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**THE PRINCIPLE OF DIVISION OF AUTHORITIES: DEVELOPMENT AND
PRESENT STATE**

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CONCEPTUAL REFERENCES OF THE THESIS

Relevance and importance of the chosen topic. The choice of the topic of the work was due to the fact that the theory of separation of powers has long ceased to be an abstract idealistic doctrinal dogma; its implementation has become a mandatory principle and sign of any modern state that positions itself as democratic and legal. The theory of the separation of powers is at the stage of development when it has been institutionalized into legislation and is perceived as one of the paramount pillars of civil society.

The delimitation of state power into branches those are independent in relation to each other, “is designed to ensure, as a result, the necessary balance of interests, which makes the power whole and unified” [171, p. 46]. At the same time, it is impossible to imagine a single state, its normal functioning without the cooperation of its individual bodies and even branches of power, without the systemic overall work of the entire state mechanism, without the coherence of actions in solving national problems. Indeed, one can note such a modern trend that, directing the main efforts to designing an ideal system of separation of powers based on its classical model, the aspect related to the need to ensure the unity of state power, which directly affects the quality of governance and the flexibility of controllability of the territory of the state, is often lost. The economic and political foundations of the modern state, according to a number of experts, also depend on the separation of powers. V.A. Ovchinnikov notes in this regard that “in a state governed by the rule of law, state regulation of economic activity, unlike a totalitarian one, does not establish the economic structure of society, but only creates conditions and protects the main principles and principles that are based on rights and freedoms. These beginnings do not give rise to any one political ideology, they are democratic and humanistic in nature. The attitude of the rule of law state to the political activity of people is built on the same foundations” [202, p.121].

The correlation and balance of the various branches of government will directly correlate with the respective powers of the state in the legislative, executive and judicial spheres, while differences between them should be overcome exclusively on the basis and within the framework of the law.

Reflections on “the ideal structure of society and the state and state power will certainly direct us to those sources on which the now known standards are being built to characterize its key properties” - this is how the role of studying the conceptual foundations of the principle of separation of powers is assessed today [252, p. 12]. Theoretical studies of the concept of separation of powers are caused by the need to continue the search for a balanced form of separation of powers against the backdrop of the complication of the functions of the modern state, which is capable of ensuring high efficiency of the state mechanism.

The moment of the appearance in the highly developed countries of today of such a phenomenon as democracy in its modern sense, where a person and his rights, the free development of the human personality, are recognized as the highest values, that historical period is recognized when such tasks were established as the main functions and activities of the state. The relevance of the issues of separation of powers remains to this day, in particular, for the legal and other social and humanitarian sciences of those countries that appeared on the world map at the end of the 20th century and develop as young democracies, and who adopted this principle in the course of their state building. For these countries, including the Republic of Moldova, such a concept of building a system of public authorities has become a novelty, since for a long time the principle of separation of powers was categorically rejected, it was opposed by the principle of unity of the “power of the Soviets”, which embodied the unity of legislative, executive and administrative and control functions.

And only in the course of large-scale democratic transformations in the countries of Eastern Europe and the countries of the former Soviet Union, the principle of separation was recognized, legally fixed and began to be implemented in practice. Such a perception was directly related to the proclamation of such a fundamental principle of the modern state as the rule of law. Therefore, it was from that time that the development of the problem of the principle of separation of powers began, both in its theoretical and practical refraction [68; 157; 165; 174; 237]. The conducted studies of various aspects of the principle of separation of powers at the present stage require a comprehensive understanding and a systematic approach to create a general theoretical basis for the development of the state at the appropriate stage of its development.

At the same time, a generalized theoretical study of this problem in the Republic of Moldova and in many other post-Soviet states has not yet taken place, which is the reason for the choice of the topic.

For the first time in the most complete form, the doctrinal explanation of the essence of the theory of separation of powers was given by J. Locke and Sh.L. Montesquieu, who, in fact, are deservedly recognized as the authors of the classical version of this concept. Since then, many foreign and domestic state experts have pondered over the principle of separation of state power, whose work formed the basis of this study - L. Dyugi, N.M. Korkunov, J. Rousseau, A. Esmen and other authors [83; 99; 147; 244; 281; 295]. In the modern period, on this issue in various contexts, they spoke with their thoughts, and their concepts were used in the work, such specialists as I.L. Bachilo, A.A. Mishin, L.A. Okunkov, V.E. Chirkin, L.M. Entin and many other authors [63; 191; 192; 203; 204; 272; 275; 280]. However, scientific works specifically devoted to the principle of separation of state power are clearly not enough. Moreover, both in the Republic of Moldova and in other post-Soviet states, the normative-legal content of the principle of separation of state power forms the basis of its forms of government and state structure.

