

## SEPARATION OF POWERS PRINCIPLE IN THE STATES OF XXI CENTURY: CONSTITUTIONAL APPROACH



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The relevance of the topic of this study comes from the constant search by legal theorists for the formula of an ideal state and the determination of the scope of power and functions of a particular branch of government. That is because the different balance and strengthening of one of the three branches of government leads to the formation of one or another political system within the state, and also determines the dynamism of the country's development. In different states, this balance and system of checks and balances are formed differently, which gives rise to their political characteristics, thus creating political challenges.

The subject of this work is the principle of separation of powers, according to which democracy is realized in the modern world. The purpose of the work is to explore the theory of separation of powers, its current position in countries with Presidential and Parliamentary forms of government and how compliance with certain criteria can help maintain the effectiveness of government in the modern era.

The topic of this study is relatively up-to-date due to the small number of legal works devoted to the issues which are taken into consideration. Most researchers focus on the topic of the classical

theory of separation of powers, rightfully positioning it as the dominant and generally accepted principle of organization of power in a state. Thus, based on a certain distribution of power, they give their preferences to one or another form of government. At the same time, the smaller number of works are devoted to alternative positions associated with the branches of government. This article, in its essence, is a study that starts discussion on the topic of the constitutional branch of government.

The research methods used in this work are typical for a legal research (analysis, synthesis, etc.). Through a comparative analysis of the separation of powers in the countries of Kazakhstan, Uzbekistan, the United States and Indonesia, this study attempts to shed light on the need to establish a balance between the three branches of government. This study outlines the position of why the principle of separation of powers is so important for modern states of the world. And how does this principle ensure stability, security and democracy in a state. Based on the analyzed theoretical and real provisions in countries, the author proposes the position of adding a new branch of government to the existing one – the classical system of checks and balances. The constitutional branch of power is a guarantee of stability and balance of a certain state.

The findings of this study contribute to the debate on the distribution of power and responsibilities between branches of government and compliance with checks and balances. This reflects the eternal search for balance between branches of power in the theory of law. This study also proposes to supplement three branches of government with a fourth component – the Constitutional branch of government. The author suggests that the inclusion of a new branch of government will

help make government systems and their forms of governance more democratic, efficient, and capable of meeting the requirements of modern time.

*Keywords: power, principle of separation of powers, democracy, branches of government, Kazakhstan, political system, state, governance, political reforms, constitutional law.*

### Introduction

Today, living in a constantly changing world, we see the dynamics of globalization of states, their participation in international organizations, and the transformation in terms of political reforms within countries. The vector of transformation and reform of states is directed towards the supremacy of law and the observance of people and citizen rights.

The purpose of this paper is to review existing theories of the functioning of the state: the classical theory of separation of powers and the newest theory of separation of powers. The author also attempts to justify the introduction of a fourth branch of government in the form of a “constitutional branch of government.”

There exist 193 states across the globe, as per the United Nations. Every state, acknowledged by the international community, possesses unique features of state structure, culture, territory, and legal family affiliation. Nonetheless they are all united by a common thread – the ability to govern a particular territory effectively, a crucial attribute of a sovereign state.

When we refer to recognized states, we mean those states that meet all the criteria of a state under international public law, where the Convention on the Rights and Duties of States, signed in Montevideo on December 26, 1933, speaks about the characteristics of a state. As indicated by the Montevideo Convention, Article 1 outlines four distinct attributes that define a state: a permanent population, a defined territory, a government, and the ability to engage in relations with other states. These criteria pertain to “*Republics*” as states, whereas for federal states, Article 2 of the same convention specifies that a federal state is an exclusive entity of international law.

In this paper the focus will be on the theses regarding the category of “*Government*”. This is because the government of any state is empowered to implement internal and external policies and is responsible for the well-being of its residents. As a fundamental element of the state, the government plays a crucial role in ensuring the welfare of its citizens.

There were two other types, empires, and protectorates, but over time and in historical reality, they remained in the history of the theory of state and law. Thus the “*State structure*” is an organizational and legal system that determines the structure and functions of the state, its bodies, and institutions, as well as their interaction to implement tasks entrusted to the state.

According to the legal theory, the state structure is one of the main elements of the state. It is determined by constitutional norms and laws that establish the legal foundations for the organization and functioning of the state.

The state structure can be different for different states, and it may include various elements, such as executive, legislative, and judicial branches of power, local self-government, federal relations between different territories, etc.

The bodies of state power and administration that make up the state structure may have different powers, levels, tasks, and functions, but they are all aimed at ensuring the protection of the rights and freedoms of citizens, creating conditions for economic and social development of society, maintaining order and security, and so on. According to the legal theory there are currently three types of state structure: unitary, federal, and confederate.

In addition to the state structure, there is also state administration in the state. “State administration” is the system of management of state affairs that is carried out by state bodies and institutions operating based on constitutional norms and laws. It is one of the elements of the state structure.

According to the legal theory, public administration is a set of activities of state bodies and institutions aimed at implementing tasks assigned to the state. It includes organizing and coordinating the activities of state bodies, as well as regulating relations between them and citizens.

