

## PRESIDENT AND EXECUTIVE POWER IN A MIXED REPUBLICAN FORM OF GOVERNMENT. THEORY AND UKRAINIAN EXPERIENCE

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**Abstract:** *The question of the relationship between the head of state and the executive branch is of fundamental importance in governance. In a presidential republic, the president is functionally and structurally integrated into the executive branch and heads the system of relevant bodies. In a parliamentary republic, the president is distant from the executive branch. In a mixed republican form of government, the president is not a structural component of the executive branch but is substantially integrated with it by functional duties. The level of this combination is significant and causes a dualism of executive power. The presence of the two leading executive bodies prevents abuse of executive power. This issue is becoming extremely important for many post-Soviet republics.*

**Keywords:** *mixed form, republican form, government, head of state, president, executive power, dualism of executive power, division of competence.*

**Rezumat:** *Președintele și puterea executivă într-o formă republicană mixtă de guvernământ: teorie și experiență ucraineană. Problema relației dintre șeful statului și puterea executivă este de o importanță fundamentală în guvernare. Într-o republică prezidențială, instituția prezidențială este integrată funcțional și structural în cadrul puterii executive, conducând sistemul organelor relevante. Într-o republică parlamentară, președintele este îndepărtat practice de puterea executivă. Într-o formă de guvernământ*

*republicană mixtă, instituția prezidențială nu este o componentă structurală a puterii executive, ci este integrată substanțial cu aceasta, prin atribuțiile funcționale. În acest fel, se provoacă un dualism al puterii executive. Prezența celor două organe executive de conducere împiedică, cel puțin în principiu, abuzul de puterea executivă. Această problemă este extrem de importantă pentru multe republici post-sovietice.*

## INTRODUCTION

The peculiarities of the President's rapport with the executive power mostly reflect the essence of the accepted form of government. Each type of republic presupposes its own, unique way of relating the president and the executive. In modern republics, significant differences are found both in the way the president is combined with the executive branch and in the degree to which this combination is affected. While in a presidential republic the president is united with the executive branch structurally and heads the system of its bodies, the president in a parliamentary republic is as distant from the executive branch as possible. In a mixed republican form of government, the president is removed from the executive branch structurally, but is significantly integrated into it functionally. Different ways of relating the president to the executive are based on dissimilar doctrinal approaches to understanding the functional nature of the president and his role in the state mechanism. The whole history of the development of the republican form of government is marked by the search for the optimal structural and functional relationship between the president and the executive branch. The diversity of modern republics reflects the results of that search. At the same time, the variability of the republican form of government shows that the search for the optimal model of the president's relationship with the executive branch is not complete.

Naturally, the question of the president's relationship with the executive remains relevant for many countries with underdeveloped civil society and insufficient influence exerted by political parties on the state mechanism. In these conditions, the need to ensure government stability makes it inevitable to strengthen the constitutional means of influencing the executive branch by the president. For countries with weak democratic political institutions, the dilemma of the need to introduce strong presidential power while limiting the risk it poses is particularly clear<sup>1</sup>. The theoretical preconditions for resolving this dilemma are

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<sup>1</sup> A. Arutiunyan, *Institut prezidenta Respubliki Armeniya. Sravnitelno-pravovoj analiz* [Institution of the President of the Republic of Armenia. Comparative legal analysis],

directly related to establishing the functional nature of the president and his optimal relationship with the executive branch.

The analysis of the models underlying the relationship between the president and the executive branch is inseparable from the issue of the form of government, so it is an adjacent subject of research in many scientific papers on this issue. In such a broad context, the study of the ways in which the president relates to the executive branch, their advantages and disadvantages, inevitably becomes generalized. At the same time, in their research, several scholars directly address the issue of competencies between the president and the system of executive bodies. In particular, the American scholars Matthew Shugart and John Carey extensively analyse the shortcomings of the “rigid” separation of powers in the presidential form of government and its acceptable model for the relationship between the president and the executive<sup>2</sup>. Giovanni Sartori, an Italian and American researcher, was one of the first in Western political science to analyse the model of competencies between the president and the government in a mixed republican form of government and he revealed the essence of the hallmark of this form of government – the dualism of executive power<sup>3</sup>. The phenomenon of dualism of executive power in a mixed republican form of government is also studied by Irish scholars Robert Elgie and Iain McMenamin<sup>4</sup>. Competent relations between the President and the Government in the Fifth French Republic as the first “full-fledged” mixed republican form of government in modern history are studied by the French scientist Philippe Ardant<sup>5</sup>. The methods of the relationship between the president and the executive branch in modern republican forms of government are studied by Russian scientist Oleg Zaznayev<sup>6</sup>. The issue of competencies between the president and the government in a mixed republican form of government, the President of Ukraine,

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Yerevan, Mkhitar Gosh, 1996, p. 65.

