

## Institution of Impeachment (*Juicio Político*) in selected states of Latin America

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### Abstract

The purpose of the article is to analyse the legal institution of *juicio político* (impeachment) in the Latin-American presidential system, regarding the regulation adopted in Argentina, Brazil, Honduras and Paraguay. The hypothesis assumes that the impeachment in Latin America turns from the instrument of pure control character into the tool dedicated to resolve the political crisis by mean of “*legislative coup d'état*”. The author will search for the answers for the following questions: 1) what is the legal character of Latin-American impeachment? 2) what makes the impeachment more common in Latin America than in United States or European countries? 3) why does it become an attractive alternative for other methods to resolve political crises? The legal, institutional as well as the comparative method will be adopted in the article.

**Keywords:** legal responsibility, political responsibility, impeachment, Latin-American presidential system

### Institucja *impeachmentu* (*juicio político*) w wybranych państwach Ameryki Łacińskiej Streszczenie

Celem artykułu jest analiza instytucji *juicio político* (*impeachment*) w latynoamerykańskim systemie prezydenckim, na przykładzie rozwiązań przyjętych w Argentynie, Brazylii, Hondurasie i Paragwaju. Hipoteza badawcza zakłada, że w Ameryce Łacińskiej *impeachment* przestaje pełnić funkcję jedynie kontrolną, a staje się narzędziem do rozwiązywania kryzysów politycznych w drodze „legislacyjnego” zamachu stanu. Autorka poszuka odpowiedzi na następujące pytania: 1) jaki jest charakter prawny latynoamerykańskiego *impeachmentu*? 2) co sprawia, że w badanym regionie sięga się po niego znacznie częściej niż w Stanach Zjednoczonych czy w państwach europejskich 3) dlaczego stał się on alternatywą dla innych metod rozwiązywania kryzysów politycznych? Autorka sięgnie po metodę instytucjonalno-prawną oraz komparatystyczną.

**Słowa kluczowe:** odpowiedzialność konstytucyjna, odpowiedzialność polityczna, impeachment, latynoamerykański system prezydencki

Since the beginning of the 1990s, at least several cases of *juicio político* took place in the region subject to analysis. This is the mode in which Fernando Collor, President of Brazil, was removed from office in 1992 and a year later Carlos Andrés Pérez, President of Venezuela. Several other heads of the executive, e.g. Raúl Cubas Grau, President of Paraguay; Alberto Fujimori, President of Peru; Fernando de la Rúa, President of Argentina, and Gonzalo Sánchez de Lozada, President of Bolivia, wishing to avoid *impeachment* resigned on their own (Pérez-Liñan 2009: p. 282–295). Recent years testify to the fact that the popularity of *juicio político* is not subsiding. Thus, the question posed at the beginning of the 21<sup>st</sup> century about the nature and purpose of impeachment in Latin America as a specific “coup d’état” staged by the legislature, still remains valid (Pérez-Liñan 2000). This is confirmed by the most recent examples from Paraguay and Brazil.

The purpose of the paper is to present the institution of *juicio político* (impeachment) in the presidential system in Latin America. Solutions adopted in Argentina, Brazil, Honduras and Paraguay will be analysed. The author sets forth legal bases of impeachment, offering interpretation of relevant provisions of the constitution or specific laws. This allows for retracing the normative model of the analysed mechanism. It is subsequently confronted with the practical application of impeachment procedures.

The research hypothesis adopted in the paper assumes that in Latin America *juicio político* ceases to perform exclusively a control function and becomes a tool to solve political crises via a “legislative” coup d’état. The author is searching for an answer to the following questions: 1) what is the legal nature of the Latin American impeachment? 2) what causes the fact that in the analysed region, it is used much more frequently than in the United States or in Europe? 3) why has it become an alternative for other methods of solving political crises?

The author makes use of the institutional and legal method and the comparative method. The former allows for determining and clarifying the rules and mechanisms of operation of impeachment. The latter, by comparing the procedures from the examined region, enables determination of common features and particular Latin American traits.

For the purpose of this paper, the term *juicio político* - following Anibal Pérez-Liñan - is understood broadly, as “any legal procedures where the parliament is involved in deciding about removal of the president from office before the end of the term” (Pérez-Liñan 2000: p. 68). The English term impeachment is used interchangeably. The analysis is narrowed down to the possibility of applying this procedure in reference

to the head of state, in spite of the fact that in certain countries of the analysed region, the substantive scope is broader and it may be applied not only to the representatives of the executive system, but also to the attorney general or the supreme court judges.