Public administration includes the following functions:

1. Legislative function – the adoption of laws and regulatory acts;
2. Executive function – implementation of laws and regulatory acts, as well as monitoring their execution;
3. Judicial function – resolution of disputes and conflicts arising between individuals (citizens, foreign citizens, and stateless persons), legal entities (organizations and companies), and state bodies;
4. Control function – control over the activities of state bodies and institutions [1].

Public administration is an important tool for implementing state policy and ensuring the protection of the rights and freedoms of citizens, creating conditions for economic and social development of society, and maintaining order and security.

### **Materials and Methods**

This work uses the results of research by various scientists on the topic of the principle of separation of powers. The results were analyzed, interpreted and adapted to justify the need for a new branch of government. The author used a typical legal research methodology, which included a systematic analysis of the concept of the principles of separation of powers and the system of checks and balances. The first step was to define and understand the principle of separation of powers and its role. Also in addition to the classical theory of separation of powers, the author pays attention to the newest theory of separation of powers.

In general, the methodology of this article involves a comprehensive study of the various ways of distributing power between the three branches of government (legislative, executive and judicial). It is also proposed to balance them with the fourth one, which is the Constitutional branch of government.

### **Main Provisions**

#### **1. The different types of governments and the implications on the principle of separation of powers**

From the legal theory we know that there are two types of government: monarchy and republic. If we talk about the first category, “monarchy” is a form of government in which the head of state is a monarch – one person who inherits power by right of inheritance. If we consider the lexical meaning, “monarchy” (the Greek word *monarchia* – absolute rule) – in English, monarchy; in German, *Monarchie*. A form of government in which supreme power in the state is formally (fully or partially) concentrated in the hands of an only head of state – a monarch.

From the perspective of the legal theory monarchy is one of the forms of government that is based on the concept of monarchical power, which is the idea that the monarch is the sole holder of power and the supreme representative of the state. In this system the monarch is usually a symbol of unity and stability of the state and also performs the functions of the head of state.

Monarchy can be absolute or constitutional. In an absolute monarchy the monarch has unlimited power and is not subject to laws. In the constitutional monarchy the monarch has limited powers and acts within the framework of the constitution and laws that define the organization and functioning of the state.

The features of monarchy can vary depending on the traditions and culture of different countries. Some monarchies may have a strong political role and influence government decisions, while in other monarchies; the monarch may be predominantly a symbolic figure who does not interfere in politics.

Although monarchy can be stable and have its advantages, it can also be criticized for the lack of democratic procedures and inequality before the law.

Moving on to the second form of government, referring to the vocabulary meaning of the word “republic,” we see that it comes from the Latin “*Res Publica*”, where “*res*” means “*thing*” and “*publicus*” means “*public*”. This is a form of government where all the highest organs of power are either elected or formed by national representative bodies (parliaments), and citizens

have personal and political rights. As for the form of government in a “republic”, this is a form of state structure in which the head of state is either a president elected for a specific term or a collegial body such as a government or parliament. Republics are characterized by the fact that the head of state and/or government is elected for a specific term rather than monarchy, power inheritance.

From the perspective of political theory and law, a republic is one form of government based on the idea that power should be elected for a specific term and controlled by the people. A republic can be presidential with the president as head of state or parliamentary with the parliament as the main authority. A constitution typically governs a republic, outlining the state’s organization and operation, safeguarding citizens’ rights and freedoms, and restricting the government’s authority.

A republic usually involves democratic procedures, such as elections, freedom of speech and assembly, and an independent judiciary. A republic can take different forms of government, such as parliamentary, presidential republic, semi-presidential republic, and so on. Throughout various nations, republics exhibit unique characteristics in regards to their legal framework, election procedures, governing structure, level of centralized authority, and more. Generally speaking, a republic serves as a type of government that restricts power and guarantees citizens’ involvement in crucial state affairs.

When discussing state institutions, it is important to recognize the three primary branches of government: legislative, executive, and judicial. These branches are a fundamental concept within constitutional law, designed to ensure the separation of powers among the three branches.

Each branch has its specific functions defined by the constitution (the country’s fundamental law). The legislative branch creates laws and only it has this legislative function; the executive branch ensures the enforcement of enacted laws and takes all possible measures to implement them. The judicial branch resolves disputes regarding the violation of rights protected by law and makes decisions based on those laws.

The concept of separation of powers was developed by the French philosopher Montesquieu in the 18th century. In his book “*The Spirit of Law*” he expressed the idea of the need to separate powers to ensure freedom and protection of citizens’ rights [2].

Montesquieu believed that the separation of powers into branches was a necessary condition for the creation of a free and rule-of-law state. He believed that the concentration of power in the hands of one person or one institution of the state could lead to abuses and violations of citizens’ rights.

Montesquieu proposed dividing power into three branches: legislative, executive, and judicial. He believed that each branch should have its specific functions and should not interfere with the work of other branches. Thus, the legislative branch creates laws, the executive branch enforces them, and the judicial branch resolves disputes and makes decisions based on laws.

