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СИСТЕМА СТРИМУВАНЬ І ПРОТИВАГ ЯК АТРИБУТ ДЕМОКРАТІЇ: ПОЛІТОЛОГІЧНИЙ АНАЛІЗ

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Розглянуто особливості системи стримувань і противаг як одного із атрибутів демократичного розвитку. Наголошено на нових підходах до розуміння системи стримувань і противаг у політичному контексті, враховуючи особливості сучасних політичних трансформацій, що наявні у світі. На основі аналізу політичної практики демократичних держав виокремлено основні риси системи та доведено, що вона є багатовимірним інститутом. Відповідно до цього, виокремлено головні виміри функціонування системи стримувань і противаг та описано проблеми, які можуть виникати на кожному з цих рівнів.

Доведено, що система стримувань і противаг є важливим елементом політичної системи. Описано низку важливих функцій, які система виконує у суспільстві. Проте головну увагу зосереджено на функціональному наповненні системи стримувань і противаг як атрибуту демократичного розвитку держави. Водночас наголошено, що система здатна розвиватись лише у тому суспільстві, де підтримуються принципи побудови демократії та верховенства права.

Підкреслено, що в Україні потребують вирішення чимало проблем, пов'язаних з функціонуванням системи стримувань і противаг. На основі системного методу доведено, що система стримувань і противаг є одним із ключових елементів демократії.

Ключові слова: *стримування, противаги, демократія, поділ влади, гілка влади, система, повноваження, форма правління.*

SYSTEM OF CHECKS AND BALANCES AS AN ATTRIBUTE OF DEMOCRACY: POLITICAL ANALYSIS

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The article deals with the features of the system of checks and balances as one of the indicators of democratic development. Taking into account the peculiarities of modern political transformations in the world, the new approaches to the understanding of the system of checks and balances in the political sense are emphasized. Basing on the analysis of the political practice of democratic states, the key features of the system of checks and balances are identified and it is proved that this institution is multidimensional. Resting on this statement, the main dimensions of the functioning of the system are outlined and the problems that may arise in in each of them are described.

The system of checks and balances is proved to be an important element of the state political system. A number of important functions, the system of checks and balances in the society are described. The main attention is paid to the functional filling of the system of checks and balances as an instrument of democratic development of the state. It is emphasized that the system of checks and balances can develop only if the basic principles of building democracy and the rule of law based on a high level of political consciousness and culture are maintained.

It is emphasized that Ukraine possesses a lot of problems related to the system of checks and balances functioning which need to be dealt with. Basing on the system method, the system of checks and balances is proved to be one of the basic elements of democracy.

Key words: *checks, balances, democracy, division of power, branch of power, system, authorities, form of government.*

The achievement of democratic ideals and the maintenance of the viability of the democratic system in the state is one of the important tasks for a modern civilized world. One of the central problems for the states

that have embarked on the path of democratic development is to ensure the separation of powers between the branches of state power. The principle of such division involves limiting the power of one or another power pole and it is aimed at balancing the competences of the authorities. It makes possible to avoid the maximum concentration of power in one's hands, and thus to achieve effective decentralization of power, implement mutual control and balance of power branches, to create conditions for effective development and strengthening of democracy.

Topicality of the problem. The main problem in the context of the system of checks and balances research faced by scientists is the impossibility of differentiating the political and legal aspects in the subject of scientific analysis. For a deeper understanding of the content and essence of the system of checks and balances, it is necessary to distinguish the main functions that it performs as a political institution, as well as to analyze the main conditions under which the system of checks and balances will function effectively.

The problem of the distribution of power is particularly topical for Ukrainian democratic practices. During the years of its independent existence, our state has not once changed the form of government and at the present stage of its development remains in search of an "ideal" division of powers between the branches of state power. The choice of the optimal form of government and, in particular, the full implementation of the mechanisms of the checks and balances system in practice requires careful consideration and research in the domestic political realities area. It should be noted that the political component of the system of checks and balances study remains poorly investigated. To do this, first of all, it is necessary to pay attention to the essence and features of the system of checks and balances, as an attribute of democracy in Ukraine, as well as the conditions under which the system will function fully and effective.

Recent publications. Taking into account topicality of the problem, modern scholars are turning to the problems of studying the system of checks and balances increasingly. Among the foreign scientists who are investigating this problem are Manov H., Shayo A., Zuev K., Fukuyama F., Andrescu M., and others. Among the domestic scientists who pay attention to the study of the system of checks and balances should be noted Haydayenko N., Sylenko L., Zhuk N., Shapoval V., Rebkalo V., Frytskyi Yu., Starodubsky B. and others. It should be noted that most studies in this area are considering a system of checks and balances in a legal key, not paying attention to the political component. The system of checks and balances as an attribute of democracy remains poorly investigated.

