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Dualistic organization of the executive authority: theory issues and modern ukrainian experience

1. Introduction

In the concept of a mixed republic, the president as a head of state appears as a functionally "neutral" element of the state mechanism. The functionally "neutral" nature of the president cannot be rigidly tied to any branch of power, and the executive branch in particular. In a mixed republic, the president as the coordinator of the interaction mechanism of "separated powers" cannot be a structural component of any of them and at the same time does not form a separate branch of power. He plays the role of a coordinator-arbitrator, who ensures the coordinated functioning of the highest state bodies, hence the effectiveness of the state mechanism in general.

The president of the mixed republic coordinates and quadrates the actions of other higher state bodies by means of the powers available to him, i.e. tools of legal functional penetration into the sphere of activity of the mentioned bodies. This explains why most of the powers of the president of a mixed republic are elements of a system of checks and balances. By means of these powers, the president can effectively support the normal functioning of the entire state mechanism, thus guaranteeing the unity of state power.

The mixed republican form of government is characterized by a special relationship between the president and the executive power, unique in classical republics. If in a presidential republic the president heads the executive power, and in a parliamentary republic he is as far removed from it as possible, in a mixed republic the president is connected to the executive power by means of his executive powers of a legal nature. At the same

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time, in a mixed republic, the level of functional integration of the president into the executive power is so significant that it causes its dualism. The very concept of "dualism of executive power", which is used to characterize mixed republics, reflects the fact of a significant functional combination of the president with the executive power and its constitutionally established division between two subjects – the head of state and the government.

2. The significance of executive power dualism in its organization in a mixed republic

Despite the fact that the constitutions of mixed republics show certain differences in the regulation of the joint competence of the president and the government, they always establish the dualism of executive power. The dualism of executive power is a fundamental, distinctive feature of a mixed republic, and its absence does not make it possible to classify the form of government as a mixed republic[1].

The constitutions of mixed republics sometimes directly enshrine provisions on the joint exercise of executive power by the president and the government (Part 2 of Article 10 of the Constitution of Poland 1997[2], Paragraph 3 of the Basic Law of Finland 1999[3]). Taking into account the risk of confrontation between the president and the prime minister of different parties, which can significantly complicate the process of joint decision-making by these subjects, the constitutions of states with a mixed republican form of government also occasionally establish a requirement for the interaction of the president with the government or members of the government in certain areas of state-authority activity. For example, Part 3 of Article 133 of the 1997 Constitution of Poland stipulates: "The President of the Republic in the field of foreign policy interacts with the Chairman of the Council of Ministers and the competent minister"[4]. Article 99 of the Croatian Constitution of 1990 establishes that "the President of the Republic and the Government of the Republic of Croatia cooperate in the formation and implementation of foreign policy"[5].

The dualistic organization of executive power characteristic of a mixed republic provides for its subordination to two governing centers – the government and the president. The relationship of these subjects with the executive power is not the same: if the government is its highest governing body, then the president is connected to the execu-

[1] Дж. Сарторі, *Порівняльна конституційна інженерія: Дослідження структур, мотивів і результатів*, Київ: АртЕк 2001, с. 115-116.
[2] Constitution of the Republic of Poland, https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.
[3] The Constitution of Finland, https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf.
[4] Constitution of the Republic of Poland, https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.
[5] The Constitution of the Republic of Croatia, https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15 January_2014.pdf.

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tive power by means of his executive powers[6]. Such powers, although belonging to the president, are executive in nature[7].

Thus, in a mixed republic, the dualistic organization of the executive power involves not a structural, but a functional combination of the president with it. The general mixed republic approach to the division of powers between the president and the prime minister in the executive branch is that although the respective powers of these subjects are "intertwined", the powers of the president are decisive. The president as a head of state is mainly responsible for solving strategic issues, controls such spheres of state-authority activity as foreign policy, national security and defense, while the prime minister solves tactical tasks and carries out operational, day-to-day management.

In a mixed republic, the president, regardless of whether or not his party affiliation coincides with that of the prime minister, exerts a significant influence on the executive branch. Such influence is provided by the participation of the president in the process of forming the government, the leadership role of the president in the spheres of his competence compatible with the government, and the discretionary right of the president to terminate the powers of the parliament for an unlimited range of reasons. The discretionary right of the president to prematurely terminate the powers of the parliament, as well as the dualism of the executive power, are distinctive features of a mixed republican form of government. The ability of the president to terminate the powers of the parliament at his discretion forces the parliamentary-government power bloc to constructively interact with the president and ensure the implementation of his political course. The organization of state power in a mixed republic may include the right of the president to terminate the powers of the government and the right to preside over its sittings. At the same time, despite the real and direct functional combination of the president with the executive power, in a mixed republic, the parliamentary responsibility of the government does not cause premature termination of the president's powers. This proves that in this form of government the president does not head the executive power[8]. The dualism of the executive power does not destroy the organizational unity of the system of its bodies. In a mixed republic, the constitutionally defined supreme body of executive power is the government.

The dualistic organization of executive power reflects the desire to combine in a mixed republic the best features of classical republican forms of government while simultaneously avoiding their disadvantages. The consequence of the significant influence of the president on the organization and activities of the executive power is the general strengthening of its efficiency and stability. At the same time, the presence of a protégé of the parliamentary majority, the prime minister, who is sufficiently independent in

[6] В. Авер'янов, *Виконавча влада в Україні: організація та розвиток інститутів*, [у:] *Державотворення і правотворення в Україні: досвід, проблеми, перспективи*, Київ: Ін-т держави і права ім. В. М. Корецького 2001, с. 139.

[7] О. Петришин, *Форма державного правління в Україні: до пошуку конституційної моделі*, "Право України" 2014, № 8, с. 109.

[8] F. Ardant, *Les institutions de la Ve République. Hachette supérieur* 2019, p. 73.

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his decisions and actions, prevents the transformation of the president into a real head of the executive power and guarantees the implementation of the pre-election program commitments of the parties forming the parliamentary majority in government policy. One of the consequences of the dualistic organization of executive power is the significant functional dependence of the president on the prime minister (government). For example, according to the French Constitution of 1958, the President cannot exercise a number of his powers without an official proposal from the Government or prior consultations with the Prime Minister (Articles 11, 12)[9]. In Portugal, in the cases provided for by the Constitution, the President exercises his powers after first hearing the opinion of the Government (Clause f of Article 137)[10]. At the same time, since under the conditions of dualism of executive power, the government is obliged to ensure the implementation of presidential acts countersigned by its ministers, it is reasonable to assert the mutual dependence of the president and the government. Thus, the dualism of executive power ensures the unity of state policy, which is carried out by two independent subjects – the president and the government.

