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КОНСТИТУЦІЙНЕ ТА МІЖНАРОДНЕ ПРАВО

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INSTITUTIONALIZATION OF PARLIAMENTARY OPPOSITION RIGHTS IN CENTRAL AND EASTERN EUROPEAN COUNTRIES

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The subject of our article is not the political opposition in general, which is often heterogeneous in ideological beliefs and means and methods of gaining power. Still, as a legal, political force that is constructive towards the government, the parliamentary opposition pursues its program goals according to established procedure. This article uses the experience of legal regulation and functioning of the parliamentary opposition in Central and Eastern European countries like Czechia, Lithuania, Poland, and Ukraine. In legal tradition and culture, the institutional aspect of the parliamentary opposition in these European Union border member states is more similar to Ukraine than others. At the same time, each of these researched countries has its own positive and negative experience in finding a precise balance between the parliamentary minority (opposition) and the pro-government majority, which is essential for each democratic country in terms of further state-building, policy, and law-making practice.

The parliamentary opposition should have the opportunity to amend the bills proposed by the majority without hindrance. To this end, it is necessary to regulate the initiatives of pro-government parliamentary factions to adopt bills under the accelerated procedure, particularly when handling critical aspects of a political or legal nature. In Central and

Eastern European countries and Ukraine, most parliamentary opposition rights are non-institutionalized; this practice has not become widespread. There are no reserved seats on committees for the parliamentary minority. They participate in the distribution of leadership positions in parliamentary structures on a proportional basis in the status of ordinary clubs and groups.

Key words: parliamentary minority, opposition, pro-government majority, institutionalization of parliamentary opposition rights.

Introduction. Up to our mind, argumentation that contemplative 'parliamentary rules that allow parliamentary opposition parties to have a more significant influence on the policy-making process guide to increasing opposition fragmentation' is feasible[1, p. 763- 774]. The primary mission of parliamentary opposition is to question and scrutinize the work of the government, monitor and criticize its actions, participate in policy-making, and (in)directly influence legislative production when it is possible [2, p. 479- 495]. The parliamentary opposition parties usually have two distinctive motivations: firstly, to disclose and highlight differences within the governing coalition and intra-coalition tensions, and secondly, to unveil ongoing policy conflicts and ministerial drift within the governing coalition [3, p. 1–13].

R. Dahl, in his research, identified six possible differences of the parliamentary opposition: organizational cohesion (discipline, concentration), competitiveness, goals, site of the encounter, distinctiveness or identifiability, and strategy. Every democratic state globally should respect values of pluralism and freedom and share responsibility. It cannot exist without checks and balances amongst different state (public) institutions, loyal and constructive cooperation amongst all state bodies, guarantee political change and efficient decision-making [4, p. 332–347; 5, p. 462–486].

Some Ukrainian and European researchers analyzed the features of the constitutional and legal status of the opposition and legislative regulation of relations between the parliamentary minority and the pro-government majority in Central and Eastern European countries and Ukraine [6, p. 8–58; 7]. They tied to demonstrate the dialectical connection between the current government and the parliamentary opposition, which function only as components of one (joint) power mechanism. The forming of the effective parliamentary opposition in these European Union member states started during the period of democratic transit, taking into account each country's legal tradition and culture. To our mind, establishing a constructive relationship between the pro-government majority and the minority in parliament requires institutionalizing opposition rights and forming inclusive political institutions, including party and electoral systems, and the use of legal tradition and political culture.

A perfect example of victorious transit we saw in Czechia, Lithuania, and Poland, those Central and Eastern European countries where the formation of political institutions took place simultaneously with constitutional reform[8; 9, p. 139–146; 10, p. 32- 62]. So for Ukraine is essential which vision of parliamentary opposition and pro-governmental majority to follow.

Pro-government majority in parliament v. parliamentary opposition

In modern days there is no single standard and rules for building and managing a democratic society where the parliamentary majority and the opposition would interact effectively. Among all internationally recognized soft law sources related to the dichotomy 'parliamentary majority – opposition', the most essential are two reports of the Venice Commission: “On the Role of the Opposition in a Democratic Parliament” (2010) [11] and “On the relationship between the parliamentary majority and the position in democracy” (2019) [12].

The Report of Venice Commission formulates the basic principles of effective interaction between the government and the opposition in a democratic parliament, which, despite their abstract nature, are reflected in more specific procedures and rules established by each democratic country in Europe.