Montesquieu emphasized that each branch should be independent and equal. He proposed creating a system of checks and balances to prevent the possibility of abuse. Thus, the legislative branch should control the executive branch, and the judicial branch should control both branches and correct errors and abuses if they occur. Thus, Montesquieu believed that the separation of powers into branches was necessary to create a free and lawful state, where the rights and freedoms of citizens are protected by law and controlled by different branches of government.

When the principle of separation of powers into three branches of government exists, the concept of “checks and balances” arises. The system of checks and balances is a concept developed in the theory of state and law, which provides for the creation of a system of control and balance of power to prevent abuses and violations of the rights of citizens.

According to this concept power in the state should be divided into different branches, each of which should perform its specific functions. Each branch of government should have independence and equality so that it can perform its functions effectively.

However, in order to prevent possible abuses, each branch should control and restrain the actions of the other branches of government. Thus a system of checks and balances is created that provides a balance of power and prevents its trespass.

For example, in the United States the legislative branch (Congress) creates laws, but the President has the right to veto, which can be overridden by Congress. The Judicial branch can overturn laws that it deems unconstitutional. Thus each branch of government controls and restrains the actions of the others to create balance and protect the rights of citizens.

The system of checks and balances is an important element of the rule of law, as it ensures a balance of power and protects the rights of citizens. It prevents the possibility of tyranny, dictatorship, and authoritarianism, and guarantees freedom and equality before the law.

Apart from the traditional concept of separation of powers, there is existing a contemporary theory proposed by Cindy Skach, an accomplished English professor. Her perspective on the theory is influenced by the advancements and difficulties faced by current states, including globalization, the era of information, and transnational concerns. This may necessitate the modification of existing separation of powers principles to suit the new conditions. Specifically, the theory of “*Semipresidentialism*” is recommended, which prioritizes the integration of features from both presidential and parliamentary systems of governance. In a seven-presidential system, the president plays an important role, but there is also a parliament with legislative powers. This is different from the clearly divided system presented in the classical separation of powers theory. Along with this, there is also an increase in the role of the executive branch. In the new theory of separation of powers, especially in the context of *Semipresidentialism*, the executive branch (president or prime minister) may have more power and influence over the legislative process than in the classical theory [3].

An example of states with *Semipresidentialism* could be:

France is one of the most famous examples of a country with a seven-presidential system. The President of France plays an important role in the executive branch and foreign policy, while the parliament (National Assembly and Senate) has legislative powers.

Romania also has a seven-presidential system, where the president is the head of state and has certain powers, and legislative power is in the hands of parliament.

Portugal has a seven-presidential system, where the people elect the president and have certain powers, while the parliament (Assembly of the Republic) has legislative powers.

Ukraine is also an example of a country with a seven-presidential system, where the president and parliament have certain powers, and the distribution of power between them is determined by the constitution.

Professor Skach also talks about the remaining branches of government, in terms of the new theory of separation of powers, which emphasizes flexibility and cooperation between branches of government, instead of strict isolation. This may be necessary to more effectively manage complex problems such as economic crises and global threats [4].

When examining the roles of government, we can draw parallels with the various branches of government. The “legislative function,” which involves the creation of laws and regulations, falls under the purview of the legislative branch. Typically the parliament serves as the legislative body, and can take the form of a unicameral system, as is the case in Ukraine’s *Verkhovna Rada*, or a bicameral system, such as Kazakhstan’s *Senate* and *Majilis* of Parliament.

“Executive function” refers to the implementation of laws and regulations, as well as the monitoring of their implementation. This function is often carried out by the Cabinet of Ministers, headed by either the UK’s Prime Minister, the US President, or the Chancellor as it currently stands in Germany.

“Judicial function” involves the resolution of disputes and conflicts that arise between individuals (citizens, foreign nationals, and stateless persons), legal entities (organizations and companies), and government bodies. This function is carried out by judges and presented in courts at different levels. For example, in Kazakhstan, this includes courts of first instance (district or city courts), appellate courts (usually regional or republican city courts), and cassation courts, such as the Supreme Court of the Republic of Kazakhstan.

The “control function” encompasses the observation of government bodies and institutions. Within the system of checks and balances all three branches of government possess this function.



Nevertheless, in a super-presidential republic, the head of state – the President – may hold this function, standing apart from the branches of government and serving as a mediator of power. It should be noted that if this control function over the branches of government is handed over to one body or person, the democratic balance of power between the branches of government is disrupted. This can strengthen authoritarian traits in the system of government, leading to a power imbalance in the state, as noted by the famous legal philosopher Montesquieu.

When considering the institutions of power, each one must be examined separately. Let's start with the legislative branch, which is represented by the country's parliament. This body is formed by parties, different political formations, and movements. Parliament is considered the highest representative body, and its representatives are elected by the people, which corresponds to the spirit of democracy. The "parliament" is the legislative body of the state, consisting of elected representatives of the people called parliamentarians. The primary functions of parliament include the enactment of laws, overseeing the work of the government, and determining the political direction of the state [5].

