

## THE POSSIBLE SUBJECTS WITH PUBLIC AUTHORITY IN EUROPEAN COUNTRIES

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### Abstract

**Purpose:** This study was aimed at analyzing the constitutional consolidation of the oath in the states of Eastern Europe, using various criteria.

**Methodology:** The present study was carried out based on a dialectical approach to investigate legal phenomena and processes, using general scientific (system, logical, analysis and synthesis) and private scientific methods.

**Result:** The findings of the study were systematized with a certain sequence and set out taking into account recipients of the oath; identification of the oath as a legal fact for acquisition/loss of the legal status of a subject of public authority, and general and specific provisions in the texts of the oath.

**Applications:** This research can be used for the universities, teachers and politic students.

**Novelty/Originality:** In this research, the model of public authority in European countries is presented in a comprehensive and complete manner.

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### INTRODUCTION

Truly, all human knowledge is developed based on the comparison. Comparison is a universal toolkit, the main purpose of which is assisting the process of obtaining information. In this most general sense, the comparative method in law is applied for acquisition of knowledge in relevant areas [Peteri, 2016; Ahmadi, e al. 2014; DALIR, et al. 2014; Seitkazy, et al. 2016]. In this regard, constitutional and legal norms formalizing the oath in foreign countries are no exception.

Oath may acquire additional features, with regard to the constitutional sphere, for example, if provided by the country's constitution; it addresses certain constitutional entities; receiving the constitutional formalization of the text sometimes along with mentioning something sacred and valuable [Alan, 20135]. In connection with the oath, conditions and procedures may be prescribed for its delivery, as well as the consequences of not bringing or bringing with reservations [Marhgejm, 2017, p. 61].

The analysis and systematization of the presented manifestations of oath within the framework of this study was carried out by the authors of this study, in relation to the constitutions of the states of Eastern Europe.

### RESEARCH METHODOLOGY

The present study was carried out based on a dialectical approach to investigate legal phenomena and processes, using general scientific (system, logical, analysis and synthesis) and private scientific methods. The latter include formal -legal, linguistic -legal, comparative-legal, collectively used to identify provisions that establish the procedure for taking an oath. The results of studies previously carried out were also used in the current study [Aleksandr, e al. 2017, p. 323-327]. The focus group consisted of countries of Eastern European, texts of the constitutions of which were taken from the database of Internet-library "Constitutions of the States (Countries) of the World" [Maginga, e al. 2018; de Paulo, et al. 2018; Matandare, 2018].

### RESULTS AND DISCUSSION

Similar to states of Eastern Europe, Russia is a republic. Accordingly, one of the objectives of this study is to identify patterns and features of the constitutionalizing of the oath of public subjects using the examples of such experience [Palidaukaite, 2004]. The initial analysis of texts of constitutions related to the countries in the study group made it possible to identify the first law representing the oath rules called typical, since only one basic law, the Constitution of Bosnia and Herzegovina, did not consist of such provisions [Lustig, R. H., Schmidt, L. A., & Brindis, C. D. (2012).

In the Constitutions of this focus group, the term “oath” is characteristically used. However, in some constitutions, the wordings “oath of loyalty” (Lithuania and Estonia), “solemn oath” (Croatia), and “sacred oath” (Macedonia) are used.

According to the method used for securing the oath in the texts of constitutions, it is possible to distinguish: a simple mention of it (Hungary, Lithuania and Croatia) and the presentation of its text (Albania, Bulgaria, Poland, Romania, Slovakia, Slovenia, the Czech Republic and Estonia) [Caporaso, J. A. \(2000\)](#).

As a rule, recipients of the oath in texts of the constitutions include the president (part 3 of article 88 of the Constitution of Albania, article 96 of the Constitution of Bulgaria, article 82 of the Constitution of Lithuania, article 130 of the Constitution of Poland, article 83 of the Constitution of Romania, part 7 of article 101 and Article 104 of the Constitution of Slovakia, Article 104 of the Constitution of Slovenia, Article 95 of the Constitution of Croatia, Articles 55 and 59 of the Constitution of Czech Republic, Article 61 of the Constitution of Estonia); deputies (article 72 of the Constitution of Albania, part 2 of article 76 of the Constitution of Bulgaria, article 59 of the Constitution of Lithuania, article 104 of the Constitution of Poland, part 2 of article 82 of the Constitution of Romania, article 75 of the Constitution of Slovakia, article 23 of the Constitution of the Czech Republic, Article 81 of the Constitution of Estonia); Chairman of the Government, his deputies / members of the government / ministers (Article 99 of the Constitution of Albania, Article 76 of the Constitution of Bulgaria, Part 9 of Article 16 of the Constitution of Hungary, Article 93 of the Constitution of Lithuania, Article 151 of the Constitution of Poland, Part 1 of Article 103 of the Constitution of Romania, Article 112 of the Constitution of Slovakia, Article 113 of the Constitution of Slovenia, Article 109 of the Constitution of Croatia, Article 69 of the Constitution of the Czech Republic, Article 91 of the Constitution of Estonia); judges with the highest judicial positions (Article 129 of the Constitution of Albania, Article 104 of the Constitution of Lithuania, Articles 112 and 145 of the Constitution of Slovakia, Article 85 of the Constitution of Czech Republic) [Pernice, I. \(2002\)](#).