The dualistic organization of executive power is based on the awareness of the common flaw of presidential and parliamentary forms of government – the concentration of executive power in the hands of one subject – the president or, accordingly, the prime minister. In a mixed republic, this defect of classical republics is eliminated by the dualism of executive power. The presence of two leading subjects of executive power – the president and the prime minister, none of whom competently dominates[11], regardless of their party affiliation, makes it impossible to concentrate executive power in the hands of one of them, therefore, significantly reduces the possibility of abuse of executive power.

The dualistic organization of executive power is not without its shortcomings. In the period of "coexistence" of the president and the prime minister – representatives of rival parties, the dualism of the executive power creates a threat of their opposition[12]. This confrontation can cause significant complications in the functioning of the state mechanism. However, the presence of the president's discretionary right to early dissolution of the parliament prevents the emergence of irresolvable contradictions in the relations between the president and the government. In general, the dualism of executive power contributes to the formation of a tradition of interaction between the president and the government in order to develop and implement a unified political course. Forming a complex mechanism of mutual control between the president and the prime minister, it ultimately serves the control of the government to society.

[9] Constitution of October 4, 1958, https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_juillet2008.pdf.

[10] Constitution of the Portuguese Republic, https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf.

[11] М. Шугарт, Дж. Кэрри, *Президентские системы*, https://info.wikireading.ru/241644.

[12] A. Valenzuela, *Latin American presidencies interrupted*, "Journal of democracy", Baltimore, MD 2004, vol. 15, N 4, p. 5-19.

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The dualistic organization of the executive power also mitigates the consequences of the failure of the president's political course. In a presidential republic, the problem of the obvious failure of the head of state's political course can be solved only by the results of his next election. Here, the president is the head of the executive power, so the consequences of the failure of his political course are the most disastrous. However, in a mixed republic, an outsider president does not cause as many problems as in a presidential form of government[13].

A mixed republic is characterized by the leading role of the prime minister in the state mechanism. This feature of the form of government is especially noticeable in the period of political rivalry between the president and the prime minister. In a mixed republic, the constitutional status of the government guarantees its role as the governing body of the executive power. "Under this form of government", V. Shapoval, a Ukrainian constitutionalist notes, "the government headed by its head is a kind of center of gravity in the executive power"[14]. The prime minister's role as a head of government, however, does not eliminate the dualism of executive power. For example, in the Fifth French Republic, the right of the Prime Minister to countersign relevant acts of the President, the need for the Prime Minister's consent to the resignation of the Government and the absence of the President's right to cancel government acts guarantee the Prime Minister the status of an equal subject in relations with the President. At the same time, even under conditions of "coexistence", it is incorrect to talk about the dominance of the Prime Minister over the President, since government acts adopted by the Council of Ministers under the chairmanship of the President cannot, except in extraordinary cases, enter into force without his signature. In a mixed republic, the growth of the prime minister's political weight does not limit the leadership role of the president in certain spheres of government activity, since such a role is constitutionally defined. After all, in this form of government, the president can at any time resort to the dissolution of the parliament, hoping in this way to end the opposition of the parliamentary-government bloc. In fact, the discretionary right of the president to terminate the powers of the parliament for an unlimited range of reasons prevents an excessive reduction of the role of the president in the state mechanism.

Regardless of the variability of its constitutional anchoring, the dualistic organization of the executive power reflects the idea of a constitutional limitation of the president's influence on the executive power. In France, in particular, the President can terminate the powers of the Government only with the consent of the Prime Minister, which is evidenced by the Prime Minister's statement on the resignation of the Government. Here, the President does not have the right to cancel acts of the Government. According to the Portuguese Constitution of 1976, the right of the President to terminate the powers of the Government in general or its individual members is significantly limited.

[13] М. Шугарт, Дж. Кэрри, *Президентские системы*, https://info.wikireading.ru/241644.

[14] В. Шаповал, *Виконавча влада в Україні у контексті форми державного правління (досвід після прийняття Конституції України 1996 року)*, "Право України" 2016, № 4, с. 86.

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The President can terminate the powers of the Government only when "it is necessary to ensure the normal functioning of democratic institutions" (Part 2 of Article 198)[15], after hearing the opinion of a special advisory body – the State Council. Despite the fact that the position of the State Council is not imperative for the President, it complicates the termination of the Government's powers. The President of Portugal has been deprived of the right to cancel government acts.

Although the dualistic organization of executive power provides for the leadership role of the president in certain spheres of government activity, it requires balancing the influence of these subjects on decisions concerning their joint competence. The dualism of executive power complicates the mechanism for making these decisions, as they are the result of a compromise between the president and the government. In a mixed republic, political factors can significantly hinder the effective interaction of the president and the government, so it needs special legal guarantees. The elements of the mechanism of interaction between the president and the government in the mixed republic are the constitutional requirement of countersigning (binding with signatures) of certain acts of the president by the prime minister and/or the relevant minister as a condition for these acts to enter into force. Unlike the parliamentary form of government, in which all acts of the head of state, with some exceptions, need to be countersigned, the logic of the organization of state power in a mixed republic requires countersigning only those acts that materialize the executive powers of the president. According to their objective orientation, these powers of the president overlap with the corresponding powers of the government and form their joint competence. The countersignature of the acts of the president by members of the government imposes on the government the obligation to ensure the implementation of these acts.

Another possible organizational form of interaction between the president and the government in a mixed republic is the right of the president to convene government sittings, determine their agenda and preside over them. The mentioned right can be exercised by the president only for consideration of issues and adoption of decisions at the government sitting, which concern his competence compatible with the government. For such decisions to enter into force, they need to be signed by the president.

The practice of mixed republics also knows more complex mechanisms of interaction between the president and the government. For example, in the Fifth French Republic, the Government is a collegial body that exercises executive power alongside or together with the President. The text of the French Constitution of 1958 mainly uses the generalized term – Government. It is present in the titles of chapters III and V of the Constitution. However, the content of the mentioned term is not clarified anywhere in the Constitution and it can be clarified only indirectly. According to Article 21 of the Constitution, the activities of the Government are managed by the Prime Minister. According to Article 49 of the Constitution, the Government raises the question of trust

[15] Constitution of the Portuguese Republic, https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf.

