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THE CONSTITUTIONAL ASPECTS OF COUNTERSIGNATURE IN CENTRAL AND EASTERN EUROPEAN COUNTRIES

Abstract

A countersignature is a constitutional requirement requesting the Prime Minister or a Minister to sign an official act already signed by a head of state, who by signing it assume a political and legal responsibility for this act.

The institution of countersigning was adopted, *inter alia*, by the Constitutions in Poland, Latvia, Hungary, Bulgaria (in the negative form enumerating exclusions), as well as the Czech Republic, Romania, Ukraine and Lithuania (positive countersigning). Therefore the countries that rejected this institution make an exception and we can provide here an example of the Constitution of Slovenia of 1991 or Russia of 1993, which resigned entirely from the institution of countersignature, or the Constitution of Estonia of 1992, which adopted the countersignature requirement in case of the decree-laws exclusively.

The narrowest range of prerogatives is enjoyed by the President of Latvia.

A characteristic feature of Central and Eastern European countries is a relatively wide range of rights excluded from countersigning. It means that the President's personal rights, and consequently his system position, are strengthened, frequently in the manner that is irrelevant to the adopted system of government.

Key words: Countersignature, prerogatives, president, constitution

A countersignature is a constitutional requirement requesting the Prime Minister or a Minister to sign an official act already signed by a head of state, who by signing it assume a political and legal responsibility for this act. A countersignature is defined more widely in the literature as “1. confirmation of the act's consistency with a will expressed by a head of state, or consistency of the act's form with adopted principles of democracy; 2. a consequence of the principle of non-responsibility of a head of state with concurrent adoption of the rule of responsibility in public life; 3. a form of ministers' responsibility as political repression for committed violation of the law; 4. a manner of submitting all state matters under control of the Parliament; 5. a form of cooperation between ministers and a head of state when the Cabinet is in power whereas a countersignature made by a head of state is a means of control; 6. incorporating the principle of the rule of law by means of political prevention” (Deryng 1934: 47).

President's acts that do not require a countersignature are so called prerogatives. Neither the President nor, in case of no person to countersign an act, any other person bears a political responsibility for such acts. Comparison of a range of acts subject to countersigning with a range of acts exempted from this obligation is an important argument in establishing a real system and political position of a head of state. Regulation of this institution determines a relation between the President and the Government to a large degree. What is more, it

influences the positions of other bodies of the state authority. On the one hand, it somehow reflects constitutional mechanism of exercising power planned by the lawmakers, whereas on the other hand, it is a primary determinant of the position of the President assuming: lack of Parliamentary responsibility or President's political involvement, taking over the responsibility for the countersigned act by the Prime Minister and (or) Ministers, making the Presidential act's legal efficiency dependent on the Government authority's participation, passing an act in result of the presentation to the Government, which would indicate a passive attitude of the President (Ciapała 1999: 329 and n.). Therefore it has become a rule of the system in relations between a head of state and the Government in the countries of parliamentary democracy. This way a countersignature has become one of determinants of the Government system.

The aim of the adopted system of countersigning acts is to lead to cooperation between the President and the Government, and on the other hand, to shift parliamentary responsibility off the President for the content of his decrees and orders just by relocating it upon the Prime Minister and (or) ministers (Płachotniuk 1999: 81).

Constitutions of democratic countries adopt four basic variants of countersigning acts: a) countersigning made exclusively by the Prime Minister (the Constitution of the Republic of Poland of 1997); b) countersigning made exclusively by the Prime Minister and a competent minister (Ukraine's Constitution of 1996); c) countersigning made by the Prime Minister or a competent minister (Polish "Small Constitution" of 1992); d) countersigning made exclusively by a competent minister (Finland's Constitution of 1919).

A countersignature may be positive or negative in nature (Dziemidok-Olszewska 2003: 291). The first one means enumerating acts that require the President's countersignature. Whereas a negative one means enumerating acts that do not require a countersignature, while all other acts are required to be countersigned. For instance, the French Constitution of 1958 as well as the Polish one of 1997 introduced countersigning President's acts as a general principle only to make some, enumerated powers vested in a head of state exempt from this duty. A Ukrainian lawmaker, on the other hand, acted contrary to it. He only indicated such President's powers that require to be signed by the Prime Minister and a competent minister. It means that apart from the enumerated ones, all other powers deriving either from the Constitution or simple acts do not require countersigning to be valid.

Another type of a countersignature is a physical one which covers all acts performed by a head of state and is also expressed in an implied form (tacit or implicit) by the very presence of the Prime Minister or a minister during an act which does not have a written form,

as well as an official countersignature meaning putting a signature on an act in the written form (Dziemidok-Olszewska 2003: 291).

A countersignature, which derives from the English parliamentary system and the political and constitutional principle adopted therein resulting from the formula that “the King can do no wrong”, has become a characteristic element of the parliamentary-cabinet system, or even the semi-presidential one (Gebethner 1997:80 and n.). In the latter case, a range of a head of state’s prerogatives, however, is much wider. On the other hand, a countersignature does not exist in the presidential system.

A characteristic feature of Central and Eastern European countries is a relatively wide range of rights excluded from countersigning. It means that the President’s personal rights, and consequently his system position, are strengthened, frequently in the manner that is irrelevant to the adopted system of government.

The institution of countersigning was adopted, *inter alia*, by the Constitutions in Poland, Latvia, Hungary, Bulgaria (in the negative form enumerating exclusions), as well as the Czech Republic, Romania, Ukraine and Lithuania (positive countersigning). Therefore the countries that rejected this institution make an exception and we can provide here an example of the Constitution of Slovenia of 1991 or Russia of 1993, which resigned entirely from the institution of countersignature, or the Constitution of Estonia of 1992, which adopted the countersignature requirement in case of the decree-laws exclusively.

Article 144, passage 2 of the Constitution of the Republic of Poland of 1997 introduced the requirement of countersigning official acts of the Polish President. Countersigning as a countersignature may refer solely to the official act in the written form. The requirement to obtain a countersignature is a clearly specified rule, therefore it refers to any official acts of the Polish President issued under the Constitution as well as simple acts, except those which have been unambiguously exempted from a mandatory countersignature. In Poland, a countersignature is provided solely by the Prime Minister, which is indicated in the provision of Art. 144, passage 2 of the Constitution.

Apart from countersigned acts, the Polish President has the right to issue acts that do not require the Prime Minister’s signature, which are called prerogatives or personal rights, which have already been known in Poland since the April Constitution. A range of the President prerogatives is included in Art. 144, passage 3 of the Constitution, indicating as many as thirty rights that do not require a countersignature, *inter alia*, proclaiming elections to the Sejm and to the Senate, shortening of the term of office of the Sejm in the instances specified in the Constitution, introducing legislation, proclaiming the holding of a nationwide

referendum, making a referral to the Constitutional Tribunal, nominating and appointing the Prime Minister, conferring orders and decorations, or exercising the power of pardon.

The Ukrainian Constitution adopted the following solution. Art. 106, passage 4 states that (enumerated) acts of the Ukrainian President that are issued within the frames of his rights require a countersignature of the Ukrainian Prime Minister and a minister responsible for the act and its performance.

Pursuant to the content of the Constitution before its amendment, that is after the Constitutional Court's decision of 1 October, 2010, which is now again in force, the Ukrainian President's acts that are subject to countersigning are those related, *inter alia*, to the following areas of his activity: representing the country in international relations, dissolving the Ukraine's High Council if its sittings cannot convene within thirty days from the first ordinary plenary session; upon the Prime Minister's motion, appointing and dismissing members of the Ukraine's Cabinet, heads of other central executive authorities as well as heads of local state authorities; appointing one third of the Ukraine's Constitutional Court's composition; and constituting courts.

A range and subject matter of acts that are subject to countersigning are quite wide but acts that are exempted from this obligation under the Constitution, i.e. the so called prerogatives, still leave the President a considerable field of independent action.

Exempting a group of rights that the President exercises when personifying the state from the countersigning requirement (granting awards, citizenship, asylum or exercising the power of pardon), or the rights that do not directly influence other state bodies (delivering addresses and appointing President's own advisory bodies) is a solution used in the countries with both parliamentary and semi-presidential system of government¹. Whereas a prerogative connected with the High Council operation (proclaiming pre-term election), the Government (appointing the Prime Minister, repealing the Cabinet's acts) and appointing top state offices (Ukraine's General Attorney, members of the National Bank of Ukraine's Council and Ukraine's National Radio and Television Council) shows the actual position of a head of state towards other government authorities. The strength of the office is also shown in a possibility of the President's independent decision in the matter of proclaiming a nationwide referendum in the matter of changing the Constitution as well as proclaiming a referendum on citizens' initiative.

The narrowest range of prerogatives is enjoyed by the President of Latvia. His decrees are in principles signed by the Prime Minister or a competent minister bearing full responsibility for a given act. The only exception is putting forward a proposal to dissolve the Sejm (the Nation decides) and nominating the Prime Minister.

¹ However, e.g., the power of pardon issued by the President of France requires a countersignature (Art. 17 and 19 of the Constitution).

