An important element of the parliamentary opposition's participation is also representatives of opposition groups in the work of standing and extraordinary committees. Polish system practice adopted the so-called "parities" guaranteeing the participation of representatives of minority parties. Consideration should be given to the introduction of legal regulations guaranteeing the participation of representatives of opposition forces in the work of internal organs of parliamentary chambers. Furthermore, it should be assumed that both constitutional and statutory provisions guarantee the participation of the parliamentary opposition in the legislative process, both through the right of legislative initiative or through voting on the rejection of the presidential veto. The powers of the parliamentary opposition can be exercised not only under the ordinary legislative procedure, but also through specific legislative processes.

The provisions of the Standing Orders of the Sejm and the Rules and Regulations of the Senate, by defining the role and tasks of deputies and senators' groups, indirectly guarantee the participation of the

parliamentary opposition in the performance of its function which consistsshaping the personal composition of state authorities.

It is worth pointing out that in accordance with the provisions of the Act of 22 June 2016 on the National Media Council, the directly guarantees opposition groups participation in forming the composition of the National Media Council. The applied normative solution should be considered desirable in terms of guaranteeing the opposition's right to shape the composition of state authorities.

However, in Ukraine guarantees, rights and mechanisms of interaction of the parliamentary opposition with state authorities were vested in the original Verkhovna Rada of Ukraine which provided regulation within its structural subdivisions and subsequent editions of the Law of Ukraine "on Rules of Procedure of the Verkhovna Rada of Ukraine". But it was withdrawn on the basis of Law № 2600-VI of 08.10.2010 [5]. At the same time, another mechanism of interaction between the opposition and government to guarantee opposition activities was through the possibility of forming an opposition government. This was provided for by, Article 72 of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine" which provided that "the parliamentary opposition after the formation of the Verkhovna Rada of the Cabinet of Ministers of Ukraine may form an opposition government from among the deputies of the parliamentary opposition." The contradiction of the norms of the then version of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine" is that it allowed the creation of several parliamentary oppositions, nevertheless, it also provided for the formation of only one opposition government.

Today, the regulation of the opposition in Ukraine is provided for in the Rules of Procedure of the Verkhovna Rada of Ukraine: the right to convene an extraordinary session of the Verkhovna Rada, indicating the agenda (Article 11); initiating the issue of responsibility of the Cabinet of Ministers of Ukraine (Article 231); the possibility of forming temporary commissions of inquiry (Article 85); the opportunity to appeal to the Constitutional Court of Ukraine with a constitutional petition and a constitutional appeal (Article 108) [6].

A past political conflict between the branches of government and opposition forces in Ukraine was being considered by the Parliamentary Assembly of the Council of Europe. On 19 April 2007, the Parliamentary Assembly of the Council of Europe adopted Resolution 1549 (2007) "Functioning of democratic institutions in Ukraine", in which it expressed its concern about the political developments in Ukraine at the time [7]. In addition, "the Assembly stressed that the crisis in Ukraine was also the result of the hasty and incomplete constitutional and political reforms of 2004, which amended the Constitution of Ukraine without regard to the Venice Commission's reservations and without a broad public debate in the country." At the same time, the Assembly recognizedthe achievements of the Orange Revolution, which allowed Ukraine to establish fundamental democratic freedoms: this led to the country acquiring freedom of speech and media, freedom of assembly, freedom of political participation and opposition, as well as a vibrant civil society.

It should be noted, that among the main recommendations of the resolution to the authorities in Ukraine, first and foremost: "1) renewal of the draft reform of the Constitution of Ukraine, in close cooperation with the Venice Commission, in order to improve the Basic Law of Ukraine and bring it in line with European standards." Such as, mandatory mandate, justice and prosecution; 2) adoption and enactment without further delay of basic constitutional laws (laws on the Rules of Procedure of the Verkhovna Rada of Ukraine, on parliamentary temporary special and investigative commissions, on central executive bodies, on parliamentary opposition, on referendum, etc.); 3 change the system of elections to the Verkhovna Rada, by introducing open party lists in which voters can indicate their preferences for specific candidates included in the party lists proposed by political parties (blocs), and by dividing the country into different constituencies; 4) reforming the judiciary on the basis of creating an independent and efficient judiciary in Ukraine; 5) reform of the criminal justice and law enforcement agencies and taking active legislative and practical measures to combat all forms of corruption, including political corruption".

Some of the positive impacts of the norms contained in the provisions of normative acts on the functioning of the parliamentary opposition are the regulations contained in the Fundamental Law of the

Federal Republic of Germany, the regulations of the Bundestag and the Bundesrat, and the norms of certain laws, such as the law "On the Federal Constitutional Court" [8]. The availability of legal instruments specified in German normative acts has a positive effect on the role and active participation of the parliamentary opposition.

The well-known politician G. Kretschmer cites the provisions of the new constitution of the state of Schleswig-Holstein of June 13, 1990, Article 12 of: "(1)Parliamentary opposition is an important part of parliamentary democracy. The task of the opposition is to control and criticize government programs and decisions. The role of the opposition is to prepare alternative solutions and proposals as a counterweight to the deputies and factions on which the government is based. Therefore, she is entitled to political equal opportunities. (2) The head of the largest non-governmental faction is the leader of the opposition " [9, p. 116]. And in the constitution of the Free and Hanseatic cities of Hamburg, due to an amendment to the Constitution of February 18, 1971, Article 23a was introduced into the Hamburg constitution. It states: "(1) The opposition is an important part of parliamentary democracy. (2) Its constant task is public criticism of the government program in principle and in detail. It is a political alternative to the government majority" [10, p. 115].