The purpose of the work is to comprehensively study the issues of the emergence and evolution of the concept of separation of powers based on a deep analysis of the doctrinal positions developed by science, as well as the actual interaction of public authorities of modern states and the transformation of this idea into the form of the fundamental and cornerstone principle of a modern democratic constitutional state, on the basis of which to formulate proposals aimed at clarifying the conceptual apparatus of the studied doctrine and improving the legislative formulation of this principle in the legislation of the Republic of Moldova.

The objectives of the study will contribute to the achievement of the purpose:

a) determine the state of scientific development of the principle of separation of powers in modern domestic legal literature, analyze and evaluate the contribution of domestic authors to the concept of separation of powers in terms of its perception, additions to its content, implementation mechanisms, identify gaps in scientific research in this area;

b) on the basis of numerous author's approaches, doctrines, ideas regarding the structure of the state, the state mechanism, ensuring the freedom of the individual, to identify the prerequisites and common principles in world scientific thought for the formation of an integral and stable system of signs and features in the content of the theory of separation of powers;

c) trace the path and reasons for the transformation of ideas about the separation of powers into the classical theory, and then into one of the principles of the rational organization of the modern state;

d) study the origins and single out the main stages in the development of the conceptual foundations of the principle of separation of powers, assess the contribution of prominent philosophers, politicians, lawyers, state scientists at each such stage: in the conditions of ancient states, in the period of feudalism, in the era of the Reformation and Enlightenment; trace the

relationship and synchronism of the formation of the theory of separation of powers with the doctrine of the rule of law;

e) based on the study of reflections in the works of the classics of the theory of separation of powers, to substantiate the role and significance of their ideas for the formation of the principle of separation of powers and the embodiment of the basic principles of the modern state, including its understanding as a legal barrier against the usurpation of power and tyranny, a means of ensuring human rights, taking into account the peculiarities the modern stage of development of statehood;

g) reveal the significance of the historical and legal approach and the general theory of state and law in determining the model of separation of powers in a particular state against the background of the peculiarities of its socio-political development;

h) based on the study of the peculiarities of understanding and practical implementation of national models of separation of powers, to assess the possibilities of using the classical concept of separation of powers and the possibility of its transformation, evolution, improvement;

i) to clarify and supplement the content and methods of implementing the principle of separation of powers for the modern state in terms of the distribution of its functions and ensuring the operation of the state mechanism, the delimitation of the competence and powers of various state bodies and their interaction;

j) to systematize all the variety of forms of separation of powers in the states of the modern world and to identify the factors that have a decisive influence on them; show the relationship between the principle of separation of powers and the form of government of the state;

k) to show the importance of the principle of separation of powers in the state at the present stage as a guarantee of the rights and freedoms of the individual and as a sign of constitutionalism and the rule of law with democratic rule;

l) consider the peculiarities of legal regulation and practical implementation of the principle of separation of powers in the countries of young democracies, including in the Republic of Moldova;

m) evaluate the possibilities of the principle of separation of powers in ensuring the rationality and efficiency of public administration and determine the relationship with the principle of unity of power;

o) on the basis of a study of the evolution of approaches to the content of the principle of separation of powers, to show the main trend in interpreting its content as the distribution of state functions between various branches and government.

The hypothesis of the dissertation research lies in the assumption of the need to consider the idea of separation of powers as a structural and functional principle of the modern state, with the help of which it is possible to ensure its democratic and legal nature.

The methodological basis of the work is: historical-legal, structural-functional, systemic-logical and comparative-legal research methods. The author uses formal legal, political science methods of research, applies dialectical, systemic and comparative legal approaches. The use of a wide range of general scientific and special methods made it possible to comprehensively and systematically approach the study of the theoretical basis for the development, content and application of the concept of separation of powers, both at different historical stages and in the modern state.

The use of the historicism method contributed to a multifaceted study of the origin and gradual development of the concept of separation of powers, the practice of its application in various historical conditions. This gave us the opportunity to comprehend the patterns of the complex and contradictory path of evolution of the doctrine of the separation of powers, which was

not distinguished by smoothness and infallibility. Moreover, it seems necessary to supplement the historical and legal method with the method of scientific interpretation, which allows using modern scientific potential and accumulated experience to assess certain stages, actions, events related to the development of the concept of separation of powers, to identify certain patterns in this issue.

The method of system analysis contributed to the study of the problems of separation of powers in the conditions of various forms of the state, including the form of government, political and territorial structure, and political regime.

The institutional method provided an opportunity to identify the political and institutional aspects of the separation of powers.

The comparative legal method was used to identify the general and particular in the legal consolidation and practical implementation of the principle of separation of powers in the Republic of Moldova, post-Soviet states, Western democracies, developing countries.

Elements of scientific novelty and originality of the work are expressed in the fact that it contains the first attempt at a deep comprehensive study of interpretations of the principle of separation of powers, both in historical retrospective and in the conditions of a modern state. All processes are shown in the historical perspective of the formation and development of democratic institutions, from ancient times to the modern period. The conceptual and theoretical elements of the principle of separation of powers are also systematically defined, which are based on the understanding of the unity and differentiation of state power formulated by the author, as a result of which the fundamental conclusion is formulated that in a rule of law state the unity of power manifests itself precisely in connection with the principle of separation of powers.