The purpose of the article – to systematize views on the concept, essence, functions and features of functioning of the checks and balances system as one of the main elements of the democratic development of the state.

First of all, it should be emphasized that the realization of the division of power principle differs from country to country. For the most part, its implementation depends on the type of form of government, that is, those powers that are constitutionally enshrined, or appear in normative legal acts of the state. The consideration of the national specificity of the state, expressed in the way of its formation and organization, functioning and the existing arsenal of mutual control mechanisms is also equally important in the organization of the division of power.

As the practice shows, even the same form of government in different countries possesses a variety of mechanisms used in this mechanism of interaction and interconnections between the branches of government, including the ability of these systems to ensure the proper separation of powers [Жук 2006: 13]. At the same time, the current democratic republic is characterized by a division into the legislative, executive and judicial branches of power. Among the basic requirements for the distribution of power in a democratic state is the independence and separation of branches of power according to functional capabilities, a clear distinction between political and legal forms of activity, mutual influence, balance and control between them [Цвик 1995: 24]. Mutual mechanisms of checks and balances are united under the name of the system of checks and balances, declared and actually operating between the branches of power.

In the classical sense, laid down by one of the founders of American statehood J. Madison, under the "system of checks balances" understood the mechanism that allows to prevent the abuse of power. It is envisioned that "... by the invention of such an internal structure of the authorities, for which they serve as means of deterring each other in its place" the misuse of power (especially, of the legislative) can be prevented [Малышенко 2011: 73]. With political and legal independence, the president, legislator, and judges remained interdependent and possessed the tools of mutual influence.

In modern realities of democratic transformation, the approach to interpreting the system of checks and balances, though retaining the general features of its classical interpretation, has undergone significant changes. The main problem in the context of the study of

the checks and balances system faced by modern scholars concerns impossibility of differentiating the political and legal aspect in the subject of scientific research. Indeed, according to a Ukrainian researcher N. Haidanenko, "... all instruments within the checks and balances system are possible to be implemented only by the letter of the law, and, conversely, no legal act regulating the division of powers and the allocation of power institutions by those other powers do not appear without a "political order", that is, an objective basis caused by the political situation and the need for a political process in a given state" [Гайдаєнко 2010: 8]. The political component of the system of checks and balances effectiveness is reflected in the functioning and maintenance of the democratic system in the state.

Among the key features of the checks and balances system which indicate the modern state as a democratic in our opinion, should be noted:

1. Spreading of the checks and balances system beyond the theory of power distribution. According to N. Haidayenko, at the present stage of its development, the system of checks and balances goes beyond the principle of separation of powers. According to the researcher, the process of establishing a separate theory of the system of checks and balances is now actively developing [Гайдаєнко 2005: 154]. In addition, the approach to the interpretation of the concept is changing: if, at the time of the adoption of the US Constitution, the checks and balances system was seen as a component of the separation of powers, then in the modern sense, the concept is modified and is seen as the basis of separation of powers, an element of democracy. The system of checks and balances transforms, acquires new features, goes beyond the bounds of state power and begins to spread to all political power in a democratic state.

2. Dependence of the functional content of the checks and balances system on the form of the republic. For example, for a parliamentary republic, the formation of a government by parliament is a characteristic element of deterrence and counteraction, while in the presidential republic the government is formed by the president. At the same time, as the world practice shows, even the same form of government in different states differs as the diversity of its mechanisms of interaction and mutual support between the branches of power, and the ability to provide an appropriate separation of powers in applying these mechanisms [Зуева 2013: 19].

3. Distribution of interactions and interconnections horizontally and vertically. In assessing the mechanisms of checks and balances, it should be taking into account that the mechanisms for balancing and control function not only horizontally, but also extend to the power vertical, are reflected in interaction with government bodies of the higher and lower levels. Increasingly, particularly in Ukrainian realities, the question of decentralization of state power is raised. In this context, the delegation of authority to local communities and the existence of a "feedback" link can be seen as key mechanisms of the system of checks and balances within the power vertical. It should be added that the form of government also plays a decisive role in the effectiveness of the system of checks and balances: therefore, in federal states the emphasis is on "vertical interaction", while for the unitary one – above all, the "horizontal" one is important. [Силенко 2000].

4. Dependence on the national features of the state. The formation and functioning of the system of checks and balances depends on the cultural, historical, economic features of the state's development, as well as on the nature of the state apparatus formation.

5. Mechanisms of the system have a formally defined character [Грачев 2010]. For example, the procedure for carrying out the procedure for impeachment is clearly stated in the Constitution of Ukraine.

6. Presence of relative imbalance in the checks and balances system. Despite the fact that the main purpose of the distribution of power and the functioning of the system of checks and balances is to establish a balance between the poles of power, it is still impossible to achieve the full equilibrium. In the scientific literature, even the term "instability of the balance of power branches" is observed. That is why, as the world practice shows, presidential and parliamentary republics (with the privilege of the president and parliament respectively) are more stable. A certain imbalance within the functioning of the system, according to the Ukrainian researcher N. Zhuk, consists in the emergence of the phenomenon of "temporary priority". For example, in the legislative process, the last word must remain in parliament [Жук 2006: 28]. Considering the system of checks and balances in a legal key, according to the Russian scientist H. Manov, the rule of law in the state can only be discussed when the entire system of checks and balances is closed precisely in the legislative branch [Манов 1991: 6].

7. Separation of the concepts of "checks" and "balances". Both concepts, which are equally included in the name of the system, are closely interrelated. The condition for the delimitation of these concepts is the fact that in the interaction between the branches of power one will be restrained, and the other will be counterbalanced. Not eccidentally, the term "mutual deterrence" is often used in the scientific community. However, from a legal point of view, under the term of *checks – legal means which enable each of the branches of power to influence the sphere of functional purpose of each other*, while at

the same time, under *balances – the technical and legal means of ensuring the equal importance of branches of power in various spheres of state power realization* are meant [Малышенко 2011: 72].

The system of checks and balances as the main mechanism for the exercise of political power in the state also has its advantages and disadvantages, which are dictated by the design of the state-building process of each individual republic, a combination of unique conditions for the development of political processes, and national specificity. However, for a state that poses itself as a democratic, effective functioning of the system of checks and balances is a guarantee of preserving the constitutional order and supporting sustainable democratic development. Therefore, in our opinion, it is expedient to consider the system of checks and balances in such dimensions:

1. Legal – concerned with the provisions in the normative legal acts concerning the distribution of powers of the state power branches. The legal measure of the functioning of the checks and balances system refers to the existence of clearly specified authorities, their consistency, feasibility and the possibilities of their implementation in the political realities of a particular state. Procedures and mechanisms of the system of checks and balances should be clearly defined in the legislation of the state. Only with respect to such principles we can talk about the democratic system of checks and balances in the legal key [Гайдаєнко 2010; Жук 2006].

2. Actual. Investigating the actual measurement of the functioning of the system of checks and balances is about to examine the compliance with the requirements of the law and their implementation in practice. Formally entrusted powers should be implemented in practice, with all the requirements of the letter of the law. The level of actual exercise of authority within the system of checks and balances is evidenced by the presence or absence of corruption schemes, the use of administrative resources, an adequate level of responsibility of persons under authority, personal interest etc. In the context of political analysis, the actual dimension of the checks and balances system is particularly indicative for identifying the main features of democracy.

3. Horizontal – refers to the distribution of power and interconnections between the branches of state power. Considering the horizontal dimension of the system of checks and balances, it is necessary to take into account the existence of mutual powers of the branches of state power provided by the legislation with respect to each other. In addition to the usual distribution of power between the legislative, executive and judicial branches of power, the focus of modern scientific research is also increasingly seen in the fourth branch of government – the mass media. Formally, having no part of formal power in the state, the media, nonetheless, have particular influence on decisions making. It is also a powerfull instrument of influence on the consciousness of the citizens [Зуева 2013; Силенко 1999].

4. Vertical. In federal states, the system of checks and balances is changed with an emphasis on vertical interaction. A large part of the powers that are implemented locally is delegated to the local communities and regions. At the same time, they have the opportunity to influence the decision-making of a national character. However, in the unitary states the problem of establishing interconnections with local communities may also appear. Particularly nowadays Ukraine is also trying to deal with problem of decentralization.

In our opinion, under *the system of checks and balances between the branches of power* should be understood a set of mechanisms, means and forms of interaction between the branches of state power, transferred from the formal consolidation into practical implementation and aimed at ensuring the balance of political forces, preventing 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 efficiency 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.

In our opinion, such *functions* should include:

1. Prevention of usurpation of power, prevention of individual decision-making and monopoly on power [Грачев 2010; Andreescu 2016].

2. Ensuring the stability of the political system of the state and guaranteeing constitutional order.

3. Transparency of public authorities. The powers of the authorities are regulated by normative and legal acts, are clearly delimited between the branches of power and create the limits for preventing abuse of authority.

4. Ensuring the proper level of human and civil rights and freedoms through the independence of the courts and judges, the ability to fully protect the interests of society through the unbiased and independent judicial branch.

5. Democratization of the processes of political decisions-making, loyal competition of power branches, making decisions on parity conditions, taking into account the interests of society. In a broader context, individual scholars view the referendum as a separate element of the system of checks and balances, as a

manifestation of the rule of people and the deterrence of society in relation to the legislative branch of government [Жук 2006].

6. Ensuring a high level of legal order and the existence of an equal constitutional responsibility of the branches of power before the law.

7. Reduction of opportunities for corruption, oligarchization, the use of administrative resources and nepotism.

The basis of any democracy is the fulfillment of formally prescribed in law and practically and effectively implemented principle of powers division and the system of checks and balances as it essence. Therefore, in order to preserve the democratic order, it is very important to observe all the authorities provided by the system of checks and balances. In some countries, mostly authoritarian, system of checks and balances is in fact fictitious, the formal division of the branches offsets by sole president actions, in whose hands most of the power is concentrated, while the states pose themselves as democratic presidential republic. This situation, in particular, has been observed in a number of countries in Africa and Asia since their formal "democratization". However, the USA, being a presidential republic but having an effective checks and balances system, became an example of democracy and stability of the constitutional order in the world [Fukuyama 2017]. Therefore, in our view, the conditions under which the system of checks and balances can effectively performing its basic function in society should also be considered. They include:

1. Representative democracy, the presence of a truly active, effective institution of democratic elections, an optimal model of the electoral system. An effective electoral system is an indicator of the level of democracy, which permits competition, pluralism of thoughts, and the rotation of the human resources capacity of the authorities which act in the interests of the people.

2. *High level of political consciousness and culture* of the citizens of the state and of their representatives in state power bodies.

3. *Multiparty system, pluralism of thoughts*, the presence of not fictitious, but actually operating opposition.

4. *The rule of law in the state*, the observance of the law and the constitutional order in society [Цвик 1995: 34].

5. *Internal ordering of normative legal acts* defining the main powers of the authorities. Well-regulated steps on the power realization by each branch provision [Силенко 2000].

From the abovementioned conditions of effectiveness of the system of checks and balances, we may conclude that the system cannot develop in a non-democratic environment, and at the same time, it is one of the main indicators of the development of democracy in the state. The mechanism of action of the checks and balances system can be really enshrined in normative legal acts, but in the absence of the above conditions of its effectiveness, it will not promote the development of a democratic system in the state and will not perform its functions, thus, being a fiction. At the same time, such a double nature of the system of checks and balances generates problems for the theoretical study of this institute.

Our state is one among a number of countries that unite elements of the presidential and parliamentary types of republics. At the same time, the mechanism of the system of checks and balances in our country during its independence was not properly organized and effective [Жук 2006; Гайдаєнко 2010]. The urgent problems of the distribution of power and the system of checks and balances should include the imperfection of the normative and legal consolidation of the main powers of the branches and the contradiction of certain provisions of the Constitution [Шаповал 1997], the general imbalance of powers between the branches, the lack of effective interconnections between the Verkhovna Rada and the Cabinet of Ministers, the actual subordination of the Government to the President and other. All these problems deter democratic development, create a number of domestic political problems and impede the effective functioning of the political system of the state, and, therefore, need to be solved.

Conclusion. The system of checks and balances is one of the most important tools for ensuring the stable development of democratic foundations in society. As an element of democracy, the system of checks and balances performs a number of important functions, and its effective functioning is a condition not only for the prosperity of the rule of law in the state, but also for the protection of the rights and freedoms of citizens, as well as the democratization of the adoption of political decisions. At the same time, it is important to take into account that not only the legal formulation of the system of checks and balances is important, but also the actual implementation of the mechanisms of the system is essential. Taking into account Ukraine's focus on building democracy, solving the problem of power distribution and functioning of the system of checks and balances remains especially topical and important.

Prospect for future researches is the study of the system of checks and balances as a condition for the construction and development of democracy in the state, identifying the main parameters of this institution as a guarantee of human rights respect in the society and

opportunities for their implementation and protection. The study of conflicts and controversies related to the practical functioning of the system of checks and balances in various republics and, particulary, in modern Ukraine deserves attention.

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