### **Liability of the executive power in the presidential system**

The institution of *juicio político* constitutes implementation of the principle of liability of the executive power. It acquires a special nature in the presidential system, where - by assumption - representatives of the executive power are not liable with respect to the parliament.

A constitutional state should possess a system of mutually related mechanisms and procedures that allows for enforcing liability (Pietrzak 1990: p. 3). Liability is understood most frequently as a necessity and inevitability of bearing consequences for own or third party's acts or omissions (Kuciński 2008: p. 267). It has essential significance with respect to the executive power on account of the competence of the executive power and the position that it holds in the system of power authorities. It is a barrier protecting from the abuse of holders of power, their attempts at arbitrariness and doing away with limitations in ruling (Montesquieu 1957, Elster 1998: p. 181). Liability of the executive power is incorporated into such principles as: the principle of the democratic legal state, the rule of law and equality with respect to the law (Dziemidok-Olszewska, Żmigrodzki 2012: p. 262). It becomes a criterion of distinction between democratic and authoritarian systems. In the former system, the executive power is liable towards the voters and/ or the parliament (which is expressed in the voting results, the applied parliamentary procedure or the judgement of a court authority). In non-democratic systems, it is effected by means of a coup d'état, a putsch or a revolution (Antoszewski 1999: p. 81–88). Liability of power is guaranteed by a complex system of control instruments. Its purpose is, on the one hand, to get rid of omnipotence and, on the other, to avoid inefficiency and incompetence of leaders.

In constitutional law, two types of liability of representatives of executive power can be distinguished: legal liability, also known as constitutional and political liability, also known as parliamentary (Pietrzak 1992: p. 36–40, Szeliga 2003: p. 7–12). The former is related to violation of the law by a member of the executive. The legality of such act is examined in relevant proceedings. On the other hand, with respect to parliamentary liability, the criteria are strictly political. The following aspects may be subjected to evaluation: implementation of the adopted policy, its purposefulness, accuracy of decisions made,

or the direction of holding the office. An impulse for initiation of proceedings is most frequently the loss of trust or loss of support of the hitherto minions.

In spite of varying solutions, the principle of liability is to be found both in the parliamentary system, the presidential system or the semi-presidential system. Three realms of relations between the legislative power and the executive power become essential: the mode of appointment, mutual competence and political liability (Dziemidok-Olszewska, Żmigrodzki 2012: p. 273–274). Nevertheless, it is worth remembering that the fact of occurrence of a specific institution in various systems does not automatically entail that it will always be an identical institution. In every case, it is necessary to take into account a specific system of rule in which a given political and legal institution is embedded (Szymanek 2017: p. 110). This also refers to the institution of *juicio politico*.

In the presidential system that is of interest to the author of this paper, the head of state in principle does not bear political liability (understood as a necessity of having the support of the parliament expressed by means of the vote of confidence) with respect to the parliament. The possibility of dismissing a president as a result of a vote of no confidence has been excluded. This would threaten the special status of the head of the executive power, simultaneously challenging the extensive competence that was gained by winning common elections. Similarly, members of the government are, in principle, not liable to a legislative authority, but to the head of the executive authority. However, it is possible to initiate an impeachment procedure against the president.

It is worth indicating that the Latin-American model of the presidential system varies from its prototype, namely the American presidential system. Even though the solutions are similar on the institutional level, yet socio-cultural and political factors result in the fact that the Latin-American version acquires different traits. Emphasis on the position of the head of state, the tradition of *caudillismo*, popular in the region, coupled with the lack of rigorous observance of the principle of the distribution of power and political instability result in the fact that in Latin America, the presidential system becomes “dangerous and full of traps” (Linz 1990: p. 69) and it may exceptionally easily turn into an authoritarian system. Given the risk of failure to fulfil the democratic features, some researchers refuse to qualify it as a presidential system and call it - at best - neo-presidentialism or hyper-presidentialism (Szymanek 2017: p. 104). Lack of a solid two-party system (and, in consequence, lack of political stability) is, without doubt, one of the main causes due to which the American solutions were not successfully transferred south of the Rio Grande.

