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**COMPARATIVE ANALYSIS OF PROBLEMATIC ASPECTS OF THE
PRESIDENT IMPEACHMENT PROCEDURE
IN UKRAINE AND RUSSIA**

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Summary: The author undertook a research of the procedural drawbacks the impeachment of President in Ukraine and Russia. A comparative analysis of the procedure of impeachment in both countries was done and the solutions to the problems of simplifying of impeachment were proposed. The author presented institutional, lawmaking and procedural alterations that could ameliorate the today's possibility to impeach the President.

Key words: constitutional law, impeachment, impeachment of President, President of Ukraine, President of Russia.

Анотація: Автор здійснив дослідження процедурних недоліків імпічменту президента в Україні та Росії. Був проведений порівняльний аналіз процедури імпічменту в обох країнах та запропоновані рішення до проблеми спрощення імпічменту. Автор представив інституційні, законодавчі та процедурні зміни, які могли б покращити сьогоденню можливість зняти з посади президента.

Ключові слова: конституційне право, імпічмент, імпічмент президента, президент України, президент Росії.

Аннотация: Автор провел исследования процедурных погрешностей импичмента президента в Украине и России. Был проведен сравнительный анализ процедуры импичмента в обеих странах и предложены решения проблемы упрощения процедуры импичмента. Автор представил институционные законодательные процедурные изменения, которые могли упростить возможность снятия с должности президента в наше время.

Ключевые слова: конституционное право, импичмент, импичмент президента, президент Украины, президент России

As the impeachment of the President is a form of political responsibility of the president, the problems of this institution, in practice, are relevant and are the object of attention of many national scientists.

The relevance of this study is that in the process of the structuring of the institute of presidency in the Russian Federation and Ukraine, a number of legal and political issues in the relationship of the President with other public authorities, parties and other political institutions arise, which can largely be compared with the problems of the functioning of the presidential authorities in foreign countries.

Exploring the practice of impeachment on the President in Ukraine and the Russian Federation, the following can be stated. At the present stage of development there is no equal partnership between the head of state and the parliament in these countries. The effect of presidential politics in the state grows rapidly in comparison with the legislature. In practice, it turns out that the impeachment procedure is complicated with the involvement of several judiciary bodies and the decision on dismissal of the president should be passed by too large qualified majority (3 / 4 in Ukraine). This negates any attempt to initiate impeachment even in the case of the president's misconduct. In this case, there can

be no question of absolute domination of political responsibility, which is expressed with the support of the president by the parliament.

The grounds and procedures for bringing the president to justice are mentioned in the Constitution and the legislation of the country, and they are distinguished by their originality. However, despite their differences, they have maintained a unified conceptual approach - the president can not be held liable on general grounds as other citizens because of a special official status. In this connection, the division of the president's responsibility into political and legal is largely contingent and the grounds and the procedure, and the consequences of bringing the head of state accountable for the offense obtain primarily political rather than legal reasons.

Article 111 of the Constitution of Ukraine governs the impeachment process as follows: "The question of removing the President of Ukraine from office on impeachment is initiated by a majority of the constitutional composition of the Verkhovna Rada of Ukraine. To investigate the Verkhovna Rada of Ukraine shall establish a special ad hoc commission of inquiry, composed of special prosecutor and special investigators. Conclusions and suggestions of temporary investigatory commission are considered at a meeting of the Verkhovna Rada of Ukraine. If there are grounds, Verkhovna Rada of Ukraine with not less than two-thirds of its constitutional composition makes a decision on charges against the President of Ukraine. The decision to remove the President of Ukraine from office on impeachment is adopted by the Verkhovna Rada Ukraine with not less than three quarters of its constitutional composition, after verification of the case by the Constitutional Court of Ukraine and the receipt of its opinion on compliance with the constitutional procedure of investigation and consideration of the case of impeachment, and obtaining the opinion of the Supreme Court of Ukraine that the acts in which the President is accused, contain elements of treason or other crimes[1].

In the Russian Federation the impeachment procedure is even more complicated. According to Art. 93 of the Constitution of the Russian Federation, the President may be removed from office by the decision of the Council of Federation on the basis put forward by the State Duma on charges of treason or other grave crime, confirmed with the findings of the Supreme Court of the Russian Federation in the actions of the President of the Russian Federation of a crime and the conclusion of the Constitutional Court of the Russian Federation on compliance with established procedures when charging. The decision of the State Duma to bring an accusation and the decision of the Federation Council on impeachment of the President from office must be accepted by two-thirds vote of all members of the chambers by at least one-third of the State Duma and the findings of the special commission established by the State Duma. The decision of the Federation Council on impeachment of the President from office must be made not later than three months after the State Duma accused the President. If at that time the decision of the Federation Council will not be accepted, the charges against the President shall be deemed rejected [2].

As for Ukraine, it should be noted that neither the Constitution nor other legislation provides guidance on the consequences of impeachment. There is also no law that would regulate the procedure of impeachment. Nonetheless a number of bills on the subject were drafted. These are the draft law "On elimination from the post of President of Ukraine (impeachment)", submitted to Parliament in January 2001, by people's deputies of Ukraine G. Buyko, P. Kuznetsov and the draft law "On the procedure of removing the President of Ukraine from office by impeachment," submitted in August 2002 by people's deputy Mykola Rudkovsky [5, p. 187].