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before the National Assembly – the lower house of the Parliament. All of this allows us to conclude that the Government is mainly understood as the totality of its members, led by the Prime Minister. At the same time, the Constitution states that the President "chairs the Council of Ministers" (Article 9)[16], and the Prime Minister "manages the activities of the Government" (Article 21)[17]. The above constitutional provisions reflect the dualistic organization of the French Government, which, depending on who presides at its sitting, can take the form of the Council of Ministers (a sitting of the Government chaired by the President) or a Cabinet of Ministers (a sitting of the Government chaired by the Prime Minister). No sitting of the Government in the form of the Council of Ministers is possible in the absence of the President, except for the case when he directly authorized another official, such as the Prime Minister, to preside over a specific sitting and in connection with a strictly defined agenda[18]. Acts adopted by the Council of Ministers require the signatures of the President, the Prime Minister and the relevant minister, and therefore cannot be adopted independently by the President or the Government. As a result, the President and the Prime Minister seem to balance each other in their prerogatives, and they need to coordinate their positions every time in order to make a certain government decision at a sitting of the Council of Ministers. In essence, the Council of Ministers is an institutionalized form of interaction between the President and the Government, designed to ensure the unity of state policy in the spheres of joint activity of these entities[19].

The practice of signing government acts with the president's signature is also reflected in the Constitution of Portugal in 1976 (Clause b of Article 137)[20].

The constitutional and legal experience of states whose form of government reflects the influence of the concept of a mixed republic proves that it is difficult to achieve a real dualism of executive power. The dualism of executive power provides for the optimal limitation of the means of influence of the president on the executive power. On the other hand, this influence must be so significant as to ensure the role of the president as the leading subject of the executive power. In other words, under the conditions of dualism of the executive power, the influence of the president and the government on the executive power should be equal. This parity can be achieved under several fundamental conditions: the presence of a parliamentary investiture of the government, the absence of the president's right at his own discretion to decide on the termination of the powers of the government (the prime minister and members of the government) and the right to cancel government acts, the presence of the prime minister's discretionary

[16] Constitution of October 4, 1958, https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_juillet2008.pdf.

[17] *Ibidem*.

[18] F. Ardant, *Les institutions de la Ve République. Hachette supérieur* 2019, p. 82.

[19] Ю. Барабаш, *Президентська влада у змішаних республіках: окремі питання теорії та практики*, "Право України" 2014, № 8, с. 71.

[20] Constitution of the Portuguese Republic, https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf.

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right to seal the acts of the head of state with his signature. A significant strengthening of the means of the president's influence on the executive power, as well as their significant weakening, cause the erosion of the dualism of the executive power. The dualism of executive power overcome in favor of the president or the government no longer allows defining the form of government as mixed republican.

Due to the administrative dependence of the prime minister on the president, the dualism of executive power has become a legal fiction, in particular, in many post-Soviet states, whose form of government imitates a mixed republican one. In these states, the absence of a full-fledged civil society and, as a result, the prerequisites for the formation of a government on a parliamentary basis turned the president into the head of the executive power in fact[21]. This nullified any of its dualism and caused the emergence of a hybrid form of government, which in a number of its features can be identified with a mixed republic, but in a number of other ones corresponds to a presidential republic.

3. Dualism of executive power in the Ukrainian form of government

The Constitution of Ukraine institutionalizes the dualism of executive power in a number of provisions of Chapters Five and Six, which enshrine the executive powers of the Head of State and the Government. According to the Constitution of Ukraine, "the Cabinet of Ministers of Ukraine is the highest body in the system of executive bodies" (Article 113), which "directs and coordinates the work of ministries and other executive bodies" (Paragraph 9 of Article 116)[22]. However, the Government is not authorized to pursue public policy exhaustively[23]. The Constitution of Ukraine establishes the relevant powers of the President of Ukraine in relation to the executive branch – the Head of State directs government activities in such areas as guaranteeing state sovereignty, human and citizen rights, constitutional legitimacy, ensuring Ukraine's national security and defense capability, implementing foreign policy, guaranteeing state sovereignty, ensuring national security and defense of Ukraine.

According to Article 102 of the Constitution of Ukraine, "The President of Ukraine is the guarantor of state sovereignty", and in accordance with paragraphs 1 and 3 of Part I of Article 106 of the Constitution of Ukraine, the President "ensures state independence, national security and succession of the state", "represents the state in international relations, manages the foreign policy of the state, negotiates and concludes international treaties of Ukraine"[24]. These constitutional provisions indicate that in such areas as guaranteeing state sovereignty, human and citizen rights, constitutional legiti-

[21] С. Холмс, *Посткоммунистический институт президента*, "Конституционное право: восточноевропейское обозрение" 1994, № 4-5, с. 54.

[22] Конституція України : Закон України від 28 червня 1996 р. № 254/96-вр, "Відомості Верховної Ради України" 1996, № 30, ст. 141.

[23] В. Авер'янов, *Дуалізм виконавчої влади у світлі конституційного вдосконалення форми державного правління в Україні*, "Вісник Конституційного Суду України" 2010, № 3, с. 110.

[24] Конституція України : Закон України від 28 червня 1996 р. № 254/96-вр, "Відомості Верховної Ради України" 1996, № 30, ст. 141.

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macy, ensuring Ukraine's national security and defense capability, implementing foreign policy, the President of Ukraine has not only a key and leading role. In these spheres of state power, he is a real subject of executive power, authorized to make important decisions[25]. On the other hand, in paragraphs 1 and 7 of Article 116 of the Constitution of Ukraine stipulates that "the Cabinet of Ministers of Ukraine ensures state sovereignty and economic independence of Ukraine, implementation of domestic and foreign policy, implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine", "takes measures to ensure defense and national security of Ukraine"[26].

According to Article 102 of the Constitution of Ukraine, the President of Ukraine is the guarantor of "observance of the Constitution of Ukraine, human and civil rights and freedoms", "implementation of the strategic course of the state to gain full membership in Ukraine in the European Union and the North Atlantic Treaty Organization"[27]. At the same time, in accordance with paragraphs 1, 1-1 and 2 of Article 116 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine ensures the implementation of the Constitution of Ukraine, "implementation of the strategic course of the state to gain full membership in Ukraine in the European Union and the North Atlantic Treaty Organization", "takes measures to ensure human and civil rights and freedoms"[28].

These powers of the Head of State and the Government outline the areas of their joint competence. In these areas, they must coordinate their positions and cooperate in order to implement a unified and systematic public policy.