### The legal institution of *Juicio Político*

The institution of *juicio político* is a form of liability of the executive power implemented before or with the participation of bodies of legislative power. Its prototype is the institution of impeachment foreseen in Art. 2 of the Constitution of the United States of America (USA). In line with it, the president may be removed from office if he is accused and subsequently sentenced by the congress for specific crimes. Two stages of the proceedings may be distinguished: “impeachment” where the House of Representatives decides whether there are bases for levelling charges, and subsequently the “procedural stage” which ends with voting in the Senate. Ousting a president from office requires a qualified majority (Makowski, Pastusiak 1999: p. 24–29). In America, impeachment is treated as a classic tool of the checks and balances mechanism and not an expression of dominance of the bodies of legislative power over the head of the executive. It is a principle that the president cannot dissolve the Congress and the Congress cannot formulate a vote of no confidence with respect to the president. In the United States, impeachment is applied in extremely rare cases and none of the presidents against whom the procedure was used were removed from office. However, in the Latin-American reality, the institution of *juicio político* acquires a different meaning. A tendency of using it in order to solve a political impasse has been noticed, along with effective, early removal of the head of state from power. It becomes a dangerous tool in the hands of the legislature. The last two decades have shown that this solution is used with increasing frequency in the countries of the studied region. In spite of the complex procedure and formal requirements that are hard to fulfil, impeachment has led to removal of the head of state from office at least several times. This was the case in Brazil (twice), in Venezuela and Paraguay. Numerous examples of effective *juicio político* call for verification of the standpoint about the extremely rare use of this procedure (Ławniczak 2008: p. 119, Czajkowski 2003: p. 29).

As far as the legal nature of the institution is concerned, the name itself (*juicio político* – literally “political trial”) could suggest that it is about political liability. However, it is a principle that in a presidential system the head of state is not politically liable with respect to the parliament. This results from an assumption that both bodies have an equally strong legitimacy (both derive from common elections) and thus a president does not have to seek a vote of confidence as it happens in parliamentary systems. It is thus assumed that *juicio político* is an example of constitutional (legal) liability, which a representative of the executive incurs in relation to violation of the

law (Nogueira Alcalá 2015: p. 403–441). If the nation is the sovereign in democratic republics, then in principle the nation should make the judgement. Due to technical reasons, the parliament, i.e. the representative body formed by representatives of the sovereign, decides about the levelling of charges (Ławniczak 2008: p. 118).

More and more frequently, attention is drawn to the political aspects of *juicio político* (Zúñiga Urbina 2006, No. 12, p. 53–56, Serrafiero 1996: p. 139), in particular in the context of allegations formulated in the statement of charges. The basis for initiation of impeachment may not only be violation of the law (committing a crime or an offence), but also a political assessment of the exercise of power by the president (e.g. via activities contradictory with the national interest, neglect, inability or lack of competence with respect to holding the office). On the other hand, examples show that the direct cause for initiating *juicio político* is most often a political crisis caused by a scandal involving the head of state (Pérez Liñan 2000: p. 69). Morally reprehensible behaviour of the president, e.g. an affair (e.g. in Paraguay in 2012) or promotion of own family when manning offices may tip the scales and cause the initiation of impeachment. Thus, the institution acquires an increasingly political character. Simultaneously, it cannot be forgotten that the parliament, i.e. an authority that may carry out the *juicio político* procedure, is a political body (Makowski, Pastusiak 1999: p. 117).

In the states of Latin America, it is possible to distinguish three models of *juicio político*: legislative, court and mixed. In the first one, the decision about dismissing the head of state is made by the parliament and does not require consultations with other bodies. The proceedings are usually divided into two stages: impeachment: made by the lower chamber of the parliament and trial, carried out by the higher chamber after the presentation of charges. Such solutions are foreseen in the constitutions of Argentina, Mexico and Paraguay. The court model is characteristic for countries with a single-chamber parliament. The court initiates the process of impeachment by authorising the charges against the head of state. The judging is made by the court authority, usually the Supreme Court. Such a mechanism exists in Venezuela. It was also foreseen in the constitution of Costa Rica of 1949. On the other hand, Brazil and Colombia have a mixed model, where the president's liability for committing ordinary crimes is determined by the supreme court, whereas crimes committed in relation to the holding of a public office are judged by the senate. In both cases, the accuser is the lower chamber of parliament. In the course of the procedure, the parliament may decide about suspending the head of state for the duration of trial (Pérez Liñan 2000: p. 70–71).