<sup>2</sup> M. Shugart, J. Carey, *Prezidentskie sistemy* [Presidential systems], in <https://info.wikireading.ru/241644>.

<sup>3</sup> J. Sartori, *Porivnialna konstytutsiina inzheneriia: Doslidzhennia struktur, motyviv i rezultativ* [Comparative Constitutional Engineering: A Study of Structures, Motives, and Outcomes], Kyiv, ArtEk, 2001, 224 p.

<sup>4</sup> R. Elgie, I. McMenamin, *Razdelennaya ispolnitelnaya vlast i demokratizaciya v poluprezidentskih sistemah* [Divided executive power and democratization in semi-presidential systems], in “Political Science”, 2014, No. 3, pp. 40-59.

<sup>5</sup> Ph. Ardant, *Franciya: gosudarstvennaya sistema* [France: The State System], Moskva, Yuridicheskaya Literatura, 1994, 175 p.

<sup>6</sup> O. Zaznaev, *Poluprezidentskaya sistema: teoreticheskie i prikladnye aspekty* [Semi-Presidential System: Theoretical and Applied Aspects], Kazan, Kazan State University named after Ulyanov-Lenin, 2006, 374 p.

and the Cabinet of Ministers of Ukraine, in particular, is most thoroughly revealed in the works of such Ukrainian scholars as Vadym Averyanov<sup>7</sup>, Volodymyr Shapoval<sup>8</sup>, Yurii Barabash<sup>9</sup>, Anastasia Repetska and Vira Burdyak<sup>10</sup>. These Ukrainian scholars studied, in particular, the peculiarities and shortcomings of the dualism of executive power, enshrined in the original and current versions of the Constitution of Ukraine.

### **THE RELATIONSHIP BETWEEN THE INSTITUTIONS OF THE HEAD OF STATE AND EXECUTIVE POWER IN THE PRACTICE OF MODERN REPUBLIC: A BRIEF OVERVIEW OF DOCTRINAL APPROACHES**

Different approaches to determining the constitutional and legal status of the president caused significant variability in the modern republican form of government. In essence, each type of republic reflects a certain, uniquely peculiar way of relating the president to the executive power. In particular, among the political scientists of the United States of America, doctrinal ideas prevail, according to which the functions of the head of state and the head of executive power should be combined in the status of the president. According to this approach, the role of the president in the state mechanism is associated with the exercise of executive power. In the presidential form of government, the integration of the head of state into the executive power is justified by the idea of a “strict” separation of powers, which requires a structural combination of all state authorities with one of the three “separated powers”. Under the conditions of “rigid” separation of powers, the government as an independent higher collegial body of executive power does not exist, just as the position of prime minister does not exist, and all the traditional powers of the government are covered by the

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<sup>7</sup> V. Averyanov, *Dualizm vykonavchoi vlady u svitli konstytutsiinoho vdoskonalennia formy derzhavnoho pravlinnia v Ukraini* [Dualism of executive power in the light of constitutional improvement of the form of government in Ukraine], in “Visnyk Konstytutsiynoho Sudu Ukrainy”, 2010, No. 3, pp. 106-115.

<sup>8</sup> V. Shapoval, *Vykonavcha vlada v Ukraini u konteksti formy derzhavnoho pravlinnia (dosvid pislia pryiniattia Konstytutsii Ukrainy 1996 roku)* [Executive power in Ukraine in the context of the form of government (experience after the adoption of the Constitution of Ukraine in 1996)], in “Pravo Ukrainy”, 2016, No. 4, pp. 72-88.

<sup>9</sup> Yu. Barabash, *Prezydentska vlada u zmishanykh respublikakh: okremi pytannia teorii ta praktyky* [Presidential power in mixed republics: some issues of theory and practice], in “Pravo Ukrainy”, 2014, No. 8, pp. 67-76.

<sup>10</sup> A. Repetska, V. Burdyak, *The Constitutional Basis for the Separation of Powers in Ukraine*, in “Codrul Cosminului”, XXVI, 2020, No. 1, pp. 143-168.

competence of the president. Therefore, in a presidential republic the executive power is personified by the head of state and given to him in personal form. This explains why the presidential republic does not know the dualism of executive power<sup>11</sup> – a distinctive feature of a mixed republican form of government, in which the president and the prime minister often compete with each other for the dominant influence on government activities.

In a presidential republic, the concentration of executive powers in the hands of the president creates a serious risk not only of abuse of executive power and permanent conflicts between the legislative and executive authorities<sup>12</sup>, but also of the decline of democratic political institutions in general, and only a developed civil society can prevent this.

The parliamentary republic, the prototype of which was the British parliamentary monarchy (and its theoretical basis is the English concept of the supremacy of the parliament), was introduced in several leading Western European countries in the post-war period. The establishment of parliamentary republics on the European continent was facilitated, in particular, by the fact that having just finished with fascism, which was associated with such “leaders” as Adolf Hitler and Benito Mussolini, the societies of the respective countries showed fear of the strong power of the president, legitimized by direct elections.