## 2. The different approaches to the separation of powers

In many countries the parliament consists of chambers formed through general elections and voting for specific political parties. For example, the U.S. Congress is formed through elections in all states of the country from the two parties, "Democrats" and "Republicans". In Kazakhstan the Parliament is formed through general elections, using a mixed system, where citizens of the country vote for candidates from political parties, which, at the time of the last election on March 19, 2023, were: "Amanat," "Respublika," "AqZhol," "Auyl," "Narodnaya Partiya Kazakhstan" and "Obshchenatsionalnaya Sotsial-Demokraticheskaya Partiya (OSDP)".

Considering the concept of "political pluralism" is essential as it ensures that all perspectives of the society are taken into account in the political beliefs of citizens. Political pluralism advocates for the coexistence of different political viewpoints, opinions, and beliefs in society, along with their expression and representation through diverse political parties, groups, and organizations. This assumes that citizens have the right to freely express their political views and participate in decision-making processes.

### 2.1 Kazakhstan

Article 5 of the Constitution of the Republic of Kazakhstan upholds political pluralism and lays out the fundamental principles of the country's constitutional system, including the principles of separation of powers and multi-party system. Furthermore, the legislation on political parties in Kazakhstan establishes the legal status and guidelines for the creation, registration, and operations of political parties. Under this legislation political parties are afforded the freedom to express their political views, participate in elections and decision-making processes, and engage in lawful activities that align with the Constitution and laws of the Republic of Kazakhstan.

Thus in Kazakhstan political pluralism is one of the fundamental principles of the constitutional system of the state, which ensures freedom of expression of citizens' political views and the diversity of political parties and organizations.

Talking on parliament it is important to outline its main functions. We believe that the main functions of parliament include:

*Legislative function.* Parliament directly participates in the process of adopting laws, considers and approves draft laws, as well as discusses and makes amendments to existing laws, or recognizes laws and acts of parliament that have lost their legal force.

*Representational function.* Parliament represents the interests of citizens and the people of the country, expresses their will, and exercises control over the activities of the government and state authorities.

*Government formation function.* Parliament participates in the formation of the government, approves its composition and program of activities, and also exercises control over its work.

*Control function.* Parliament exercises control over the activities of the government and other state authorities, conducts parliamentary hearings, and investigations, and adopts resolutions on issues related to the national interests of the country.

*Function of budget management.* The parliament participates in the formation of the state budget, approves it, and exercises control over its execution.

*Function of international cooperation.* The parliament exercises control over the foreign policy of the government, participates in the process of ratification of international treaties and agreements, and also participates in inter-parliamentary relations with other countries.

All these functions must be carried out by the parliament per constitutional principles and laws, taking into account the interests of citizens and the people of the country. The parliament must also ensure the observance of the rights and freedoms of citizens, as well as take measures to strengthen the constitutional system and the rule of law [6].

Now let us turn our attention to the executive branch of government. As is customary the authorized entity in this branch is referred to as the “*Government*”. The Government is an executive authority that oversees the state and guarantees the enforcement of policies and laws passed by the legislative authority. Among its many responsibilities the Government conducts both domestic and foreign policies, ensures safety and maintains law and order, regulates the economy, provides social protection, and addresses other various aspects of society’s well-being.

The legal theory considers the government as one of the three main bodies of the state, including the legislative, executive, and judicial branches of power. The government belongs to the executive authorities that are responsible for the implementation of laws and policies approved by the legislative authority [7].

The philosophy of law also regards the government as an executive authority that ensures the enforcement of laws and the protection of the rights and freedoms of citizens [8].

By analyzing the legal structure of the “government” and its connection to the executive branch, we can discern its primary roles. While we offer six functions it is important to note that this catalogue is not exhaustive and may be augmented by additional duties based on the political landscape of a given nation. Thus, according to constitutional law, the functions of the government include:

*The legislative function.* It is important to note that this function is not the function of adopting laws, but only endows the government with legislative initiative. The government interacts with parliament and presents draft laws that are then discussed and adopted in parliament. In addition the government may issue resolutions and orders that have the force of law in exceptional cases.

In Kazakhstan, in situations where resolving a socially significant matter is urgent, the government reserves the authority to release temporary government resolutions that possess the weight of law. These resolutions remain in effect until laws are passed by Parliament or until Parliament fails to pass any laws. This function is intended to eliminate gaps in legislation or to address acute situations in society. Subsequently, the Parliament of Kazakhstan passes the main law and cancels the temporary government act. In other words, in this case, the constitution provides for such functions of the government to timely respond on behalf of the state.

*Function of the executive branch.* The Government exercises leadership and coordination of the activities of all executive authorities, approves state programs and plans, and regulates economic and social processes in the country.

*Function of control.* The Government controls the execution of laws, decrees, and resolutions, as well as the activities of all executive authorities.

*Function of protecting the rights and freedoms of citizens.* The Government is obliged to protect the rights and freedoms of citizens and ensure compliance with constitutional guarantees and the rules of the rule of law.

