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CONTEMPORARY PARLIAMENTS IN EUROPA

1. Structure of the parliament. A dispute over bicameralism

Ever since the beginnings of the contemporary democratic state the structure of the parliament has been a hotly debated issue. In the last two centuries various solutions have been adopted and the number of parliamentary chambers varied between two and even five, two being the most commonly adopted structure. Montesquieu recommended a parliament where two chambers could counteract each other; one chamber representing the people and the other – the individuals distinguished by their birth, wealth or occupied positions. The idea was later elaborated by A. Hamilton, who maintained that legislature tends to predominate in the system of separation of powers and to minimize it, it is necessary to divide the parliament into two chambers. This view was accepted and elaborated by many eminent constitutionalists. The arguments advocating a bicameral parliament quoted its following advantages:

1/ Enhancing the principle of separation of powers

2/ Making better law thanks to more comprehensive discussion of legal acts

3/ Continuation of long-standing traditions in many states

4/ Better representation of the people in the constituents of federal states

A unicameral parliament in federal states could lead to majorisation of the federal states (states, cantons) with a smaller number of residents, and the parliament would represent interests of the whole entity organized into a federation. The other chamber provides for a dualism of representation at the central level and more effective consideration of interests of the federation's constituents.

The opponents of bicameralism (and multicameralism in general) bring up the following arguments:

1/ Bicameralism weakens the executive and causes conflicts within it.

2/ This was succinctly rendered by B. Franklin, who compared a bicameral parliament to a cart drawn by horses into two opposite directions.

3/ In the unitary state there are no clearly distinguished interests justifying the existence of the other chamber.

4/ The other chamber lengthens the legislative process.

5/ The tradition of existence of the other chamber itself does not prove that it is of any benefit to the community.

2. Modification of the parliament's functions resulting from the integration processes in the European Union

Apart from the traditional functions: defining the basis of the political system, legislation, creation and review, the doctrine of constitutional law increasingly more frequently distinguishes a new function of parliaments of EU member states: participation in creating community (European) law. The reason for distinguishing this function is the fact that while the process of creating community law is based on the decisions made by executive bodes, national parliaments play an advisory role in the process (and in practice the role is played by their specialized bodies, which frequently become great European commissions).

1/ Legislative Function

It results from the principle of the division of powers. Generally, the parliament adopts the statutes, makes amendments to the Constitution and in some countries authorizes the head of the state – by meanings of an act – to ratify and terminate certain international agreements. Constitution making and amendment procedure are often classified as a separate system – forming function. As long as the making and amending of a constitution is equivalent with the adoption of a statute (even in a special procedure), such division is regarded as redundant.

It should be underlined that the EU law cannot be discussed in isolation from the internal laws of its member states. It is created by the representatives of individual member states legitimised by the binding constitutions. EU does not replace the states but the states remain – as formulated by the German Federal Constitutional Tribunal – "the lords of the treaties". The Tribunal reserved the right to investigate "whether the legal acts of the European institutions and organisations remain within the limits of the ceded sovereign laws and do not exceed them"[1]. Similar

attitude admitting supervision of constitutionality of the treaties constituting the EU primary law was adopted by constitutional tribunals in[2] and[3]and also. Polish Constitutional Tribunal stated: "Establishment treaties are international agreements. The sovereign parties to these agreements are Member States. They independently and in accordance with their constitutions ratify the treaties and have at their disposal the right to terminate them"[4].

In this context the issue of resolving conflicts between the constitutions and legal acts and the Community primary and derivative law in the practice of member states' political systems is exceptionally interesting. The EU law does not include any provisions concerning the resolution of conflicts between it and the internal law of the member states. It should be added here that as early as in the 1960s the European Tribunal of Justice resolved that the superiority of the EU law is absolute and does not depend on the rank of the internal law norm or their temporal sequence. Besides, the uniformity of the EU law stipulates that it must be uniformly applied in all the member states and therefore its interpretation is reserved for the European Tribunal of Justice as it would be unacceptable that in individual member states their agencies, and especially courts, should interpret the law, which would cause chaos. Therefore, in the case when a member state's legal system retains the norms contradicting the Community law, the Tribunal may declare that it does not meet the requirements resulting from the treaties constituting the EU. Such ruling, however, does not entail direct legal consequences and the elimination of the legal norms conflicting with the Community law rests within the competence of a given state – an EU member.