The solved scientific problem within the framework of this dissertation is defined as the identification of the organizational and legal possibilities of the principle of separation of powers, which acts in the modern state as a guarantor of ensuring its essential characteristics and progressive development. The conditionality and intercomponent connections of this principle with other principles, which together constitute the organizational structure of democratic constitutional states, are shown.

The thesis undertakes the analysis of multiple scientific opinions of local and foreign doctrinaires, following which their own conclusions are formulated on the researched issues. In the same way, the theoretical conclusions are combined with the analysis of the concrete situation in the field of the realization of the principle of separation of powers in several CIS states. The conclusion is formulated, according to which the system of organization of state powers in them can be called democratic with some reservations. The situation is explained, including by maintaining the samples of political behavior specific to the Soviet system. The need to overcome the respective situation is emphasized through its critical analysis and directions for the effective implementation of the principle of separation of powers in the respective states are revealed (organization of referendums; strengthening the role of the Constitutional Court; aligning the principles and norms of national law with those of international and European law; strengthening the institution of rights and fundamental human freedoms, etc.) These and other approaches have an analytical, critical character, give the thesis novelty and originality and contribute to the solution of the announced important scientific problem.

The theoretical significance of the study lies in the fact that the theses and recommendations outlined in it contribute to the improvement of the content of the fundamental course of state studies in terms of the problems of the topic under consideration, related to the evolution and current state of the principle of separation of powers. As a result of a systematic analysis of the formation, development and current state of the concept of separation of powers, conclusions and generalizations were formulated that will contribute to the development of new

approaches to the study of the problems of the formation and development of this theory based on scientific provisions and real practice of interaction between public authorities of modern states and the transformation of this ideas into the form of the fundamental and cornerstone principle of a modern democratic legal state, and will also be aimed at clarifying the conceptual apparatus of the studied doctrine and modernizing the legal design of this principle in the legislation of the Republic of Moldova.

The practical significance lies in the fact that the results of the study can be recommended in order to be used to develop the legal system and improve the system of public authorities in the Republic of Moldova and other post-socialist countries; as a basis for further scientific research in the field under consideration with a view to amending or revising the legislation of the countries of young democracies; in the analysis of urgent problems of improving the state structure, the institution of the presidency and strengthening the judiciary; in teaching the theory of state and law, as well as branch legal disciplines, including constitutional, administrative, municipal law; when teaching and conducting trainings for specialists in the field of public administration and local self-government.

Implementation of the results: the theoretical conclusions of the dissertation, the elements of novelty and the formulated recommendations are used in the process of teaching the course of the General Theory of Law and branch legal disciplines.

Approbation of the results. Various aspects of the topic under study, the most significant theoretical and practical results are reflected in a number of publications. In particular, "The principle of separation of powers and the system of checks and balances as signs of a rule of law" [57], "Modern forms of public power and their influence on the content of the principle of separation of powers" [54], "Bodies of constitutional control in the state mechanism in the light of the separation of powers "[56], "Unity and separation of powers in the countries of the Commonwealth of Independent States: general and special" [58], "Stages in the development of the concept of separation of powers: theoretical and legal aspect and significance for the development of a modern state" [59], "The theory of separation of powers : from the tradition of the classical concept to the actual problems of our time" [55], "The head of state "neutral" power: conceptual basis" [19] .

The volume and structure of the dissertation. The structure of the work is determined by the goals and objectives of the dissertation research and is represented by a title page, annotations in the state, Russian and English languages, a list of abbreviations, an introduction, 3 chapters, general conclusions and recommendations and a bibliography in the state language, as well as in Russian, English, French and German languages used in the preparation of the dissertation. Each chapter contains paragraphs with final provisions containing conclusions.

The total volume of the dissertation is 209 pages, of which the dissertation text itself is 176 pages. The bibliography is represented by 328 sources.

Key words: separation of powers, concept, theory, branches of power, legislative power, executive power, judicial branch of government, balance of power, "checks and balances", "neutral" power.

THESIS CONTENT

The introduction substantiates interest in the topic and its relevance and significance. It also formulates goals, objectives, the situation of the development of the topic, determines the scientific novelty and originality of the study, indicates the theoretical and practical significance of the research results, talks about approbation of the research results, and also provides data on the volume and structure of the work.

In Chapter 1, which is called "**Features of the development of the principle of separation of powers in jurisprudence at different stages**", the state of the theoretical basis of the principle of separation of powers in the countries of the world at the present stage was determined and issues related to the difficulties in implementing the principle of separation of powers were considered. The issue of separation of powers is studied, first of all, in the aspect of doctrinal development at the present stage. It is noted that under the name of the theory of separation of powers in the state, in fact, there are several concepts about state power or, more precisely, about different ways of its implementation. The idea of a plurality of powers has its roots in antiquity. Even Aristotle spoke about three directions in public administration [35]. In England, the theory of separation of powers was first formulated by John Locke (1632-1704) [52, p. 337-361], and was later developed by Montesquieu (1689-1755) in France in his work "On the Spirit of the Laws" [62]. The three branches of power are conceived in such a way that, on the one hand, they perform certain specific functions, and on the other hand, they cooperate and control each other.