*Function of foreign policy.* The Government conducts foreign policy activities, establishes diplomatic relations with other states and international organizations, concludes international treaties and agreements, and protects the interests of the country in the international arena.

*Function of economic development.* The Government is involved in the development and implementation of the country's economic policy, regulation of economic processes, ensuring the economic security of the state, and the development of infrastructure.

All of these functions must be carried out by the Government following constitutional principles and laws, taking into account the interests of citizens and the people of the country [9].

Continuing our discussion on the fundamental components of government, we come to the judicial branch – an integral part of the state's governance. This branch is responsible for upholding justice and interpreting laws by hearing and deciding cases. Along with the legislative and executive branches, the judicial branch completes the trifecta of the state's main governing bodies.

The legal theory considers the judicial branch of government as an independent and autonomous power that is not subordinate to other branches of government and exercises control over their actions. The judicial branch of government exercises justice within the framework of established laws and norms, protects the rights and freedoms of citizens, and also regulates public relations.

The philosophy of law also considers the judicial branch of government as one of the main branches of government, which protects the rights and freedoms of citizens and exercises justice in accordance with the legislation.

Like the previous branches of government, the judicial branch of government has its own specifics and corresponding functions. Thus, the main functions of the judicial branch of government are:

*Dispute resolution.* The judicial branch of government is engaged in the resolution of disputes and conflicts between individuals, organizations, and the state. This may be related to property rights, contracts, inheritance, crimes, etc. The bodies that resolve disputes often include courts, arbitrations, tribunals, and other judicial bodies.

*Ensuring social justice.* The judicial branch of government guarantees justice and equality before the law. Judges must make decisions based on the law and evidence, not on their personal beliefs or prejudices. However, it should also be noted that on some issues, where the law does not provide a precise interpretation and has evaluative categories, judges consider cases from the point of view of their own moral, ethical, and life experiences and situations.

*Protection of rights and freedoms of citizens.* The judicial branch of government protects the rights and freedoms of citizens from violations by the state or other citizens. The courts must ensure the protection of rights to life, liberty, honor, dignity, property, and other civil rights.

The judicial branch of power applies lawful measures to violators of the law and public order, which may take the form of administrative or criminal liability in the form of fines, corrective labor, restrictions on freedom, imprisonment, and in some countries, the death penalty and even deprivation of citizenship.

*Enforcement of the laws.* The judicial branch of power monitors the enforcement of laws and resolutions adopted by other branches of government. Courts may invalidate illegal acts and decisions made by other branches of government.

*Ensuring legal stability.* The judicial branch of power creates precedents and establishes norms that regulate relations between people and the state. This ensures legal stability and predictability in the legal system.

All of these functions should be carried out by the judicial branch of power in accordance with the constitution and laws, taking into account the interests of citizens and the state. Courts must also ensure the protection of the rights and freedoms of citizens, as well as take measures to strengthen human rights and ensure the rule of law in the state [10].

It is no coincidence that we propose the introduction of a new branch of government - the Constitutional branch. Because as it seems to us its main goal is to be an arbiter of power and provide a guarantee of the inviolability of the norms of the Constitution. Which can be expressed in the function of balancing Parliament, Government, and Court. As a result the above analysis of the functions of each branch of government speaks of the need to contain and establish the scope of powers defined by the Constitution. Therefore, to avoid conflicts within the political



system (between the three branches of government) a body is needed to balance them, which is an independent branch of government – the Constitutional branch of government. This is where this specific branch of the government monitors compliance with the norms of the Constitution.

For example, the Constitutional Court, as a branch of government, can monitor the compliance of laws and regulations adopted by other branches of government with the norms of the Constitution. Also, the Constitutional Court can overturn non-constitutional acts and decisions made by other branches of government. This function of the Constitutional Court is designed to ensure constitutional stability, where the body of constitutional control creates precedents and establishes norms that regulate relations between the branches of government, both among themselves and between them and the people. This ensures constitutional stability and balance in the legal system.

At this stage of state existence, each country, seeking to build an “ideal state,” chooses a certain path of political development. On this path countries with three branches of government shift the balance in one of the three directions or endow a stabilizing function to a fourth branch of power outside the branches of government (the fourth branch of power). Often this role is assigned to either the head of state or the constitutional control body. These shifts in the balance of power are expressed in the endowment of a greater number of powers and functions to one or another branch of power.

However all state and political transformations usually occur with the help of the will of the citizens of the state – a referendum. Thus a referendum is a form of direct expression of the will of the people, in which citizens vote for or against any question that is put to a referendum. A referendum is an instrument of direct democracy that allows citizens to make important decisions directly, bypassing representative bodies of power.

In the Constitutions of various countries, including Kazakhstan, a referendum can be held on a number of issues, such as amending the Constitution, adopting or repealing laws, decisions on joining international organizations, etc.

Citizens, parliament, or the president can initiate a referendum, which typically follows specific procedures and rules outlined in laws governing referendums, elections, and other regulatory acts related to the electoral process. If a sufficient number of votes are garnered, the results of the referendum hold legal weight.