The list of principles of effective interaction between the government and the opposition in a democratic parliament formulated in the Report of Venice Commission is not exhaustive; it can be changed (altered) and supplemented depending on the political regime, constitutional culture, values, and historical traditions. Some of them found entire expression through the specific rights and guarantees of the opposition, while the implementation of others proved to be complex and problematic enough. It is indicated by the experience of the parliaments of Poland [13], Lithuania [14], Czechia[15], and Ukraine [16].

Let us focus only on some factors that affect the effective functioning of the parliamentary minority and the exercise of its right to opposition.

An essential aspect of the opposition's functioning is related to whether there is a need to institutionalize the rights of the opposition and at what level they should be enshrined: the constitution, laws, regulations? This issue is especially relevant for 'young' democracies, which have not yet fully formed a legal tradition of regulating relations between the pro-government majority and parliamentary minority (opposition). It is primarily a matter of transferring the parliamentary opposition from actual existence to the level of a formal institution regulated by law.

The necessity for such institutionalization of opposition has become increasingly apparent in recent years. It is primarily due to a change in the perception of the parliamentary opposition as an independent subject of parliamentary law, who, along with the governing coalition and parliamentary factions, is an active participant in the parliamentary process. Just as the legalization process once embraced political parties, determining their status as constitutional law subjects, a vital element of the political system, he included his influence and the opposition in the radius of his influence – an integral part of public power. Thus, interrelations between the government (parliamentary majority) and the opposition have shifted from the actual relationship that existed until recently to the legal relationship, which was associated with a more general trend towards legal regulation of all elements of the political system.

No less important is the level at which the legal act will consolidate the rights of the opposition. The highest degree of institutionalization might be foreseen in the constitution. However, this form of legalization has precise advantages and disadvantages. On the one hand, the constitution provides the best protection for the minority from the majority. Still, on the other hand, it can be a source of problems – for example, if the basic Law sets too high a threshold for a qualified majority to make crucial decisions. In addition, it should be noted that the mention of opposition or minority in the constitution is rare. Only in recent years can we see the practice of supplementing the constitution with provisions that should guarantee special protection to the parliamentary opposition.

According to the recommendations of the Venice Commission, the constitutional regulation of the rights of the parliamentary opposition for 'young' democracies is a positive phenomenon. At the same time, the constitution should enshrine only the basic principles of parliamentary opposition activities – for example, the principle of proportional representation in parliamentary committees, a reasonable opportunity for opposition MPs to enjoy legislative initiatives, rules on qualified majority decision-making. However, this practice has not been fully implemented in Central and Eastern Europe and Ukraine. Although the Opinion of the Constitutional Court of Ukraine of 27 June 2000 states the following: “the introduction of the notion of a permanent parliamentary majority” in the Constitution of Ukraine (1996) to the “permanent parliamentary majority” and which can be conditionally characterized as a “parliamentary minority” [17].

The constitutional regulation of the rights of the parliamentary opposition and the legislative determination of the status of a parliamentary minority are exceptional provisions. A legislative

determination of the parliamentary opposition's rights harms the autonomy of both the parliamentary minority and the legislature; since a draft law falls under constitutional scrutiny and can be vetoed. The reasons for not passing such a law in the parliament may be entirely political, as in the case of Ukraine.

Since the restoration of the independence of Ukraine in 1991, about twenty bills, directly or indirectly related to the legal status of the parliamentary opposition, have been registered in the Verkhovna Rada of Ukraine. None of them was adopted, primarily due to the lack of political will of the public authorities to institutionalize the rights of the parliamentary opposition at the level of the pro-government majority in parliament.

Moreover, in March 2016, the Verkhovna Rada of Ukraine recognized the European Parliament's Needs Assessment Mission recommendations, which were developed to improve the quality of the Ukrainian parliamentarian order and set out in the Report and Roadmap on internal reform and capacity-building for the Verkhovna Rada of Ukraine. European Parliament’s Needs Assessment Mission to the Verkhovna Rada of Ukraine led by Pat Cox, President of the European Parliament (2002-2004). These Recommendations of the European Parliament's Needs Assessment Mission stipulate that 'a decision on the settlement of the parliamentary opposition status should be taken as soon as possible' [18]. The Report and Roadmap on internal reform and capacity-building for the Verkhovna Rada of Ukraine stated that the parliamentary opposition status should be resolved by amending (altering) existing legislation of Ukraine or by adopting a new special law. A precise vision of such amending (alteration of existing law or adoption of a new one) is to guarantee the fundamental legal rights of the parliamentary opposition and ensure peaceful coexistence of the majority and minority in the parliament.