Legal acts issued by the President of Hungary under the amended Constitution of 1949, which is still in force, require in principle the Prime Minister's or a competent minister's countersignature. The exceptions are acts that: are issued by the President when representing the country outside, proclaim election, by means of which the President participates in the House's sitting, use the legislative initiative or proclaim a referendum.

Implementing his rights, the President of Bulgaria passes decrees and delivers addresses and messages (Art. 102, passage 1 of the Constitution of 1991). They have to be countersigned by the Prime Minister or a competent minister. An exception is appointing the Provisional Government, entrusting a mission to form the Government, dissolving the National Assembly, veto powers, or setting a date of election or referendum and determining the organization and course of action of the President's Chancellery.

Within the frames of exercising his or her constitutional prerogatives (Art. 62 of the Constitution of 1992), the President of the Czech Republic summons the Chamber of Deputies' session; dissolves the Chamber of Deputies; is entitled to return a passed act to the Parliament except the Constitution Act; signs acts; appoints and dismisses the President and other Members of the Government and accepts their resignations; dismisses the Government and accepts its resignations; entrusts the Government whose resignation has been accepted or which has been dismissed by him or her with provisional tasks' performance until a new Government is appointed; appoints the President and Vice President of the National Audit Office; appoints judges of the Constitutional Court, its President and Vice Presidents; appoints the President and Vice President of the High Court from among the judges; appoints Members of the Bank Council of the Czech Republic National Bank and exercises the power of pardon against penalties imposed by the court, orders criminal proceedings not to be started but interrupted and erases the conviction.

Exercising most of his or her rights, however, the President has to obtain a countersignature of the Government (the Prime Minister or a minister authorized by him or her), by means of which a countersigning person takes over a political responsibility before the Chamber of Deputies. It means lack of political responsibility for his or her activity, including wrong doings committed during his or her term of office. Such acts include: matters connected with representing the country outside, proclaiming parliamentary election, appointing general command of armed forces and exercising other traditional rights of a head of state.

The Lithuanian President's decrees do not require to be countersigned. In accordance with few exceptions indicated in the Constitution of 1992, within the frames of acts that require a countersignature made by the Prime Minister or a competent minister, the President

appoints and dismisses representatives of foreign diplomatic missions and international organizations of the Republic of Lithuania; accepts credentials and dismissals of diplomatic representatives; presents the highest diplomatic distinctions and special orders; appoints to the highest military ranks; announces the state of emergency in a manner and cases envisaged by the act and reports this decision to be accepted in the nearest Sejm sitting, and grants citizenship of the Republic of Lithuania.

Pursuant to Art. 99, passage 2 of the Constitution of Romania of 1991, decrees passed by the President within the frames of some powers exercised by him or her are countersigned by the Prime Minister. According to them, on behalf of Romania, a head of state concludes international agreements that are negotiated by the Government and presents them to the Parliament for ratification within 60 days; upon the Government's motion empowers and dismisses diplomatic representatives of Romania and accepts the formation, dissolution or change of a rank of diplomatic posts; supervises the armed forces and holds the position of President of the National High Council of Defence; confers orders and courtesy titles; confers Marshal, General and Admiral degrees and exercises the power of individual pardon.

Countersigning of President's acts by the Prime Minister or a competent minister in Slovakia was introduced by the amendment of the Constitution of 2001. Its original version of 1992 did not envisage such an institution. At present, the countersignature requirement relates to the accreditation of ambassadors, declaration of amnesty and exercise of the office of the General Commander of Armed Forces (Art. 102, passage 2).

Summing up, we may indicate several regularities (Dziemidok-Olszewska 2003: 303). Constitutions of the countries of our region use different names to determine acts made by a head of state, a decree being the most frequently applied therein. Even though most Constitutions adopted a parliamentary-cabinet system of the government, a range of prerogatives is relatively wide. Being wider than a classical one, a range of acts that do not require a countersignature seems to be influenced by a special role granted to a head of state in the process of system transformation. A person authorized to countersign the President's Acts is most often the Prime Minister or a competent minister (Latvia, Hungary, Bulgaria, the Czech Republic and Lithuania), or the Prime Minister himself or herself (Poland and Romania). Countersigning made by the Prime Minister and a minister is envisaged solely by the Constitution of Ukraine whereas an independent countersignature by a minister does not exist. The Constitutions of Poland, the Czech Republic, Slovakia, Latvia and Lithuania mention outright a shift of responsibility connected with countersigning. Ranges of countersignature exclusions are varied and frequently seem accidental (Dziemidok-Olszewska 2003: 304). It is similar with a range of the President's rights that require a countersignature.

Some consistency may be noticed solely in the sphere of foreign policy and the state's defence and security.

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