For example, in Kazakhstan and Uzbekistan, constitutional reforms were carried out through a referendum. Let us consider the example of Kazakhstan, where the current President K. Tokayev is carrying out a reform to democratize the state and strengthen the branches of power, thereby continuing the policy of N. Nazarbayev in 2017. Thus the center of the super-presidential republic, Kazakhstan is moving towards a parliamentary republic. Since the transfer of presidential powers began in 2017, when the president’s powers were transferred to the government and parliament, it continues today with the construction of the New Kazakhstan (Second Republic) by K. Tokayev, which strengthens the role of the Parliament. This is evidenced by the slogan of the reform being carried out - “Strong President - Influential Parliament - Accountable Government.” At the moment the role of the Constitutional Court has been strengthened as a body of constitutional control, and a mixed voting model has been introduced in parliamentary elections. In the referendum of June 5, 2022, amendments were made to 35 articles of the Constitution out of 99 existing ones, and the role of the human rights ombudsman was strengthened. The number of terms of the presidency for the same person has been reduced from two times for five years to one time for seven years.

## **2.2 Uzbekistan**

In Uzbekistan Shavkat Mirziyoyev is also reforming the state power after the departure of Islam Karimov, taking a course towards democratization and holding a republican referendum to adopt amendments to the country’s constitution. This was announced in 2021 by the current President of Uzbekistan Shavkat Mirziyoyev.

According to the new articles of the Constitution of Uzbekistan, following the referendum in 2023, the President of Uzbekistan is elected for 7 years with the right to be re-elected for a

second term. The Constitution provides for the accountability of the government to the Parliament, and the country's Basic Law strengthens the protection of children's rights through a Children's Rights Commissioner. The legislative initiative is outlined for the Constitutional Court, the Supreme Judicial Council, the Supreme Court, and the Prosecutor General – in the scope of their competencies, and the legislative initiative is also defined for citizens of no less than 100,000 people. Additionally the function of determining the most important external and internal directions of development has been transferred from the Parliament, which now only considers them, to the President.

It is crucial to give due consideration to constitutional control bodies. Despite the legislative, executive, and judicial branches, all laws in a country must align with the Constitution. To ensure this principle is upheld, constitutional control bodies like the Constitutional Court or Constitutional Council may be established, or the President may be authorized to fulfill this role.

In the Republic of Kazakhstan these functions, in accordance with Article 1 of the Law of the Republic of Kazakhstan “On the Constitutional Court of the Republic of Kazakhstan” – “The Constitutional Court of the Republic of Kazakhstan ensures the supremacy of the Constitution of the Republic of Kazakhstan throughout the territory of the Republic of Kazakhstan” and following paragraph 3 of Article 72 of the Constitution of Kazakhstan – “The Constitutional Court at the request of citizens considers for compliance with the Constitution of the Republic the normative legal acts of the Republic of Kazakhstan that directly affect their rights and freedoms enshrined in the Constitution” – in other words, these two norms give us the right to say that the guarantor of the constitutional rights and freedoms of citizens.

However, what is the guarantor of the Constitution itself in Kazakhstan is the outcome of paragraphs 2 and 3 of Article 40 of the Constitution of Kazakhstan, the institution of the President is “the guarantor of the inviolability of the Constitution”, and the President “ensures the coordinated functioning of all branches of state power”. Thus in Kazakhstan ensuring the supremacy of constitutional law is in the competence of two authorities – the President and the Constitutional Court of Kazakhstan.

The experience in Ukraine is interesting, where the Constitutional Court of Ukraine has constitutional jurisdiction only, which is reflected in Article 1 of the Law of Ukraine “On the Constitutional Court of Ukraine” – “The Constitutional Court of Ukraine is a body of constitutional jurisdiction that ensures the supremacy of the Constitution of Ukraine...”.

As for similar functions in the constitutional jurisdiction of the President, he does not have any. However, there is a function of constitutional control, indicated in paragraph 15 of the Constitution of Ukraine, where the President suspends the acts of the Cabinet of Ministers of Ukraine on the grounds of their inconsistency with the Constitution, while simultaneously appealing to the Constitutional Court of Ukraine regarding their constitutionality. Thus, in Ukraine, the Constitutional Court of the country acts as the guarantor of the Constitution.

### **2.3 Indonesia**

Considering the experience of Indonesia, we see that according to Article 24C of the Constitution of Indonesia, the Constitutional Court of Indonesia is one of the state institutions exercising an independent judiciary in managing the judiciary to ensure the rule of law and justice. That is, the Constitutional Court plays a crucial role in protecting the rights of citizens through its general judicial jurisdiction. Additionally the People's Consultative Assembly, as stipulated by Article 3 of the Indonesian Constitution, is responsible for adopting the Constitution and Constitutional Laws (including amendments to the Constitution). Thus we observe a system of high responsibility for the laws and constitutional rights of citizens, entrusted to the People's Consultative Assembly of Indonesia as the country's legislative body.