Elements of dualism of executive power can also be traced in the constitutional and legal status of the National Security and Defense Council of Ukraine, headed by the President of Ukraine, more precisely, in the functions of the Council on executive bodies, in particular the Cabinet of Ministers of Ukraine, in the field of national security and defense. The existence of the National Security and Defense Council of Ukraine and the chairmanship of the President of Ukraine in this body play a significant role in combining the functions of the Head of State with the executive branch[29]. The National Security and Defense Council of Ukraine is one of the subsidiary bodies under the President of Ukraine, which ensures the exercise of his respective powers through the system of executive bodies. The constitutional and legal status of this body, its competence derive from the powers of the Head of State. Decisions of the National Security and Defense Council of Ukraine shall be implemented by decrees of the President of Ukraine. The official position of the President of Ukraine, expressed in the form of decisions of the

[25] В. Шаповал, *Виконавча влада в Україні у контексті форми державного правління (досвід після прийняття Конституції України 1996 року)*, "Право України" 2016, № 4, с. 74.

[26] Конституція України : Закон України від 28 червня 1996 р. № 254/96-вр, "Відомості Верховної Ради України" 1996, № 30, ст. 141.

[27] *Ibidem*.

[28] *Ibidem*.

[29] В. Шаповал, *Конституційно-правовий механізм державної влади в незалежній Україні: політико-правові проблеми організації виконавчої влади*, "Право України" 1997, № 1, с. 32.

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National Security and Defense Council of Ukraine on specific issues of the Government, is imperative for the latter.

An important feature of the constitutional and legal status of the National Security and Defense Council of Ukraine is the inclusion of the Prime Minister of Ukraine, the Minister of Defense of Ukraine, the Minister of Internal Affairs of Ukraine, and the Minister of Foreign Affairs of Ukraine. Although according to the Constitution of Ukraine, direct subordination of these members of the Cabinet of Ministers to the President of Ukraine is impossible without the participation of the Government, their inclusion in the National Security and Defense Council of Ukraine is directly influenced by the President of Ukraine.

Coordination of the activities of executive bodies in the field of national security and defense by the President of Ukraine does not limit the relevant competence of the Cabinet of Ministers of Ukraine. According to Paragraph 7 of Article 116 of the Constitution of Ukraine, the implementation of measures to ensure national security and defense capabilities of Ukraine is the authority of the Cabinet of Ministers of Ukraine. In fact, national security and defense is one of the spheres of joint competence of the President of Ukraine and the Cabinet of Ministers of Ukraine. Therefore, ensuring the national security and defense capability of Ukraine by the President of Ukraine is directly related to the activities of the Cabinet of Ministers of Ukraine in that area.

Thus, the areas in which the President of Ukraine manages the activities of relevant executive bodies, direct executive and administrative activities (in particular, directs the work of heads of central executive bodies), are those defined in Part 2 of Article 102 of the Constitution of Ukraine. At the same time, in accordance with the Basic Law, the President of Ukraine does not coordinate the activities of executive authorities outside the spheres of guaranteeing state sovereignty, human and citizen rights, constitutional legitimacy, ensuring Ukraine's national security and defense capability, the sphere of the state's foreign policy activity. The President of Ukraine should not interfere in the activities of executive bodies concerning other issues not covered by his constitutional competence using administrative acts.

The dualism of executive power is also reflected in the wording of Article 113 and Article 116 of the Constitution of Ukraine. According to Part 3 of Article 113 of the Constitution of Ukraine, "The Cabinet of Ministers of Ukraine in its activities is guided … by the decrees of the President of Ukraine", and in accordance with Paragraph 1 of Article 116 of the Constitution, the Government "ensures … the implementation … of acts of the President of Ukraine". These constitutional provisions directly indicate the supremacy of normative decisions of the President of Ukraine in the system of bylaws[30]. Therefore, by means of his respective decrees, the Head of State directs the activities of the Government.

[30] Л. Горбунова, *Принцип законності у нормотворчій діяльності органів виконавчої влади*, Київ: Юрінком Інтер 2008, с. 71.

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The dualism of the executive branch in the content of the original and current versions of the Constitution of Ukraine reveals significant differences. However, both cases are united by a significant disproportion between the means of influence of the President of Ukraine and the Prime Minister of Ukraine on the activities of the Cabinet of Ministers of Ukraine.

According to the original version of the Constitution of Ukraine, the President of Ukraine had the unrestricted right to terminate the powers of the Cabinet of Ministers of Ukraine as a whole and any of its members (paragraphs 9, 10 of Article 106, Article 115), the right to repeal acts of the Government (Paragraph 16 of Article 106). These powers of the President of Ukraine effectively eliminated the dualism of the executive branch. The influence of the President of Ukraine on the executive branch was strengthened by the constitutional safeguards of parliamentary responsibility of the Cabinet of Ministers of Ukraine. The termination of the powers of the Cabinet of Ministers of Ukraine due to the adoption of a resolution of no confidence by the Verkhovna Rada of Ukraine was possible if the President of Ukraine signed the resignation of the Prime Minister of Ukraine. Article 115 of the Constitution stated that "The Cabinet of Ministers of Ukraine, *whose resignation was accepted by thePresident of Ukraine* (emphasis added), on his behalf continues to exercise its powers until the newly formed Cabinet of Ministers of Ukraine…"[31]. In fact, the signing by the President of Ukraine of the resignation of the Prime Minister of Ukraine was a condition for the termination of the powers of the Cabinet of Ministers of Ukraine.

The absence of a statement by the Prime Minister of Ukraine on the resignation of the Cabinet of Ministers of Ukraine or the lack of political will of the President of Ukraine to sign this statement turned the right of the Verkhovna Rada of Ukraine to terminate the Government's powers to legal fiction. At the same time, the refusal of the Prime Minister of Ukraine to submit to the President of Ukraine the resignation of the Cabinet of Ministers of Ukraine, caused by the decision of the President of Ukraine, did not create such problems. The decision of the President of Ukraine is his expression of will in the process of exercising specific powers, which are legally materialized in the acts (decrees and orders) issued by the President[32]. The consequences of the decree of the President of Ukraine on the termination of the powers of the Cabinet of Ministers of Ukraine were final.

The original version of the Constitution of Ukraine did not provide for the obligation of the President of Ukraine to sign the statement of the Prime Minister of Ukraine

[31] Конституція України : Закон України від 28 червня 1996 р. № 254/96-вр, "Відомості Верховної Ради України" 1996, № 30, ст. 141.

[32] *Окрема думка судді Конституційного Суду України Шаповала В. М. стосовно Рішення Конституційного Суду України у справі за конституційним поданням 73 народних депутатів України щодо відповідності Конституції України (конституційності) здійсненого Президентом України права вето стосовно прийнятого Верховною Радою України Закону України "Про внесення змін до статті 98 Конституції України" та пропозицій до нього (справа щодо права вето на закон про внесення змін до Конституції України) від 11 березня 2003 р. № 6-рп/2003*, "Вісник Конституційного Суду України" 2003, № 2, с. 16.