## The institution of *Juicio Político* in selected states of Latin America

### Brazil

The principles of liability of Brazil's president are regulated in Section III of the Constitution of the Federative Republic of Brazil of 5 October 1988 and in the act of 10 April 1950 No. 1.079.

Pursuant to Art. 86 of the constitution, the impeachment procedure is always initiated by the lower chamber of the congress. If the bill of indictment is adopted by a majority of two-thirds of the Chamber of Deputies, a president is indicted. Subsequently, depending on what charges were levelled, the president is judged either by the Federal Supreme Court (in case of common crimes), or by the Senate (in case of constitutional tort). The catalogue of common crimes has not been defined clearly. However, these are always crimes related to the holding of the function of the head of state. In line with § 4 Art. 86, during the term of office, the president of the republic cannot be held accountable for deeds not related to the performance of the obligations of the head of state. On the other hand, as far as constitutional tort is concerned, a sample catalogue is contained in Art. 85 of the constitution (Trnka 2017: p. 70). They include, *inter alia*, deeds that threaten: the existence of the Union, the free exercise of the legislative power, the judicial power, the public prosecution and the constitutional powers of the units of the federation, the exercise of political, individual and social rights, the internal security of the country, probity in the administration, the budgetary law, compliance with the laws and with court decisions. A detailed description of types of such crimes is contained in the Act of 10 April 1950. It distinguishes: a) eleven types of crimes against the existence of the Union (including, e.g., attempts - direct or factual - at surrendering the entire country or its part to the supremacy of another state or separation; signing treaties, conventions or agreements that violate the dignity of the Brazilian nation; violation of the immunity of ambassadors or ministers of third countries having accreditation), b) eight crimes against the free exercise of power by the constitutional authorities (e.g. violation of immunity of congress members, regional parliaments, councillors of the federal district and municipal councillors; attempting to dissolve the congress, cancelling a session or impacting, in another mode, the functioning of any of the congress chambers), c) ten crimes against the exercise of political, individual and social rights (e.g. influencing, by means of a threat, violence or corruption, the freedom of the right to vote; provoking animosities between the military service or against it or the military service against civil institutions; impelling

the military forces to disobedience or violation of discipline), d) eight types of tort against the internal security of the country (e.g. attempting to change, by means of violence, the form of exercising power in Brazil; attempting to change the federal constitution, the constitutions of individual states, the law of the Union or the state in a forceful manner), e) eleven crimes against probity in the administration (e.g. failure to publish or purposeful delays in publication of laws and other acts of legislative power or acts of executive power; behaviour in a mode defying dignity, honour and solemnity of the office held), f) twelve crimes against the budgetary law (e.g. overspending or transfer of budgetary funds without prior legal authorisation; making corrections of budgetary funds; incurring or allowing for incurring credit in contrast to the limits specified by the senate and without bases in the budgetary law), g) four types of tort against the compliance with the laws and court judgements (e.g. failing to observe or rendering the obligation of payment specified in a court ruling impossible, failing to attend the summons of the Federal Supreme Court or the Supreme Electoral Court).

In the course of the proceedings until the moment of conviction, the president cannot be arrested (Constitution 1988, 86 § 3). However, the president may be suspended in his functions. This happens either after acceptance of the bill of indictment by the Federal Supreme Court or when a charge of committing a constitutional tort is raised - after transferring the case to the senate (Constitution 1988 Art. 86 § 1). In such a situation, the obligations of the president are performed by the vice president. Suspension is limited in time. It ceases after the lapse of one hundred and eighty days from applying this measure, if no sentence was issued. A potential revocation of suspension does not influence the validity of further proceedings.

The impeachment procedure (in both its variants) ends with a judgement, issued by the Supreme Court or by the Senate, respectively. In case of proceedings pending in the lower chamber of the parliament, the function of the chairman is taken up by the president of the Supreme Federal Court. A majority of at least two-thirds of the Senate votes is necessary for deeming the president guilty. If there was the required majority during voting, apart from ousting from office, it is also possible to issue a ban on holding public office for a period up to eight years (Constitution 1988 Art. 52 *in fine*). The presidential mandate expires at the moment of announcing the judgement and the hitherto vice president becomes the president. No new elections are organised and the new president ends the term of his/ her predecessor. If there was no required majority during the voting, the proceedings are discontinued.