In the course of state-legal development, the principle of separation of powers has undergone significant modifications. First of all, in this regard, it is necessary to mention the addition of a system of checks and balances to the separation of powers, which was initially manifested in judicial practice, and later was enshrined in the Constitutions, then the rule on the need for interaction between the branches of power began to be actively introduced. The complication of state functions and the state apparatus led to the creation of a very branched system of state bodies that do not fit into the classical triad of power or the relationship between them is different than the original concept envisaged. The theory of separation of powers is considered in the modern state as the political and legal basis of democracy. In most constitutions of the states of the post-Soviet space, there is a direct indication of this principle as a fundamental one in the organization of state power.

According to Article 6 of the Constitution of the Republic of Moldova, "in the Republic of Moldova, the legislative, executive and judicial powers are separated and interact in the exercise of their prerogatives in accordance with the provisions of the Constitution" [44]. According to L. Aliyeva, "perhaps, the literal mention of this principle is a kind of counter thesis of the ideology of Marxism-Leninism, with a very peculiar idea of the separation of powers" [34, p. 45-46]. On this basis, the author concludes that the doctrine of the separation of powers and its modern practical interpretation allow us to recognize the versatility and multidimensionality of the principle under study. Theoreticians and specialists of individual branch sciences ambiguously interpret the essence of the very idea of separation of powers and its current practical implementation.

Another key point the author calls the discrepancy between the essence of the classical doctrine of the separation of powers into three branches with its modern legal, and even more so actual content, and a dispute about the quantitative and qualitative composition of the branches of power is proposed for discussion. The separation of powers is proposed to be considered in yet another aspect - as a system of checks and balances necessary for rational and effective public administration.

The dissertation points out that many modern lawyers define the principle of separation of powers as a sign or feature of the rule of law, others as a means of implementing the principle of the rule of law, as the most consistent binding of political power through the law, the formation of a regime of legal restriction for state structures.

The first chapter presents an overview of ideas related to understanding the accumulated experience in the issue of separation of powers, laying the foundation for creating a theoretical foundation for adapting the separation of powers to new and constantly changing historical and legal conditions. Modern authors present their ideas on understanding the accumulated experience in the issue of separation of powers, laying the foundation for creating a theoretical foundation for adapting the separation of powers to new and constantly changing historical and legal conditions. A number of experts cover certain aspects of the problems of separation of powers, including the status of public authorities belonging to one of the branches of government, the separation of powers as a sign of a legal, democratic state, etc.

Avornic Gheorghe notes that since in a constitutional state the sovereign will of the people is implemented on a democratic basis, state authorities and local self-government bodies must exercise their powers for a strictly defined period of time for which they were elected, based on the constitutional principle of separation of powers into legislative, executive and judicial, since only such power will be exercised in accordance with the requirements of legality as a fundamental principle and method of social government[32].

In the security mechanism, the primary role belongs to the state and its agencies. At the same time, this mechanism involves almost all branches of government. But the judiciary rests on a position separate from it. Judicial instances, as noted by Grecu Raisa, serve as a guarantee of respect for human rights. If, according to the current legislation, the security system is managed or controlled, coordinated by the head of state, the judiciary is automatically excluded from his sphere. This is necessary to ensure the real functioning of the principle of separation of powers in the state [32].

Gheorghe Costachi in his works [47;48] investigated a number of aspects that are important for the ongoing research. Thus, he touched upon the problems of ensuring the rule of law and the formation of civil society in the Republic of Moldova on the basis of the principle of separation of powers, which is one of the mandatory features of a constitutional state. Discussing the relationship between the powers of state bodies, the author explores the theoretical aspects of the phenomenon of public power and its sources. In their opinion, only legitimate power can be effective and sustainable.

Nicolae Gradinaru argues that “recognition and implementation of the principle of separation of powers directly affects the structure, the mechanism of activity of the state organism, the relationship between the authorities of the state. In fact, this principle predetermines which body exercises power and to what extent” [40].

In the works of the famous scientist **Victor Popa** [25;26;27], the most important aspects of the organization and structure of public authority, its types and forms are developed in detail, the place and role of various state bodies related to public authority and public law are determined.

Alexandru Arseni devoted a number of scientific studies to the organization and functioning of state power in general, so the author makes a number of conclusions and recommendations to ensure the legitimacy of state power, both theoretical and practical, as a principle of a legal and democratic state at the present stage of its development. A special role in determining the legitimacy of power is assigned to the body of constitutional control. Alexandru Arseni comes to the conclusion that the study of the existing structure of power in the state and at a certain stage of its development means the study of the structure of bodies that implement the form,

principles, methods underlying their organization and functioning, including the principle of separation of powers [3;4;5] .