In addition to the typical addressees in individual constitutions, there are other cases as well. For example, in Bulgaria, the post of the vice-president is provided and its oath is constitutionally fixed (article 96). The Constitution of Lithuania enshrines the need for the oath of the state controller (art. 133) [Hondius, F. W. \(1980\)](#).

It is believed that, the wording "Loyalty to the country", according to Part 2 of Article 50 of the Constitution of Romania is referred to the notion of oath, as it reflects: "Citizens entrusted with the exercise of public functions, as well as military personnel, are responsible for proper performance of their duties and to do this, they must take the oath as required by law." Thus, this provision actually addresses all people who officially exercise authority in the country, as well as military personnel [Curtin, D. \(1990\)](#).

It is noteworthy that oath is indeed a direct attribute of the legal status of a person exercising state functions in the manner prescribed by law. In the texts of constitutions, this is expressed in formulations clarifying acquisition of status upon taking the oath and, conversely, in the case of inappropriate attitude towards it [Slimani, N., Deharveng, G., Unwin, I., Southgate, D. A. T., Vignat, J., Skeie, G., ... & Becker, W. \(2007\)](#).

In this context, the following legal constructions were revealed in relation to the president von [Bogdandy, A. \(2014\)](#):

- “The President takes office after taking the oath” (part 3 of article 88 of the Constitution of Albania);
- “The President takes office after taking an oath and before the National Assembly ...” (Article 130 of the Constitution of Poland);
- “Term of the mandate of the President of Romania is 4 years; its course begins from the day of taking the oath; the President of Romania carries out the mandate until the newly elected President takes the oath” (Article 82 of the Constitution of Romania);
- “The elected candidate accepts functions of the President by taking the oath” (part 7 of Article 101 of the Constitution of Slovakia) and “refusal of the oath or oath with reservations entails the invalidity of election of the President” (part 2 of Article 104 of the Constitution of Slovakia);
- “Before taking office, the President of the Republic takes an oath in the National Assembly” (Article 104 of the Constitution of Slovenia);
- “Before taking office, the President of the Republic takes a solemn oath” (Article 95 of the Constitution of Croatia);
- “The President of the Republic takes up his duties from the moment of taking the oath” (Article 55 of the Constitution of Czech Republic), as well as “the refusal of the President of the Republic to take the oath or, the oath with reservations is considered as non-election” (Article 60 of the Constitution of Czech Republic);

The following wording is characteristic with regard to parliamentarians:

- “Before the beginning of the mandate, deputies take an oath” (Article 72 of the Constitution of Albania);
- “An elected member of the Seimas acquires all rights of a representative of the nation only after he takes an oath of allegiance to the Republic of Lithuania at the Seimas” (Article 59 of the Lithuanian Constitution);

- “Before embarking on the implementation of the mandate, deputies take an oath before the Seym; refusal to take an oath means the renunciation of the mandate” (Article 104 of the Constitution of Poland);
  - “A member of the Seimas who fails to take an oath in accordance with the procedure established by law, or who has taken a conditional oath loses the mandate of a member of the Seimas” (Article 59 of the Constitution of Lithuania);
  - “In the first sitting, the National representatives take an oath ...” (Article 76 of the Constitution of Bulgaria);
  - “A candidate, whose election has been validated, takes the oath before the Chamber of Deputies and the Senate in a joint sitting” (part 2 of article 82 of the Constitution of Romania);
  - “In the sitting of National Council of the Slovak Republic, the deputy takes an oath, at the first session which he /she attends, Refusal of taking the oath or oath with reservation entails the loss of the mandate” (Article 75 of the Constitution of Slovakia);
  - “The deputy and senator take the oath in the first sitting of the Chamber of Deputies / Senate, which he/she attends (Art. 23 of the Constitution of Czech Republic), and also “mandate of the deputy or senator is terminated in cases of refusal of taking the oath or taking the oath with reservation” (Art. 25 of the Constitution of Czech Republic);
- “Before taking up his duties, a member of the State Assembly takes an oath of office” (Article 61 of the Constitution of Estonia).