### **2.4 United States**

In the United States, executive power is vested in the President, which is enshrined in Article 2, Clause 1 of the US Constitution: “Executive power is vested in the President of the United States of America.” As for the principle of separation of powers, it is directly mentioned in the explanation of Article II.S1.C1.6 Separation of powers and functions of the executive, where Judge Joseph Storey

recognized the significance of an autonomous executive branch in maintaining a system of checks and balances. He observed that the creation of a distinct executive department had gained unanimous approval throughout America. This fundamental principle is enshrined in the constitutions of every state, and has become a cornerstone of our governance – the separation of legislative, executive, and judicial powers, with no one branch wielding authority over the others.

Considering the aforementioned classifications of power branches, as well as the principle of separating powers, the implementation of checks and balances, and instances of state reforms, it is evident that the distribution of power among the government branches in each country differs. In some nations, the parliament holds more power, as in the case of a parliamentary republic, whereas in others, the president or prime minister assumes a more prominent role in government affairs. However, in all modern democratic countries, these powers are distributed in such a way as to ensure stability, effective government institutions, and, most importantly, the protection of human and civil rights under the law, ensuring the supremacy of the law and the protection of human and civil rights.

### Conclusion

In conclusion it would be logical to establish a “constitutional branch of power” in the future, which would embody the principle of the constitutionality of the state, serve as an independent arbiter of power, and guarantee the supremacy of law and the constitution. This new branch of power should observe the principle of checks and balances. The highest official of the state, such as the President or a similar position, depending on the country, or a collegial body like a Constitutional Court or Council, could perform this role.

Thus the main functions of the constitutional branch of power can be as follows:

- *Control over compliance with the Constitution and laws*: the bodies of the constitutional branch of power monitor the compliance of all laws and other legal acts (government decrees, court decisions, parliamentary acts, etc.) with the constitution and protect the constitutional rights of people and citizens.

- *Resolution of constitutional disputes*: the institutions of the constitutional branch of power can consider constitutional complaints and resolve constitutional disputes between state authorities.

- *The reform initiative for changes to the Constitution*: the bodies of the constitutional branch of government can participate in the process of developing and amending the constitution by putting them to a general referendum.

- *Protection of human rights and freedoms*: the bodies of the constitutional branch of government can take measures to protect the rights and freedoms of individuals provided by the constitution, including making decisions on citizens’ complaints about the actions or inactions of state authorities (branches of government).

- *Ensuring constitutional legitimacy*: the bodies of the constitutional branch of government ensure the constitutional legitimacy of the activities of state authorities and prevent constitutional crises.

The scope and range of functions of the constitutional branch of government may vary in different countries depending on the specific provisions of their constitutions.

**А.Д. Кадырбеков, Anadolu University-нің «Қоғамдық құқық» мамандығы бойынша PhD докторанты (Эскишехир, Түркия Республикасы): Білікті бірлеу принципі ХХІ ғасыр мемлекеттіктерінде: Конституциялық тәсілдер.**

Бұл зерттеу тақырыбының өзектілігі құқық теоретиктерінің идеалды мемлекет формуласын және белгілі бір билік тармағының билік аясы мен функцияларын анықтау үшін үздіксіз ізденістерінен туындайды. Өйткені биліктің үш тармағының біреуінің әртүрлі тепе-теңдігі мен нығаюы мемлекет ішінде сол немесе басқа саяси жүйенің қалыптасуына әкеліп соғады, сонымен қатар елдің даму динамизмін анықтайды. Әртүрлі мемлекеттерде бұл тепе-теңдік пен тежеу мен тепе-теңдік жүйесі әртүрлі қалыптасады, бұл олардың саяси сипаттамаларын және онымен бірге саяси қиындықтарды тудырады.

Жұмыстың тақырыбы билік бөлінісі принципі болып табылады, оған сәйкес қазіргі әлемде демократия жүзеге асырылады. Жұмыстың мақсаты – билік бөлінісінің теориясын, оның президенттік және парламенттік басқару нысандары бар елдердегі қазіргі жағдайын және белгілі бір критерийлерді сақтау қазіргі дәуірде мемлекеттік басқарудың тиімділігін сақтауға қалай көмектесетінін зерттеу.

Зерттеудің тақырыбы қаралатын мәселелерге арналған заңгерлік еңбектердің аздығына байланысты жаңа болып табылады. Зерттеушілердің көпшілігі билікті бөлудің классикалық теориясы тақырыбына назар аударады, оны мемлекеттегі билікті ұйымдастырудың басым және жалпы қабылданған қағидасы ретінде дұрыс орналастырады. Осылайша, биліктің белгілі бір бөлінуіне сүйене отырып, олар басқарудың сол немесе басқа нысанына өз басымдықтарын береді. Сонымен қатар, аздаған еңбектер билік тармақтарымен байланысты балама қызметтерге арналған. Бұл мақала өз мәні бойынша биліктің конституциялық тармағы тақырыбына пікірталас ашатын зерттеу болып табылады.