A parliamentary republic is characterized by maximum weakening of the functional relationships between the president and the executive power. Here, the role of the president in the state mechanism is limited to the exercise of powers related mainly to the foreign policy representation of the state and the leadership of the country’s armed forces. In general, under the conditions of a parliamentary republic, any powers of the head of state must be evaluated in the context of the use of the institution of countersignature, which significantly determines and limits the value of the formal and legal means of the president’s influence on the executive power. The institution of countersignature determines the “connection” of the president’s actions with the political will of the prime minister. Since the president of the parliamentary republic exercises his constitutional competence at the initiative of the government or with its sanction, the competence of the president turns into the sphere of government activity. The government controls practically all the activities of the president: the act of the head of state becomes effective as a result of its binding by the prime minister, if it is a document of

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<sup>11</sup> R. Elgie, I. McMenemy, *op. cit.*, p. 43.

<sup>12</sup> Juan J. Linz, *Opasnosti prezidentstva* [The Perils of Presidentialism], in *Politologiya: Hrestomatiya* [Political Science: Reader]. Sankt-Peterburg, Piter, 2006, p. 50.

general political content, and (or) by the corresponding minister, if it is a document in a certain field of administration.

Implementation of the idea of distancing the president from the executive power in a parliamentary republic is difficult to consider successful. Limiting the influence of the president on the executive power inevitably leads to a corresponding expansion of the competence of the prime minister. The concentration of executive power in the hands of the prime minister in a parliamentary republic replaces the danger of a one-person presidential dictatorship with the danger of a narrowly collegial dictatorship<sup>13</sup>. The threat of this dictatorship is determined precisely by the absence of a “strong”, independent, and opposite parliament in the sense of the party affiliation of the president. In the parliamentary form of government, the potential subject of this dictatorship is the prime minister as the leader of the parliamentary majority and the government headed by him. Only the diversity of the party system and the government instability it generates neutralize the potential authoritarian tendencies of classical parliamentarism.

The concept of a mixed republican form of government, first implemented in 1958 in the Constitution of the Fifth French Republic, describes the president as a functionally “neutral” element of the state mechanism. The functionally “neutral” nature of the president cannot be rigidly tied to any of the “separated powers”. In a mixed republican form of government, the president is structurally removed from the executive power, and, at the same time, he does not form a separate branch of power. He plays the role of a coordinator-arbiter, who ensures the coordinated interaction of the highest state bodies, hence the effectiveness of the state mechanism. The doctrinal approach, which defines the president as the guarantor of the unity of state power and coordinator-arbiter, makes it impossible for him to be structurally or even functionally integrated into any branch of government, which could lead to his dominant role in the relevant field. The status of a coordinator-arbiter, in particular, makes it inadmissible to identify the president with the executive power. This would contradict his mediating role in conflicts between the highest bodies of the state and would prevent the implementation of the principle of separation of powers. The president can head the executive branch or be an arbiter in the system based on the separation of powers but cannot combine both roles. In a mixed republican form of government, the president has substantial executive powers, but he is not a structural element

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<sup>13</sup> D. Gorovic, *Razlichiya demokratij* [Differences among democracies], in <http://old.russ.ru>.

of the executive power.

It is obvious that in terms of the organization of executive power, a mixed republican form of government has a fundamental advantage over classical republics. In a mixed republican form of government, there are two leading centres of executive power – the president and the government. This important circumstance makes it impossible to concentrate executive power in the hands of the president or the prime minister. Therefore, in a mixed republican form of government, the possibility of abuse of executive power by either the president (a flaw of a presidential republic) or the prime minister (a flaw of a parliamentary republic) is significantly limited.

### **DUALISTIC ORGANIZATION OF EXECUTIVE POWER AS THE MODEL OF COMPETENT RELATIONS BETWEEN THE PRESIDENT AND THE GOVERNMENT IN A MIXED REPUBLICAN FORM OF GOVERNMENT**

In a mixed republican form of government, the level of functional combination of the president with the executive power causes its dualism. This feature of the organization of the executive branch is of fundamental importance for the classification of the form of government as a mixed republican form of government. The very concept of “dualism of the executive branch” reflects a significant functional combination of the president with the executive branch and the constitutionally determined division between the two entities of the head of state and the government. The variability of balance of power between the president and the government is inherent to mixed republican forms of government, but it is important that the form of government remains a mixed republican form of government as long as it preserves the dualism of executive power.