An interesting structure in the German Bundestag is the Council of Elders. In accordance with the provisions of the Rules of Procedure, "the Council of Elders consists of the Chairperson, Chairperson's deputies and twenty-three deputies nominated by parliamentary factions. The convening and management of the council is entrusted to the Chairperson.At the request of any parliamentary faction (including the opposition), Chairpersonis obliged to convene a council of elders. " It is worth noting that minority rights in Germany are well protected. This is evidenced by the conclusion of the Federal Constitutional Court of Germany on the government's violation of opposition rights. It emphasizes that the Federal Government is using its material and financial resources to fight the opposition. However, according to experts from the Federal Constitutional Court of Germany, the government must be neutral, otherwise it violates the constitutional principle of equality. Specifically, the Federal Constitutional Court of Germany emphasized that the government has no right to fight the opposition, in any form to express a negative or contemptuous attitude towards at" [11].

Case in point was the formation of too broad oppositions in 2014, when the results of the parliamentary elections managed to form a coalition of the two largest parliamentary factions of the Social Democratic Party of Germany (SPD) and the Christian Democratic Union and the Christian Social Union (CDU / CS).). According to 631 members of the Bundestag, 504 joined the coalition [12].

Conclusions. Along with the firm belief in the need for constitutional changes and the adoption of a special law on the opposition in Ukraine and the Republic of Poland, we believe that this will preserve political diversity, provide a real opportunity to elect government officials with alternative views, free expression and criticism of public authorities, control over the activities of the government, as well as constructive interaction between the opposition and the government.

In our opinion, for successful interaction of the opposition with public authorities important political and legal mechanisms of such interaction should be: 1) negotiations, including through politicians of foreign states and representatives of international organizations; 2) round tables; 3) political consultations; 4) conclusion of political and legal agreements (agreements, memoranda, universals); 5) appeal to international institutions (Venice Commission, Council of Europe, OSCE, etc.); 6) joint speeches and debates streamed on both national and internet channels.

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Марцін Голембіовскі
Університет Марії Кюрі-Склодовської,
доцент кафедри конституційного права
Факультету права та Адміністрації
Люблін, Польща
marcin.golebiowski@umcs.pl
ORCID 0000-0002-6699-0612
Майя Пивовар
Національний університет "Львівська політехніка",
асистент кафедри теорії та філософії права,
конституційного та міжнародного права
Інституту права, психології та інноваційної освіти,
Львів, Україна
law.maya233@gmail.com
ORCID: 0000-0001-5495-5361

ПРАВОВИЙ СТАТУС ПАРЛАМЕНТСЬКОЇ ОПОЗИЦІЇ В УКРАЇНІ ТА РЕСПУБЛІКИ ПОЛЬЩА: ПОРІВНЯЛЬНО-ПРАВОВИЙ АНАЛІЗ

Механізми взаємодії державної влади та опозиції у європейських державах пройшли свій шлях становлення та розвитку. За цим критерієм держави Європи можна поділити на сталі демократії з багатолітніми традиціями та молоді демократії, становлення яких відбулося на межі 80-90-х років XX століття. До першої групи можна віднести Францію, Іспанію, Португалію, Великобританію, країни Бенілюксу та Скандинавські держави. До другої – держави східної Європи: Польщу, Словаччину, Румунію, Болгарію, Угорщину, держави Балтії, Чехію. З числа країн Центрально-Східної Європи, які вступили на шлях демократизації серед яких Республіка Польща стала першою.

В статті здійснено аналіз щодо правового статусу опозиції в Україні та Республіки Польща. Авторами статті також було досліджено особливості законодавчого регулювання опозиції у Федеративній Республіці Німеччини в контексті досвіду для цих держав.

Зосереджено увагу на тому, що правове регулювання механізмів взаємодії державної влади та опозиції відбувається переважно на рівні Регламентів парламентів, в яких врегульовується статус меншості. Встановлено, що в Україні та в Республіці Польща відсутнє законодавче регулювання статусу опозиції та опозиційної діяльності на рівні спеціально прийнятого закону, проте опозиція отримує державну підтримку з боку офіційної державної влади.

Доведено, що належним чином інституціолізована опозиція з чітким правовим статусом та належними конституційними та законодавчими гарантіями діяльності сприятиме впровадженню нових якісних відносин у взаємодії з органами державної влади. Автори статті зосереджують увагу на тому, що в Україні та в Республіці Польща необхідно чітко закріпити на законодавчому рівні правовий статус опозиції на рівні спеціального закону.

Авторами доведено, що політико-правовими механізмами взаємодії державної влади та опозиції є: 1) переговори, в тому числі за посередництвом політиків іноземних держав та представників міжнародних організацій; 2) круглі столи; 3) політичні консультації; 4) укладення політико-правових угод (договорів, меморандумів, універсалів); 5) звернення до міжнародних інституцій (Венеційська комісія, Рада Європи, ОБСЄ тощо).

Ключові слова: державна влада, парламентська опозиція, демократична трансформація, Венеціанська комісія, законодавчий статус.