Бұл жұмыста қолданылатын зерттеу әдістері құқықтық зерттеулерге (талдау, синтез және т.б.) тән. Қазақстан, Өзбекстан, АҚШ және Индонезия елдеріндегі биліктің бөлінуін салыстырмалы талдау арқылы бұл зерттеу мемлекеттік биліктің үш тармағы арасындағы тепе-теңдікті орнату қажеттілігін ашып көрсетуге тырысады. Бұл зерттеу биліктің бөліну принципі неліктен әлемнің заманауи мемлекеттері үшін соншалықты маңызды екендігі туралы ұстанымды көрсетеді. Бұл қағида мемлекеттегі тұрақтылықты, қауіпсіздікті және демократияны қалай қамтамасыз етеді? Елдердегі талданған теориялық және нақты ережелерге сүйене отырып, автор қолданыстағы билікке жаңа билік тармағын – тежемелік және тепе-теңдіктің классикалық жүйесін қосу ұстанымын ұсынады. Биліктің конституциялық тармағы мемлекеттің тұрақтылығы мен тепе-теңдігінің кепілі ретінде, оның мақсаты.

Зерттеудің нәтижелері билік тармақтары арасындағы билік пен жауапкершілікті бөлу және тежеу мен тепе-теңдікті сақтау туралы пікірталасқа ықпал етеді. Бұл құқық теориясында билік тармақтары арасындағы тепе-теңдікті мәңгілік іздеуді көрсетеді. Бұл зерттеу сонымен қатар билік тармақтарының трихотомиясын төртінші құрамдас – биліктің Конституциялық тармағымен толықтыруды ұсынады. Автор биліктің жаңа тармағының қосылуы мемлекеттік жүйелер мен олардың басқару нысандарын демократиялық және тиімді, уақыт талабына жауап беруге қабілетті етуге көмектеседі деп болжайды.

*Түйін сөздер: билік, биліктің бөліну принципі, демократия, билік тармақтары, Қазақстан, саяси жүйе, мемлекет, басқару, саяси реформалар, конституциялық құқық.*

#### **А.Д. Кадырбеков, докторант PhD специальности «Публичное право», Anadolu University, (Республика Турция, г. Эскишехир): Принцип разделения властей в государствах XXI века: конституционный подход.**

Актуальность темы настоящего исследования исходит из постоянного поиска теоретиками права формулы идеального государства и определения объемов властных полномочий и функций той или иной ветви власти. Поскольку разный баланс и усиление одной из трех ветвей власти ведет к формированию той или иной политической системы внутри государства, а также определяет динамичность развития страны. В разных государствах данный баланс и система сдержек и противовесов сформированы по-разному, от чего и вытекают их политические особенности, а с ними и политические вызовы.

Предмет настоящей работы представляет собой принцип разделения властей, согласно которому в современном мире реализуется демократия. Цель работы заключается в исследовании теории разделения властей, ее современное положение в странах с Президентской и Парламентской формами правления и как соблюдение определенных критериев может помочь поддерживать эффективность власти в современную эпоху.

Тема данного исследования отличается новизной благодаря малому количеству юридических работ, посвященных рассматриваемой проблематике. Большинство исследователей сосредоточены на теме классической теории разделения властей,

обоснованно позиционируя её в качестве главенствующего и общепринятого принципа организации власти в государстве. Так, на основе определенного распределения властных полномочий отдают свои предпочтения той или иной форме государственного правления. В то же время, малое количество работ посвящены альтернативным позициям, связанным с ветвями власти. Данная статья по своей идее является исследованием, которое открывает дискуссию на тему конституционной ветви власти.

Методы исследования, использованные в настоящей работе, являются типовыми для юридических исследований (анализ, синтез и др.). Посредством сравнительного анализа положения разделения властей в странах Казахстан, Узбекистан, США и Индонезия данное исследование пытается пролить свет на необходимость установления баланса между тремя ветвями власти. В данном исследовании обозначена позиция – почему принцип разделения властей так важен для современных государств мира. Как этот принцип обеспечивает стабильность, безопасность и демократию в государстве. На основе проанализированных теоретических и реальных положений по странам автор предлагает позицию добавления новой ветви власти к существующей – классической системе сдержек и противовесов. Конституционная ветвь власти как гарант стабильности и сбалансированности государства, ее предназначение.

Выводы этого исследования вносят вклад в дискуссию по вопросу распределения властных полномочий и функций между ветвями власти и соблюдения системы сдержек и противовесов. Что отражает вечный поиск баланса между ветвями власти в теории права. А также данное исследование предлагает дополнить трихотомию ветвей власти четвертой составляющей – Конституционной ветвью власти. Автор предполагает, что включение новой ветви власти поможет сделать государственные системы и их формы управления более демократичными и эффективными, способные отвечать требованиям времени.

Ключевые слова: власть, принцип разделения властей, демократия, ветви власти, Казахстан, политическая система, государство, управление, политические реформы, конституционное право.

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Для цитирования и библиографии: Kadyrbekov A. Separation of Powers Principle in the States of XXI Century: Constitutional Approach // Право и государство. № 1(102), 2024. – С. 18-30. DOI: 10.51634/2307-5201\_2024\_1\_18

Материал поступил в редакцию 29.01.2024.