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FEATURES OF THE PRINCIPLE OF SEPARATION OF POWERS IN THE CONTEXT OF THE LEGAL LIMITATION OF STATE POWER

This article addresses the most important theoretical and practical issues of modern jurisprudence, the manifestation of the principle of separation of powers in the context of the legal limitation of state power. The article reveals the essence and features of the manifestation of the concept of "legal restriction", the principle of separation of powers, as well as the system of checks and balances in modern legal literature. The purpose of the study of the topic is to present various approaches of well–known jurists and philosophers regarding the principle of separation of powers, the peculiarities of the manifestation of this principle in the presidential, semi–presidential and parliamentary republics, as well as to present the author's analysis of them. Particular attention was paid to the issues of delegating the right of legislative initiative and the use of the veto by the President in the context of the principle of separation of powers.

The results of the study will provide an opportunity to gain a more detailed understanding of the legislative development of this principle of government in different states and forms of government, as a result of which we will be able to improve the legislation of the Republic of Armenia.

Keywords: separation of powers, checks and balances system, veto, limiting state power, government, president, parliament, delegation, parliamentary form of government.

Introduction

The principle of separation of powers is the fundamental basis of the organizational activities of a modern democratic, legal, and social state. Moreover, this principle is also one of the main types of legal limitations (restrictions) of State power and helps to eliminate the abuse of power by any branch of government or individual officials (Kazanchian & Zaqaryan, 2023).

It should be noted, that in modern legal literature, the concept of "legal limitation" is considered as a legal deterrence of an illegal act, creating conditions for satisfying the interests of the counter–subject and public interests in protection. Moreover, these are the boundaries established by law within which the subjects of legal relations must act (Mal'ko, 2003, p.85). At the same time, the principle of separation of powers cannot exist without a system of "checks and balances", which provides each branch of government with individual powers to check the other branches and prevent any one branch from becoming too powerful (Wex legal dictionary and encyclopedia, 2023, August 24).

It should be noted, that the problem of separation of powers in the context of the legal limitation of state power remains poorly studied in modern domestic legal literature. Consequently, in this scientific article, based on a comprehensive study of the principle of separation of powers, the system of checks and balances, the features of their implementation in the republican form of government will be identified, and the author's analysis of these phenomena will also be presented.

Methods

Based on the features of the study and the number of problems analyzed in it, both general and specific methods such as comparative legal, structural analytical, historical, formal legal, and other methods were applied in the current research.

Different approaches to the concept of separation of powers

It should be noted that the term "separation of powers" was coined by the 18th–century French jurist, social, and political philosopher Ch. L. Montesquieu in his treatise 'Spirit of the Laws.' This work is considered one of the great contributions to the history of jurisprudence and became the basis for the Declaration of the Rights of Man and of the Citizen and the Constitution of the United States of America.

The development of the theory of separation of powers is also associated with the name of J. Locke, who revealed the essence of this concept in his work "Two Treatises of Government" Locke opposed tyranny and proposed dividing power into legislative (represented by Parliament), executive (headed by the monarch), and federal (carrying out foreign policy functions). The courts were included in the executive branch. Subsequently, the idea of the separation of powers was further developed in the works of J.–J. Rousseau, A. Hamilton, and J. Madison.

The conducted research shows that the principle of separation of powers was first reflected in the Constitutions of the states of Virginia (1776) and Massachusetts (1780). Article 3 of the Constitution of Virginia established: 'The legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time; provided, however, administrative agencies may be created by the General Assembly with such authority and duties as the General Assembly may prescribe' (The Constitution of Virginia).

This principle was later reflected in the US Constitution (1787), which established the principle of separation of powers, clearly dividing the powers of the federal state into three branches: executive (president), legislative (Congress), and judicial (supreme court, federal courts, state courts). It also included a strict system of checks and balances (Miryayeva, 2021). If one branch of government exceeds its authority over others or acts against the national interest, the other branches can block its actions.

The Founding Fathers of the US Constitution considered that the system of checks and balances is a necessary mechanism to ensure the civil and political rights and liberties of the person in accordance with the US Constitution. Thus, J. Madison believed that the main purpose of applying the principle of separation of powers is to prevent the emergence of factions or groups of people that oppose the interests of society (Partlett, 2023)."

