

The legal and political conditions of opposition parties in Central and Eastern Europe: an introduction

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The political opposition is considered a qualifying and essential element of liberal democratic states, as it performs a number of fundamental functions, namely those of monitoring the activities of the majority, influencing decisions, criticising government policies and proposing alternative policies with a view to running for the leadership of the country in the next round of elections.

From a comparative legal perspective, the issues related to the parliamentary opposition, i.e. political parties that are represented in parliament

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but not in government, and the relevance of the political opposition in the public arena are not particularly focused on Central and Eastern European countries (for a constitutional framework of the countries in this geographical area, see Di Gregorio 2019). Indeed, no single volume in a *lingua franca* has provided an overview of these issues. There are no in-depth studies of the legal frameworks that can ensure that majorities do not abuse their otherwise legitimate rights simply because they have won the elections. This vacuum can be explained, at least in part, by the absence of constitutional provisions dealing with the opposition, with the exception of the constitutions of Croatia, Albania, Armenia, Georgia, Kyrgyzstan and Uzbekistan¹. Where there is literature on the subject, it is mainly analysed through the lens of political science, looking at the electoral process and propaganda, election results, the phenomenon of clientelism and the patronage networks that threaten parliaments and other democratic institutions (Ramet, Hassenstab, Listhaug 2017; Marović, Prelec, Kmezić 2019).

The rules and practices that can guarantee democracy within the parliamentary decision-making process, or those that can jeopardise political pluralism by denying the opposition a sphere of rights, are key aspects insofar as the democratic quality within the Parliament is measured by the means available to the opposition to fulfil its tasks. As these issues are currently at the core of constitutional democracies, a number of guarantees for the opposition should be provided in constitutions, parliamentary rules or other sources of law.

In 2008, the Parliamentary Assembly of the Council of Europe provided procedural guidelines to enable the opposition to scrutinise the Government, participate in the legislative process and control the legality and constitutionality of parliamentary texts, which member states were invited to follow². In 2010, the European Commission for Democracy through Law complemented the resolution with a report specifying what kind of formal rights the parliamentary opposition should have and how these could best be legally regulated and protected (Venice Commission 2010). In 2019, it further elaborated on this topic in a new report (Venice Commission 2019). The latter is closely linked to the erosion of democracy observed in several countries over the past decade. According to the Venice Commission, this worrying political trend is characterised by the

¹ See Croatia, articles 92, 121, 121A Const.; Albania, art. 147 Const.; Georgia, art. 42 Const.; Kyrgyzstan, articles 70, 74, 75, 76, 95 Const.; Uzbekistan, art. 34 Const.

² See PACE Resolution 1601 (2008), *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*, at <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17626&lang=en>>.

dismantling of the checks and balances that limit the power of the parliamentary majority, by the more frequent hasty adoption of laws without genuine political debate, and by the appointment and dismissal of top judges and officials of independent agencies by the majority alone. For this reason, the 2019 report outlines a framework of parameters to impose responsibilities and limits on the majority and safeguards for the opposition, based on the fundamental general principles that characterise a constitutional democracy, namely freedom, pluralism, checks and balances, loyal cooperation and respect for institutions, solidarity with society, the possibility of changing power, and effective decision-making.

In the light of the above, the purpose of examining the level of democracy through the lens of the guarantees given or denied to the opposition seems more than justified. The chapters in this volume focus on the status, functions and role of the political opposition in the system of government in some Central and Eastern European countries. The analysis of some case studies is preceded by two introductory chapters. The first one focuses on the classification of the types of opposition, which are divided into three different groups: parliamentary opposition and opposition in general; dissenting opposition and ideological opposition; external and internal opposition. The second introductory chapter focuses on the democratic method in the Parliaments of the Central and Eastern European countries, looking at Government-opposition relations as they are shaped by the distribution of procedural resources.

The country-specific case studies allow for a broad reflection, as they represent different stages of democratic consolidation. They range from EU candidate countries such as Serbia and Moldova, to newer members of the Union whose democratic stabilisation is not in doubt (the Baltic countries), or which have experienced moments of difficulty in the early stages of the transition to democracy, which they have then overcome despite some cyclical episodes of crisis (Slovakia), to countries with greater fragility in terms of political pluralism and alternation (Romania), and finally to the cases of Hungary and Poland. In these countries, despite the existence of formal guarantees, opposition forces have in recent years been all but wiped out by the overwhelming power of populist majorities, or are extremely divided, polarised and unable to use the instruments available to them under the constitutional order, if not actually paralysed by legislative or constitutional reforms that tend to stifle countervailing forces in general. First of all, it should be remembered that the countries in question are young and fragile democracies (in some of them, unfortunately, the persistence of the democratic