The constitutions of countries with a mixed republican form of government seldom contain provisions that directly indicate the joint exercise of executive power by the president and the government (Part 2 of Article 10 of the Constitution of Poland of 1997<sup>14</sup>, Clause 3 of the Basic Law of Finland of 1999)<sup>15</sup>, but always establish its dualism by means of distributing relevant competencies. Since the dualistic organization of the executive power potentially complicates the pro-

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<sup>14</sup> *Constitution of the Republic of Poland of April 2, 1997*, in <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>15</sup> *Constitution of Finland of June 11, 1999*, in [https://www.constituteproject.org/constitution/Finland\\_2011](https://www.constituteproject.org/constitution/Finland_2011)

cess of joint decision-making by the president and the government (prime minister) in conditions of party opposition between these subjects, the constitutions of states with a mixed republican form of government sometimes require the president to interact with the government or members of the government in certain areas of authority activities. For example, Part 3 of Article 133 of the Constitution of Poland of 1997 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”<sup>16</sup>. 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”<sup>17</sup>.

The dualistic organization of the executive branch presupposes the existence of its two leading centres – the government and the president, which are connected not structurally but functionally. The relationship of these entities with the executive is not the same: despite the fact that the government is the highest governing body, the president is united with the executive by means of his executive powers<sup>18</sup>. Such powers, although vested in the president, are executive in their legal nature<sup>19</sup>.

Thus, the dualistic organization of the executive branch presupposes not a structural but a functional cooperation of the president with it. The common approach for the mixed republican forms of government to the division of powers between the president and the prime minister in the executive branch is that although the respective powers of these entities are “intertwined”, the powers of the president are crucial. As a head of state, the president is primarily responsible for resolving strategic issues, overseeing areas of government such as foreign policy and defence, and the prime minister is responsible for tactical tasks and operational, day-to-day management.

Having, in a number of cases, the right to terminate the powers of the

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<sup>16</sup> *Constitution of the Republic of Poland of April 2, 1997*, in <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

<sup>17</sup> *Constitution of the Republic of Croatia of December 22, 1990*, in <https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>.

<sup>18</sup> V. Averyanov, *Vikonavcha vlada v Ukrayini: organizaciya ta rozvitok institutiv* [Executive power in Ukraine: organization and development of institutions], in *Derzhavotvorennia i pravotvorennia v Ukraini: dosvid, problemy, perspektyvy* [State-Building and Law-making in Ukraine: Experience, Problems, Prospects], Kyiv, Instytut derzhavy i prava im. V. M. Koretskoho, 2001, p. 139.

<sup>19</sup> O. Petryshyn, *Forma derzhavnoho pravlinnia v Ukraini: do poshuku konstytutsiinoi modeli* [The form of government in Ukraine: to find a constitutional model], in “Pravo Ukrainy”, 2014, No. 8, p. 109.



government, the right to chair its meetings and play, in fact, in accordance with the content of his constitutional powers, a leading role in areas of joint competence with the government, the president has significant influence in a mixed republican form of government. At the same time, despite its real and direct functional combination with the executive branch, the parliamentary responsibility of the government here does not lead to the early termination of the president's powers. This shows that in a mixed republican form of government, the president does not head the executive branch<sup>20</sup>. The dualism of the executive does not mean that its various segments are subordinate to different centres – the president or the government – and the constitutionally determined supreme body of executive power is the government. In a mixed republican form of government, the president, given the nature of his competence, cannot be associated with any branch of government, including the executive.

The first precedent of the classical dualism of executive power was set in the Fifth French Republic. According to the 1958 Constitution of France, the President “presides over the Council of Ministers” (Article 9), and the Prime Minister “directs the activities of the Government” (Article 21)<sup>21</sup>. These constitutional provisions reflect the dualistic organization of the French Government, which may take the form of a Council of Ministers (a meeting of the Government chaired by the President) or a Cabinet of Ministers (a meeting of the Government chaired by the Prime Minister). In essence, the Council of Ministers is an institutionalized form of cooperation between the President and the Government, designed to ensure the unity of public policy in areas of their joint competence. Acts adopted by the Council of Ministers need to be signed by the President, the Prime Minister, and the relevant Minister. They do not come into force at the will of the President or the Government alone. As a result, the President and the Prime Minister seem to balance their prerogatives and they need to reconcile their positions each time in order to make a government decision at a meeting of the Council of Ministers. The Constitution specifies relatively clearly which issues need to be considered by the Council of Ministers. However, the issue of the division of powers between the President and the Government in the areas of their joint competence is not directly reflected in the 1958 French Constitution.

In the process of implementing the relevant constitutional provisions in the

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<sup>20</sup> Ph. Ardant, *op. cit.*, p. 73.

<sup>21</sup> *Constitution of the French Republic of October 4, 1958*, in <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958>.