In our opinion, the constitutional entrenchment of the principle of separation of powers, by clarifying the limits of the rights of each branch of government, as well as by determining the means of checks and balances, becomes one of the guarantees that the constitution will function clearly.

The modern approach to the principle of separation of powers also includes the need for separation of powers between central and local authorities and governing bodies. The legal and political justification of the principle of separation of powers is that the powers of the government should be distributed and balanced among different state bodies in such a way as to exclude the concentration of all powers or their dominant part in the hands of one state body or official and thereby prevent arbitrariness and abuse of power (Bati & Varghese, 2023; Lawrence, 2021). It is clear, that the independent branches of government can restrain, balance and control each other, prohibiting the violation of the Constitution and laws. In the legal literature, this mechanism is known as a **system of checks and balances**. In this case, we are not talking about the separation of absolutely independent authorities, but about the division of a single state power into three independent branches of government: legislative, executive, and judicial.

Nevertheless, discussing the delimitation of powers in the principle of separation of powers, it should be noted, that each body of state power must have its

own system of powers because duplication of functions can lead to legal contradictions (legal conflicts) and negative consequences. Thus, the need to use the principle of separation of powers in a modern democratic state is beyond doubt, but the dispute over the **allocation of the number of branches of government is still ongoing.**

In European and Latin American countries, there were attempts to expand the traditional branches of power, adding to the list such branches of power as constituent power, control power, power of the electoral party, technical branch of power, press power, and ecclesiastical power. It is obvious, that the set of public authority functions necessary for the protection of freedom is exhausted by the adoption of laws and their implementation.

Other branches of power are either not independent, being part of one of the three branches of the classical scheme of separation of powers, or they do not implement the powers of state power. For instance, the expression "fourth estate" is used to emphasize the independence and power of mass media, but in reality, media is not related to the existence of any powers of public authority. This is only a metaphorical expression that emphasizes the influence of the media, as an element of civil society, on the actions of each of the three branches of government.

Analysis of implementation of separation of powers

In the modern theory of state and law, there are numerous approaches to the concept of "the principle of separation of powers", within which several legal scholars, deviating from the classical approach to the separation of powers, noted that in each state, it is possible to allocate as many branches of government as it is possible to create public authorities. According to the authors, the basis for the separation of new branches of government is the concept of a branch of state power, which is characterized as the implementation of state power through any bodies and their corresponding procedures, which means that a specific body of the state will have the authority to exercise a certain type of power (supervisory, prosecutorial, etc.) (Baykin, 2010; Pfersmann, 2004; Stanskikh, 2005).

Analyzing various non-classical approaches to the separation of powers, it should be noted that such approaches proceed from the need to create an effective system of public administration in socio-economic, political, legal and historical conditions, taking into account national characteristics, the level of legal awareness in society, the problem of improving relations between government officials and citizens, and other factors. ***However, in our opinion, in any case, one of the goals of the separation of powers should certainly be the limitation of power, which contributes to the prevention of abuse of power.***

The conducted research indicates, that in the modern legal literature, the focus of legal scholars is on the issue of ***the adequacy of the branches of government or the supremacy of one of them***, around which there are various approaches.

It is noteworthy, that J. Laws, V.E. Chirkin, based on the ideas expressed by The Founding Fathers of the US Constitution, emphasize that the legislative power

should have supremacy over other powers because the body that implements it Parliament is mainly formed through the direct expression of the will of the country's population (elections) and thus acts as a representative body of the people. Moreover, according to legal scholars, this branch of government has the exclusive right of legislative initiative, and it creates the legal framework within which only, other branches of government can act. (Laws, 2021, p. 20; Chirkin, 2020). Despite the fact, that the above-mentioned authors, at first glance, represent a model of a state with a parliamentary form of government, we consider this approach too narrow. In our opinion, **the authors do not consider the principle of delegating the right of legislative initiative.**

In this case, not only the parliament can have the right of legislative initiative, but also other branches of government: the executive, in some cases also the judiciary, as well as the people. Thus, the Article 109 of the Constitution of the Republic of Armenia establishes: "A Deputy, a faction of the National Assembly and the Government shall have the right to legislative initiative" (The Constitution of the Republic of Armenia).