### Argentina

The principles of presidential liability in Argentina are regulated in Art. 53 and from Art. 59 to 60 of the Constitution of the Argentine Nation of 1 May 1853 (as amended). A model of *juicio político* was adopted in which both chambers of the Congress are involved (Bożyk 2016: p. 47). In line with Art. 53, only the house of deputies has the power to impeach the president and other members of the executive. The charges may refer to cases pertaining to responsibility for misconduct or crimes committed during the fulfilment of their duties or common crimes. The decision about impeachment has to be made only after careful description of the alleged acts and determination where they took place. It is necessary to secure two-thirds of votes of deputies present during the voting.

After presentation of the bill of indictment, the further part of the impeachment procedure takes place in the higher chamber of the Congress. Prior to examining the case, the senators are required to make a relevant oath. When the *juicio político* is initiated against the president, the senate is headed by the chief justice of the Supreme Court. Pursuant to Art. 59 *in fine* of the constitution, declaration of guilt requires concurrence of two-thirds of the members present during voting. When the quota was met, the president is ousted from office. The Senate may also adopt - with respect to the head of the executive - a ban on holding public functions (quote from the literal meaning of Art. 59 of the constitution: “positions related to honour, trust or remuneration from public funds”). *Juicio político* does not exclude potential criminal liability of the former president. Criminal proceedings before a common court may be initiated against him/ her (Constitution 1853, Art. 60).

### Paraguay

In the legal system of Paraguay, the *juicio político* has a long history. It was foreseen in the constitution of 1870, even though after 1940 its application in reference to the president and governmental ministers was excluded (Balbuena Pérez 2013: p. 269-371). The present-day constitution (Constitution of the Republic of Paraguay, 1992) restores impeachment also with respect to the head of the executive branch.

The procedure of *juicio político* is regulated in Art. 225 of the constitution and is similar to solutions adopted in the neighbouring Argentina. Here, exclusively the lower chamber of the parliament has the right to formulate the charges. The proceedings start with a motion of a member of the House of Deputies, containing a description of

charges against the president. The accusations may both refer to the incorrect fulfilment of constitutional obligations, as well as crimes committed in relation to the holding of office, as well as other common-type crimes. The decision of the lower chamber of the Congress about the indictment should be carried out by means of a debate ended with voting. In order to move to the judgement stage, it is necessary to have the majority of two-thirds of the members of the chamber. The absence of the required majority causes discontinuation of the proceedings which cannot be resumed without new evidence and charges.

The second part of the *juicio politico* procedure takes place in the Senate. The decision about guilt and removal from office is made by the higher chamber of the Congress via a qualified majority of two-thirds of the statutory number of members. In spite of the fact that the subject matter of the procedure may also include behaviour constituting forbidden acts, the Senate may only adjudge a penalty resulting in removal from office. The Senate cannot apply penalties foreseen in the criminal law. Nevertheless, as clearly specified in Art. 225 *in fine* of the constitution, if the charge pertained to committing a crime, it would subsequently be judged before a common court.

### Honduras

Impeachment was introduced to the legal order of Honduras in 2013. The basic principles were incorporated by means of amendments of 23 January (Decree 2012/231). They were elaborated in special act No. 51-2013 of 5 April 2013 (special act 2013/51). Pursuant to Art. 205.15 of the constitution, the body authorised to carry out the *juicio politico* procedure is exclusively the Congress. Due to the fact that the parliament of Honduras is a single-chamber body, both the stage of the preparatory procedure and the court stage are held before it.

In line with Art. 234 of the constitution, the basis for initiating impeachment against the president may be: commencement of activities contrary to the constitution or the national interest, as well as neglect, inability or lack of competence when holding office. These terms are defined in act No. 51-2013.

Both the initiation of impeachment and indictment require a qualified majority, i.e. votes of three-fourths of the general number of Congress members. The decision is not subject to further examination and does not require approval by another body. The proceedings are divided into two stages: a) investigation and defence and b) debate and voting. In line with Art. 9 *in fine* of the above-quoted act, the first stage cannot

last longer than thirty calendar days. The second has to end within five days from the date of presentation, at the plenum, of a report prepared by a special committee. At this stage, the accused president has a right to respond to the charges set against him. As indicated in Art. 14 of the act, the response of the head of state, containing legal arguments, cannot exceed four hours. The president's absence does not block the procedure. Such detailed regulations are probably aimed at avoiding a potential deadlock of the procedure.

