Vol. 4, No. 2, 2018

УДК 321.015

https://doi.org/10.23939/shv2018.02.007

ПОЛІТОЛОГІЧНИЙ АНАЛІЗ ОСНОВНИХ ЕЛЕМЕНТІВ СИСТЕМИ СТРИМУВАНЬ І ПРОТИВАГ

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(стаття надійшла до редколегії – 19.10.2018 р., прийнята до друку – 14.11. 2018 р.)

Розглянуто основні елементи системи стримувань та противаг – одного з індикаторів демократичного розвитку держави. Зважаючи на особливості сучасних політичних перетворень у світі, закцентовано на нових підходах до розуміння системи стримувань і противаг у політичному сенсі. На основі аналізу політичної практики демократичних держав показано основні риси елементів системи стримувань та противаг. Зважаючи на це, висвітлено основні параметри функціонування системи та описані проблеми, які можуть виникнути у разі функціонування кожного окремого елемента.

Система стримувань і противаг вважається багатовимірним явищем. Основну увагу звернуто на функціональне наповнення системи стримувань і противаг, і наголошено, що її цілісне розуміння не може бути зведеним до суми її елементів. Підкреслено, що право вето, право законодавчої ініціативи, вотум недовіри, імпічмент, контрасигнація, призначення ключових посадових осіб є ключовими елементами системи стримувань і противаг. Проаналізовано їх основні особливості та роль, яку вони відіграють у функціонуванні системи.

Наголошено, що українська практика функціонування системи стримувань та противаг має проблеми із законодавчим закріпленням та практичною реалізацією. На основі структурно-функціонального підходу доведено, що елементи системи стримувань і противаг є основною гарантією демократичного ладу.

Ключові слова: *стримування, противаги, демократія, право вето, гілка влади, вотум недовіри, контрасигнація, імпічмент.*

POLITICAL ANALYSIS OF THE CHECKS AND BALANCES SYSTEM MAIN ELEMENTS

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The article considers the main elements of the system of checks and balances, one of the indicators of democratic development. Due to the peculiarities of modern political transformations in the world, which require new approaches to the understanding of the system of checks and balances in the political sense, are emphasized. Based on the analysis of the political practice of democratic states, the key features of the checks and balances system elements are shown. According to this, the main dimensions of the functioning of the system are outlined and the problems that may arise in each of them are described.

The system of checks and balances is considered to be the multidimensional phenomenon. The main attention is paid to the functional filling of the system of checks and balances and its understanding cannot be reduced to the sum of its elements. The right of veto, the right of legislative initiative, the vote of no confidence, impeachment, countersigning, the appointment of key officials are emphasized to be the key elements of the checks and balances system. Their basic peculiarities and role they play in the functioning of the system are analyzed.

It is emphasized that Ukrainian practice of the checks and balances system functioning has a problem with legislative consolidation and practical implementation. Based on the structurally functional approach the elements of the system of checks and balances are proved to be a basic guarantee of democratic governance.

Keywords: *checks, balances, democracy, right of veto, branch of power, vote of no confidence, countersigning, impeachment.*

One of the central problems for the states that have embarked on the democratic development path is to ensure the separation of powers between the branches of state power. In each country, the system of checks and balances functions differently, however, in each democratic state the principle of separation of powers and the use of the system of checks and balances elements provides the limiting of this or that pole power aimed at balancing the competences of the authorities. In the process of historical development within the system of checks and balances a certain set of elements (mechanisms) has been formed. These elements became mandatory components that form an integral structure of interactions between the branches of state power.

Each particular state provides its unique system of checks and balances. The study of separate elements of the system of checks and balances is an essential component in assessing the role of the system in the effectiveness of the branches of power functional responsibilities implementation. At the same time, it should be emphasized that the study of ways of implementing mechanisms of the checks and balances system is a necessary guarantee of a comprehensive theoretical study of the checks and balances as a complex phenomenon.