Silvia Goriuc devoted a number of her scientific works to the legal position of the head of state. Conducting a detailed analysis of the political and legal status of the President of the Republic of Moldova, the author determines the place and role of the President in the system of separation of powers and the state mechanism [21,22,23,24].

The works of Goriuc S. [11,12;13;14;15] are of great importance for our research, since they study in detail various aspects of the status of the head of state in his interaction with state bodies and taking into account the principle of separation of powers. Of interest is the comparative legal analysis of the normative and actual status of the head of state in foreign countries, which allows us to give an objective assessment of the ongoing administrative reforms and predict their effectiveness.

Ion Jecev argues that the problem of the unity of state power occupies a central place in the political and legal thought of many modern states [17]. The author comes to the conclusion that at the present stage the problem of the unity of state power has acquired particular importance in relation to the formation of civil society and the establishment of the principle of the rule of law. There is a transition from totalitarian concepts of understanding the unity of state power to the approval of its rational division. Ion Jecev considers the separation of the branches of state power as a means of ensuring its unity.

Andrei Smochină examines the theoretical and practical aspects of the powers of the head of state in the Republic of Moldova [43]. According to the author, the president has a special legal status in a parliamentary regime. In this regard, the issues of empowering the president with the powers of executive power are problematic. The author comes to the conclusion that it is necessary to hold separate parliamentary and presidential elections, and the government should be formed through a parliamentary majority. Presidential elections must be universal, equal and free in a single constituency. In addition, the report contains criticism of the system of checks and balances and an opinion on the need to create an effective mechanism for balancing between the three branches of government using the principle of responsibility.

V. Mishin's research [61] is aimed at various aspects of the problems under consideration - the interaction of the branches of government in the exercise of their prerogatives in a state governed by the rule of law. A special place is given to the analysis of mutual powers between the legislative, executive and judicial authorities of the Republic of Moldova at the present stage.

P. Hlipca argues [16, p.70-72] that the spread of the theory of separation of powers in the state is explained by the fact that it was developed at a time when political parties had not yet been created and when the main problems of power were of an institutional nature, but also at this stage, the classical theory of the separation of powers in the state must be considered with some reservations. At the same time, it should not be interpreted that it has lost its significance and timeliness and remains a theory of the past. The great power of the theory of separation of powers lies in its phenomenal social, political and moral influence.

Another researcher, **Drilea-Marga Marian Pompiliu**, analyzes the process of interaction between different branches of government in Romania and the Republic of Moldova [24, p. 31-34]. The author, as the main research goal, stated the definition of a model for such a separation of powers and their balance, which would meet the modern requirements of constitutionalism, democracy, and the rule of law. The paper deals with the issues of the emergence and evolution of the theory of separation of powers in the state, determining the general coordinates of the systemic organization of state power.

Dan Moldoveanu notes [21] that since the 18th century. The principle of separation of powers was laid down in the practice of democratic state building. Based on the meaning of this principle, the exercise of power is divided among several institutions, as a result of which, “power is divided into powers. At the same time, the author argues that today the principle of separation of powers in the state is largely declarative and archaic.

P. Railean in his works explores the place of the judiciary and its bodies in the system of public authorities and the separation of powers [68]. Thus, the author writes that by implementing the principle of separation of powers, state bodies do not function with themselves, but interact with each other. The judiciary is considered a form of state power along with the legislative and executive branches of government. The inclusion of the judiciary in the system of separation of powers contributes to mutual control and ensuring equal responsibility of all state bodies.

M. Safta [28] notes that the complexity and dynamics of political life determine the possibility of revising classical theories of law. This process can also be observed in relation to the separation of powers in the state. Numerous facts indicate that this theory is being put into practice in many modern states, and has firmly entered the practice of state building.

Conceptually and diversified theoretical problems of the separation of powers were investigated by modern Russian authors, whose ideas were also taken into account when writing the dissertation. We are talking about the works of **M.N. Marchenko** [53], **S.N. Sheverdyayev** [70], **A.I. Kovler** [70], **A.M. Arbuzkin** [70], **R.V. Kosova** [46], **E.V. Kovryakova** [49], **S.A. Osetrov** [66].

An undoubted contribution to the development of the concept of separation of powers, its modernization is made by Western experts. Accordingly, for the completeness of the dissertation research, the works of **Marcus Maeva** [19, p. 269-277], **Ackerman Bruce** [1, p. 633-729], **Kordeva M.** [18], **Marshall W.** [20].