In the case of conflict between the Community law and the constitution, courts and other legal institutions implementing the constitution attempt to use the interpretation favouring the EU law. But, as stated the "the interpretation favouring the EU law has its limits. In cannot after all lead to results not in accordance with the Constitution"[5].

If, however, the contradictions cannot be removed, two solutions are available: either, due to the superiority of the constitution, the conflicting norms of the Community law are not enforced (which in the case of the primary law denotes the refusal to ratify the treaty which belongs to it or the denunciation of the ratified treaty) or – which is a much more frequent case – a constitution is modified before a EU regulation comes in force, which aims at ensuring the effectiveness of the Community law and the process of European integration. The above is exemplified by the modifications of several constitutions (French, German, Belgian and Spanish) performed to facilitate the ratification of the Maastricht Treaty. An interesting solution was adopted in. International treaties discordant with the constitution may be incorporated into it by a majority of votes of the members of the parliament (two thirds), which practically denotes modifying the constitution. Constitutions are modified even when its provisions collide with the derivative law (e.g. in).

In the practice of the political systems of the member states, the jurisdiction of constitutional courts, where they exist, or supreme courts attributes the EU law with superiority over internal regulations of a lower rank than the constitution, which has been based not so much on the EU law and the jurisdiction of the Tribunal but on the constitutional norms[6]. In, where there is no constitution, in the early 1990s the House of Lords advocated the non-application of the internal law if it conflicted with the EU law. The superiority of the Community law over the constitution if both cannot be reconciled denotes that "the restriction of the constitutional laws below the standards resulting from the international norms in relation to a ratified international agreement or a law resolved by an international organisation should not be admissible"[7].

The constitutions of the EU member states and the judicial decisions of courts do not decide about the results of the principle of the superiority of the Community law and it is not clear whether the application of a regulation conflicting with the agreement of that category is only suspended or whether the regulation is invalid or ineffective. The analysis of judicial decisions prompts the conclusion that an internal law regulation which is not applied due to the superiority of the Community law still remains a part of the legal system and will be applied when the provisions of the Community law cease to be binding in the country.

In this context the following view expressed by the Polish Constitutional Tribunal should be quoted: "In the light of the constitutional principle of the priority of Community law over statutory norms (art. 92 par. 2 and 3 of the Constitution), if there are no doubts as to the content of the norms of Community law, the court should refuse to apply the provision of the statute not in conformity to this norm and apply directly the provision of Community law. The court does not adjudicate in this case on repealing the norm of national law but only refuses to apply it in the scope in which it is obliged to give priority to the norm of Community law. The legal act in question is not affected by invalidity, it is still binding and is applied in the scope not covered by the norms of Community law. If however, it is not possible to apply directly the norms of Community law, the court should seek the possibility of an interpretation of national law in accordance with the Community law. In the case of the appearance of interpretative doubts in relation to Community law, the court should turn to the European Court of justice with a prejudicial question"[8].

It follows from the discussion so far that the constitutions of the EU member states have retained their legal significance. Thus, the existing notional apparatus and research methods remain still valid, while the research of the constitutional law, including comparative research, makes sense. The member states, facing the same or similar external challenges and internal problems, solve them not only with the aid of the EU institutions but also adopting in their internal legal systems certain systemic measures verified in other member states. It would also be interesting to examine the reasons of rejecting the solutions present in the constitutions of other EU member states.