The following versions of constitutional provisions were revealed, with regard to the conjugation of the oath taken by the members of the government with their legal status:

- “Before starting to fulfill their duties, the Prime Minister, Deputy Prime Minister and Ministers take the oath” (Article 99 of the Constitution of Albania);
- “Before starting to fulfill their duties, the Prime Minister and ministers take an oath at the Seimas, to remain loyal to the Republic of Lithuania” (Article 93 of the Constitution of Lithuania);
- “The prime minister and ministers take an oath before the State Assembly after the elections or, the appointment” (Article 113 of the Constitution of Slovenia);

The statements associated with oath of judges were presented in the following:

- “Judge takes office after taking the oath” (Article 129 of the Constitution of Albania);
- “Before starting the fulfillment of their duties, judges of the Constitutional Court take the oath of allegiance to the Republic of Lithuania and Constitution at the Seimas” (Article 104 of the Constitution of Lithuania);
- “The judge of Constitutional Court takes up his office from the moment of taking the oath” (part 5 of article 112 of the Constitution of Slovakia) and “the judge accepts his office after taking the oath” (part 5 of article 145 of the Constitution of Slovakia);

“The judge of Constitutional Court takes up his office from the moment he takes the oath before the president of the republic” (part 1 of article 85 of the Constitution of Czech Republic), and also “if the judge refuses to take the oath or take the oath with reservation, he is not appointed” (part 3 article 85 of the Constitution of Czech Republic). A similar situation is with respect to the judge (part 1 of article 93 of the Constitution of Czech Republic).

Among all the constitutions analyzed, the Constitution of Lithuania was singled out particularly, since in one norm (Article 74), it has been provided that violation of oath of the President of the Republic, chairman and judges of the Constitutional Court, chairman and judges of the Supreme Court, chairman and judges of the Court of Appeal, and members of the Seimas, results in suspension from office or deprivation of the mandate of a member of the Seimas. Thus, this basic law is referred to as the violation of the oath addressing a wide range of subjects exercising power and is considered as the basis for loss of the corresponding legal status.

Also, the Constitution of Lithuania was found to be different based on presenting a detailed procedure for “activating” status of the president, namely:

- The elected President of the Republic takes up his duties the day after the expiration of the term of office of the former President of the Republic, and after he takes the oath in Vilnius before the national representatives, and members of the Seimas;
- The act of taking the oath by President of the Republic is signed by him and Chairman of the Constitutional Court, and in his absence - by one of the judges of the Constitutional Court (Article 82).

## CONCLUSIONS

Direct analysis of the texts related to the oath envisaged for various subjects in the constitutions of states of Eastern Europe made it possible to draw a number of conclusions.

1. Traditionally, as determined in the texts related to oath (with the exception of judges) the subjects exercising power take an oath of loyalty to the state (Slovakia, Czech Republic), or taking oath to the Constitution (Poland); to obey/comply with the Constitution and laws of the country (Albania, Bulgaria, Poland, Romania, Slovakia, Slovenia, Czech Republic, Estonia); respect to the rights and freedoms of citizens (Albania, Romania); to protect independence of the state (Albania) / to protect sovereignty and interests of the state (Poland); to protect sovereignty, independence, unity and territorial integrity (Romania) / or to protect state independence and security (Poland); to fulfill obligations for the nation (Poland) / to conscientiously fulfill their duties and not abuse their position (Czech Republic) / to faithfully fulfill their duties (Estonia); to serve the common interest (Albania) / to protect the interests of the nation (Albania, Bulgaria, Czech Republic) / to protect the interests of citizens (Slovakia); to do everything for welfare of the country and welfare of citizens (Poland, Slovenia, Estonia).
  2. The original wording in texts related to the oath is as follows: to serve the progress of the Albanian people (Albania); to stand firm on protection of the dignity of the people (Poland); to protect democracy ..., to devote all his/her strength and ability to the spiritual and material prosperity of the Romanian people (Romania); to take care of the welfare of the Slovak nation, national minorities and ethnic groups living in the country (Slovakia); with all fairness and impartially enjoy the authority assigned to him/her (Estonia, the oath of the President) [Von Bogdandy](#).
- An interesting remark was found in the oath of presidents of Albania and Poland: ... "God help me!", and in the Constitution of Romania, the above-mentioned remark is considered as an obligatory part of the oath [Abendroth](#).
3. The constitutional text of oath addressed different subjects including National Representatives, the President and Vice-President, members of the Council of Ministers in Bulgaria; Representatives of the People, Prime Minister, Ministers and the rest of the Members of government in Romania; Deputies and Members of the government in Slovakia; President, Prime Minister and Ministers in Slovenia; Deputies, Senators and the President in the Czech Republic.

## CONFLICT OF INTEREST

The author confirms that the data do not contain any conflict of interest.

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