According to the experience of European democracies, the optimal form of institutionalization of the parliamentary minority is the regulations. This particular regulation is adopted by a different procedure (more specific than the ordinary law) and does not fall under the constitutional scrutiny and veto of the head of state. The Venice Commission points out that the rules of procedure must be stable and cannot be changed regularly to the detriment of the parliamentary minority. These rules of procedure might be changed (amended) only with the qualified majority vote in favor and the consent of a minority of parliament. The regulations cannot be altered systematically at the request of the parliamentary majority in resolving other issues not related to the content of the rules, in violation of the principle of legal certainty. Such a practice is a characteristic phenomenon in the conditions of democratic transit, particularly when the president, government, and parliamentary majority represent the interests of one political force.

It is generally accepted that the absence of references in the regulations regarding the opposition, or at least to the parliamentary minority, does not mean the lack of provisions concerning its rights within the parliament. The opposition can be considered any group of the parliamentary minority or even individual deputies who have declared their opposition to the government and have the appropriate rights. In such circumstances, the rights of the opposition are de jure institutionalized, but indirectly, because it occurs without the direct use of the term “opposition” or “minority”. In this case, we are talking about the so-called supposed institutionalization.

For example, in Czechia, the Rules of Procedure of the Chamber of Deputies contain a certain number of provisions that small parliamentary groups and individual parliamentarians can use [19]. Thus, any member of the Chamber of Deputies has the right to legislative initiative, just as any member of parliament can make an interpellation. In turn, a group of deputies, which includes one-fifth of the parliamentarians, may initiate an extraordinary parliamentary session and set up temporary commissions of inquiry; at least fifty deputies may submit to the Chamber the issue of confidence in the Government.

The regulation of the exercise of minority rights in the Rules of Procedure of the Polish Sejm is similar [20]. Thus, any deputy may propose amendments to any bill; a group of deputies can initiate decisions on specific issues:

- fifteen deputies can suggest adopting a law,
- sixty-nine deputies can initiate a separate question to be put on a referendum,
- Forty-six deputies can submit a draft to establish a temporary commission of inquiry and express a vote of no confidence in the Government.

According to the Law of Ukraine, "On the Rules of Procedure of the Verkhovna Rada of Ukraine" [21], deputies have the right of legislative initiative. While a group of at least one-third of the Verkhovna Rada's constitutional composition (150 MPs) may form a temporary commission of inquiry and consider the responsibility of the Cabinet of Ministers of Ukraine, 45 deputies may apply to the Constitutional Court of Ukraine. It should be noted that during 2008- 2020, the legal status of the parliamentary opposition was enshrined in Chapter 13 (Parliamentary Opposition) of the Rules of Procedure of the Verkhovna Rada of Ukraine. At that time had the force of a bylaw. It described in detail the procedure for the formation and termination of the opposition and its rights. Thus, the opposition was considered a faction that numbered more than half of the deputies who did not join the coalition while publicly declaring their opposition. The possibility of creating an opposition union was also envisaged. It had the right to form factions, the total number of which also amounted to more than half of non-coalition deputies. There could be only one faction or one group of factions in the parliamentary opposition.

In all these cases, the parliamentary opposition (minority) is endowed with the same means as the pro-government majority. Therefore, such regulations indicate the lack of institutionalization of the parliamentary opposition (de facto, not formally).

Compared to Poland, Czechia, and Ukraine, the situation regarding the legalization of parliamentary opposition rights in Lithuania is somewhat different. In Lithuania, the rights of the parliamentary opposition are enshrined in the Statute of the Seimas [22]. Thus, Article 41 of the Statute defines the legal status of the opposition faction. "Factions or coalitions of members of the Seimas that do not agree with the government's program may declare themselves oppositional". Opposition groups are those factions whose political declarations set out provisions that differ from those adopted by the majority of the Seimas. Opposition factions or coalitions publicly announce alternative government programs. They are guaranteed all the rights of factions and coalitions provided by the Statute of the Seimas, which cannot be restricted under any circumstances.