2/ Creative Function

Itis performed by the parliament through appointment and dismissal of various state bodies and their members, as well as holding them accountable for their activities. First of all, the parliament takes part in the process of establishing the government.

3/ Controlling Function

The performance of the controlling function by the parliament is – besides the legislative function – the essence of the parliament's activity in a democratic state ruled by law. The parliament exercises control over the activities of the executive within the scope specified by the constitution and statutes. The controlling function is performed not only by the said chamber *in pleno*, but also through the activities of committees and deputies themselves. The subject of the control is the activity of the government concerning internal affairs and foreign policy of the State in the field not reserved to other state organs and local government.

The parliament's supervision procedure consists of two forms of control – general and particular.

– The general control contains demanding information on a given issue from a Government member (in written or in oral form) at the sitting of the parliament or a committee.

– The particular forms of the parliament's supervisory function consist of a control performed by an investigative committee, an individual control exercised by the deputies and a control over budget performance(the parliament considers the report on the implementation of the budget together with the information on the condition of the State debt, presented by the government).

As result of control performed by the parliament, measures can be taken such as dismissal of the whole government in consequence of a vote of non-confidence or of an individual from a State post

4/ Cooperation in the Process of Making of the EU Law

The doctrine of the constitutional law very often distinguishes the cooperation in the process of making EU law as another function of the parliament. This function can be defined also as a legislative one, with some elements of the controlling function, and as a way to compensate national parliaments for the loss of some of their legislative competencies in favour of EU institutions. It is estimated that in the course of the European integration, the parliaments of the EU member states lost about 2/3 of their former legislative powers, which were moved to the European governing level. In conclusion, the traditional principle of the division of powers has been modified, since the executive power in the EU belongs to the Council of the EU, consisting of representatives of the national governments. This way a law made by the EU institution is in fact a law made by the executive authority and not by the parliament traditionally meant to perform a legislative function. In the beginning of the 90ties, the European Parliament adopted two resolutions providing institutional possibilities of influencing the legislative process at the EU level and therefore strengthening the position of national parliaments and preventing "the lack of democracy". The latest act providing some principles and requirements in the Treaty of Lisbon.

It should be emphasized that since the essence of the legislative function is the possibility of influencing the shape of the law-binding in the country, so the powers of the parliament relating to influencing the content of the position adopted by the given state in the forum of the Council of the UE should be included within this function.

3. The role of national parliaments in EU

Articles 5.3, 10.2 and 12 TEU, as well as Protocol No 1 and Protocol No 2 strengthened the powers of national parliaments and give them some new and rights. The most important Treaty of Lisbon provision on the role of national parliaments within the EU is Article 12 TEU which states that national Parliaments contribute actively to the good functioning of the Union.

The new provisions give national parliaments an opportunity to play a more active role within the EU, but they have not caused national parliaments as key actors within the European polity. The Treaty established no institutional status to national parliaments. In fact the new rules has only fostered the dialogue between national legislators and institutions of the Union.

1/ National parliaments should be informed by the EU organs by having submitted all legislative drafts. They can still be adopted regardless of oppositionfrom national parliaments.

2/ The early warning mechanism

Although in 2011 there have been given 64 reasoned opinions by national parliaments to 28 different legislative proposals on the Union level, neither a "yellow" or an "orange" card procedure had to be initiated. These are following reasons responsible for this:

(1) Coordination between national parliaments is insufficient. Each parliament uses its own internal procedure for applying the mechanism.

(2) The foreseen time periods are prohibitively short in order to achieve parliamentary consensus on an international level.

(3) The early warning mechanism cannot be perceived as the fulfillment of a procedural function as it can only be used by national parliaments at the tail end of the decision making process.

3/ The extension of the information mechanism concerning decisions of European Council.

In comparison to the Amsterdam Treaty Protocol on the Role of National Parliaments in the European Union, Protocol No 1 contains two elements, which have been considerably improved.