In the conditions of the Ukrainian society democratization and the desire for transparency and openness in the functioning of power structures, it is necessary to study the principle of separation of powers and the principles of their interaction. The study of basic elements of the checks and balances system is topical due to the need of practical implementation of the branches of power authorities within their competences. The procedures for such interactions, legaly enforced in Ukrainian legislation, are complicated and, accordingly, difficult to be applied in practice. To do this, it is necessary to examine the content and basic principles of the use of one or another element of the checks and balances, as well as to take into account the foreign experience of western democracies in their desire to use the elements of the system in order to avoid the usurpation of power.

The purpose of the article is to analyze the key elements of the system of checks and balances and their features.

According to the topicality of the issue, modern scholars are increasingly turning to the problems of studying the system of checks and balances. Among the foreign scientists who are investigating this problem we may name Manova H., Aduchiyev B., Zuyeva K., Bulmer E. and others. Among the scholars who studied the principles of the formation and functioning of the checks and balances system Haidanenko N., Sylenko L., Soroka S., Shapoval V., Rebkalo V. and others should be named. The study of the system of checks and balances has extended in legal science. However, from the political science point of view, the problem of the elements of the checks and balances system remains poorly investigated. It should also be noted that there is a problem of the absence of a comprehensive study of checks and balances system elements at the structural and functional level, taking into account the specifics of each individual state.

The system of checks and balances between the branches of power is a set of elements, means and forms of interaction between the branches of state power, transferred from formal consolidation to the practical implementation and aimed at ensuring the balance of political forces, preventing the usurpation of power and promoting democratic development. The system of checks and balances as a political institution is designed to stand for the protection of the interests of society and to represent the interests of citizens, which is impossible under unlimited powers. The effectiveness of the activity of the branches of government is reflected directly in the functions that perform the system of checks and balances as a condition of democracy.

A separate element of the system of checks and balances can be considered a procedure that defines the relationship between, at least, two branches of government, which is called to exercise the function of control, deterrence or promotion of a more efficient functioning of a separate branch of power in the political system of the state. In the horizontal dimension of the system of checks and balances, it is necessary to distinguish between the following general directions of the elements implementation (see Table 1).

From the above information it is possible to distinguish the following important elements of influence of the checks and balances system:

1) Veto (from the Latin «Veto» – prohibit) – the prohibition or suspension by the supreme authority of the state of the enactment of a resolution of a legislative body (parliament or one of its chambers) [Шемшученко 2004]. The head of state is responsible for the laws adopted by the parliament. The following types of veto are known in the constitutional practice of foreign countries:

a) Absolute veto (resolutive) is the prerogative of the heads of monarchical powers (operates effective only in absolute and dualistic monarchies) and is not subject to cancellation by parliamentarians. In modern democratic republics, an absolute veto exists formally and is not used. Often it is seen as an important instrument of the head of state in the event of a crisis or political confrontation [Погорєлова 2015]. In the constitutional and legal practice of European states such a right is owned only by a monarch of Great Britain who has not resorted to him for more than two centuries [Bulmer 2017]

Table 1

Basic elements of the system of checks and balances

The direction of mutual influence	**Elements of influence within the system of checks and balances**
1) President -> Parliament	– the right of the deferral veto; – the right to dissolve the parliament; – the right of legislative initiative
2) Parliament -> President	– impeachment; – election of the president.
3) President -> Government	– departure of the government; – formation of the government; – appointment of the head of government.
4) President -> Judicial branch *Parliament -> Judicial branch:*	– creation and reform of courts; – appointment of judges.
5) Parliament -> Government	– a motion of no confidence; – government formation.
6) Government -> President	– countersigning.
7) Government -> Parliament	– the right of legislative initiative.
8) Judicial branch -> President	– participation in the procedure of impeachment.

b) The suspensive / relative veto consists in the right of the head of state to return the bill to a reconsideration or discussion in parliament. This veto can be overcome by parliament [Погорєлова 2015].

c) The selective veto allows the heads of state to impose a ban on not the entire bill, but on its separate articles, sections, paragraphs. The right to selective veto is endowed and widely used by executives in most US states. This right provides governors with an impact on the distribution of state funds.

d) «Pocket» veto is used in a few states, in particular, in the United States. It is applied when the ten-day term for consideration of the bill by the president is terminated by the end of the session of the Congress or the transfer of its meetings. This is usually an artificially created situation in which the president has the opportunity to postpone the bill «to the pocket» if he does not like it, he does not want to sign it, but at the same time he would not want to use the suspensive veto, because in the case of such a bill, a suspensive veto could undermine his authority. Under the pretext that the ten-day term was violated, the bill does not become legally binding, but it is not recognized as canceled by the presidential «pocket» veto. No procedure for overcoming this type of veto is foreseen, so in such a way, the presidential «inactivity» acquires an absolute veto power [Levy 2000].

Veto as a kind of protective tool in the democratic process often serves as the object of constant compromises and concessions between the president and parliament. The application of this right is a kind of evidence of transparency and democracy in the functioning of the political system. When it comes to overcoming the president's veto, they distinguish between «strong» (when an absolute majority is needed to overcome it) and «weak» (which requires other requirements – 2/3, 3/4 votes) veto [Bulmer 2017]. In modern democracies, the president's veto overcome means his political weakness and inability to significantly influence the political process.

2) The right of legislative initiative – the stage of the legislative procedure, which consists in the introduction of an official proposal for the adoption, amendment or repeal of a legislative act by the authorized subject of the right of legislative initiative to the parliament. Often, under the law of legislative initiative, this is the first stage of the legislative process that arises between a representative body and a specially authorized entity, aimed at introducing a bill or legislative proposal, as well as direct participation in its consideration, the right to withdraw [Абрамова 2006].

For example, in accordance with the Constitution of Ukraine, the right of legislative initiative in the parliament belongs to the President, people's deputies, the Cabinet of Ministers and the National Bank of Ukraine. The advantage of the introduction of the bill belongs to the President, who has the right to make such an extraordinary rendition. It is important that the draft laws are accompanied with an accompanying note, which should justify the need for their development or approval.

3) Impeachment – the procedure for bringing to court senior officials of the state by the parliament as a result of treason or committing a serious crime. The result of impeachment is the early termination of the powers of the accused official or his removal from office. Often, impeachment is applied by the parliament to the president. As a rule, impeachment occurs also with the participation of the judicial branch of government.

Historically, the procedure of impeachment arose as a functional replacement of the parliamentary responsibility of the government in the presidential republic. At the present stage of the development of democracy, this institution is associated, first of all, with the head of state. According to the Ukrainian scientist T. Kaduk, impeachment has a warning meaning, since it is used rarely in practice [Кадук 2014]. However, this mechanism of the system of checks and balances is extremely important and in contemporary scientific thought there are discussions about historical origin and modern interpretation of it as a complex procedure.

Scientists possess different positions about the history of the origin of the procedure for impeachment. Some researchers argue that the rooting procedure for impeachment dates back to the time of ancient Greece and is associated with the process of «eisangelia» – a special procedure, the essence of which was the consideration of public and open court cases of crimes against the state. Such a court, in particular, known as Areopagus (Supreme Court in Ancient Athens), had the right to remove from office any official whose actions inflicted «harm» on the state. The decision was taken by secret chairmanship by an absolute majority of people. Such hearings have always been open and could be joined by persons from other cities-states [Балух 2007]. Such a procedure is likely to be a prototype of impeachment.

Other scholars argue that the procedure of impeachment originated in England at the end of the XIV century. and its essence was reduced to the fact that the House of Commons raised the issue of accusing an official of abuse of authority by the House of Lords [Orth 2000]. It should be noted that in this form, impeachment was already political in essence and judicial in form of implementation. In 1338, he received regulatory approval in the form of an agreement between the parliament and the king, and it was that any of the ministers could be removed from office for committing «serious crimes and misdemeanors» [Кадук 2014].

At the constitutional level, the procedure for impeachment was first laid down in the US Constitution in 1787, the basis of which was the interpretation of such basic British formulation as «state betrayal» and «serious crimes and misdemeanors» [Кадук 2014]. Since the first constitutional consolidation of this mechanism in the practice of American state-building, it has become a typical procedure for all the states that have embarked on the path of democratic-republican development. However, at the present stage of development of democratic states, a significant difference in the application of impeachment is a significant reduction in the frequency of its application in practice. This is due to a number of features of this procedure, which exist in different states. In particular, there are such approaches to impeachment:

– impeachment, as a special procedure for accusations of senior officials by the decision of parliament [Гаращук 2002];

– impeachment, as a special form of parliamentary control over the activities of the head of state in a democratic society

– impeachment, as a procedure for preventing authoritarianism and arbitrariness by the head of state in order to secure a national statehood [Мельник 2011];;

– impeachment, as a form of bringing the head of state to responsibility for committing an offense incompatible with the subsequent occupation of his position.

Parliamentary control in the form of impeachment is a powerful guarantee of preserving the constitutional order in the state and preventing abuse of power. Despite the fact that impeachment is a complex and multi-step procedure and is not used frequently in modern democracies, it is an important lever of influence on the head of state, which determines the importance of observance of the rules of law and conscientious fulfillment of their powers.

4) A vote of no confidence is a manifestation of disapproval of the political line by the parliament or certain actions of the government of a country or a separate minister by voting. The initiative to raise the issue of a vote of no confidence can come from the government, from parliamentary factions or groups of deputies. In political practice, the expression of a vote of no confidence leads either to the resignation of the government and the formation of a new government, or to dissolution of the parliament and holding early parliamentary elections. In the parliamentary and mixed republics and in constitutional monarchies, the government needs the confidence of the parliament or its lower chamber. In order to exercise control over the government in these countries, the constitution establishes the possibility of expressing the government a vote of no confidence or a resolution of condemnation.

The vote of no confidence gives an opportunity to overcome the government crisis that has developed in the state. The government crisis is the loss of the government's support of the majority in the parliament or in its chamber, before which the government is responsible [Сорока 2011]. Thus, there are two kinds of the vote of no confidence, namely:

a) A constructive vote of no confidence is a kind of collective responsibility of the government, in which the parliament (or its separate chamber, before which the government is responsible) expresses distrust of the

government with the simultaneous appointment of its new head. In the very essence of the constructive vote of no confidence it is supposed to overcome the government crisis, by approving the candidacy of the new head of government.

b) A destructive vote of no confidence is a kind of government responsibility in which the government resigns, and then the procedure for forming a new government in the manner prescribed by the law of the state begins, or the head of state dissolves the parliament and prescribes early elections (after which the government is formed by the newly elected parliament) [Лихачов 2018].

Both of these types of vote of no confidence are collective. This means that regardless of whether a vote of no confidence was voiced on a separate minister, the entire staff of the government is resigning. At the same time, in many European countries there is also a so-called individual vote of no confidence, that is, the use of liability in relation to a separate officer. It should be added that the existence of such a mechanism in the system of checks and balances is a significant guarantee of the proper fulfillment by the government of its functions.

5) Countersigning (from the Latin «counter» and «signare» – to sign, to certify) – the previous affirmation of the act of the head of state signed by the Prime Minister and the Minister responsible for this act and its execution, as a result of which they assume legal and political responsibility for the act of the head of state [Колисенко 2016]. Historically, the institution of countersigning (or ministerial scribe) arose and formed as a result of the merger of two opposing legal principles – the lack of control and irresponsibility of the monarch on the one hand, and the principle of the supremacy of parliamentary responsibility of the government – on the other [Филлипова 2006]. However, at the time of the absolute monarchy, the ministerial scribe was formal, and only with the development of democracies has become widespread among modern democratic republics.

The functioning of this mechanism of the system of checks and balances in modern states is not only a manifestation of lifting responsibility from the head of state and transferring it to individual government representatives. The institution of countersigning is, rather, a manifestation of the partial dependence of the head of state on the government and the government's accountability to the parliament. At the same time, countersigning carries out a number of important functions for the viability of democratic government in the state, namely: it is evidence of the collegiality of making political decisions between the government and the head of state; provides guarantees against abuse of power, and also supports the stability of the political system [Olechno 2013].

The division of functions and powers in the sphere of executive power between the head of state and the government is possible only subject to the parliamentary responsibility of the latter. The institution of counterignature is most widely used in parliamentary forms of government – in a parliamentary monarchy and in a parliamentary republic, where the organization of state power is based on the principle of parliamentary supremacy in the system of higher authorities of the state. In the parliamentary monarchy and the parliamentary republic, all or almost all acts of the head of state are subject to contraction. Exceptions, if any, most often relate to acts of the government itself – its formation and dismissal. In some parliamentary countries, counter-signing is subject to the act of the head of state on the dissolution of parliament. This means that in fact the parliament is dissolved by the government, or rather, by the parliamentary majority that formed it**.**

6) Appointment of key public officials is a procedure for the formation of a staffing of key positions in the state apparatus, which have a decisive influence on important areas of public life. Such key positions include, in particular, the Attorney General, the Head of the Security Service, the Head of the National Bank, etc.

In our opinion, we can distinguish the following *features* of the mechanisms of the system of checks and balances:

1) All elements of the system are formally defined and are clearly defined by the national legislation of a particular state.

2) Key mechanisms of the system of checks and balances are implemented in the form of sequential actions and procedures aimed at achieving a certain goal.

3) Mechanisms of the system of checks and balances require complex consideration and can not be considered unilaterally and in isolation. Therefore, one and the same mechanism is deterrence for one branch of government and a counterweight to another (see Table 2).

4) A set of elements of the system of checks and balances is unique for each state and its formation is influenced by a number of factors, including historical, cultural, mental and other determinants of the functioning of the state.

5) The study of the main elements of the system of checks and balances requires complexity and consideration of various factors that can directly or indirectly influence the functioning of each individual factor.

Table 2

Some elements of the ckecks and balances system between the branches of government

Checks	**Balances**
Veto of the head of state	
For the parliament	For the head of state
Overcoming the veto by the parliament	
For the head of state	For the parliament
Impeachment	
For the head of state	For the parliament
Countersigning	
For the head of state	For the head of government
Dissolution of parliament	
For the parliament	For the head of state
The vote of no confidence in the government	
For the government	For the parliament
Determination of the laws constitutionality	
For the parliament, government and head of state	For the judiciary branch

Hence, the system of checks and balances is an integrated entity of interconnected elements. The effectiveness of its functioning depends on the effectiveness of the implementation of each individual element-mechanism. Each of the mechanisms of the system of checks and balances is a legally established procedure aimed at ensuring the achievement of the system-wide goal – the obstruction of usurpation and abuse of power. The effectiveness of the elements of the system of checks and balances is an indicator of the democratic development of the state, and its assessment is impossible without taking into account the peculiarities of the implementation of its individual mechanisms in a particular state.

Prospects for future research are the study of the elements of the system of checks and balances as a condition for the construction and development of democracy in the state, the identification of the main parameters of these institutions as a guarantee of maintaining a balance of power between the branches of government in the society and preventing the concentration of power in one's hands. Special attention should be paid to the study of conflicts and contradictions related to the practical implementation of checks and balances elements in various republics and, in particular, in modern Ukraine.

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