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on the resignation of the Cabinet of Ministers of Ukraine. In Paragraph 9 of Article 106 of the Constitution of Ukraine stipulated that the President of Ukraine "terminates the powers of the Prime Minister of Ukraine and decides on his resignation"[33]. This provision confirmed that the early termination of the powers of the Cabinet of Ministers of Ukraine as the result of the adoption of a resolution of no confidence in the Verkhovna Rada of Ukraine depends on the decision of the President of Ukraine. It is obvious that the burden of parliamentary responsibility of the Cabinet of Ministers of Ukraine with the corresponding discretionary will of the President of Ukraine has distorted the system of checks and balances. The refusal of the President of Ukraine to sign the statement of the Prime Minister of Ukraine on the resignation of the Cabinet of Ministers of Ukraine, submitted in connection with the adoption of a resolution of no confidence in the Verkhovna Rada of Ukraine, threatened the stability of the constitutional order[34].

The influence of the President of Ukraine on the executive branch has been strengthened by his right to appoint and dismiss heads of other central executive bodies and heads of local state administrations (Paragraph 10 of Article 106 of the original version of the Constitution of Ukraine) as well as by the absence in the constitutional text of a provision on the chairmanship of the meetings of the Government.

Under the conditions of administrative subordination of the members of the Cabinet of Ministers of Ukraine to the President of Ukraine, the Government became the body through which the Head of State pursued his political course. This state of affairs was reflected, in particular, in the provisions of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" of October 7, 2010 concerning the procedure for approving the relevant acts of the President of Ukraine by the ministers of the Government (Part 3 of Article 25) as well as for the Program of activities of the Cabinet of Ministers of Ukraine (Part 1 of Article 10)[35].

The elimination of the dualism of the executive branch testified to the existence in Ukraine of a form of government that only imitated a mixed republic. The President of Ukraine was de facto the head of the executive branch in this form of government. In 2003, in one of its documents, the Venice Commission directly stated that the President of Ukraine "heads the executive branch"[36].

Amendments to the Constitution of Ukraine of December 8, 2004 fundamentally changed the relationship between the President of Ukraine and the executive branch. They resulted in overcoming the administrative subordination of the Cabinet of Minis-

[33] Конституція України : Закон України від 28 червня 1996 р. № 254/96-вр, "Відомості Верховної Ради України" 1996, № 30, ст. 141.

[34] В. Авер'янов, *Уряд у механізмі поділу влади: недосконалість вітчизняної конституційної моделі*, "Право України" 2005, № 4, с. 15.

[35] *Про Кабінет Міністрів України* : Закон України від 7 жовтня 2010 р. № 2591-VI, "Відомості Верховної Ради України" 2011, № 9, ст. 58.

[36] *Висновок щодо трьох проектів законів про внесення змін до Конституції України. Прийнятий Венеціанською Комісією на її 57-му пленарному засіданні (Венеція, 12-13 грудня 2003 р.)*, [у:] *Конституційна реформа: експертний аналіз*, Харків: Фоліо 2004, с. 23.

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ters of Ukraine to the President of Ukraine and the emergence of a real dualism of executive power. At the same time, under the current model of dualism of executive power, the implementation of the guarantor's functions by the President of Ukraine requires the appropriate participation of the Cabinet of Ministers of Ukraine. The President of Ukraine is closely bound by functions with the executive branch, but is deprived of sufficient constitutional means to influence the Cabinet of Ministers of Ukraine. This significantly complicates the implementation of the guarantor's functions by the President of Ukraine in the conditions of his "coexistence" with the Prime Minister of Ukraine. The President of Ukraine exercises powers to guarantee the state sovereignty, territorial integrity of Ukraine, respect for human and civil rights and freedoms, ensure the national security of the state and direct its foreign policy through a system of executive bodies. The Cabinet of Ministers of Ukraine significantly mediates the implementation of the constitutional status of the President of Ukraine as the Supreme Commander-in-Chief of the Armed Forces of Ukraine. Given the weak influence of the President of Ukraine on the Cabinet of Ministers of Ukraine, such a model of competent relations of these entities threatens serious functional limitations of the Head of State.

Although the Constitution of Ukraine enshrines the principle of responsibility of the Cabinet of Ministers of Ukraine to the President of Ukraine (Article 113), the mechanism for its implementation is not established. It would be a mistake to consider the right of the President of Ukraine to suspend acts of the Cabinet of Ministers of Ukraine on the grounds of their inconsistency with the Constitution of Ukraine with a simultaneous appeal to the Constitutional Court of Ukraine regarding their constitutionality (provided for in Paragraph 15 of Part 1 of Article 106 of the Constitution of Ukraine) as the form of constitutional and legal responsibility of the Cabinet of Ministers of Ukraine. The right of the Head of state to initiate specialized constitutional control over governmental acts derives from the "linked initiative" of the body of constitutional jurisdiction. It should be considered as a necessary element of the constitutional and legal status of the president, regardless of the form of government.

It is supposed that further revision of the form of the relationship between the President of Ukraine and the executive branch should ensure its organizational and functional unity, and therefore efficiency. In strengthening the legal status of the President of Ukraine, however, it is necessary to emphasize that an excessive increase in the power of the Head of state inevitably turns him/her into the head of the executive branch. The powers of the President of Ukraine in the sphere of organization and activity of the executive power should not give rise to administrative dependence of its bodies on the Head of State. This would functionally and motivationally orient the President of Ukraine to the role of the head of the executive branch, thus making it impossible for him/her to perform the function of coordinator and arbitrator.

The dualism of the executive branch provides a balanced opportunity for the president and prime minister to influence the adoption and implementation of relevant decisions. An effective means of balancing the influence of the President of Ukraine and the Prime Minister of Ukraine on the activities of the Cabinet of Ministers of Ukraine

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in the areas of their joint competence may be the constitutional requirement to adopt acts chaired by the President of Ukraine enshrined in the paragraphs 1, 3 and 17 of Article 106 of the Constitution of Ukraine. Convening and determining the agenda of such meetings of the Government should be the prerogative of the Head of State. The acts adopted at these meetings must be signed by the President of Ukraine, the Prime Minister of Ukraine, and the relevant Minister. Countersignature of relevant government acts by the President of Ukraine will ensure the implementation of his status as a guarantor of state sovereignty, territorial integrity of Ukraine, human and civil rights and freedoms, head of foreign policy. At the same time, the dualism of the executive branch does not allow giving the President of Ukraine the right to repeal acts of the Cabinet of Ministers of Ukraine. It is also necessary to remove from the competence of the President of Ukraine the power to repeal acts of the Council of Ministers of the Autonomous Republic of Crimea and heads of local state administrations, because. The right to repeal acts of the Council of Ministers of the Autonomous Republic of Crimea and such interference may lead to functional disorganization of the Government-led executive system heads of local state administrations should be transferred to the Cabinet of Ministers of Ukraine as the governing body in the system of executive bodies.