The same article (Part 5, Article 41) stipulates that in case of joining an opposition faction or coalition, more than half of the deputies are a minority of the Seimas, the head of such a faction or coalition acquires the official status of opposition leader. The leader of the opposition enjoys additional rights established by this Statute: he is a member of the Seimas Board and has the right to speak extraordinarily during the debate (this right is exercised only by the President, the Speaker of the Seimas, and the Prime Minister); the leader of the opposition may also urgently propose draft laws and decisions of the Seimas; receives for his work an additional salary established by Law [22].

Conclusions. In general, we'd like to conclude that the parliamentary opposition should be determined and defined in the constitution of every democratic state, relevant legislature, and bylaws. We are talking about its official status, role, and place in the parliament and policy-making, a dichotomy with the pro-government majority, preconditions of scrutiny of governmental activity, etc. Possession of solid parliamentary opposition but not just a hologram ensures the abovementioned scrutiny (even review) of planned (often populistic) governmental policy and strategy. The institutionalization of the parliamentary opposition is essential for several reasons for all 'democratic transit' countries in Central and Eastern Europe. The first condition is the lack of a constitutional tradition of relations between the pro-government

parliamentary majority and the minority (the opposition). The normative enshrinement of the latter's rights and guarantees of activity shapes its attitude as a crucial parliamentary institution, an effective alternative to the pro-government coalition. This approach emphasizes the value of the parliamentary opposition, which performs specific functions and is much more than just a personal cast of MPs being in the minority proportionally to the majority in the parliament.

Secondly, legally enshrined and clearly defined rights and guarantees are a more effective tool for the functioning of the parliamentary opposition than exercising the powers of an ordinary parliamentary minority. It establishes the status of the opposition, endowed with equal powers as the governing coalition. Finally, the legitimization of the parliamentary opposition in the constitution, for example, provides, on the one hand, some legal guarantees within the dichotomy government-opposition to limit the political influence of the pro-government parliamentary majority on the minority. On the other hand, it imposes on the parliamentary opposition the right to be with the governing majority on equal footing; therefore, it is legally responsible for the exercise of power. So, the effective parliamentary opposition can scrutinize (the populistic) policy of governing majority, which is a visible symbol of the salvation of state political order and parliament itself. Finally, the Venice Commission is an international (European) institution to safeguard all the constitutional issues regionally and produce a guideline for parliamentary opposition, its rights, duties, status, and functions [23].

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ІНСТИТУЦІОНАЛІЗАЦІЯ ПРАВ ПАРЛАМЕНТСЬКОЇ ОПОЗИЦІЇ У ДЕРЖАВАХ ЦЕНТРАЛЬНОЇ ТА СХІДНОЇ ЄВРОПИ

Предметом нашого дослідження є не політична опозиція загалом, яка дуже часто є неоднорідною як за ідеологічними переконаннями, так і враховуючи засоби та методи досягнення влади, а парламентська опозиція як легальна політична сила, яка є конструктивною щодо влади і реалізує свої програмні цілі відповідно до встановленої процедури. В цій статті використано

досвід правового регулювання та функціонування парламентської опозиції таких держав Центральної та Східної Європи як Литва, Польща, Чехія, які, зважаючи на правової традицію та культуру, а також в інституційному аспекті є найближчими до УкраїниТакож, кожна з цих держав має свій як позитивний, так і негативний досвід пошуку балансу між парламентською меншістю (опозицією) та проурядовою більшістю, який є важливим для кожної з них, враховуючи подальшу державотворчу та правотворчу практику.

Парламентська опозиція повинна мати можливість безперешкодно вносити зміни до законопроєктів, запропонованих парламентською більшістю. З цією метою необхідно врегулювати ініціативи провладних депутатських фракцій щодо ухвалення законопроєктів у прискореному порядку, зокрема щодо критичних аспектів політичного чи правового характеру. У державах Центральної та Східної Європи і в Україні більшість прав парламентської опозиції не є інституціалізованими; ця практика не набула масового поширення: зарезервованих місць у парламентських комітетах саме для депутатської меншості немає, вони беруть участь у розподілі керівних посад у парламентських структурах на пропорційній основі в статусі звичайних клубів і груп.

Ключові слова: парламентська меншість, опозиція, провладна більшість, інституціоналізація прав парламентської опозиції.