It is known, that as a result of the constitutional reforms in the Republic of Armenian, the right of citizens to propose a draft law to the National Assembly as a civil initiative was established in the 6th part of the same article. In our opinion, this is one of the democratic achievements in our country not only in the context of individual rights and freedoms but also in the legal restriction of power.

According to T.V. Milusheva, the executive power should have priority over other branches of government, because in certain cases it can implement both law-making and law-enforcement activities. In addition, to jurist underlines, that the executive branch of the government is also endowed with the flexibility to respond quickly to problems and solve them, which makes it possible to put this branch above the legislative and judicial authorities. (Milusheva, 2011, p.225).

We *partially agree* with the current opinion of view *for the several reasons.*

First of all, in many democratic states, the executive power is endowed not only with the right of legislative initiative but also with certain advantages within the framework of the initiative, as, for example, in the Republic of Armenia. According to Article 109 of the Constitution of the Republic of Armenia, a draft law deemed to be urgent upon the decision of the Government shall be either adopted or rejected within a period of two months. Moreover, draft laws for which the Government has the exclusive right to the legislative initiative may be put to vote only with the corrections acceptable to the Government. (The Constitution of the Republic of Armenia). Nevertheless, in our opinion, the **predominance of executive power over other branches of government** will lead to the establishment of a system in which power is concentrated in the hands of the Prime Minister and the executive branch. Obviously, this will lead to the creation of a dictatorship. Moreover, considering the presidential and semi-presidential republics, we can confirm the same, since the special position of the head of state leads to excessive centralization of power and the creation of a super-presidential system.

At the same time, some scientists note that the Russian model of state power is comparable to the form of organization of the current government in Latin American and African states (Peru, Argentina, Central African Republic, Niger), where the principle of separation of powers is constitutionally proclaimed, but the president and the government occupy a privileged position, which leads to a weakening of parliamentary control (Melekhin, 2007, pp. 163–164; Milusheva, 2011, pp. 226–227).

As for the flexibility of the executive branch and the ability to respond promptly to existing problems, it is indisputable and is at the core of the idea of the executive power's activity from the very beginning.

Based on the above, it can be concluded, that ensuring the interests of individuals and the state can be achieved not by the isolated activities of the branches of government, or by the fact of influencing each other, the possession of dominant power, but only by the precise exercise of the powers of each branch of government and mutual cooperation.

We agree with the opinion of M.N. Marchenko, that it is necessary to introduce a mechanism of separation of powers, within which the formation of a political and legal system **will represent the unity of the three branches of government, but not a merger,** with clear boundaries between the functions and powers of these branches of government, and in this case the activity of the entire political system will be based on a mechanism of checks and balances (Marchenko, 2015, pp. 220–221).

Observing the peculiarities of the manifestation of the relationship between the principle of separation of powers and the limitation of state power, we consider it necessary to refer to the institution of the head of the state, the president, and the peculiarities of the latter's interaction with other branches of government in various forms of state administration.

It is known, that the president is the head of a democratic legal, social state. In presidential or semi–presidential republics, the president is endowed with the right to present draft laws, as well as to exercise a veto over laws. It should be noted, that in professional dictionaries and legal literature, veto (Latin meaning forbid) is characterized as the authority of one branch of government or department to temporarily or finally prohibit the adoption or application of a legal act adopted by another branch or department (Black's Law Dictionary, 2004, p. 4840; Fomichev, Komarov, & Komarov, 2021).

At the same time, in the legal literature, there is a difference between the **absolute and suspensive veto** power of the head of State.

In the case of an absolute (final) veto, the head of state has the right to finally reject the draft law (bill) adopted by the parliament. In the case of a **suspension (relative) veto**, the refusal of the head of the state to ratify the bill only stops the process of its entry into force, because in this case, the parliament can overridethevetoby passing the original bill by an absolute majority. Moreover, **a suspensive veto also includes the** power of the president to return the bill to

the parliament with or without consideration.

The concept of **"pocket" veto**, which has appeared in legal theory and practice in recent years, originates from the US constitutional practice. The essence of this concept is that the president must approve or reject a bill submitted by parliament within a certain period of time. If the bill was submitted to the president before the end of this session of the parliament, the president may keep the bill until the end of the session (without making any decision), after which it will be considered rejected. This practice is often used by US presidents when they do not want to have an obvious conflict with any of the chambers of Congress. Thus, the US President receives the bill 10 days before the end of the session of Congress and without making any decision considers the bill rejected after 10 days.

It is noteworthy that the President of India is endowed with three options of the right of veto, enshrined in Article 111 of the Constitution of India. Unlike the US President, who must either sign the bill or return it to Congress with a statement of his objections within 10 days (excluding Sundays), the President of India does not have such a time limit. The President of India cannot exercise his right of **suspensive veto** in relation to Money Bills, which are concerned with financial matters like taxation, public expenditure, etc. He/she can only right to ratify or reject them, using the absolute right of veto (The Constitution of India).

The limitation of state power through the principle of checks and balances is manifested in a unique way in a republic with a form **of parliamentary government**. Despite the fact that the presidential and semi-presidential forms of government continue to predominate in the world, however, in the last decade, the growth of states that have switched to the parliamentary form of government has been observed. Famous parliamentary republics are Italy, Germany, Austria, Switzerland, Ireland, Iceland, Greece, India, Israel, Lebanon, Lithuania, Latvia, Estonia, Georgia, Armenia and several other countries.

It should be noted, **that a republic with a parliamentary form of government** differs from **republics with a presidential and semi-presidential form of government**. First of all, it is the parliament, that forms the government, which is fully accountable to the parliament. Moreover, the president of the country is elected by the parliament, or by a special collegium established on the basis of the parliament. According to part 3 of the Article 89 of the Constitution of RA, the National Assembly shall be elected through a proportional electoral system and the Electoral Code shall guarantee the formation of a stable parliamentary majority.Moreover, Article 149 of the Constitution of RA emphasizes, that immediately after the commencement of the term of powers of the newly-elected National Assembly, the President of the Republic shall appoint as Prime Minister the candidate nominated by the parliamentary majority formed under the procedure prescribed by Article 89 of the Constitution (Constitution of the Republic of Armenia).

As for the veto right of the president, there are also certain subtleties in the

case of a parliamentary republic. In our opinion, the head of state in a parliamentary republic is officially endowed with significant powers, but in practice has almost no influence on the exercise of state power. Any action by the president, including the dissolution of parliament or the use of a veto, is carried out with the consent of the government in some countries. In some cases, normative acts presented by the President gain legal force only after they are ratified by the relevant minister, who is responsible for them. For instance, the Article 129 of the Constitution of RA states: "The President of the Republic shall sign and promulgate a law adopted by the National Assembly within a period of twenty-one days, or shall apply within the same time period to the Constitutional Court for the purpose of determining the compliance of the law with the Constitution. In case the Constitutional Court decides that the law complies with the Constitution, the President of the Republic shall sign and promulgate the law within a period of five days. In case the President of the Republic fails to fulfill the requirements prescribed by this Article, the Chairperson of the National Assembly shall sign and promulgate the law within a period of five days" (Constitution of the Republic of Armenia).

The conducted research shows that the most flexible form of government is a mixed (semi-presidential) republic, which is an average option between a presidential and a parliamentary republic. Traditionally, it is considered that the main attribute of a mixed republic is, on the one hand, the real possibility of the parliament expressing no confidence in the government, and on the other hand, the right of the president to dissolve parliament. Despite the presence of this basic criterion, the semi-presidential republic does not have a specific list of features and a single format, but they are able to mitigate the institutional shortcomings of the classical republics – presidential and parliamentary.

Considering the peculiarities of the **activity of the legislative body** in the context of the principle of separation of powers, and the legal limitation of state power, it can be stated that the legislative initiative should be based on the adoption of laws that meet the interests of society and the state, based on the principles of humanism and justice.

Bezrukov A.V. rightly pointed out, that the principle of separation of powers in a modern democratic rule-of-law state clarifies the purpose of the law, which is the establishment of general rules of conduct and the implementation of which is often entrusted to the branches of government of the states (Bezrukov, 2018, p. 60).

Meanwhile, the constitutional and legal practices of developed countries in the recent period indicate a tendency to strengthen the law-making activity of **the executive power**, which is related to the delegation of certain functions by the parliament (legislative power) to the executive power. Moreover, in modern democratic, legal states, the culture of the distribution of law-making activity between the legislative and executive authorities has mainly been formed, according to which the first should solve general issues, and the second should specify the provisions of the by-law. However, the legislative power is not satisfied

with this, and in many countries, the Parliament has the right to authorize the executive branch to carry out legislative activities for a certain period of time and on specific issues.

It should be noted that Parliament's right **to delegate** is generally enshrined in the Constitution rather than in current legislation. As we have already noted, the Article 109 of the Constitution of RA, stipulates that along with a faction of the National Assembly, a deputy, the Government also has the right to legislative initiative (Constitution of the Republic of Armenia)

The experience of Canada is noteworthy, where the legislature also delegates part of the legislative initiative to the executive branch. At the same time, since 1971, there has been a special Committee (Standing Joint Committee for the Scrutiny of Regulations) created by members of the two chambers of the Parliament. The main function of this committee is to monitor the legal validity of bills and legal acts adopted by the executive body, to check their compliance with the Constitution and laws (Zakonodatel'nyy protsess v zarubezhnykh stranakh: ucheb. posobiye[Legislative process in foreign countries: textbook], 2012).

Considering the role of the judiciary in the system of separation of powers, it should be noted, that, there is an opinion that when federal courts adjudicate separation of powers cases, they are not simple arbitrators of the separation of powers. Thus, by resolving the case, the federal courts become participants in the separation of powers (Ahdout, 2023). Moreover, the activity of **the Constitutional Court** can also be considered as a deterrent, since this court has the right to block all unconstitutional acts. The legislator in his actions is limited to other means established in the Constitution and in other normative acts.

The main activity of the Constitutional Court is reduced to constitutional control – checking for compliance with the Constitution of various acts at the federal and regional levels. He also determines the competence of the authorities, participates in the impeachment of the President, and the referendum, interprets the Constitution and some countries (Russia, Paraguay, Ecuador, Brazil, Venezuela, Bolivia, etc.) have the right of legislative initiative. (Zmievsky, 2021)

Conclusion

Based on the conducted research, we have come to the following conclusions:

The implementation of the principle of separation of powers and the checks and balances system does not violate the integrity and unity of state power.

The principle of separation of powers into legislative, executive and judicial, as one of the elements of the system of limiting state power, means that each of the branches acts independently, without interfering with the powers of the other.

The implementation of the principle of separation of powers is possible and effective only when accompanied by a system of "checks and balances". It prevents attempts to usurp the powers of one government by another and ensures the normal functioning of State bodies. Checks and balances system allows each branch of a government to amend, override, or veto acts of another branch in

order to prevent any one branch of a government from exerting too much power or power beyond its authority.

The legal limitation of state power of the parliament is manifested by the prohibition of the adoption of discriminatory laws against the legislative body that violates the rights of individuals, groups, or minorities in the given state. Moreover, the legislative power is also limited by a highly coordinated legislative process, with clear stages of adoption of the draft law, which is combined with the use of legal techniques.

Conducted research shows, that the restriction of state power through the mechanism of checks and balances in a parliamentary republic is more pronounced, since, in fact, the parliament, on the one hand, restrains the government and is in the hands of the president.

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Աշոտ Զաքարյան
Երևանի Ավան վարչական շրջանի ղեկավարի աշխատակազմի իրավաբանական բաժնի պետ,
ՀՀ ԳԱԱ Փիլիսոփայության,սոցիոլոգիայի և իրավունքի ինստիտուտի հայցորդ
Էլ. հասցե՝ ashot.zaqaryan.55555@inbox.ru

ԻՇԽԱՈՒԹՅԱՆ ՏԱՐԱՆՋԱՏՄԱՆ ՍԿԶԲՈՒՆՔԻ ԱՌԱՆՁՆԱՀԱՏԿՈՒԹՅՈՒՆՆԵՐԸ ՊԵՏԱԿԱՆ ԻՇԽԱՆՈՒԹՅԱՆ ԻՐԱՎԱԿԱՆ ՍԱՀՄԱՆԱՓԱԿՄԱՆ ՀԱՄԱՏԵՔՍՏՈՒՄ

Սույն հոդվածը անդրադառնում է արդի իրավագիտության կարևորագույն տեսական և գործնական հիմնախնդիրներին՝ իշխանությունների տարանջատման սկզբունքի դրսևորմանը պետական իշխանության իրավական սահմանափակման համատեքստում: Հոդվածում բացահայտվում է արդի իրավաբանական գրականությունում առկա «իրավական սահմանափակում» հայեցակարգի, իշխանությունների բաժանման սկզբունքի, ինչպես նաև զսպումների և հակակշիռների համակարգի էությունն ու դրսևորման առանձնահատկությունները:

Թեմայի ուսումնասիրության նպատակն է՝ հիմք ընդունելով կատարված հետազոտություն առանձնահատկությունները և ստացված արդյունքները, ներկայացնել իշխանությունների տարանջատման սկզբունքի վերաբերյալ հայտնի իրավագետների, փիլիսոփաների տարաբնույթ մոտեցումները, տվյալ սկզբունքի դրսևորման առանձնահատկությունները նախագահական, կիսանախագահական և խորհրդարանական հանրապետություններում, ինչպես նաև ներկայացնել դրանց վերաբերյալ հեղինակային վերլուծություններ: Առանձնակի ուշադրության են արժանացնել իշխանությունների տարանջատման սկզբունքի համատեքստում օրենսդրական նախաձեռնության իրավունքի պատվիրակման և նախագահի կողմից վետոյի կիրառման հիմնախնդիրները:

Ուսումնասիրության արդյունքները հնարավորություն կընձեռնեն առավել մանրամասն պատկերացում կազմել տարբեր պետություններում և պետական կառավարման ձևերում իշխանությունների տարանջատման սկզբունքի օրենսդրական ամրագման վերաբերյալ, ինչի արդյունքում կկարողանանք կատարելագործել ՀՀ օրենսդրությունը:

Հիմնաբառեր. իշխանությունների տարանջատում,զսպումների և հակակշիռների համակարգ, վետո, պետական իշխանության սահմանափակում, կառավարություն, նախագահ, խորհրդարան, պատվիրակում, կառավարման խորհրդարանական ձև:

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ОСОБЕННОСТИ ПРИНЦИПА РАЗДЕЛЕНИЯ ВЛАСТЕЙ В КОНТЕКСТЕ ПРАВОВОГО ОГРАНИЧЕНИЯ ГОСУДАРСТВЕННОЙ ВЛАСТИ

Статья затрагивает ключевые теоретические и практические вопросы современной юриспруденции, фокусируясь на проявлении принципа разделения властей в контексте правового ограничения государственной власти.

В статье раскрывается сущность и особенности проявления концепции «правовое ограничение», принципа разделения властей, а также системы сдержек и противовесов, существующих в современной юридической литературе. Цель исследования заключается в представлении различных точек зрения известных правоведов и философов относительно принципа разделения властей, особенностей его проявления в президентских, полупрезидентских и парламентских республиках, а также в представлении авторского анализа относительно данных явлений. Особое внимание было уделено проблемам делегирования права законодательной инициативы и применения права вето президентом в контексте принципа разделения властей.

Результаты исследования предоставят возможность получить более детальное представление о законодательном закреплении принципа разделения властей в разных государствах и формах государственного правления. Это позволит усовершенствовать законодательство Республики Армения.

Ключевые слова: разделение властей, система сдержек и противовесов, вето, ограничение государственной власти, правительство, президент, парламент, делегирование, парламентская форма правления.

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