order is now being questioned³) which, at the time of the last political transition (the post-communist one, which for some countries, such as Moldova, Serbia and Slovakia, also coincided with the conquest of statehood), had to learn the practice of multi-partyism after a long period of domination by a single or hegemonic party. In some of the countries studied, the proto-parties (e.g. the national liberation fronts in the Baltic countries and Moldova, the “civic umbrella movements” in Slovakia, Poland and Hungary), protagonists of the democratic transition, gave way to a fragmented and unstable system. Therefore, before these countries could learn the role of the opposition, they had to learn multi-partyism, including the revival of pre-war parties wherever possible.

The laborious process of political stabilisation (which in some cases has not yet been achieved) has then had to face the challenge of the alternation of political forces in government (the countries in question predominantly adopt a parliamentary or weak semi-presidential system of government) and the instability caused by the introduction of electoral systems that are not very selective (with a few significant exceptions, such as Hungary) and reflect societies that are highly divided along ethnic and socio-economic fault lines. Many of these countries have recently witnessed the rise of populist forces, both in opposition and in government (with varying results), and thus strong identity polarisation (e.g. in Serbia). An increasingly important divide is also that between pro-European and Eurosceptic parties, if not openly sovereignist or pro-Russian (the case of Moldova is emblematic, but there is no shortage of pro-Russian cases, even in contexts as diverse as Hungary and Serbia). The geopolitical equilibrium, which has been disrupted and reshuffled over the past year in particular by Russia’s war of aggression in Ukraine, influences the internal political dynamics and also gives rise to major political clashes.

The contributions in this volume focus mainly on the normative aspect and the guarantees of formal protection of the opposition contained in constitutional texts and parliamentary regulations (in some cases, as in Slovakia, in special laws). From this point of view, the rules of the democratic game – with the strategic importance of the opposition for the maintenance of a pluralist system and for the functioning of checks and balances – had to be

³ See the Resolution of the European Parliament in which Hungary is considered to be a hybrid regime of electoral autocracy: European Parliament resolution of 15 September 2022 on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2018/0902R(NLE), at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022IP0324>>.

written from scratch, often with little reference to their constitutional tradition. The chapters also contain references to the practical functioning of the political dialectic in the countries concerned, such as in the case of Serbia, which is analysed from a political science perspective.

In some cases, there are interesting points of comparison with other European countries. This is the case, for example, with Moldova and Romania, whose constitutional histories are traditionally intertwined (until relatively recent times) and even in the current constitutional order they share many common elements. Both countries are influenced by the cultural and constitutional influence of France, the traditional point of reference for these countries, even if, as far as the status of the opposition is concerned (the case of Romania is closer to that of France), there is a clear divide between the normative-formal aspect (which is already not particularly designed to protect the opposition) and political practice, which shows a limited maturation of the political culture of both the majority and the opposition. Particularly worrying is the phenomenon of parliamentary transformism, for example in the Romanian case, which weakens the dialectic between parties and the physiological logic of control and alternation between majority and opposition. Despite the existence of mechanisms similar to those in France (especially in Romania), the practical result is completely different due to the diversity of the electoral and party systems. Structural elements cannot be imported without functional ones.

It is also interesting to note the paradox of the countries that were pioneers of democratic transformation and that later proved to be vulnerable precisely because of the role of the opposition (but the degeneration occurred after about twenty years, thus confirming the democratic stabilisation before the subsequent populist drift). Among these is Poland: although it is the country that began the transition from communism precisely by recognising (and legalising) the role of the Solidarity opposition, the Polish legal system, like others in the region, lacks a solid constitutional statute for the opposition. Paradoxically, it is the PIS that has recently introduced some minority protection provisions in the regulations of the Electoral Commission and the National Media Council, following the conservative involution. In fact, in this country, more than specific mechanisms to enforce the political responsibility of the majority, an important role of the opposition should be found in the position that certain institutions could exercise in their complexity, such as the Senate or the Head of State. In this case, we are talking about specific counter-powers. However, since the capture of the Constitutional

Tribunal, there have been no significant attempts by the opposition or guarantee institutions (which are not such because they are politically aligned, such as the Head of State) to use this institution to counter the political direction of the majority.

The considerations in this volume make us reflect on the importance for legal scholars and political scientists to continue to deepen the study of the status and role of the political and parliamentary opposition in order to better understand the dynamics affecting transitions, democratic consolidation and pluralism guarantees in this geographical area and beyond.

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