Fifth Republic, a mechanism for the division of executive powers of the President and the Government was developed. The practice of allocating these powers in the Fifth Republic has undergone some development. During the presidency of Charles de Gaulle, there was a kind of vertical demarcation of the joint competence of the President and the Government. The president mainly directed France's foreign and military policy. In the post-Gaullist period, a kind of horizontal division of powers was established, in which the decisions of the most general political nature are made by the President and all current management of the country is carried out by the Government. However, neither model of separation of powers is available when the President and the Prime Minister represent opposing political forces and the parliamentary majority with the Government are in opposition to the President. Under such conditions, the President is forced to seek a compromise with the Government, as, however, the same task must be solved by the Government. During "coexistence", the current public administration is concentrated mainly in the hands of the Government. At the same time, the President's sole authority, not mediated by the Prime Minister's countersignature, remains intact.

The joint competence of the president and the government reflects the desire both to combine the best features of the presidential and parliamentary forms of government in the organization of the executive branch and to avoid their shortcomings. The positive features of the dualistic organization of the executive branch are the high functional efficiency of the government, which is largely a consequence of the president's influence on its organization and activities, and the presence of a prime minister who is sufficiently independent in his decisions and actions. The consequence of the dualistic organization of the executive branch is a 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 consultation with the Prime Minister (Articles 11, 12)<sup>22</sup>. In Portugal, in cases provided for by the Constitution, the President exercises his powers after hearing the opinion of the Government (paragraph f of Article 137)<sup>23</sup>. Thus, the dualism of the executive ensures the unity of state policy pursued by two independent entities – the president and the government.

The dualistic organization of the executive branch is based on the

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Constitution of the Portuguese Republic of April 2, 1976*, in [https://www.constituteproject.org/constitution/Portugal\\_2005](https://www.constituteproject.org/constitution/Portugal_2005).

realization of the common flaw of presidential and parliamentary forms of government, i. e., the concentration of executive power in the hands of the sole entity – the president or, vice versa, the prime minister. In a mixed republican form of government, this defect of the classical republics is eliminated by the dualism of executive power. The existence of two leading executive bodies, the president and the prime minister, neither of which is competent to dominate<sup>24</sup>, makes it impossible for any party affiliation to concentrate executive power in the hands of one of them, thus abusing the executive branch.

Although the dualistic organization of the executive branch presupposes the leading role of the president in certain areas of government activity, it requires balancing the influence of these entities on decisions concerning their joint competence. These decisions are the result of a compromise between the president and the government. The latter is provided by the constitutional requirement to sign the acts of the President concerning the competence of the government with the signatures of the Prime Minister and (or) the responsible Minister. At the same time, in the Fifth French Republic, the mechanism of interaction between the President and the Government is more complex. Here, the President has the right to chair sessions of the Government, which consider issues related to their joint competence, and to sign the relevant acts. “The President of the Republic chairs the Council of Ministers”, “The President of the Republic signs ordinances and decrees adopted by the Council of Ministers” – such legal provisions were enshrined in the French Constitution of 1958 (Article 9; paragraph 1 of Article 13)<sup>25</sup>. The practice of signing acts of the government by the president is reflected in the Constitution of Portugal of 1976 (paragraph b of Article 137)<sup>26</sup>.

If the means of influencing the president and parliament on the organization and activities of the government are normatively balanced, the dualism of the executive takes on different meanings given the party “colour” of the president, and the prime minister as a protégé of the parliamentary majority. This leads to a changing functional attraction of the mixed republican form of government to the parliamentary or presidential form of government.

Although, in the period of ‘coexistence’, the dualism of the executive branch poses a threat of confrontation between the president and the prime minister<sup>27</sup>, it

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<sup>24</sup> M. Shugart, J. Carey, *op. cit.*

<sup>25</sup> *Constitution of the French Republic of October 4, 1958*, in <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958>.

<sup>26</sup> *Constitution of the Portuguese Republic of April 2, 1976*.

<sup>27</sup> Arturo Valenzuela, *Latin American presidencies interrupted*, in “Journal of democracy”,

promotes the tradition of their interaction and prevents the concentration of the executive branch in a sole entity. Forming a complex mechanism of mutual control between the president and the prime minister, it ultimately serves to control the power of society. The dualistic organization of the executive mitigates the failure of the president's political course. In a presidential republic, the problem of the apparent failure of the political course of the head of state can be solved only by the results of his next election. Here, the president heads the executive branch, so the consequences of the failure of his political course are the most disastrous. However, in a mixed republican form of government, the outsider president does not pose as many problems as in the presidential form of government<sup>28</sup>.