Subsequent steps in the impeachment procedure are described in Art. 10 of the act in question. Formally, *juicio político* is initiated by an accusation filed by an entity that is vested with a legislative initiative. A written complaint is filed to the secretary of the congress, who is required to present it at the forum, not later than within five calendar days from the date of receiving it. If the complaint is formulated as a civic initiative, the period of time begins to run after verification, by the National Register, of the finger prints of persons filing the complaint. After presentation of the complaint in the parliament, one debate is held with respect to its permissibility, and afterwards it is subjected to voting. Subsequently, a special committee is appointed, whose task is to carry out the investigation. It is composed of nine members. At this stage, in order to avoid obstruction in the investigation, a decision may be made about suspending the president in performance of his/ her duties. The investigation cannot exceed 30 calendar days, whereas in the first forty-eight hours, it is necessary to hear the accused and enable him to organise defence, including presentation of potential evidence. Finalising the preparatory procedure, the committee presents a final opinion, which should contain recommendations addressed to the Congress. These recommendations should be the subject matter of a debate, carried out not later than within five days from the presentation of the opinion. A complaint rejected by the parliament is archived and, without new facts and evidence, cannot form the basis of renewed procedure. Accomplishing a qualified majority of three-fourths of votes in favour of the complaint causes automatic removal of the president from office. At the same time, this does not preclude further civil, criminal or administrative liability.

### **Recent Latin-American experience**

Recent years have shown that the analysed procedure is still frequently used in the countries of Latin America. In June 2012, the congress of Paraguay, in an express mode (in less than two days) impeached the contemporary president, Fernando Lugo.

On 21 June, the chamber of deputies initiated a procedure by adopting the bill of indictment. It contained a description of five deeds, including charges pertaining to the so-called *Curuguata massacre*. On the same day, the bill of indictment was read in the senate. On the next day, on 22 June at noon, a time was designated for presentation of the arguments of the defence. After only three hours, evidence was revealed and voice was given to the parties. In the early afternoon, at 4.30 p.m., the senate started voting and as a result of it, Fernando Lugo was deemed guilty and removed from office (Lopez 2012).

The most recent impeachment took place in 2017 in Brazil and was performed in reference to President Dilma Rousseff, who was a member of the Labour Party. The procedure was initiated on 2 December 2015 when an application for initiation of the procedure was received by the Chamber of Deputies. Subsequently, a special committee was set up to investigate the issue. Dilma Rousseff was accused of a constitutional tort consisting in manipulation of financial data. This affected the result of elections which gave her the second term of office. In the background, there were also charges pertaining to the corruption in Petrobras. On 17 April 2016, the lower chamber of parliament voted in favour of impeaching the head of state. Less than a month later, after a tumultuous debate, the Brazilian Senate, in a ratio of fifty-five votes in favour to twenty-two votes against, voted to suspend the president in holding her functions for three months. The procedure ended on 31 August 2016 with removal of Dilma Rousseff from office. In the last voting, sixty-one senators were in favour of the impeachment. Twenty were against it. The stepping-down president, referring to the entire situation, called it a coup d'état.

A recent example from Honduras is also worth paying attention to. In 2009, a political dispute between the president and the opposition was solved by a coup d'état in this small Central American republic. The contemporary constitution did not foresee the *juicio político* procedure. On 28 June 2009, in the culminating moment of the political dispute, President Manuel Zelaya was arrested by the military and transported to the capital of Costa Rica, San José. The president's duties were taken over by the chairman of the Congress, Roberto Micheletti. The coup d'état was condemned by the international community. These events have probably contributed to the fact that four years later, in 2013, impeachment was introduced to the constitution of Honduras.

## Conclusions

The institution of *juicio político* is an example of implementation of the principle of liability of the executive power in the presidential system. In the region covered by the

study, it does not have a uniform nature and due to this, it is hard to speak about a single Latin American model. Differences occur both on the level of premises for liability (only crimes, or crimes and political premises), accusing entities (lower chamber of the parliament or single-chamber parliament) or judging (single-chamber parliament, higher chamber, the senate or the supreme court), as well as in the procedure as such, including the possibility of exercising temporary measures, or in the final “judgement” (exclusively removal from the office, or removal from the office with a ban on holding public functions). The solutions adopted in Honduras are a rarity: impeachment may be initiated by any complaint which constitutes a social initiative (a specific *vox populi*). In some countries, *juicio político* is regulated in a very general manner, in others in a detailed way (e.g. in Honduras, where even the time which the accused president has to respond to the charges levelled against him is specified).