The procedure enshrined in the Article 118 of the Constitution of Ukraine, for appointing heads of local state administrations, who are "appointed and dismissed by the President of Ukraine on the proposal of the Cabinet of Ministers of Ukraine"[37], also should be revised. The situation when the Cabinet of Ministers of Ukraine is formed under the decisive influence of the Verkhovna Rada of Ukraine as a sole entity, and local executive bodies are formed under the decisive influence of another entity – the President of Ukraine, threatens to destroy the executive vertical and diversify the policies of the Cabinet of Ministers and local state administrations. It is obvious that the current procedure for appointing heads of local state administrations is not consistent with the provisions of Article 113 of the Constitution of Ukraine that "the Cabinet of Ministers of Ukraine is the highest body in the system of executive bodies"[38]. The cited constitutional provision stipulates that all executive bodies are directly or indirectly subordinated to the Cabinet of Ministers of Ukraine, whose powers extend to all parts of the system of these bodies[39].

Given the dualism of executive power, the President of Ukraine must have effective tools to influence the organization and activities of the Cabinet of Ministers of Ukraine as the governing body of the executive. It seems that one of such instruments should be the constitutional and legal responsibility of the Cabinet of ministers to the President of Ukraine. However, the right of the President of Ukraine to terminate the powers of the

[37] Конституція України : Закон України від 28 червня 1996 р. № 254/96-вр, "Відомості Верховної Ради України" 1996, № 30, ст. 141.

[38] *Ibidem*.

[39] І. Дахова, *Розподіл повноважень між Президентом України і Кабінетом Міністрів України*, "Форум права" 2011, № 1, с. 241.

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Cabinet of Ministers of Ukraine should be limited in order not to cause administrative subordination of the Government to the Head of State. The dualism of the executive branch is also guaranteed by the natural form of the countersignature institution for a mixed republic. Therefore, the relevant acts of the President of Ukraine should come into force only if they are signed by the Prime Minister of Ukraine.

The issue of dualism of executive power needs to be reflected in the legal positions of the Constitutional Court of Ukraine. In particular, we mean the issue of the correlation of the provisions of the Constitution of Ukraine that "the Cabinet of Ministers of Ukraine is guided in its activities … by decrees of the President of Ukraine" (Article 113) and that it "ensures … the implementation … of the acts of the President of Ukraine" (Paragraph 1 of Article 116)[40].

4. Institution of countersignature as an element of the mechanism of interaction between the President of Ukraine and the Cabinet of Ministers of Ukraine

The institution of countersignature in a mixed republic is the prime minister's most important tool for influencing the president. Countersignature is the procedure of signing the acts of the president by the prime minister and/or the relevant minister. This procedure ensures the constitutionality and compliance with the principles of government policy of the president.

In the parliamentary form of government, all acts of the head of state, with the exception of the act of appointment to the post of prime minister and some others, require appropriate binding. Here, the institution of countersignature virtually nullifies any attempts by the head of state to take independent action. In contrast to the parliamentary form of government, in a mixed republic the logic of the organization of state power requires countersigning those acts of the president that relate to his joint competence with the government. These acts materialize the powers of the president, the implementation of which requires appropriate government action. Therefore, in a mixed republic, exclusively the acts of the president, whose implementation is provided by the government, should be the object of the procedure of countersigning.

In state and legal theory, there are different interpretations of the institution of countersignature. In monarchies, the binding of the head of state's signature by the prime minister was a way of overcoming the contradiction between the responsibility of the executive and the irresponsibility of the monarch to whom it belonged[41]. Under the conditions of the republican government, countersignature testifies to the government's recognition of the constitutionality and expediency of issuing a certain act of the president, its compliance with the government's political course. In addition, countersigning is believed to ensure that both actors, the president and the prime minister,

[40] Конституція України : Закон України від 28 червня 1996 р. № 254/96-вр, "Відомості Верховної Ради України" 1996, № 30, ст. 141.

[41] А. Алексіъевъ, *Безотвътственность монарха и отвътственность правительства*, Москва: Типографія т-ва И. Д. Сытина 1907, с. 5-6.

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comply with the act. At the same time, it is a form of a kind of mutual control of the president and the government, carried out in the process of law-making[42]. By means of countersignature, the prime minister restricts the president's rulemaking, thus preventing him/her from possible abuses in the executive branch.

Thus, in parliamentary and mixed republics, countersigning presidential acts is a right, not a duty, of the prime minister and/or the relevant minister. Here, the binding of presidential acts by the signatures of the mentioned subjects as the fulfillment of their constitutional duty would undermine the importance of the countersignature as an element of the system of checks and balances. In a mixed republic, the institution of countersignature guarantees the adoption of relevant decisions by the president with the participation of the prime minister and is therefore a manifestation of the dualism of executive power. Under such conditions, the countersignature of the president's acts is a procedural form of restricting his rulemaking. Adherence to this form is a constitutional condition for the entry into force of acts of the president.

Countersignature of the relevant acts of the President of Ukraine is designed to ensure the unity of the state policy, the subjects of which are the President of Ukraine and the Cabinet of Ministers of Ukraine.

According to the original version of the Constitution of Ukraine, countersignature of a certain range of acts of the President of Ukraine is the only deterrence that the Cabinet of Ministers of Ukraine has against the President of Ukraine. However, due to the administrative subordination of the members of the Government to the Head of State, the countersignature of his acts occurred automatically.

The current version of the Constitution of Ukraine leaves unanswered the question of the consequences of the refusal of the Prime Minister of Ukraine or the relevant Minister to sign the act of the President of Ukraine. This defect in the constitutional regulation of the institution of countersignature gives rise to its various misinterpretations.