The mixed republican form of government is characterized by the key role of the prime minister in the state mechanism, which is clearly seen in the situation of "coexistence". In this form of government, the constitutional status of the government guarantees its role as the governing body of the executive. "Under this form of government", says Ukrainian constitutionalist Volodymyr Shapoval, "the government headed by its head is a kind of centre of gravity in the executive branch"<sup>29</sup>. However, the importance of the prime minister as head of government does not eliminate the dualism of the executive branch. For example, in the Fifth French Republic, the Prime Minister's right to countersign relevant acts of the President, the need for the Prime Minister's consent to the resignation of the Government and the President's lack of right to repeal governmental acts guarantee the Prime Minister the status of an equal subject with the President. At the same time, even under conditions of "coexistence", it is incorrect to speak of the Prime Minister's dominance over the President, as government acts passed by the Council of Ministers chaired by the President, except for extraordinary cases, cannot come into force without his signature. In a mixed republican form of government, the growing political weight of the prime minister does not limit the president's leadership role in certain areas of government, as such a role is constitutionally defined. After all, in this form of government, the president can dissolve parliament at any time, hoping to end opposition to the parliamentary-government bloc. The latter also takes into account this possibility, which strengthens the role of the president in the state mechanism.

The constitutions of the mixed republican forms of government, while preserving the fundamental features of the dualistic organization of the executive

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Baltimore, MD, 2004, Vol. 15, No. 4, pp. 5-19.

<sup>28</sup> M. Shugart, J. Carey, *op. cit.*

<sup>29</sup> V. Shapoval, *op. cit.*, pp. 72-88.

branch, enshrine it in certain variations. However, these variations always embody the idea of constitutionally limiting the president's influence over the executive branch. In France, for example, the President can terminate the powers of the Prime Minister only with his consent, as evidenced by the Prime Minister's resignation. The President does not have the right to repeal acts of the Government here, either. According to the 1976 Constitution of Portugal, the right of the President to terminate the powers of the Government as a whole or of its individual members is significantly limited. The President may terminate the powers of the Government only when "it is necessary to ensure the proper functioning of democratic institutions" (Part 2 of Article 198)<sup>30</sup>, after hearing the opinion of a special advisory body – the State Council. Although 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 repeal government acts.

The real dualism of the executive branch, at the same time, is an elusive phenomenon. Only the optimal limitation of the president's means of influencing the government and, as a result, the equal influence of these entities on the executive branch guarantee its dualism. The equal influence of the president and the government on the executive branch is possible under several fundamental conditions: the presence of a parliamentary investiture of the government, the president's lack of discretion to terminate the government (prime minister and members of the government) and the right to repeal the Prime Minister of discretion to sign the acts of the head of state. Significant strengthening of the president's means of influencing the executive branch, as well as their significant weakening, erodes the dualism of the executive branch. The dualism of the executive branch, which has been overcome in favour of the president, no longer allows us to define it as a mixed republican form of government form of government. Given the prime minister's administrative dependence on the president, the dualism of the executive branch has become, in particular, impossible for many post-Soviet republics, whose form of government mimics a mixed republican form of government. In these republics, lack of a full-fledged civil society and, as a result, prerequisites for the formation of a government on a parliamentary basis has transformed the president into the factual head of the executive<sup>31</sup>. It has nullified any dualism and caused the emergence of a hybrid

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<sup>30</sup> *Constitution of the Portuguese Republic of April 2, 1976*, in [https://www.constituteproject.org/constitution/Portugal\\_2005](https://www.constituteproject.org/constitution/Portugal_2005).

<sup>31</sup> Stephen Holmes, *Postkommunisticheskiy institut prezidenta* [The Post-communist

form of government that can be identified with a mixed republican form of government in a number of respects but corresponds to a presidential republic in a number of other respects.

The organization of state power inherent in post-Soviet presidential republics reflects the abandonment of some of the most important institutions of a mixed republican form of government. The content of the constitutions of these republics shows, in particular, the desire to avoid the dualism of the executive branch. The dualism of the executive branch is eliminated primarily by the relevant constituent and personnel powers of the president in relation to the government. Presidents of Azerbaijan (paragraph 5 of Article 109 of the Constitution of Azerbaijan of 1995)<sup>32</sup>, Belarus (paragraph 7 of Article 84, Article 106 of the Constitution of Belarus of 1994)<sup>33</sup>, Kazakhstan (paragraph 3 of Article 44 of the Constitution of Kazakhstan of 1995)<sup>34</sup>, Kyrgyzstan (paragraph 4 of Part 1 of Article 70; Part 1 of Article 92 of the Constitution of Kyrgyzstan of 2021)<sup>35</sup>, the Russian Federation (Article 83; Part 2 of Article 117 of the Constitution of the Russian Federation of 1993)<sup>36</sup>, Uzbekistan (paragraphs 10, 11 of Article 93 of the Constitution of Uzbekistan in 1992)<sup>37</sup> have the unconditional right to terminate the powers of the government as a whole or its individual members. The president's unrestricted discretion to terminate the powers of members of the government (the government as a whole) results in their administrative subordination to the head of state.

The president's right to repeal government acts also helps to destroy the dualism of the executive branch. This right is established by paragraph 8 of

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Presidency], in "Konstitucionnoe pravo: vostochnoevropejskoe obozrenie" [Constitutional Law: Eastern European Review], 1994, No. 4-5, p. 54.