(1) First of all, the catalogue of documents with which national parliaments are to be provided has been substantially extended. Currently, Protocol No 1 requires the provision of: Commission consultation documents, the annual legislative programme; draft legislative acts (regardless of whether they are provided by the Commission, initiated by a group of Member States or the European Parliament or requested by the CJEU, the European Central Bank or the European Investment Bank; Council agendas; minutes and the annual report of the Court of Auditors.

(2) The second and most significant improvement is the commitment to transfer adequate documents in all official languages directly to national parliaments.

4. National parliaments and EU foreign policy

National parliaments have a crucial position, when an international agreement has to be concluded as "mixed agreement". This is usually necessary when an international treaty requires that Member States and the Union sign and ratify it because the allocation of competences between them is shared or unclear. In summary, this seems to remain the only situation where one can clearly argue that a unified policy of the Union in a binding form exists and national parliaments, by blocking the required national ratification, do have direct influence on whether the relevant text will come into force or not.

Polish example:

From the point of view of the principle of sovereignty a very significant regulation is contained in Article 90 of the Constitution. The art. 90 states:

"1. The Republic of Poland, by virtue of international agreements, delegates to an international organization or international institution the competence of organs of State authority in relation to certain matters".

2. A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.

3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum.

4. Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

This regulation allows only to delegate the competences but not to limit the sovereignty. The Constitutional Tribunal has stated: "The Constitution remains 'the supreme law of the Republic of Poland' in relation to all international agreements, including agreements delegating competence. In particular […] there could not come about a delegating of competence to the extend that would cause Poland not to be able to function as a sovereign and democratic state. Furthermore, the limiting of the scope of delegating to 'certain matters' means a prohibition on delegating: firstly, the entirely of the competence of a given organ; secondly, competence in the entirely of matters in a given field; and thirdly, competence as to the essence of matters defining the management of a given organ of state authority"[9].

5. The future of national parliaments within EU

The development of European integration also stimulates the questions concerning the future of national parliaments and the future of the classically understood internal law created by them. The future is not very promising if it were assumed that "the notion of the constitution, at least in its wide meaning, may be transformed onto the supranational level, onto the legal order of the European Community, which emerged from the transfer of the national sovereign laws as the Community increasingly takes over the functions of the states and thus increasingly more intensively substitutes a functional state"[10]. This proposal corresponds with the idea of emergence of a new decision-making subject in the EU, i.e. the citizens of the Union[11]. But are these premises still relevant?

The answer requires defining the character of the EU and the role of the EU law in the member states' legal systems. As to the former issue, the EU is not a state nor is it an entity resembling a state. It is composed of member states, which transfer their competence in the matters defined by treaties. The constitutional regulations in many member states allow only to delegate the competences but not to limit the sovereignty.

As has been aptly noted by Polish legal commentators dealing with EU law, "the lack in the treaty materials of any clear delimitation as to the EU institutions' powers to legislate, in effect allows them to enact secondary law on the basis of competencies that arise under primary Community law. This occurs by applying a teleological interpretation enabling the EU […] to so function notwithstanding the absence of any specific treaty authorization. One can scarcely fail to note here, that such a *modus operandi* represents a serious challenge to the sovereignty of the Member States"[12].

Perceiving this risk, the Constitutional Tribunal has held that: „Each international organization is a secondary subject whose functioning is dependent on the will of member states. The Member States of the European Union, therefore, retain the right to assess whether the organs managing the European Community are acting within the frameworks of the delegated competences and the principles of subsidiarity and proportionality. Regulations passed in the contravention of these frameworks are not covered by the principle of the primacy of Community law"[13].

In this context another opinion occurring in legal literature could be quoted here "It appears that the future of national parliaments within the European Union entirely depends upon the future of the European Union itself. More Europeanization heading towards a federal European state […] will mean less power for national parliaments. And vice versa: the emergence of stronger interests of Member States within European integration will increase the importance of national parliaments as European actors"[14].