Under a mixed republic, countersigning presidential acts is a means of reviewing the constitutionality and appropriateness of his policies by the government. By signing the President's Act, the Prime Minister and the relevant Minister accept it for implementation. Thus, they confirm the legal validity and constitutionality of the act, as well as their responsibility for its implementation. However, such an understanding of the countersignature is not observed in the content of the Constitution of Ukraine. It is noteworthy that Part 3 of Article 25 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" of February 27, 2014 establishes the duty of the Prime Minister of Ukraine and the relevant Minister to sign the act of the President of Ukraine[43]. This distorts the meaning of countersignature. Drawing attention to this circumstance, the Venice Commission in its Opinion "On the Constitutional Situation in Ukraine" of December 17-18, 2010 noted

[42] В. Шаповал, *Сучасний конституціоналізм*, Київ: Салком; Юрінком Інтер 2005, с. 186.

[43] *Про Кабінет Міністрів України* : Закон України від 27 лютого 2014 р. № 794-VII, "Відомості Верховної Ради України" 2014, № 13, ст. 222.

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that "the countersignature requirement imposes restrictions on the President's discretion in certain areas and prevents him from pursuing his own policies"[44].

The correct understanding of the countersignature was reflected in the Law of Ukraine "On the Cabinet of Ministers of Ukraine" of December 21, 2006. According to Part 9 of Article 27 of the Law, the Prime Minister of Ukraine and the relevant Minister, considering it impossible to countersign the act of the President of Ukraine, had the right to return it with a statement in the cover letter of the reasons for their decision[45].

Therefore, the Constitution of Ukraine should stipulate that the relevant acts of the President of Ukraine are bound by the signatures of the Prime Minister of Ukraine and the relevant Minister. The right, not the duty of the Prime Minister of Ukraine and the relevant Minister to sign the relevant acts of the President of Ukraine will give the countersignature the character of an element of the system of checks and balances, will prevent intentional legislative distortion of its content.

Given that in a mixed republic the object of countersignature should be only those acts of the president, the implementation of which is provided by the government, the requirement of countersignature of the act of the President of Ukraine on early termination of powers of the Verkhovna Rada of Ukraine established by Part 4 of Article 106 of the original version of the Constitution of Ukraine. As the mentioned act does not directly concern the competence of the Cabinet of Ministers of Ukraine, its countersigning should be considered as unjustified interference of the Government in the activity of the President of Ukraine. The president's discretion to prematurely terminate the powers of parliament is a hallmark of a mixed republic. Therefore, the counter-receipt by the Prime Minister of Ukraine of the act of the President of Ukraine on the early termination of the powers of the Verkhovna Rada of Ukraine contradicts the criteria of a mixed republic. The same contradiction is caused by the enshrined Part 4 of Article 106 of the original version of the Constitution of Ukraine, the requirement to countersign the acts of the President of Ukraine on the appointment of judges of the Constitutional Court of Ukraine. On the other hand, in accordance with Part 4 of Article 106 of the current version of the Constitution of Ukraine, acts of the President of Ukraine, by means of which he manages the foreign policy of the State, do not need to be signed by the Prime Minister of Ukraine and the Minister of foreign affairs of Ukraine. This is abnormal given the dualism of the competence of the President of Ukraine and the Cabinet of Ministers of Ukraine in the field of foreign policy. As the Cabinet of Ministers of Ukraine mediates the foreign policy activities of the President of Ukraine, the relevant acts of the Head of State require a countersignature from the Government.

[44] *Висновок Комісії за демократію через право (Венеціанської комісії) "Про конституційну ситуацію в Україні" від 17-18 грудня 2010 р.*, http://zakon3.rada.gov.ua/laws/show/994_a36.

[45] *Про Кабінет Міністрів України* : Закон України від 21 грудня 2006 р. № 514-V, "Офіційний вісник України" 2007, № 6, ст. 7.

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5. Conclusions

In a mixed republican form of government, the president, given his status as the guarantor of the unity of state power, cannot be a structural component of any of its branches. At the same time, the president of the mixed republic is a functionally "neutral" body and therefore does not form a separate branch of power. The role of the coordinator-arbitrator requires providing the president with many checks and balances, i.e. tools for functional penetration into the sphere of activity of other higher state authorities. By exercising his/her respective powers, the president of the mixed republic ensures the unity of state power and the coordinated functioning of all its bodies. At the same time, in a mixed republic, the genetic attraction of the president to the executive power determines its dualism – the constitutionally established division of joint competence of the president and the government in the executive branch. The dualism of executive power in a mixed republic means that the president is combined with the executive power functionally, but is not a structural part of it.

The general approach to the division of powers between the president and the prime minister in the executive branch proper to a mixed republic is that although the respective powers of these subjects are "intertwined", the powers of the president are decisive. The president as a head of state is mainly responsible for solving strategic issues, controls such spheres of state-authority activity as foreign policy, national security and defense, while the prime minister solves tactical tasks and carries out operational, day-to-day management.

The dualistic organization of executive power allows to minimize the danger of abuse of executive power by both the president and the prime minister as a protégé of the parliamentary majority. It also contributes to the goals of government stability and reduces the risk of confrontation between the president and the parliamentary-government power bloc.

In the original version of the Constitution of Ukraine, the method of correlation between the President of Ukraine and the executive branch inconsistently combined the features of presidential and mixed republics. In fact, the prevalence of elements of presidentialism in the form of government led to overcoming the dualism of executive power in favor of the President of Ukraine. The current version of the Constitution of Ukraine guarantees a real dualism of executive power, but the constitutionally established model of competencies between the President of Ukraine and the Cabinet of Ministers of Ukraine deprives the President of Ukraine of sufficient constitutional means to influence the Cabinet of Ministers of Ukraine. As a result, given the different party affiliations of the President of Ukraine and the Prime Minister of Ukraine, the implementation of the guarantor functions by the President of Ukraine is significantly complicated. There is an obvious need to review the constitutionally established procedure for forming the Cabinet of Ministers of Ukraine, to consolidate the natural form of countersignature of acts of the President of Ukraine by members of the Government, to establish a mechanism of responsibility of the Cabinet of Ministers of Ukraine to the President of Ukraine. We are convinced that the constitutional requirement to adopt

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acts ensuring the exercise of the powers of the President of Ukraine provided for in paragraphs 1, 3, and 17 of Article 106 of the Constitution of Ukraine at sittings of the Cabinet of Ministers chaired by the President of Ukraine can be a constructive means of ensuring equal influence of the President and the Prime Minister of Ukraine on the decisions of the Government on issues of joint competence of the Head of State and the Government. The President of Ukraine should be given the exclusive right to convene and determine the agenda of such sittings of the Government.

In general, the constitutional means of influencing the executive power by the President of Ukraine should guarantee its stability and effectiveness, serve the purpose of developing and implementing a single political course carrying out by the President of Ukraine and the Cabinet of Ministers of Ukraine. At the same time, the constitutional means of the influence of the President of Ukraine on the executive branch should not functionally and motivationally orient him/her to fulfill the role of the head of the executive branch. Such an orientation of the President of Ukraine would make it impossible to realize his status as a guarantor of constitutional values, coordinator of the mechanism of interaction between branches of government and a mediator in state and legal conflicts.