Chapter 2 "Doctrinal basis of the principle of separation of powers" defines the conceptual and theoretical elements of the principle of separation of powers, which are based on the understanding of the separation of state power formulated by the author. Within the framework of this chapter, the genesis of the theory of separation of powers is presented, which makes it possible to trace and evaluate the main stages in the formation of the concept under study, the emergence of those political, legal, and organizational problems that need to be addressed. When analyzing the theory of separation of powers, both in the understanding of the founders of this theory and in the understanding of modern authors, it must be borne in mind that this theory should not be abstract, it is always used in specific historical conditions. The dissertation notes that the theory of separation of powers arose as a result of the periods of socio-political development preceding it and the accumulation of historical experience in organizing state-legal life and maintaining stability in society and the state. The thinkers of antiquity and the Middle Ages only have the idea of the impossibility of unlimited power in the hands of any person or body of the state, in connection with which the demand for limiting state power arises. R.V. Kosov calls this situation the “ideological background”, the “intellectual environment”, in which “the idea of limiting power has become possible” [46, p.21]. Ideas related to the separation of powers can be found in the works of such famous ancient thinkers as **Plato, Aristotle, Polybius**. The ancient polis and empire with republican institutions of power are being replaced by a medieval worldview based on the system of vassalage-suzerainty and the principles of Christian morality. The concept of the divine origin of power was hardly compatible with the principles of separation of powers, however, one way or another, **F. Aquinas** and **M. Padua** discussed the problems of the structure of power and its division.

The author connects the next stage with the Renaissance, when the separation of powers takes the form of a coherent concept that has received practical application in the state mechanism of a number of countries. The essence of the relationship between man and the state during the Reformation was concentrated in the concept of "state-mechanism", which can be studied and improved, differed significantly from the state and society, growing on the soil of customs, rooted in historical depths, rejecting attempts at radical change. In modern times, "the theory of the separation of powers is gradually transforming into a kind of imperative of modern statehood." [46, p.35] One of the first declarations of the new order was the work of **T. Hobbes** "Leviathan, or Matter, Form and Power of the Church and Civil State" [39].

However, as a fundamental principle of the composite doctrine of a democratic state, the principle of separation of powers was formulated by **Locke** and subsequently developed by **Montesquieu**. At the same time, the theoretical base was prepared by the entire objective course of history, and the impetus for its design was the bourgeois revolutions in England (1640-1648) and, subsequently, in France (1789-1794). **J. Locke** decisively broke the tradition of attitude towards the monarchy that came from **T. Hobbes**. He directly and unequivocally rejected it: "...absolute monarchy, which some consider the only form of government in the world, is in fact incompatible with civil society and, therefore, cannot be a form of civil government" [52. T. 3, p. 312]. Considering the balance of power, **Locke** gave the indisputable primacy of the legislative power, recognizing it "not only as the supreme power of the state, but sacred, unchanging in the hands of those to whom the community once entrusted it" [52. T. 3, p. 265].

Montesquieu is widely known as the author of the classical triad of powers preventing despotism and usurpation of power. The book of his work "On the Spirit of Laws", dedicated to this problem, poses the problem of guaranteeing political freedom in the state as the central task of organizing power [62].

Rousseau criticized a number of provisions of **Charles Montesquieu** and the very formula "separation of powers", despite the fact that the first French Constitution directly stated that "a society in which the enjoyment of rights is not ensured and the separation of powers is not carried out does not have a constitution" [69, p.98]. **Rousseau's** theoretical position on this issue is characterized by two fundamental propositions: different manifestations of supreme power stem from the unified sovereignty of the state; the separation of powers is nothing else than the division of the functions of the state, as a result of which it becomes legitimate to divide "powers" not only into legislative, executive, administration of justice, but also into the right to tax, wage war, carry out foreign relations, etc.

The dissertation outlines the originality of the study of the problem of separation of powers in Russian pre-revolutionary legal literature [42;38;45].

Further, the author of the dissertation analyzes the current state of the doctrine of the separation of powers, taking into account a number of features of the modern state and trends in its development. The dissertation analyzes critical approaches to the concept of separation of powers and its implementation in domestic and foreign philosophical, legal, political sciences [37].

Attention is paid to the works of American scientists who studied the practice of implementing the principle of separation of powers: **J. Adams**, **D. Marshall**, as well as the French lawyer **L. Duguit**, who criticized the theory of separation of powers, believing that it contradicts more general principles - national and state sovereignty [2;20;9]. The concepts proposed by him are aimed at overcoming the gap between society and the state on the basis of the implementation of the ideas of comparativeism, solidarism and nationalism. The criticism of the separation of powers by **V. Wilson** and **J. Bourdo** is close to the position of **L. Duguit** [33;6].

Modern approaches to the content and implementation of the concept of separation of powers were analyzed on the basis of the works of **A. Esmen, M. Oriou, G. Mosca** and others [75;67;23].

The modern period of the separation of powers in Russian history was associated with the denial of the separation of powers in the Marxist-Leninist theory of the state, and its rigid denial is characteristic of the entire Soviet period. After the collapse of the USSR and the adoption of new constitutions by the former republics, which fixed the separation of power into legislative, executive and judicial, there was a surge of interest in the idea of separation of powers, scientific research began in this area of state science and law, which were carried out by **A. Lighter, M. Marchenko, B. Strashun, V. Chirkin, L. Entin**, whose main ideas on the topic under study are reflected in the described chapter. [51;53;43;72;73;74].

The author formulated an understanding of the unity of state power. As a result, the dissertation concludes that in a state governed by the rule of law, the unity of power manifests itself precisely in connection with the principle of separation of powers, with the delimitation of the functions of power and, accordingly, with targeted responsibility for the performance of these functions.

Chapter 3 " Current issues of separation of powers in the state mechanism " is devoted to the implementation of the principle of separation of powers in modern states, taking into account the diversity of forms of government, political and territorial structure, political regime, national-cultural, legal and other traditions of the countries of the world. In this chapter, the author of the dissertation presented a classification of models of separation of powers, reflected their advantages and disadvantages, paying particular attention to the signs that formed the basis of such a division.

The dissertation author gives a detailed description and systematizes the features of the historically established two typical forms of government, which are based on the principle of separation of powers: presidential and parliamentary. The main criterion for distinguishing between them is the degree of structural and functional separation of the legislative and executive powers.

Analyzing the features of the parliamentary model, the author of the work comes to the conclusion that under parliamentary forms of government there are legal mechanisms for the coordinated functioning of the legislative and executive powers, ensuring the necessary unity of their actions, as well as mechanisms for resolving contradictions between them, restoring, maintaining their coordinated activities, balance. However, in the absence of a developed party system and a stable political regime, the question of the government's social base becomes acute. Direct dependence on changing public opinion in this case, turns into systematic government crises. At the same time, the rationalization of the parliamentary system means, on the one hand, the restriction of parliament, on the other hand, the formal expansion of its powers. Parliament loses the ability to dictate its will to the government, but retains the right to constructively criticize its activities, control, correct and sanction government policies and activities.

The presidential form of government is characterized by a sharp confrontation between the legislative and executive branches. Conflict, in fact, is incorporated into the system of state power. But since the power in the field of tax, budgetary, financial issues is exclusively in the hands of the parliament, the executive branch is doomed to search for ways of cooperation and agreement with the legislature. An important conclusion in this regard was the warning that in the conditions of an emerging democracy, negative consequences are possible due to the confrontation of the branches of power. The normal political process, based on competition, develops into confrontation, when the parties seek to resolve the crisis by violent means. This will inevitably destabilize the political situation in the country. The rationalization of the presidential form of government is aimed at

creating an effective mechanism for interaction between the branches of power, coordination, harmonization of their activities, and conflict resolution.

In this regard, the paper notes that the change in the relationship between the legislative and executive powers is reflected in the creation of a mechanism that promotes mutual information and deterrence, the search for acceptable options even in preparation for the discussion of government and legislative measures. Along with this, within each branch of power, its own mechanism of self-control is formed, allowing it to comprehensively consider a certain problem even before it falls into the field of view of another branch of power. From the foregoing, the conclusion follows that the optimization of interaction between public authorities is possible by creating mixed forms of government. This is not about a mechanical combination of individual elements of various forms of government, but about the creation of a qualitatively unique system of state administration. The bicephalic (dual) nature of the executive power, the institution of dual responsibility of the government, a significant amount of the powers of the president form the basis and essence of the mixed form of government [43, p. 310]. Under a mixed form of government, the principle of separation of powers receives a very peculiar refraction. The emphasis is not on the separation of powers, but on ensuring "balance" and "containment". In practice, this was expressed in the redistribution of power. A strong head of state is a key link in ensuring governmental stability and continuity despite party polymorphism. The dominant role of the head of state in the system of state bodies is to a certain extent "restrained" by the prime minister responsible to the parliament. The main prerogative of the legislator is to lay down the rules, determine the guarantees and the basic principles of the national policy.

This chapter explores the nature and role of the institution of the head of state, which is generally determined by the specifics of the political system. In a presidential republic, one body exercises all executive competence, that is, the president combines the functions of the head of state and government. The parliamentary system, assuming the dualism of executive power, assigns the head of state the role of "arbitrator-observer". The head of state, being outside the political situation, ensures the normal functioning of public authorities and the continuity of state power. The mixed form of government is based on the doctrine of "active presidential arbitration". The head of state is endowed with significant constitutional powers, allowing him to single-handedly decide many issues on the merits. At the same time, he must be a national leader, alien to party and social confrontation.

The dissertation critically analyzes a two-dimensional model for a comparative study of government institutions in various states, proposed by Shugart M., Carey J. [29, p. 6-11.] within the framework of this model, the problem of separation of powers can be reduced to two key questions for it: who and to what extent controls the composition of the government: parliament or the head of the regional executive power; Is it possible for the government and parliament to coexist in conditions of mutual distrust? The combination of answers to these questions serves as the basis for classifying the four ideal types of separation of powers: presidential, presidential-parliamentary, prime-presidential, and parliamentary.