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[1] Entscheidungen des Bundesverfassungsgerichts. Amtliche Sammlung vol. 89, p. 155.

[2] More about the subject cf. A. Oppenheimer (ed.) The Relationship between Community Law and national Law: The Cases Cambridge 1994, p. 630.

[3] *Cf. A. E. de Noriega* A Dissident Voice: The Spanish Constitutional Court Case Law on European Integration European Public Law, vol. 5, z. 2, p. 297.

[4] OTK ZU Nr 5/A/2005, pos. 49.

[5] OTK ZU Nr 5/A/2005, pos. 49.

[6] As done by the Spanish Constitutional Tribunal, cf. W. Czapliński Członkostwo w Unii Europejskiej a suwerenność państwowa in: E. Popławska (ed.) Konstytucja..., p. 133.

[7] *Policastro P.* Prawa podstawowe..., p. 346.

[8] OTK ZU Nr 11/A/2006, pos. 177.

[9] OTK ZU Nr 5/A/2005, pos. 49.

[10] *Arnold R.* Perspektywy prawne powstania konstytucji europejskiej Państwo i Prawo 7/2000, p. 36.

[11] *Pernice Cf.* Europaisches und nationales Verfassungsrecht VVdStRL z. 60 (2001), p. 171.

[12] *Tkaczyński J. W., Potorski R., Willa R.* Unia Europejska. Wybrane aspekty ustrojowe. Toruń 2007, p. 126–127.

[13] OTK ZU Nr 5/A/2005, poz. 49.

[14] *Zalewska M., Gstrein O. J.* National Parliaments and their Role in European Integration: The EU's Democratic Deficit in Times of Economic Hardship and Political Insecurity. Bruges Political Research Papers / Cahiers de recherché politique de Bruges No 28 / February 2013, p. 19.

Резюме

***Богуслав Банашак.* Сучасні парламенти в Європі.**

У статті розглядаються питання модифікації функцій національних парламентів в результаті сучасних інтеграційних процесів в ЄС, коли більша частина законодавчих повноважень покладена на Європейську комісію та інші виконавчі органи ЄС. Автор розглядає проблеми нагляду за відповідністю договорів ЄС національним законодавчим актам, аналізує можливості країн-членів ЄС в рамках захисту свого суверенітету, наводить приклади вирішення конфліктних ситуацій між законодавством ЄС та національними конституціями. Автор пропонує запровадити дієвий механізм контролю діяльності виконавчих органів ЄС національними парламентами та знайти розумний баланс між делегуванням повноважень та забезпеченням суверенітету в майбутньому.

Ключові слова: законодавчі повноваження, виконавчий орган, вирішення конфліктних ситуацій, право ЄС, нагляд за конституційністю, Європейський суд, розірвання угоди, конституційний суд, законопроект, механізм завчасного попередження конфліктів, делегування повноважень.

Резюме

***Богуслав Банашак.* Современные парламенты в Европе.**

В статье рассматриваются вопросы изменения функций национальных парламентов в результате современных интеграционных процессов в ЕС, когда большая часть законодательных полномочий возложена на Европейскую комиссию и другие исполнительные органы ЕС. Автор рассматривает проблемы надзора за соответствием договоров ЕС национальным законодательным актам, анализирует возможности стран-членов ЕС в рамках защиты своего суверенитета, приводит примеры решения конфликтных ситуаций между законодательством ЕС и национальными конституциями. Автор предлагает ввести действенный механизм контроля деятельности исполнительных органов ЕС национальными парламентами и найти разумный баланс между делегированием полномочий и обеспечением суверенитета в будущем.

Ключевые слова: законодательные полномочия, исполнительный орган, решение конфликтных ситуаций, право ЕС, надзор за конституционностью, Европейский суд, расторжение соглашения, конституционный суд, законопроект, механизм раннего предупреждения конфликтов, делегирования полномочий.