Attention is drawn to the shortcomings of Ukrainian model impeachment, which significantly reduces the possibility of applying this procedure in practice.

If bringing charges against President with not less than two-thirds of the constitutional composition of the Verkhovna Rada is more or less probable, a decision on removal from the post of President of Ukraine with not less than three-fourths vote of its constitutional composition is more than doubtful.

Nowadays in Ukraine the majority of possible violations of the Constitution by the President are faultless in any legal sense. They do not form compounds not only of serious, but in general criminal and constitutional violations. So, on the one hand, according to Art. 104 of the Constitution of Ukraine when President takes office he gives his people the oath which clearly undertakes "to respect the Constitution of Ukraine and laws of Ukraine" and, on the other hand, for violation of this oath he often faces, just hypothetically, no electoral victory for another term. But no impeachment and criminal penalties are involved to any extent.

In this regard, a list of reasons named in art. 111 of the Constitution of Ukraine should be added with "an intentional violation of the Constitution." The above ground is determined by the Basic Law of Germany. Constitutions of Bulgaria, Poland, Croatia provides such a ground as "a violation of the constitution". Also, it would be appropriate to apply to the President of Ukraine the institute of impeachment only for crimes committed by intent taking into account the significance of the President in the country. Of interest is the opinion of R. Dworkin and K. Sunstein which admits that an essential element of the offense for which the President is subject to impeachment - "this is a clear link between the abnormal behavior of the official and his or her official duties (only the acts such as murder and rape are an exception) [4, p. 56].

In the scientific researches the proposals are expressed to simplify the procedure of impeachment and add alternative subjects that can remove the President from office. Thus, according to Ms. Malkina, it would be also appropriate to arrange a referendum on early termination of powers of the President and the dissolution of parliament in case of maintenance the President by the voters at a referendum on the initiative of the Verkhovna Rada of Ukraine all-Ukrainian. But, in our opinion, the dissolution of Parliament is a form of political accountability of Parliament for inefficiency and inability to make decisions, and is unlikely to set the automatic dissolution of the parliament with the support of the people of the President in a referendum, as this could lead to a prolonged political

crisis in the presence of the charismatic head of state and oppositional majority to him present in parliament [7, p. 162]. Thus, the real opportunity, in addition to impeachment, the adoption of the referendum decision to eliminate the post of President will serve as a good leverage over the behavior of the head of state, because now the expression of no confidence to President of Ukraine does not involve his mandatory retirement, since it is not envisaged by the Constitution of Ukraine.

Speaking about the role of the Verkhovna Rada of Ukraine and the Ukrainian Constitutional Court, it is difficult not to agree with Ju. G. Barabash, who notes that the role of the Constitutional Court of Ukraine should be limited to the expert and supervisory authority [3, p. 52]. Thus the politically biased Constitutional Court of Ukraine is invited to obtain the expert authority, which is now assigned to the Supreme Court of Ukraine.

As for the problematic aspects of the implementation of impeachment in the Russian Federation, the following shortcomings should be noted:

- it should be mentioned that the constitutional legislation of the Russian Federation does not know the term "impeachment".

- Russian President may be impeached by the Federation Council only on the grounds put forward by the State Duma on charges of treason or other grave crimes (Part 1 of Art. 93 of the Constitution).

First of all, treason (st.275 of the Criminal Code) – refers to *gravest* crimes. According to Article 15 of the Criminal Code all the crimes are divided into minor offenses, crimes of average seriousness, grave crimes and the gravest crimes. Based on the analysis of the same constitutional provision treason is one of grave crimes.

Secondly, it remains unclear how to behave in the case if the president commits any other of the gravest crimes or any crime of minor or average severity. It turns out that the offender has the right to stay on as head of state.

Moreover, the Constitution does not regulate a situation where the incumbent president is not formally violating any law, but, is notwithstanding, he is seriously harming state interests. As grounds for impeachment are not merely purely criminal, but also involve specific offenses, the President shall not be politically liable. In the Russian context, it turns out that the political responsibility of the president can be spoken of only in the sense of non-reelection for the next term. So, the leverage to force the president to fulfill their obligations properly has not been worked out properly [6, c .263].

All these problems suggest that the current Russian Constitution establishes such a basis for the impeachment of the President, under which it is virtually impossible.

More detailed procedure of removal the President from office is stated in the regulations of the State Duma and Federation Council. In this aspect, it is necessary to draw attention to an inconsistency between the regulations of the chambers.

Based on the foregoing, we can draw the following conclusions: the institute of impeachment proceedings in Ukraine and the Russian Federation is

primarily a deterrent value, since the president bringing to justice through the impeachment process was not applied. Secondly, the grounds and the procedure for bringing to justice the president under the Constitution and laws of the Russian Federation and Ukraine, despite their differences, have maintained a unified conceptual approach - the president can not be held responsible on the common grounds with other citizens due to the special employment status. Thirdly, the range of offenses for which the possible involvement of the president to account, is extremely narrow and limited as a rule, treason and serious crimes and, finally, the existence of the institute of impeachment plays the role of a warning and means to check and balance the government system in both countries.

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