<sup>32</sup> *Konstituciya Azerbajdzhanskoj Respubliki ot 12 noyabrya 1995 g.* [Constitution of the Republic of Azerbaijan of November 12, 1995], in <https://mincom.gov.az/ru/view/pages/13/>.

<sup>33</sup> *Konstituciya Respubliki Belarus ot 15 marta 1994 g.* [Constitution of the Republic of Belarus of March 15, 1994], in <https://president.gov.by/ru/gosudarstvo/constitution>.

<sup>34</sup> *onstituciya Respubliki Kazahstan ot 30 avgusta 1995 g.* [Constitution of the Republic of Kazakhstan of August 30, 1995], in [https://www.akorda.kz/ru/official\\_documents/constitution](https://www.akorda.kz/ru/official_documents/constitution).

<sup>35</sup> *Konstituciya Kyrgyzskoj Respubliki ot 11 aprelya 2021 g.* [Constitution of the Kyrgyz Republic of April 11, 2021], in <http://cbd.minjust.gov.kg/act/view/ru-ru/112213?cl=ru-ru>.

<sup>36</sup> *Konstituciya Rossijskoj Federacii ot 12 dekabrya 1993 g.* [Constitution of the Russian Federation of December 12, 1993], in <http://duma.gov.ru/news/48953/>.

<sup>37</sup> *Konstituciya Respubliki Uzbekistan ot 8 dekabrya 1992 g.* [Constitution of the Republic of Uzbekistan of December 8, 1992], in <https://www.lex.uz/acts/35869>.

Article 109 of the Constitution of Azerbaijan of 1995<sup>38</sup>, paragraph 25 of Article 84 of the Constitution of Belarus of 1994<sup>39</sup>, paragraph 3 of Article 44 of the Constitution of Kazakhstan in 1995<sup>40</sup>, Part 3 of Article 89 of the Constitution of Kyrgyzstan of 2021<sup>41</sup>, Part 3 of Article 115 of the Constitution of the Russian Federation of 1993<sup>42</sup>, Part 6 of Article 69 of the Constitution of Tajikistan<sup>43</sup>, paragraph 16 of Article 93 of the Constitution of Uzbekistan of 1992<sup>44</sup>.

The right to terminate the powers of the government (the prime minister and other members of the government) and the right to repeal government acts correspond to the status of the head of the executive branch and demonstrate a real role in the state mechanism of presidents of post-Soviet presidential republics. Analysing, in particular, the competencies of the President and the Prime Minister in the Russian Federation, Russian researchers Aleksandr Kozyrin and Yelena Glushko note: "Although Russian law does not say that the president heads the executive branch, but in fact its prerogatives in this area are the most important. Under such a construction, the powers of the head of government inevitably become administrative in nature"<sup>45</sup>.

The abolition of the dualism of executive power also turns into nothing such a fundamental deterrence for a mixed republican form of government as the countersignature of the president's acts by the prime minister and (or) the relevant minister. It is noteworthy, however, that of all the current constitutions of the post-Soviet presidential republics, the institution of countersignature is

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<sup>38</sup> *Konstituciya Azerbajdzhanskoj Respubliki ot 12 noyabrya 1995 g.* [Constitution of the Republic of Azerbaijan of November 12, 1995], in <https://mincom.gov.az/ru/view/pages/13/>

<sup>39</sup> *Konstituciya Respubliki Belarus ot 15 marta 1994 g.* [Constitution of the Republic of Belarus of March 15, 1994], in <https://president.gov.by/ru/gosudarstvo/constitution>.

<sup>40</sup> *Konstituciya Respubliki Kazahstan ot 30 avgusta 1995 g.* [Constitution of the Republic of Kazakhstan of August 30, 1995], in [https://www.akorda.kz/ru/official\\_documents/constitution](https://www.akorda.kz/ru/official_documents/constitution).

<sup>41</sup> *Konstituciya Kyrgyzskoj Respubliki ot 11 aprelya 2021 g.* [Constitution of the Kyrgyz Republic of April 11, 2021], in <http://cbd.minjust.gov.kg/act/view/ru-ru/112213?cl=ru-ru>.

<sup>42</sup> *Konstituciya Rossijskoj Federacii ot 12 dekabrya 1993 g.* [Constitution of the Russian Federation of December 12, 1993], in <http://duma.gov.ru/news/48953/>.

<sup>43</sup> *Konstituciya Respubliki Tadjikistan ot 6 noyabrya 1994 g.* [Constitution of the Republic of Tajikistan of November 6, 1994], in <http://legalns.com/download/books/cons/tajikistan.pdf>

<sup>44</sup> *Konstituciya Respubliki Uzbekistan ot 8 dekabrya 1992 g.* [Constitution of the Republic of Uzbekistan of December 8, 1992], in <https://www.lex.uz/acts/35869>.

<sup>45</sup> A. Kozyrin, E. Glushko, *Pravitelstvo v zarubezhnyh stranah* [Government in Foreign Countries], Moskva, Os-89, 2007, p. 12.

enshrined, albeit in an atypical form, only in the Constitution of Kazakhstan in 1992 (Part 3 of Article 45)<sup>46</sup>.

Thus, in the post-Soviet presidential republics, the president's relationship with the executive nullifies its dualism. Here, the government is an instrument for implementing the president's policy.

The Constitution of Ukraine institutionalizes the dualism of executive power in a number of provisions of Chapters 5 and 6, 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)<sup>47</sup>. However, the Government is not authorized to pursue public policy exhaustively<sup>48</sup>. The Constitution of Ukraine establishes the relevant power 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, foreign policy, guaranteeing state sovereignty, ensuring national security and defence 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"<sup>49</sup>. These constitutional provisions indicate that in such areas as guaranteeing state sovereignty, human and citizen rights, constitutional legitimacy, ensuring Ukraine's national security and defence 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<sup>50</sup>. Conversely, paragraphs 1 and 7 of Article 116 of the Constitution of Ukraine stipulate that "the Cabinet of Ministers of Ukraine ensures state sovereignty and economic independence of Ukraine, implementation of domestic

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<sup>46</sup> *Konstituciya Respubliki Kazahstan ot 30 avgusta 1995 g.*

<sup>47</sup> *Konstytutsiia Ukrainy vid 28 chervnia 1996 r.* [Constitution of Ukraine of June 28, 1996], in [https://kodeksy.com.ua/konstitutsiia\\_ukraini.htm](https://kodeksy.com.ua/konstitutsiia_ukraini.htm).

<sup>48</sup> V. Averyanov, *Dualizm vykonavchoi vlady...*, p. 110.

<sup>49</sup> *Konstytutsiia Ukrainy vid 28 chervnia 1996 r.*

<sup>50</sup> V. Shapoval, *op. cit.*, p. 74.



and foreign policy, implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine”, “takes measures to ensure defence and national security of Ukraine”<sup>51</sup>.

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 of Ukraine in the European Union and the North Atlantic Treaty Organization”<sup>52</sup>. 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 of Ukraine in the European Union and the North Atlantic Treaty Organization”, “takes measures to ensure human and civil rights and freedoms”<sup>53</sup>.

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 Defence 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 defence. The existence of the National Security and Defence Council of Ukraine and the leadership 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.

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 defence 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

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<sup>51</sup> *Konstytutsiia Ukrainy vid 28 chervnia 1996 r.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

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<sup>54</sup>. Therefore, by means of his respective decrees, the Head of State directs the activities of the Government.

### CONCLUSIONS

Each country, which constitutionally enshrines the chosen form of government, is faced with the question of how to relate the institutions of the head of state and the executive branch. The effectiveness of the form of government depends on the successful resolution of this issue. In particular, in each type of republican form of government the organization of state power reflects its own, unique logic of competent relations between the president and the government.

In modern republics, significant differences are found both in the way the president is combined with the executive branch and in the degree of such combination. In the presidential form of government, the head of state is also the head of the executive branch and therefore united with it both functionally and structurally. In a parliamentary republic, the president is functionally and structurally distanced from the executive branch. The relationship between the president and the executive branch in a mixed republican form of government is special. Here, the status of the president as an impartial coordinator and arbiter in the relations of the highest bodies of the state makes it impossible for him/her to integrate structurally into any branch of government. At the same time, this status requires the president to be given significant powers as the instruments to influence all branches of government. The purpose of these powers is to ensure the integrity of the state mechanism, the coordinated functioning of all its structural elements. The instruments of the president’s influence on the executive branch, which are characteristic of a mixed republican form of government, are so

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<sup>54</sup> L. Gorbunova, *Princip zakonnosti u normotvorchij diyalnosti organiv vikonavchoyi vladi* [The Principle of Legality in the Rule-Making Activities of Executive Bodies], Kyiv, Yurinkom Inter, 2008, p. 71.

significant that they lead to its dualism – the constitutionally established division of the joint competence of the president and the government.

The question of the president's relationship with the executive branch is of particular importance for countries with underdeveloped civil societies and insufficient influence of political parties on the state mechanism. For these countries, the need to ensure governmental stability inevitably increases the president's influence over the executive branch. At the same time, the strengthening of the constitutional status of the president against the background of the weakness of the parliament always threatens the authoritarianization of the power of the head of state.

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 republican forms of government. In fact, the prevalence of elements of presidentialism in the form of government led to overcoming the dualism of executive power in favour 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, which is proper to the mixed republican form of 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 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 sessions of the Government.

In general, the constitutional means of influencing the executive power by the President of Ukraine should guarantee its stability and effectiveness, serving

the purpose of developing and implementing a single political course carried 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 fulfil 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.

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