The above analysis of the institution of *juicio político* allows for drawing the following conclusions:

- 1) It is assumed that impeachment is an example of constitutional liability of the head of state. By assumption, in a presidential system the head of the executive does not bear political liability, understood as the necessity of securing a vote of confidence from the parliament. He is elected in direct elections, thus we are not dealing with a deficit of democratic mandate, as it happens in the case of the prime minister in the parliamentary and cabinet system. The performed analysis shows that the basis for charges in the impeachment procedure may always be the accusation of violation of the law (e.g. committing a crime, behaviour contrary with the constitution). Yet next to legal premises, there may also be political premises. This results in the fact that in the procedure of *juicio político*, we are not exclusively dealing with legal evaluation of the president’s act or behaviour. It is impossible to rule out performance of a subjective political evaluation of the mode of exercising power by the head of the executive in the course of the procedure. Thus, the institution acquires the nature of a political assessment (as suggested by its very name). Therefore, a more proper solution is to speak about a mixed nature (political and legal) of Latin American impeachment.
- 2) *Juicio político* is not a new institution; however, it had its renaissance in the 1990s. This coincided with commencement of democratisation processes in Latin America. The end of internal conflicts, collapse of authoritarian regimes,

liberalisation of the political scene, relegation from power of the military, drawing attention to the necessity of protecting human rights and ensuing constitutional changes resulted in the fact that forceful solutions were gradually abandoned as the basic tool for solving political conflicts. Impeachment has turned out to be a convenient alternative: it offered a possibility of accomplishing the same effect (removing the political opponent from power) yet on a legal footing. What is more, it was an instrument available immediately, known in the majority of Latin American constitutions. In result, impeachment allowed for marginalisation of forceful methods. This is confirmed by the most recent example from Honduras, where four years after the last coup d'état (which took place in 2009), the procedure of impeachment was implemented to the legal order. The future will show whether its introduction will allow for avoiding subsequent overthrows.

- 3) In Latin America, impeachment is used much more frequently than on the Old Continent (for example, in Great Britain the practice disappeared in the 19<sup>th</sup> century) or north of the Rio Grande. In the American model, impeachment was conceived as a mechanism of checks and balances and constituted the *ultima ratio*. History is familiar with only two cases of the head of state being charged by the Congress and in both cases ineffectively. In solidified European democracies, a political evaluation is performed, in principle, by the sovereign and its emanation is the result of subsequent elections. On the other hand, when we look at states with a less stable political scene, and frequently an authoritarian past, the frequency of reaching for impeachment grows. A good example is provided by some states of the former eastern bloc. For example, Romanian parliament voted on the dismissal of President Traian Basescu twice. The president was not removed from office only on account of the procedural requirement of acceptance of the impeachment decision via a referendum. This induces a conclusion that the less stable the political scene, coupled with authoritarian past, the more frequently is impeachment used to solve a political crisis and to change the power. Like in a vicious circle, this aggravates the political instability.
- 4) The above results in the fact that in the reality of Latin America, *juicio político* loses the nature of a strictly-control institution and may also be perceived as an instrument used by the legislative power to carry out a coup d'état. Such danger

is pictured by the impeachment carried out in 2012 against the contemporary president of Paraguay, Fernando Lugo. Its course, fast speed, lack of procedural guarantees for the “impeached” president, including the right to defence, convince us that it was all about a quick takeover of power and relegation of a competitor from the political scene. *Juicio político* allowed for accomplishing this aim in white gloves, without reaching for forceful measures. Thence it was called the parliamentary coup d'état. In the author's opinion, such a risk forms a part of the mechanism of impeachment, whereas the Latin American reality (namely the authoritarian past, political instability and lack of consolidation of democratic mechanisms) is conducive to a conclusion that it is impossible to rule out such use of this institution also in the future. Certain similarities between the analysed region and the states of the former eastern bloc induce a conclusion that such hypothesis may also be confirmed in countries located in this part of Europe.

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