Abstract: The form of government established by the current version of the Constitution of Ukraine generally meets the criteria of a mixed republic. One of the distinguishing features of the mixed republican form of government is the dualism of executive power, which provides for the constitutional consolidation of the joint competence of the president and the government in the executive branch. The presence of the president and the prime minister as two leading subjects of the executive power, none of whom dominates competently, prevents the abuse of executive power. The dualistic organization of the executive power also makes it possible to reduce the danger of a tough confrontation between the head of state and the parliament, a potential flaw of the presidential form of government, and the threat of permanent governmental instability, a potential flaw of the parliamentary form of government. The model of competence relations between the president and the government has a decisive influence on the effectiveness of the mixed republic. The general mixed republic approach to the division of powers between the president and the prime minister in the executive branch is that although the respective powers of these subjects are "intertwined", the powers of the president are decisive. The president as a head of state is mainly responsible for solving strategic issues, controls such spheres of state authority activities as foreign policy, national security and defense, while the prime minister solves tactical tasks and carries out operational, day-to-day management.

The analysis of the relationship between the president and the executive power characteristic of a mixed republic provides the necessary criteria for assessing the distribution of the joint competence of the President of Ukraine and the Cabinet of Ministers of Ukraine established by the Constitution of Ukraine. The model of competence relationships of these subjects, established by the initial version of the Constitution of Ukraine, corresponds to a greater extent to the criteria of the presidential form of government, and the current version of the Constitution of Ukraine complies with the criteria of a mi-

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xed parliamentary-presidential republic. At the same time, the tools of influence on the executive power available to the President of Ukraine are obviously insufficient and create serious complications in the implementation of the constitutional status of the head of state.
The methodology of this work is based on two main special legal methods of scientific research – comparative legal and legal dogmatic. These methods were used both during the entire research and more actively at its separate stages.
The comparative legal method was applied primarily to compare the content of the constitutional norms establishing the dualistic organization of executive power in countries with a mixed republican form of government.
The juridical or legal dogmatic method was applied to the theoretical legal analysis of the constitutional provisions on the status of the president and the government, in particular, those powers of these subjects that determine the spheres of their joint competence.
The mentioned research methods were complemented by a comparative historical method, which allowed to analyze the genesis of the competence relationships of the President of Ukraine and the Cabinet of Ministers of Ukraine in accordance with the original and current editions of the Constitution of Ukraine.
Keywords: form of government, mixed republic, president, government, executive power, dualism of executive power, division of competence.

Dualistyczna organizacja władzy wykonawczej: zagadnienia teoretyczne i współczesne doświadczenia ukraińskie

Streszczenie: Forma rządów ustalona w aktualnej wersji Konstytucji Ukrainy zasadniczo spełnia kryteria republiki mieszanej. Jedną z cech wyróżniających mieszaną formę rządów republikańskich jest dualizm władzy wykonawczej, który przewiduje konstytucyjne utrwalenie wspólnych kompetencji prezydenta i rządu w niektórych obszarach działania władzy państwowej. Obecność dwóch wiodących podmiotów władzy wykonawczej – prezydenta i premiera, z których żaden nie dominuje, zapobiega nadużyciom władzy wykonawczej. Dualistyczna organizacja władzy wykonawczej pozwala także zmniejszyć niebezpieczeństwo ostrej konfrontacji głowy państwa z parlamentem – potencjalną wadę prezydenckiej formy rządów, oraz zagrożenie trwałą niestabilnością rządu – potencjalną wadę parlamentarnej formy rządu.
Decydujący wpływ na efektywność republiki mieszanej ma model relacji kompetencyjnych pomiędzy prezydentem a rządem. Ogólne podejście republiki mieszanej do podziału kompetencji między prezydentem a premierem we władzy wykonawczej jest takie, że chociaż odpowiednie uprawnienia tych podmiotów są "splatane", to uprawnienia prezydenta są decydujące. Głowa państwa – prezydent – odpowiada głównie za rozwiązywanie kwestii strategicznych, kontroluje takie sfery działalności władzy państwowej, jak polityka zagraniczna, bezpieczeństwo narodowe i obrona, natomiast premier rozwiązuje zadania taktyczne i realizuje bieżące, operacyjne zadania kierownictwo.
Analiza relacji pomiędzy prezydentem a władzą wykonawczą, charakterystyczna dla republiki mieszanej, dostarcza niezbędnych kryteriów oceny podziału wspólnych kompetencji Prezydenta Ukrainy i Gabinetu Ministrów Ukrainy ustanowionych Konstytucją Ukrainy. Model stosunków kompetencyjnych tych podmiotów, ustalony w pierwotnej wersji Konstytucji Ukrainy, w większym stopniu odpowiada kryteriom

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prezydenckiej formy rządów, a obecna wersja Konstytucji Ukrainy kryteriom mieszanej republika parlamentarno-prezydencka. Jednocześnie narzędzia oddziaływania na władzę wykonawczą, jakimi dysponuje Prezydent Ukrainy, są w oczywisty sposób niewystarczające i stwarzają poważne komplikacje w realizacji konstytucyjnego statusu Głowy Państwa.

Metodologia tej pracy opiera się na dwóch głównych metodach specjalistycznych badań naukowych porównawczo-prawnej i prawno-dogmatycznej. Metody te stosowano zarówno w trakcie całego badania, jak i aktywniej na jego poszczególnych etapach.

Porównawczą metodę prawniczą zastosowano przede wszystkim do porównania treści norm konstytucyjnych ustanawiających dualistyczną organizację władzy wykonawczej w krajach o mieszanej formie rządów republikańskich.

Do teoretyczno-prawnej analizy przepisów konstytucyjnych dotyczących statusu prezydenta i rządu, w szczególności tych uprawnień tych podmiotów, które wyznaczają sfery ich wspólnych kompetencji, zastosowano metodę prawno-dogmatyczną.

Wymienione metody badawcze uzupełniono metodą porównawczo-historyczną, która pozwoliła przeanalizować genezę relacji kompetencyjnych Prezydenta Ukrainy i Gabinetu Ministrów Ukrainy zgodnie z pierwotnym i aktualnym wydaniem Konstytucji Ukrainy.

Słowa kluczowe: forma rządu, republika mieszana, prezydent, rząd, władza wykonawcza, dualizm władzy wykonawczej, podział kompetencji.

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