Summary

***Boguslaw Banaszak.* Contemporary parliaments in Europa.**

The article presents the topic on modification of the EU national parliament's functions resulting from the integration processes in the European Union when the most part of legislative powers were moved to the European Commission and other EU executive bodies. The author considers the problems of controlling the conformity of EU treaties with national legislative acts, analyses the possibilities of EU member states to defend their sovereignty, and gives some examples of resolving the conflicts between Community law and national constitutions. The Author makes the proposals to implement efficient mechanism of controlling the activity of EU executive bodies by national parliaments and to find a reasonable balance between delegating the competences and ensuring the sovereignty in the future.

Key words: legislative powers, executive body, resolving conflicts, community law, supervision of constitutionality, European Court of Justice, denunciation of treaty, constitutional tribunal, legislative draft, early warning mechanism, delegating the competences.

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TRANSPARENCY IN DEFENCE ADMINISTRATION
(PhD. Thesis)

1. INTRODUCTION

The democratic transition of the 1990's opened a new chapter in Hungary's history. Comprehensive changes were introduced in society, politics and the country's economy, which had a significant impact on the institutional system's characteristics[1].

Public administration, in a system based on the rule of law and the separation of powers, is part of the executive branch, which operates as an independent power. Its specific tasks extend over all sectors of social and economic life. From an organisational point of view, it is composed by all state institutions exercising public authority[2].

The definition what is meant by "Defence administration" is contained in Government Regulation 290/2011 (XII. 22). In this introduction, it appears necessary to note that among the tasks listed in this definition, I focus on the examination of disaster management institutions. In the literature, police forces are also included in the larger definition of safety defence administrations, therefore, the term "defence administration" can also be used to designate them.

Defence administration, as part of the overall public administration, follow the principles of the social division of labour. From a functional point of view, they serve the various branches of public administration, while at the same time representing their own administrative tool and public management technique[3]. Though I chose to study the implementation of transparency in defence organisations, this task must also take data protection aspects into close account. The dual sides of information rights cannot be separated but can only be approached in relation to one another. Data protection and transparency are both deduced from the academic study of the fundamental human rights system.

The disclosure of data of public interest (freedom of information) has been a constitutional freedom, in, since 1989. Its function is to guarantee the right to control of the state power for citizens. "Information is vital. An adequate level of information is a condition for citizens' freedom, which it also improves"[4].

In the course of the present dissertation, in order to reach the set goal, this interdependence has been treated with emphasis, so that this work's conclusions could always be attached to the implementation or the violation of human rights.

In a way, this thesis is an attempt of evaluating the level of transparency and data protection that has been achieved by defence administration organisations. I undertook to reach this goal by going through the following steps:

– Describing the main developments under defence administration organisations following the democratic transition, and their connection and place in the processing of public administration tasks;

– Analysing and shedding light on the legal situation of the development of data protection, data safety and transparency, while pointing out the specificities of defence administration;

– Based on the Fundamental Law and other legal provisions, analysing police and disaster management authorities' achievements in the field of information rights, including both potential negative and positive aspects, formulating proposals in the interest of ending putative negative practices;

– Analysing both the contents and functioning of the notion of safety, security policy, and information rights to find out common elements and relations that influence the practice of transparency, either in a reinforcing or in a weakening way;

– Analysing and demonstrating the system of administrative qualification and practice at different institutional levels, the transparency of their data processing operations, and the practical implementation of access to information of public interest;

– Investigating contradictions constituting obstacles to the implementation of the transparency principle;

– Devising proposals that can support the complex implementation of data protection, data safety and transparency in public safety organisation.

2. HYPOTHESIS, METHODOLOGY AND LIMITATIONS OF THE PRESENT STUDY

According to Section VI, paragraph 2 of 's Fundamental Law: "Every person shall have the right to the protection of his or her personal data, and to access and disseminate data of public interest." According to the National Avowal contained in the Fundamental Law: "[…] democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse"