

THE CONSTITUTIONAL BASIS FOR THE SEPARATION OF POWERS IN UKRAINE

Anastasia REPETSKA ^{1,2}, Vira BURDYAK ¹,

¹Chernivtsi Yurii Fedkovych National University (Ukraine)

²Stefan cel Mare University of Suceava (Romania)

E-mail: nastasia_queen94@ukr.net; vira.burdjak@gmail.com

Abstract: *The article is aimed at analysing the constitutional basis of the separation of state powers in Ukraine. One of the guiding principles of the constitutional system, the separation of powers (legislative, executive and judicial), is enshrined in art. 6 of the Constitution of Ukraine. By strengthening the principle of separation of state powers according to constitutional norms, it is possible to balance the whole system of state bodies and delimit their competencies as clearly as possible. This means, firstly, that certain independence of each authority is secured; secondly, their competencies are clearly divided; and, thirdly, every state body can make its opinion known, by opposing the decision of another body and at the same time controlling its actions. Having investigated the constitutional basis for the separation of powers, the authors conclude that the Constitution of Ukraine contains appropriate mechanisms for interaction between the legislative, executive and judicial branches of power, but these require a more detailed application and implementation in practice.*

Keywords: *Constitution of Ukraine, state powers, branch of power, legislative, executive, system of "checks and balances".*

Rezumat: *Bazele constituționale pentru separarea puterilor în Ucraina. Articolul are ca scop analiza bazelor constituționale pentru separarea puterilor în stat în Ucraina. Separația puterilor (legislativă, executivă și judecătorească), ca unul dintre principiile fundamentale ale sistemului constituțional, este consacrată de art. 6 din Constituția Ucrainei. Potrivit normelor constituționale, consolidarea principiului separației puterilor în stat permite echilibrarea întregului sistem al organismelor statului și delimitarea, cât se poate de clară, a competențelor acestora. De aici rezultă, în primul rând, asigurarea unei anumite independențe pentru fiecare autoritate în parte; în al doilea rând, competențele sunt clar distribuite, iar în al treilea rând, fiecare organ de stat are posibilitatea de a-și face cunoscută opinia, contrând decizia unui alt organism și controlând, în același timp acțiunile sale. În urma cercetării fundamentelor constituționale ale separării puterilor, autorii ajung la concluzia potrivit*

căreia Constituția Ucrainei conține mecanisme adecvate de interacțiune între ramurile legislativă-executivă-judecătorească ale puterii, impunându-se, totuși, o mai detaliată aplicare și implementare.

INTRODUCTION

In Ukraine, a unified system of state authorities is based on the so-called “principle of separation of powers”. In political and legal practice, there is no real separation of powers, but structural isolation and functional specialization of individual parts of the state mechanism. State power is integral, sovereign and indivisible. That is, it is not about the separation of powers, but the functions of the exercise of this power. Moreover, not only about the separation but also about the interaction of these functions. Therefore, the principle of separation of functions of power should be interpreted as recognition of the fact that the state power is implemented through certain types of state bodies.

By consolidating the principle of separation of state powers according to the constitutional norms it is possible to balance the whole system of state bodies and to delimit their competences as clearly as possible. This means, firstly, that certain independence of each authority is secured; secondly, their competence is clearly divided; and, thirdly, everybody has the opportunity to oppose the decision of another body, while controlling its actions.

Different forms of consolidation of this principle are used in constitutional practice. In the vast majority of developed countries, including Ukraine, it is expressed through the structural and functional determination of each of the higher authorities of the state: the head of state, the parliament, the government and the higher courts.

PROBLEM STATEMENT

Among the most important problems facing political science at present, the issue of the constitutional and legal regulation of relations between the supreme bodies of state power, namely the legislative, executive and judicial branches of power, is particularly topical.

The importance of the role of this problem is that it actually accumulates two key aspects of the development of the national state and the legal system. The first is a purely practical aspect, which is connected with the constitutional definition of the institution of state power foundations in Ukraine since the con-

struction of any system of state power implies the presence of mechanisms and means of strict regulation of relations between state authorities and their units. If this is not the case then, in essence, it can be said that the Constitution can claim that it does not perform any of its basic functions in terms of legal regulation of the most important relations in the organization of state power and its normal development and activity. The second is a theoretical aspect, because, firstly, the problem of the constitutional provision of separation of state powers refers to the most complex theoretical issues of constitutional and legal science. In fact, the essence of this aspect is not so much as to how to separate one branch of state power from the other and to divide their functions and responsibilities, but how, through the functional separation of powers, to maximize the state power from the threat of usurpation and from its excessive concentration in the hands of that or another body of state power. Secondly, the norm of separation of state power traditionally refers to a group of basic principles of democratic state integrity. Therefore, based on the transformation of Ukraine into a modern, developed and democratic state, it is necessary to consider the issues of constitutional support of precisely those fundamental conditions that distinguish a democratic state from others.

Of course, the idea of unity and integrity of state power is based on the modern understanding of the theory of separation of powers, which reflects the organic connection of the theory of separation of powers with the theory of popular sovereignty.

The classical theory of the separation of state powers is known to have been formed as a scientific justification for such a device of the state apparatus that provides full freedom. The modern stage of its development was marked by the recognition of the principle of separation of powers with the necessary institutional and power components of developed legal freedom. The construction of a law-governed state with the separation of its power is not an end in itself, but a form of ensuring the rights and freedoms of a man and a citizen. The state is organized and operates legally by the separation of powers because without that despotism comes.

ANALYSIS OF RESEARCHS AND PUBLICATIONS

The theory of the separation of state power, despite the long period of its development and practical implementation, continues to attract the attention of

scientists (T. Campbell¹, E. Carolan², D. Bilchitz and D. Landau³, V. S. Abashmad⁴, J. Locke⁵, Sh. L. Montesquieu⁶, T. E. Ziuzin⁷, O. Yu. Bulba⁸, I. V. Protsiuk⁹, T. Parsons¹⁰, M. V. Tsvik¹¹, et al.) on the issues that maintain the status of discussion, as indicated by the analysis of the works of classics of political and legal thought, along with modern tasks of state formation. Thus, one of the most problematic areas of contemporary scientific discussions about the theory of the separation of state powers is understanding its essence, organizing the interaction between the branches of power, which would preserve the state unity and state power, and the

¹ T. Campbell, *Separation of Powers in Practice*, Stanford University Press, 2004, 235 p.

² E. Carolan, *The New Separation of Powers: A Theory for the Modern State*, Oxford University Press, 2009, 300 p.

³ D. Bilchitz, D. Landau (Eds.), *The Evolution of the Separation of Powers. Between the Global North and the Global South*, Cheltenham – Northampton, Edward Elgar Publishing, 2018, 288 p.

⁴ В.В. Абашмадзе, *Учение о разделении государственной власти и его критика* [The doctrine of the separation of state power and its criticism], Тбилиси: Сабчота сакартвело, 1972, 51 с.

⁵ Дж. Локк, *Сочинения: в 3 т. Т. 3* [Composition: in 3 v. V. 3], Мысль, Санкт-Петербург, 1985, 670 с.

⁶ Ш. Л. Монтескье, *О духе законов* [About the spirit of laws], Избранные произведения, Москва, 1955, 800 с.

⁷ Т. Е. Зюзина, *Единство государства и разделение властей в истории политических и правовых учений* [Unity of the state and separation of powers in the history of political and legal doctrines], Философия права, Ростов-на-Дону, 2009, № 6, с. 22; В.М. Соколов, *Форма правления и разделение властей: зарубежный опыт* [The form of government and the separation of powers: foreign experience], Актуальные проблемы российского права, Москва, 2010, № 4, с. 10-11.

⁸ О. Ю. Бульба, *Конституційно-правові аспекти реалізації принципу поділу влади в Україні: національна традиція та сучасність* [Constitutional and legal aspects of the implementation of the principle of separation of powers in Ukraine: the national tradition and the present], Інститут законодавства Верховної Ради України, Київ, 2008, 20 с.

⁹ І. В. Процюк, *Сучасні підходи до розуміння принципу поділу державної влади* [Modern approaches to understanding the principle of separation of state power], http://dspace.nlu.edu.ua/bitstream/123456789/2034/1/Protsyuk_3.pdf

¹⁰ Talcott Parsons, *An Outline of the Social System*, University of Puerto Rico, Department of Social Sciences, 1961, 118 p.

¹¹ М. В. Цвік, *Конституційні проблеми розподілу властей (деякі загально-теоретичні аспекти)* [Constitutional problems of the distribution of powers (some general theoretical aspects)], Вісник Академії правових наук України, Харків, 1993, № 1, с. 60-68.

factors that determine the choice of a particular model, the implementation of the investigated principle, an optimal definition of the ratio between branches of power in the newest stage of state formation, the specific implementation of the principle of separation of powers in the context of political and legal reform.

In fact, the theory of separation of powers in different ways is still being processed in various states. The reasons for such pluralism are “national specificity, as well as factors influencing the process of applying the theory of separation of powers in one or another country, conditioned by the peculiarities of the country's development, the nature, and level of development of its state mechanism, economy, and society”¹².

For example, V. Chirkin, analyzing the concept, explains that “the thinkers of the 17th – 18th centuries, who put forward the idea of separation of powers, did not define the very concept of the “branch of power”. They only used this term descriptively (branches of a single tree). To fill this gap the researcher provides the following features:

- each branch of power presupposes the existence of particular specialized and homogeneous state bodies that take their place in a holistic state apparatus and carry out certain work on the management of the state;
- each branch of power has autonomy. While performing specific tasks, it is not subordinated to any other bodies;
- the branch of power is not just a combination of bodies, but a structure in the state mechanism;
- the branch of power is the organizational and legal form (transformation) of a certain state apparatus of management in a society;
- each branch of power is characterized by specific forms, methods, and procedures for its activities. Based on these features, the scientist gives an option to determine the branch of power;
- it is “an isolated organizational and functional structure in the integrated mechanism of the implementation of state power”¹³.

Analyzing the criteria for the allocation of branches of power, defined by V. Chirkin, L. Golubeva points out that “the branch of state power is a combination of

¹² А. Б. Венгеров, *Теория государства и права: учебник для юридических вузов* [Theory of State and Law: a textbook for law schools], М.: Омега-Л, Москва, 2006, 608 с. http://lib.ysu.am/close_books/259207.pdf

¹³ В. Е. Чиркин, *Основы государственной власти* [Basics of state power], М.: Юристъ, 1996, 112 с.

state and government powers regulated by independent and homogeneous state bodies, which are a separate structure in the state mechanism and carry out their functions within the framework of specific forms, methods, and procedures to improve the efficiency of public administration. The fundamental point here is the exercise of the very powers of state power, which represent a set of rights and obligations to exercise a legal effect on social relations that arise in the public law sphere, with the purpose of their legal regulation"¹⁴.

Therefore, in a modern state, such a triad separation of state powers is inadequate. More often than not, we can talk about directly undetermined, but actually existing branches of state power, such as control-supervisory, presidential, and electoral.

CONSTITUTIONAL MODELS OF ORGANIZATION OF STATE POWER

The issue of constitution and constitutionalism has been the focus of historical, legal and philosophical science for a long time. From the etymological point of view, the word "constitution" comes from Latin. "constitutio", which means "order"¹⁵.

A. Hauriou states that: "The Constitution is a set of rules which govern the organization and functioning of the state"¹⁶. The author says that a constitution is essential in any state, that is, provisions that govern the organization and relations within the state power and establish relations between the state and a citizen¹⁷.

In the Ukrainian legal system, the Constitution is the Basic Law of the State, which defines and establishes the main principles of state and public life, the basic rights and duties of citizens, the principles of elections and referendum, the system and principles of organization and activities of state authorities, local self-government, foundations and the system of territorial organization, as well as the

¹⁴ Л. А. Голубева, *Сравнительное государственное устройство: учебник для высших учебных заведений* [Comparative State Studies: A Textbook for Higher Education Institutions], Институт внешнеэкономических связей, экономики и права, 2009, 556 с.

¹⁵ M. Safta, *Drept constitutional si institutii politice* [Constitutional law and political institutions], Vol. I. Editia a 3-a revizuita, Hamangiu, 2016, 328 p.

¹⁶ J. Gicquel, A. Hauriou, P. Gélard, *Droit constitutionnel et institutions politiques* [Constitutional law and political institutions], Paris: Editions Montchrestien, 1985, 978 p.

¹⁷ I. Rusu, *Drept constituțional și instituții politice* [Constitutional law and political institutions], Lumina Lex, 2004, 490 p.

state symbols of Ukraine¹⁸.

Analyzing the Basic Law of Ukraine, it should be mentioned that article 6 provides a clear definition: “The State power in Ukraine shall be exercised with the consideration of its separation into legislative, executive and judicial branches”¹⁹. However, a fact of constitutional consolidation of the separation of state power into three branches cannot be considered the achievement of the democratization process, which began with the proclamation of Ukraine’s independence. We believe that the unconditional value of this principle, as constitutional, has been manifested in the development of various projects of the Constitution of Ukraine. After all, in all projects (regardless of what form of organization of state power they were offered) the principle of separation of powers was passed as a separate article.

The state authorities in a legal democratic state, namely Ukraine (in accordance with Article 1 of the Constitution of Ukraine²⁰), form a system of state authorities in their entirety. The system of state authorities of Ukraine has the following features:

- the system of legally formed state bodies, that is, that have the competence (powers, subject, legal responsibility) and are engaged in the management of society on a professional basis as power holders;
- the system of state bodies, which is a well-established structural organization, based on general principles, the unity of the ultimate goal, interaction and focused on ensuring the realization of state functions;
- the system of state bodies is an organizational unit since the bodies are elected or created by others; some manage others; some are accountable to and controlled by others;
- national bodies in Ukraine act on the basis of the Constitution and laws of Ukraine. Acts adopted by higher authorities are mandatory for the lower ones. For example, the Acts of the Cabinet of Ministers of Ukraine are mandatory for implementation by ministries, local state administrations etc. Thus, there is an organizational-legal link between the state bodies;
- the system of bodies, each of which has logistic means to carry out these functions. But within the framework of the state bodies, the activities of

¹⁸ УСЕ (Універсальний словник-енциклопедія) [ALL (Universal Dictionary-Encyclopaedia)], <http://slovopedia.org.ua/29/53402/13633.html>

¹⁹ Конституція України [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

²⁰ Ibid.

civil servants are strictly separated from the “property” of their subjects;

– the system of government is not unchangeable. It is modified by the influence of political, historical, economic, social and other factors. This system is changing with the development of the state. For example, the constitutional reform in modern Ukraine has led to changes in the powers of the authorities²¹.

During the period of independence in Ukraine four constitutional models of organization of the state power and separation of powers in the power triangle of Ukraine have been tested.

The first stage (1991-1995) was determined by the inherited Constitution of the Ukrainian Soviet Socialist Republic in 1978 amended during 1991-1993. This model was characterized by the maintenance of the significant influence of the Verkhovna Rada of Ukraine, in particular on personnel issues. The President of Ukraine led the system of state executive bodies. Thus, the Verkhovna Rada of Ukraine, on the recommendation of the President of Ukraine, approved the candidacy of the Prime Minister, ministers of foreign affairs, defense, finance, justice, internal affairs and the chairmen of the State Committee for Protection of the State Border and the State Customs Committee. The Parliament appointed the judges of the Constitutional Court of Ukraine, the Supreme Court of Ukraine, the judges of the regional and Kyiv City Courts, the arbitrators of the Supreme Arbitration Court of Ukraine, the arbitration courts of the regions, the city of Kyiv, the Prosecutor General of Ukraine, the Head of the National Security Service of Ukraine, the Head of the Board of the National Bank of Ukraine, Deputy Chairmen and State Commissioners of the Antimonopoly Committee of Ukraine, the Presidium of the Supreme Arbitration Court of Ukraine, the Collegium of the General Prosecutor's Office of Ukraine. The Verkhovna Rada of Ukraine may express a vote of no confidence in the Prime Minister of Ukraine, individual members of the Cabinet of Ministers of Ukraine or the Cabinet of Ministers of Ukraine as a whole, which would lead to their resignation²².

²¹ *Конституційний механізм розподілу державної влади в Україні* [Constitutional mechanism of distribution of state power in Ukraine], https://pidruchniki.com/16940928/politologiya/konstitutsiyniy_mehanizm_rozpodilu_derzhavnoyi_vladi_ukrayini

²² *Конституційні аспекти розподілу повноважень у системі вищих органів державної влади України* [Constitutional aspects of division of powers in the system of higher bodies of state power of Ukraine], http://old2.niss.gov.ua/content/articles/files/rozpodil_povnovazhen-b04c1.pdf

The second stage (1995-1996) was characterized by a presidential model of government, which was enshrined in the Constitutional Treaty between the President of Ukraine and the Verkhovna Rada of Ukraine on the basic principles of organization and functioning of state power and local self-government in Ukraine for the period before the adoption of the new Constitution of Ukraine (since 8 June 1995²³). The President, in accordance with this act, was proclaimed the head of the state and the head of the state executive power, which he carried out through the Cabinet of Ministers of Ukraine and other central executive authorities subordinated to him, as well as the system of local state administrations²⁴.

The third stage (1996-2014) is a system of governance formed by the 1996 Constitution, which many experts describe as a mixed presidential-parliamentary model. Following the provisions of the Constitution of 1996, the President of Ukraine appointed the Prime Minister of Ukraine (with the consent of the Parliament) and the entire structure of the Government, heads of other central executive bodies and heads of local state administrations (at the request of the Prime Minister). The head of the state, by his decision, terminated the powers of all these officials. It was the President who, on the proposal of the Head of the Government, decided to create, reorganize and liquidate the ministries and other central executive bodies. He had the right to cancel the acts of the Cabinet of Ministers of Ukraine. Before the newly elected Head of State, the Cabinet of Ministers relinquished its duties. According to this model, the Cabinet of Ministers of Ukraine was accountable to the President of Ukraine, but was controlled by and accountable to the Verkhovna Rada of Ukraine²⁵.

However, on December 8, 2004, the Verkhovna Rada of Ukraine adopted the

²³ Конституційний договір між Верховною Радою України та Президентом України про основні засади організації та функціонування державної влади і місцевого самоврядування в Україні на період до прийняття нової Конституції України від 8.06.1995 р. [Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine on the Basic Principles of Organization and Functioning of State Power and Local Self-Government in Ukraine for the Period Prior to the Adoption of the New Constitution of Ukraine of June 8, 1995], <https://zakon.rada.gov.ua/laws/show/1%D0%BA/95-%D0%B2%D1%80#Text>

²⁴ Конституційні аспекти розподілу повноважень у системі вищих органів державної влади України [Constitutional aspects of division of powers in the system of higher bodies of state power of Ukraine], http://old2.niss.gov.ua/content/articles/files/rozpodil_povnovazhen-b04c1.pdf

²⁵ *Ibid.*

Law of Ukraine "On Amendments to the Constitution of Ukraine"²⁶, which provided for a substantial redistribution of powers between the head of the state, the parliament and the government, according to the logic of constitutional reform initiators, balancing the scope of powers assigned to the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine.

The main provisions of the draft law № 4180, which was later adopted as the Law of Ukraine "On Amendments to the Constitution of Ukraine"²⁷, were once the subject of study of the Constitutional Court of Ukraine, the Venice Commission, experts of domestic analytical centres and scientists, which, in turn, pointed out several shortcomings of the bill, the vast majority of which have not been corrected.

Later, in 2006-2010, the above-mentioned imperfections and conflicts of the updated Constitution of Ukraine caused several constitutional conflicts. This led to the fact that on September 30, 2010, the Constitution of Ukraine, as amended in 1996, was restored by a decision of the Constitutional Court of Ukraine in compliance with the procedure for amending the Constitution on December 8, 2004²⁸.

The fourth stage (from 2014 to present) is characterized by the parliamentary-presidential constitutional model (first engaged in 2006, and in 2014 for the second time²⁹), which redistributed powers to form the executive branch in favour of the Verkhovna Rada of Ukraine. The President retains the authority to submit to the parliament a candidate for the Prime Minister (who,

²⁶ Закон України "Про внесення змін до Конституції України" від 08.12.2004 р. № 2222-IV [Law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004], <https://zakon.rada.gov.ua/laws/show/2222-15#Text>

²⁷ *Ibid.*

²⁸ Рішення Конституційного Суду України у справі за конституційним поданням 252 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України "Про внесення змін до Конституції України" від 8 грудня 2004 року № 2222-IV (справа про додержання процедури внесення змін до Конституції України): Конституційний Суд; Рішення, Окрема думка від 30.09.2010 № 20-пн/2010 [Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 252 People's Deputies of Ukraine on compliance of the Constitution of Ukraine (constitutionality) with the Law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004 № 2222-IV], <https://zakon.rada.gov.ua/laws/show/v020p710-10>

²⁹ Закон України "Про відновлення деяких положень Конституції України" від 21 лютого 2014 року № 742-VII, <https://zakon.rada.gov.ua/laws/show/742-18#Text>

nevertheless, is still determined by the coalition of parliamentary factions), the Minister of Defence and the Minister of Foreign Affairs. All other members of the Government, as well as the Chairman of the Antimonopoly Committee of Ukraine, the Chairman of the State Committee for Television and Radio Broadcasting of Ukraine and the Chairman of the State Property Fund of Ukraine, are appointed by the Verkhovna Rada of Ukraine at the proposal of the Head of Government. The Parliament has the right to dismiss all of these officials independently. The Cabinet of Ministers of Ukraine relinquishes its duties before the newly elected Verkhovna Rada of Ukraine. At the same time, the President's influence on Government activity has been also limited. The President has the right to suspend the acts of the Cabinet of Ministers of Ukraine only on the grounds of their non-compliance with the Constitution, at the same time appealing to the Constitutional Court of Ukraine. However, the President reserves the right to appoint and revoke the Heads of local state administrations (at the proposal of the Cabinet of Ministers of Ukraine)³⁰.

Most experts evaluate positively the fact that Ukraine used the so-called mixed constitutional model of the organization of state power in one form or another, except the short transition period of 1995-1996. The mixed model is considered to be the most appropriate for countries that are in transit from an authoritarian regime to democracy. However, the presidential model is considered vulnerable to slipping into authoritarianism, and the parliamentary model (despite democracy and pluralism) threatens instability, and its application implies the presence of developed political parties, high political culture and stable democratic traditions³¹.

As in Ukraine, all implemented constitutional changes were, in fact, subject to the political circumstances in which they were made and the compromises that the politicians were able to achieve, and all the models of the organization of state power were characterized by some common disadvantages³².

Such disadvantages are:

- insufficient balance of authority and inefficiency of the system of checks and balances between the subjects of authority;

³⁰ *Конституційні аспекти розподілу повноважень у системі вищих органів державної влади України* [Constitutional aspects of division of powers in the system of higher bodies of state power of Ukraine], http://old2.niss.gov.ua/content/articles/files/rozpodil_povnovazhen-b04c1.pdf

³¹ *Ibid.*

³² *Ibid.*

- the dualism of the executive power;
- the imperfection of the mechanisms of formation, responsibility, and resignation of the Cabinet of Ministers of Ukraine;
- excessive centralization of managerial functions;
- problems with the organization of the legislative process and the work of the parliament as a whole³³.

Moreover, the constitutional evolution in Ukraine is characterized by maintaining two main tendencies: 1) a centralized model of the organization of state power with a concentration of powers in the capital inherited from the Ukrainian SSR³⁴, and 2) a political struggle for the powers of the President of Ukraine and the procedure for the formation of the Cabinet of Ministers of Ukraine.

SEPARATION OF POWERS

The Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine, which is controlled by and accountable to the Verkhovna Rada (Article 113 of the Constitution of Ukraine), have multifunctional relations³⁵. The Verkhovna Rada consents to the appointment of the Prime Minister, considers and makes decisions on approving (not approving) the program of the Cabinet of Ministers, and oversees its activities.

At the proposal of at least one-third of the people's deputies of its constitutional composition, the Verkhovna Rada may consider the responsibility of the Cabinet of Ministers and adopt a resolution of no confidence with a majority of the constitutional composition of the Verkhovna Rada, which results in the resignation of the Cabinet of Ministers of Ukraine³⁶.

³³ *Конституційні аспекти розподілу повноважень у системі вищих органів державної влади України* [Constitutional aspects of division of powers in the system of higher bodies of state power of Ukraine], http://old2.niss.gov.ua/content/articles/files/rozpodil_povnovazhen-b04c1.pdf

³⁴ A law draft on the amends to the Constitution of Ukraine (regarding decentralization of power) No. 2217a dated 01.07.2015 was submitted to the Verkhovna Rada of Ukraine by the President of Ukraine in order to eliminate the problems of the organization of state power connected with the concentration of powers in the capital.

³⁵ *Конституція України* [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

³⁶ *Ibid.*

The most important powers of the Verkhovna Rada regarding the Cabinet of Ministers and other bodies of executive power are the adoption of laws on the organization and activities of executive authorities, the basis of civil service etc.³⁷ The Parliament, as a legislative body, determines the judicial system, the legal proceedings, the status of judges, the basis of forensic examination, the organization and activities of the prosecutor's office by the laws of Ukraine. The interaction of the Parliament with the organs of justice in the process of parliamentary control is quite close³⁸.

It is also possible to distinguish the functions of the Verkhovna Rada of Ukraine according to two main criteria: the forms of activity and the objects of power influence. By objects of influence – political, economic, social, cultural, ecological, and by forms of activity there are the legislative, constituent and control functions of the parliament:

- legislative function. In general terms, it lies in the adoption of laws, amendments, their recognition as legally invalid, cancellation or suspension of their actions;
- constituent (state-building, organizational). The priority directions of the Parliament's activity in the exercise of this function are the formation or participation in the formation of executive and judicial bodies, as well as the formation of their own parliamentary structures and others;
- parliamentary control function. Control over the activities of the Cabinet of Ministers of Ukraine, parliamentary control over observance and protection of constitutional rights and freedoms of a man and citizen, budgetary and financial control, and others³⁹.

All of these functions and correspondent powers of the Verkhovna Rada have normative-legal consolidation, first of all constitutional.

³⁷ Конституція України [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

³⁸ Ф. Веніславський, *Взаємодія гілок державної влади як принцип основ Конституційного ладу України* [Interaction of the branches of state power as the principle of the foundations of the Constitutional system of Ukraine], *Право України*, 1998, №1, с. 34-38.

³⁹ Конституційний механізм розподілу державної влади в Україні [Constitutional mechanism of distribution of state power in Ukraine], https://pidruchniki.com/16940928/politologiya/konstitutsiyniy_mehanizm_rozpodi_lu_derzhavnoyi_vladi_ukrayini

A fundamentally new provision of the Constitution is as follows: the deputy powers are terminated ahead of schedule in case of non-fulfillment of the requirements of the people's deputy concerning the incompatibility of the parliamentary mandate with other types of activities. Unlike the current legislation on the status of a people's deputy, according to which the decision on early termination of authority is adopted by the Verkhovna Rada, according to the Constitution it should be adopted by a court⁴⁰.

According to the Constitution of Ukraine, the Cabinet of Ministers of Ukraine is the supreme body in the system of executive bodies, which consists of central and local executive authorities. As a supreme collegiate body, it exercises power directly and through central and local executive authorities, directing and controlling their activities. As the supreme body of executive power, the Cabinet of Ministers heads a unified system of executive power in Ukraine; ensures, by the Constitution, the exercise of the functions and powers of the executive power on the territory of Ukraine; directs the activities of ministries and other executive bodies; independently decides the issues assigned to it by the Constitution of Ukraine, the laws of the Verkhovna Rada of Ukraine and the decrees of the President of Ukraine⁴¹.

However, certain difficulties arise in the organization of executive power carried out by the Cabinet of Ministers of Ukraine. They reflect the struggle between the legislative branch and the President. With the change of the status of the President of Ukraine, when he is the head of state by the new Constitution and does not belong to any branch of power, the question of the essence and legal principles of the executive power, as a separate power, have not been resolved completely.

Moreover, according to Art. 92, paragraph 12 of the Constitution of Ukraine⁴², only the legislative power represented by the Verkhovna Rada of Ukraine defines the laws and regulations of the executive body. Given the provisions of this paragraph of Art. 92 of the Constitution, it means that the legislature must adopt almost one hundred laws, including the Cabinet of Ministers of Ukraine, ministries, and other central departments (and there are more than fifty of them); as well as local state administrations in the regions, districts, cities of Kyiv and Sevastopol.

⁴⁰ Конституція України [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁴¹ *Ibid.*

⁴² *Ibid.*

Hence, the powers of the Cabinet of Ministers of Ukraine in co-operation with the Verkhovna Rada of Ukraine and its bodies are:

- implementation by the Government of legislative initiatives in the Verkhovna Rada of Ukraine;
- participation of the Cabinet of Ministers in the process of consideration of the Verkhovna Rada issues;
- powers in connection with the approval and control over the implementation of the State Budget of Ukraine, preparation, approval, and implementation of general state programs;
- reporting to the Verkhovna Rada of Ukraine on its activities⁴³.

Also, to strengthen the constructive cooperation between the Cabinet of Ministers of Ukraine and the Verkhovna Rada of Ukraine, to increase the efficiency of work related to the preparation and decision-making process on important issues of state and public life, there is the Resolution “On Cooperation of the Cabinet of Ministers of Ukraine with the Verkhovna Rada of Ukraine”⁴⁴.

By this Resolution, the Cabinet of Ministers of Ukraine decides:

- to establish that one of the priority directions of the Cabinet of Ministers of Ukraine is to ensure effective cooperation with the Verkhovna Rada of Ukraine;
- if members of the Cabinet of Ministers of Ukraine and heads of central executive bodies, who are not members of the Cabinet of Ministers of Ukraine, are personally responsible for ensuring the interaction with parliamentary factions;
- to coordinate positions on the legislative settlement of urgent issues of socio-economic development of Ukraine, so that joint parliamentary-governmental working bodies may be formed with the consent of the Verkhovna Rada of Ukraine and its bodies⁴⁵.

⁴³ Конституція України [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁴⁴ Постанова “Про співробітництво Кабінету Міністрів України з Верховною Радою України” від 7 вересня 2006 р. № 1284 [The Resolution “On Cooperation of the Cabinet of Ministers of Ukraine with the Verkhovna Rada of Ukraine” of September 7, 2006 No. 1284], <https://www.kmu.gov.ua/ua/npas/47224183>

⁴⁵ Постанова “Про співробітництво Кабінету Міністрів України з Верховною Радою України” від 7 вересня 2006 р. № 1284 [Resolution of the Verkhovna Rada of Ukraine of February 22, 2014 № 750-VII “On the Text of the Constitution of Ukraine as amended on June 28, 1996, as amended by the Laws of Ukraine of December 8, 2004 № 2222-IV, of February 1, 2011 № 2952 -VI, dated September 19, 2013 № 586-VII”], <https://zakon.rada.gov.ua/laws/show/750-VII>

And the Minister of Relations with the Verkhovna Rada of Ukraine and other public authorities is to:

- ensure regular meetings of the First Vice Prime Minister of Ukraine, Vice Prime Ministers with the parliamentary factions in accordance with the division of responsibilities at the beginning of each plenary week of the work of the Verkhovna Rada of Ukraine;
- formulate proposals for inclusion of the bills submitted by the Cabinet of Ministers of Ukraine for consideration by the Verkhovna Rada of Ukraine;
- initiate the participation of the Cabinet of Ministers of Ukraine to put the issues on the agenda of the regular session of the Verkhovna Rada of Ukraine⁴⁶.

So, analyzing the distribution of powers in Ukraine, we can draw the following conclusions:

- the separation of powers in Ukraine is realized only for a formal purpose, but in reality, it is a redistribution of powers between the branches of power;
- The President of Ukraine, due to the powers vested in him, performs many functions and powers inherent to the executive power (in particular, paragraphs 1, 3, 17 of part one of Article 106 of the Constitution of Ukraine⁴⁷);
- Non-regulation at the level of the law of issues related to the organization, powers and order of the government causes a situation of external regulation and self-regulation of its activities.

We believe that solving these problems and reaching a stable performance of political institutions such as the Parliament, the President and the government is possible only with their agreement on a common interest in building a truly democratic rule of law. Therefore, in the opinion of O. O. Danylyak: "It is necessary to adopt laws such as "On the President of Ukraine", "On the Cabinet of Ministers" and "On the Central Executive Authority", which will define the mechanisms of interaction between the President, authorities, citizens, political parties, non-governmental organizations and local self-government bodies, which determines

⁴⁶ *Постанова "Про співробітництво Кабінету Міністрів України з Верховною Радою України" від 7 вересня 2006 р. № 1284* [Resolution of the Verkhovna Rada of Ukraine of February 22, 2014 № 750-VII "On the Text of the Constitution of Ukraine as amended on June 28, 1996, as amended by the Laws of Ukraine of December 8, 2004 № 2222-IV, of February 1, 2011 № 2952 -VI, dated September 19, 2013 № 586-VII"], <https://zakon.rada.gov.ua/laws/show/750-VII>

⁴⁷ *Конституція України* [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

the prospects for further research"⁴⁸.

Also, most researchers of the modern Ukrainian system of organization of state power and the distribution of powers note that one of the most important problems of state power is irresponsibility. That is why neither the President of Ukraine with his powers, nor the Verkhovna Rada of Ukraine, or the Cabinet of Ministers of Ukraine is responsible for the results of the activity of the authorities. Thus, almost all proponents of amending the Constitution of Ukraine substantiate the need for such a reform, first of all, by imposing the responsibility of the state authorities for the results of their activities before the citizens and society⁴⁹.

It should be noted that according to the essence of the concept of separation of state power into legislative, executive and judicial, one of its main tasks and leading functional purpose is to ensure the highest efficiency of state power, joint highly professional activity of different branches of state power in the interests of the sovereignty holder and the sole source of power – the people, and ultimately – a responsible result. This necessitates not only the separation of functions and powers between all branches of state power but also their close interaction and cooperation. Therefore, the aim of any reform of the state power system should be to strive to eliminate contradictions and conflicts between state institutions, as well as to ensure their close cooperation and to establish real responsibility of the authorities for the results of their activity as a whole.

CONSTITUTIONAL PROCESSES IN UKRAINE BETWEEN THEORY AND PRACTICE (1995-1996 AND 2010-2014)

The Constitutional Treaty (June 8, 1995⁵⁰) did not solve the problem of adopting a new Constitution of Ukraine. Therefore, on November 24, 1995, the

⁴⁸ О. О. Даниляк, *Принцип поділу влади: досвід України* [Principle of division of powers: Ukraine's experience], <http://academy.gov.ua/ej/ej2/txts/pol-prav/05doovdu.pdf>

⁴⁹ Ф. В. Веніславський, *Проблеми української моделі організації державної влади (порівняльно-правовий аналіз розподілу владних повноважень між гілками державної влади в Україні за чинною Конституцією України та законопроектом про внесення змін до Конституції України № 4105)* [Problems of the Ukrainian model of organization of state power (comparative legal analysis of the distribution of powers between the branches of state power in Ukraine under the current Constitution of Ukraine and the Bill on Amendments to the Constitution of Ukraine No. 4105)], Конституційна реформа: експертний аналіз, Х.: Фоліо, 2004, С. 73-84.

⁵⁰ *Конституційний договір між Верховною Радою України та Президентом України про основні засади організації та функціонування державної влади і місцевого*

President of Ukraine proposed to the Constitutional Commission to create a new working group consisting of four representatives of the Verkhovna Rada, four representatives of the President and two representatives of the legislative authorities to finalize the draft constitution. The draft was designed by the first working group and finalized by the second, submitted for discussion to the Constitutional Commission on March 12, 1996, and recommended for consideration by the Verkhovna Rada. On March 20, the draft Constitution was examined during an extraordinary session of the Parliament. Although the co-chairs of the Constitutional Commission, L. Kuchma and O. Moroz, had assessed the draft differently, they were eager to adopt the Basic Law as soon as possible. On April 2, 1996, the Verkhovna Rada put the draft Constitution on the agenda and started to examine it on April 17.

The initial point of formation of the political system of independent Ukraine was the adoption of the Constitution of Ukraine in 1996⁵¹. Previously, the restructuring of the state power system was determined by the 1978⁵² Constitution of the Ukrainian SSR, with changes made after Ukraine proclaimed its independence. However, the changes in the country over the past five years and the prospects for its further development required not a partial adjustment of the Basic Law, but comprehensive and full-scale constitutional reforms.

First of all, the status of a new State required a constitutional definition, the foundations of its social system and its main attributes. Secondly, the introduction of a new institution of the presidency for Ukraine in 1991 required the coordination of functions and powers in the triangle of the President – Verkhovna Rada – Cabinet of Ministers (the last two bodies were inherited by the young state from the Ukrainian SSR). Third, it was necessary to create a new system of local

самоврядування в Україні на період до прийняття нової Конституції України від 8.06.1995 р. [Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine on the Basic Principles of Organization and Functioning of State Power and Local Self-Government in Ukraine for the Period Prior to the Adoption of the New Constitution of Ukraine of June 8, 1995], <https://zakon.rada.gov.ua/laws/show/1%D0%BA/95-%D0%B2%D1%80#Text>.

⁵¹ *Конституція України* [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁵² *Конституція (Основний Закон) Української Радянської Соціалістичної Республіки* [Constitution (Basic Law) of the Ukrainian Soviet Socialist Republic], <http://gska2.rada.gov.ua/site/const/istoriya/1978.html>

government, since the existence of a "vertical of councils" did not meet the new socio-political realities and needs of the country's development⁵³.

The specific objectives of the constitutional reform were caused by internal and external factors. The acute financial and economic crisis of 1992-1994 and the political crisis of 1994, as well as difficult relations with some neighbouring countries, required the creation of a strong state as a guarantor of national independence, socio-economic and political changes in the interests of the people. The 1996 Constitution was intended to legitimize such a State⁵⁴.

The process of drafting a new Constitution took place in the context of a fierce confrontation between the Verkhovna Rada and the President of Ukraine over the constitutional scope of powers of each of these institutions of power in the political system of Ukraine. The conflicting nature of the process was essentially a political confrontation between the institutions of state power⁵⁵. The adoption of the Constitution had both positive and negative consequences, which mainly determined the logic of further political reforms in Ukraine. The positive consequences include, first of all, the fact that the Constitution of Ukraine of 1996:

- finally consolidated the statehood of Ukraine and guarantees of the basic rights and freedoms of its citizens;
- declared Ukraine a democratic, social, and legal state;
- deprived the Verkhovna Rada of functions unusual for the Parliament, in particular, eliminated the "vertical of councils";
- noted a compromise between the President and the Parliament regarding the scope of powers of each of the subjects, which allowed to temporarily suspend the political conflict, which distracted the authorities from solving urgent problems of socio-economic development of Ukraine⁵⁶.

The negative consequences that had a systemic nature, and subsequently caused the need to reform the political system, include the following:

- the unbalanced nature of the state power system;
- reduction of the political influence of the Verkhovna Rada as a representative body;

⁵³ *Матеріали Аналітичної доповіді Центру Разумкова "Парламент в Україні: головні тенденції та проблеми становлення"* [Proceedings of the Razumkov Centre's Analytical Report "Parliament in Ukraine: Main Trends and Problems of Formation"], http://razumkov.org.ua/uploads/journal/ukr/NSD85_2007_ukr.pdf

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

- subordination of the executive power, the Government and local administrations in particular, to the President of Ukraine, who, however, was not responsible for the results of its activities;
- lack of effective mechanisms of influence of the Parliament on the system of executive power and political communication between the Verkhovna Rada (deputy majority) and the Government as a prerequisite for their constructive interaction;
- insufficiency and inefficiency of the system of checks and balances between the President and the Verkhovna Rada (lack of real opportunities for the dissolution of Parliament by the President and the implementation of impeachment procedures by the Parliament), lack of effective mechanisms of parliamentary control⁵⁷.

Scientists called the new model of state government that was established in Ukraine under the Constitution "the President-Parliamentary Republic". The model was much closer to unrestricted presidential rule than to the classic model of a President-Parliamentary Republic, which is, for example, the constitutional structure of France. According to the 1996 Constitution of Ukraine, the President gained almost complete control over the formation of the Cabinet of Ministers, the leadership of central executive bodies (even having assumed the powers not provided by the Constitution to appoint and dismiss deputy heads of these bodies), and the appointment and dismissal of heads of local executive bodies⁵⁸.

Besides, the Constitution of Ukraine of 1996 also granted the President significant organizational and personnel powers concerning:

- judicial authorities: creation and liquidation of courts, appointment of judges to positions for the first time, appointment of a one-third of judges to the Constitutional Court of Ukraine and de facto assigned and only later legitimized in the Law "On the Judicial System of Ukraine" appointment of judges to administrative positions in courts;
- military formations: leadership in the areas of national security and defence, appointment and dismissal of the high command of the Armed Forces of Ukraine and other military formations;

⁵⁷ *Матеріали Аналітичної доповіді Центру Разумкова "Парламент в Україні: головні тенденції та проблеми становлення"* [Proceedings of the Razumkov Centre's Analytical Report "Parliament in Ukraine: Main Trends and Problems of Formation"], http://razumkov.org.ua/uploads/journal/ukr/NSD85_2007_ukr.pdf

⁵⁸ *Ibid.*

– law enforcement agencies: appointment of the Prosecutor General to office with the consent of the Verkhovna Rada and dismissal at discretion⁵⁹.

In the presence of such a significant amount of Presidential powers, the provisions of the Constitution, which were supposed to play the role of deterrence mechanisms and prevent the full subordination of the Executive power to the President of Ukraine, have become ineffective.

Therefore, in practice, this model of state government ensured the implementation of management decisions of the Head of State and in this sense could be considered quite effective. However, this effect was significantly reduced when the Government could not implement certain policies or implemented political decisions without legislative authorization. Meanwhile, the formation of the Government without the participation of the Verkhovna Rada led to situations in which the attitude of the Parliament to the legislative initiatives of the Government largely depended on situational factors. Therefore, even if the President and his subordinate executive bodies dominated the country and had significant opportunities to influence the position of deputies, not all the decisions proposed by the Government have been translated into laws⁶⁰.

This was one of the stages of the constitutional processes in Ukraine. The next one started after the fourth President V. Yanukovich came to power (on February 25, 2010). This stage is important because on the initiative of the Head of State, on September 30, 2010, the Constitutional Court annulled the constitutional reforms adopted in 2004⁶¹. Since that time, the Constitution of

⁵⁹ Конституція України [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁶⁰ Матеріали Аналітичної доповіді Центру Разумкова "Парламент в Україні: головні тенденції та проблеми становлення" [Proceedings of the Razumkov Centre's Analytical Report "Parliament in Ukraine: Main Trends and Problems of Formation"], http://razumkov.org.ua/uploads/journal/ukr/NSD85_2007_ukr.pdf

⁶¹ Рішення Конституційного Суду України у справі за конституційним поданням 252 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України "Про внесення змін до Конституції України" від 8 грудня 2004 року № 2222-IV (справа про додержання процедури внесення змін до Конституції України) [Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 252 People's Deputies of Ukraine on compliance of the Constitution of Ukraine (constitutionality) with the Law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004 № 2222-IV], <https://zakon.rada.gov.ua/laws/show/v020p710-10>

1996 has come into force again. In the "Special Opinion" on this decision, judges V. Shishkin and P. Stetsyuk indicated that the Constitutional Court had the right to recognize violations in the procedure for adopting Law No. 2222 (Constitutional reform), but did not have the right to change the "existing structure of state power in Ukraine", and had only to instruct the Verkhovna Rada to decide on confirming the "Constitutional reform", or on its cancellation. Amendments to the Constitution should be made only through a vote in Parliament, because there is "the exclusive right of the Verkhovna Rada of Ukraine on the "final intervention" in the text of the Constitution of Ukraine, except chapters I, III, XIII, when such a right belongs directly to the Ukrainian people... This approach results from the provisions of part two of article 19 of the Constitution"⁶²; The Constitutional Court illegally assumed the functions of the Verkhovna Rada: "The Constitutional Court of Ukraine... having made a constitutional revision of the existing structure of power in the state, assumed the powers of the constituent power in the State (of the Verkhovna Rada and the President), which contradicts the second part of article 19 of the Constitution of Ukraine"⁶³. Well-known Ukrainian lawyers expressed their doubts about the legitimacy of this decision of the Constitutional Court even after several years⁶⁴.

Violations of the rather complex but democratic procedure for amending the Constitution of Ukraine have not been overlooked by civil society institutions, including experts, and the single body of constitutional jurisdiction, because you cannot build a truly democratic state by violating democratic principles and procedures. V. Kolesnik believes that this provision should be understood as follows: from this day on, all state authorities and their functionaries (including officials) must act by the powers granted to them by the first redaction of the Basic Law (i.e., before changes were made). It should be understood that all these bodies and officials are legitimate, as they were formed (elected, appointed) in the manner specified by the current Constitution of Ukraine at the time and by applicable law⁶⁵.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Важко сказати, яка Конституція зараз діє – Мусіяка. Сайт "Радіо Свобода". 28 червня 2013* [It is difficult to say which Constitution is in force now – Musiyaka. Radio Svoboda website. June 28, 2013], <https://www.radiosvoboda.org/a/25030891.html>

⁶⁵ В. Колісник, *Конституційні зміни та їх скасування як віддзеркалення роздоріжжя української демократії* [Constitutional changes and their abolition as a reflection of the crossroads of Ukrainian democracy], <http://khpg.org/index.php?id=1286780557>

For example, the Verkhovna Rada of Ukraine, elected on September 30, 2007, was a legitimate body. Since the term of office of the Verkhovna Rada provided for in article 76 of the initial (first) version of the Constitution of Ukraine is "four years", this requirement should apply to the Parliament of this convocation as well. Some politicians and specialists reference the experience of 1996 when both the Parliament and the Head of State continued to exercise their state powers after the adoption of the Constitution, but this seems quite incorrect and unacceptable. The current situation was radically different from what it was then. First, the terms of office of the Parliament and the President provided for by the Constitution on the day of its adoption in 1996 fully coincided with the terms for which they were elected in 1994. Secondly, the Transitional Provisions defined the year and month of regular parliamentary and presidential elections. There are no transitional provisions now and there should not be, and the terms of the Parliament's offices before and after the termination of the constitutional changes do not coincide⁶⁶.

The Cabinet of Ministers of Ukraine is also legitimate. However, after the Law "On Amendments to the Constitution of Ukraine" of December 8, 2004, it is declared unconstitutional and the office of the Cabinet is terminated, the appointment of a new composition must follow the procedure provided for in the first version of the Constitution of Ukraine of 1996. That is, if on September 29, 2010, the President of Ukraine did not have the rights to terminate the office of the Prime Minister of Ukraine, but only could initiate consideration of the issue of Government responsibility in the Verkhovna Rada (according to part 1 of article 87 of the Constitution as amended in 2004⁶⁷), then after the decision of the Constitutional Court of Ukraine of September 30, 2010, the Head of State could, without any consultations, at his discretion, terminate the powers of the Prime Minister and dismiss him. In this case, the entire Cabinet should resign. And the President, having accepted the resignation of the Government, must instruct it to perform its duties until the new Cabinet of Ministers of Ukraine begins to function⁶⁸.

⁶⁶ *Ibid.*

⁶⁷ *Конституція України* [Constitution of Ukraine], <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁶⁸ В. Колісник, *Конституційні зміни та їх скасування як віддзеркалення роздоріжжя української демократії* [Constitutional changes and their abolition as a reflection of the crossroads of Ukrainian democracy], <http://khpg.org/index.php?id=1286780557>

Subsequently, on February 1, 2011, the Verkhovna Rada adopted the Law № 2952-VI "On Amendments to the Constitution of Ukraine regarding holding Regular Elections of People's Deputies of Ukraine, President of Ukraine, Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils, City, Township and Village Mayors", previously approved by the Verkhovna Rada on 19 November 2010⁶⁹. The Law came into force on February 4, 2011.

Another step of constitutional change was the Law of Ukraine "On Amendments to Article 98 of the Constitution of Ukraine" (regarding the powers of the Accounting Chamber), adopted by the Verkhovna Rada on September 19, 2013. It came into force on October 6, 2013⁷⁰. It is worth noting that on February 21, 2014, the Verkhovna Rada of Ukraine, without the decision of the relevant Committee and the conclusion of the Constitutional Court, adopted Law No. 742-VII "On the Renewal of certain provisions of the Constitution of Ukraine"⁷¹.

The next day, taking into account that the Law on restoring certain provisions of the Constitution of Ukraine was not signed by the President, the Parliament adopted a Resolution "On the text of the Constitution of Ukraine of June 28, 1996, with amendments and additions made by Laws of Ukraine dated December 8, 2004 No. 2222-IV, February 1, 2011 No. 2952-VI, September 19, 2013, No. 586-VII"⁷². On March 1, 2014, Law No. 742-VII was published in a special

⁶⁹ Закон України від 2 лютого 2011 року № 2952-VI "Про внесення змін до Конституції України щодо проведення чергових виборів народних депутатів України, Президента України, депутатів Верховної Ради Автономної Республіки Крим, місцевих рад та сільських, селищних, міських голів" [Law of Ukraine of February 2, 2011 № 2952-VI "On Amendments to the Constitution of Ukraine Concerning Regular Elections of People's Deputies of Ukraine, President of Ukraine, Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Town and City Mayors"], <https://zakon.rada.gov.ua/laws/show/2952-VI>

⁷⁰ Закон України від 19 вересня 2013 року № 586-VII "Про внесення змін до статті 98 Конституції України" [Law of Ukraine of September 19, 2013 № 586-VII "On Amendments to Article 98 of the Constitution of Ukraine"], <https://zakon.rada.gov.ua/laws/show/586-VII>

⁷¹ Закон України від 21 лютого 2014 року № 742-VII "Про відновлення дії окремих положень Конституції України" [Law of Ukraine of February 21, 2014 № 742-VII "On renewal of certain provisions of the Constitution of Ukraine"], <https://zakon.rada.gov.ua/laws/show/742-VII>

⁷² Постанова Верховної Ради України від 22 лютого 2014 року № 750-VII "Про текст Конституції України в редакції 28 червня 1996 року, із змінами і доповненнями, внесеними законами України від 8 грудня 2004 року № 2222-IV, від 1 лютого 2011 року № 2952-VI, від 19 вересня 2013 року № 586-VII" [Resolution of the Verkhovna

issue of the "Voice of Ukraine" newspaper, signed by the acting President, A. V. Turchinov, and came into force on March 2, 2014.

Therefore, starting from March 2, 2014, the Ukrainian Constitution adopted at the fifth session of the Verkhovna Rada of Ukraine on 28 June 1996 is in effect –with amendments and additions introduced by Laws of Ukraine, as stated above (No. 2222-IV of December 8, 2004, № 2952-VI of February 1, 2011, and № 586-VII of September 19, 2013, and № 742-VII of February 21, 2014).

Even so, these changes to the Constitution of Ukraine, which fundamentally change the rules of interaction between different branches of power, indicate that the period of transition from a totalitarian to a democratic regime and the rule of law is still far from completion. So far, no strong instruments and norms have been created at the state level that would not allow a political force to change the Constitution of Ukraine in the desired direction. It would be appropriate for such a tool to be a nationwide referendum, during which the population would have the opportunity to accept or reject the government's proposals. However, Ukraine has not adopted a law on the referendum yet, but the draft law is currently being developed and is being considered by the Verkhovna Rada of Ukraine. And the second tool could be the Venice Commission, to which our state has often turned in various cases.

CONCLUSIONS

It may be concluded that the Constitution of Ukraine contains appropriate mechanisms for interaction between the legislative, executive and judicial branches of power, although they are not perfect and require more detailed study and implementation. Before the independence in Ukraine, society did not face the practical application of the principle of separation and interaction of the branches of state power. During the years of independence, four models of the organization of state power and its distribution have been tested in Ukraine. However, the problem itself is not solved either in theoretical or practical aspects, because at present in the state there are many cases of confrontation between the authorities, especially between the legislative and executive authorities, which does not help solve the rather complex problems faced by the Ukrainian state and society.

Rada of Ukraine of February 22, 2014 № 750-VII "On the Text of the Constitution of Ukraine as amended on June 28, 1996, as amended by the Laws of Ukraine of December 8, 2004 № 2222-IV, of February 1, 2011 № 2952 -VI, dated September 19, 2013 № 586-VII"], <https://zakon.rada.gov.ua/laws/show/750-VII>

The separation of state power is a necessary condition for a democratic political regime because totalitarian and authoritarian political regimes deny the separation of powers. Also, it should be remembered that the separation of state power is only one of many elements of the mechanism for the democratic exercise of power and is not a complete guarantee of democracy in any state. Moreover, for an unbalanced system of checks and balances, the strict separation of powers may lead to confrontation between the branches of state power.

Taking into account all the above, it can be argued that it is not necessary at all to confine to the most common allocation of the three branches when implementing the principle of separation of state power, as there may be other branches of power.