The author also came to the conclusion that the implementation of various state-power functions independently of each other by various bodies does not at all contradict the understanding of power as a whole. At the same time, the concept of separation of powers developed by C. Montesquieu can be regarded only as an ideal construction, playing the role of an exclusively methodological model. This is explained by the fact that the original model of a clear division of power into three branches causes controversy regarding its implementation in a modern state due to the more complex social structure and the increasing role of the state in regulating social relations. In modern public administration, such public authorities participate that cannot be

attributed to the bodies of the classical branches of government: the prosecutor's office; head of state; investigative units occupying an independent place in the system of law enforcement agencies that ensure justice in criminal cases; accounting chamber; electoral bodies; ombudsman, etc. Such bodies of state power form atypical branches of state power, tk. represent a specialized and homogeneous system in the mechanism of the state, carrying out its functions in special specific forms through procedures established by law in order to increase the efficiency of public administration [71; 72; 73].

Within the framework of this chapter, a controversy is presented on the issues of atypical branches of government and “neutral power”. Also in this part of the work, an assessment is made of the application of the principle of separation of powers in the CIS countries and in the Republic of Moldova, which only since the end of the last century “reanimated” the theory of separation of powers, which was recognized and consolidated only in new Constitutions and legislation.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

As a result of a systematic analysis of the formation, development and current state of the concept of separation of powers, conclusions and generalizations were formulated that will contribute to the development of new approaches to the study of the problems of the formation and development of this theory based on scientific provisions and real practice of interaction between public authorities of modern states and the transformation of this ideas into the form of the fundamental and cornerstone principle of a modern democratic legal state, and will also be aimed at clarifying the conceptual apparatus of the studied doctrine and improving the legislative formulation of this principle in the legislation of the Republic of Moldova.

Consequently, the transition to a new understanding of the scheme of interaction between the branches of power is rather complicated by the need to abandon the usual patterns of legal thinking, but it is not impossible within the framework of the original concept of separation of powers.

As a result of the study, we came to the following conclusions:

1. Analyzing the general trends and milestones in the development of the theory of separation of powers that have influenced modern ideas about its purpose, content and application, we determine that this theory appeared in response to such political and legal challenges and problems as: the concentration of state power in certain bodies and centers, the need to exclude its usurpation, ensuring the freedom of the individual and the effective implementation of public administration. [Chapter 1, 1.1,1.2, 1.3 Chapter 2,2.1, 2.2, 2.3, Chapter 3, 3.1, 3.2,3.3, 3.4]

2. The overwhelming majority of representatives of modern domestic legal science recognize the principle of separation of powers as the political and legal basis for democracy and the legality of state power, the rule of law in it. The modern legal science of the Republic of Moldova has a number of sources on the topic under study, however, all of them reflect only certain aspects of it. The works of such prominent specialists as **A. Arseni, G. Avornik, S. Goryuk, N. Gradinaru, P. Railean, A. Smokina** and many others touch upon issues related to the separation of powers in connection with their consideration of the problems of the powers of individual state bodies and their interaction (parliament, government, president, constitutional court), the principles of a legal and democratic state, the foundations of constitutionalism, the institution of individual rights and freedoms. At the same time, there is no comprehensive study of the theoretical foundations of the principle of separation of powers, its evolution and current state. From the point of view of the general theory of state and law, there are clearly not enough works on the issues under study [Chapter 1, 1.1, 1.2, 1.3].

3. Revealing the prerequisites for the emergence of the theory of separation of powers in scientific thought, the formation of a coherent system of its features, we determine that at all times the best representatives of humanity, thinking progressively, were aimed at finding a balance between individual freedom and state power, between the sole head of state and a representative body between tyranny and democracy. This is embodied in numerous author's approaches, doctrines, concepts of optimal public administration based on the principle of separation of powers, which gradually formed a coherent, logically unified and verified doctrine. [Chapter 2, 2.1]

4. The theory of the separation of powers has gone through a difficult path of historical development from the philosophical idea of the need to limit state power and its rational organization to the practically applicable organizational and functional principle of the state mechanism, which at the present stage should be considered an achievement of political and legal views on the organization of the state and the system of state bodies, synthesized as a result of the evolution of state science.

In general, the evolution of the separation of powers took place in the general context of social development [Chapter 1, 1.1, Chapter 2, 2.1, 2.2, 2.3, Chapter 3, 3.1, 3.2, 3.3, 3.4].

5. The study of the origins and main stages of development of the conceptual foundations of the principle of separation of powers allows us to define the unique political and legal culture of Ancient Greece as a platform. Representatives of feudal philosophy F. Aquinas, M. Padua made a significant contribution to the formation of the concept of separation of powers. However, the final formalization of ideas into a coherent and logically complete theory occurred somewhat later - during the period of the Reformation and Enlightenment. The whole design of the concept is completed immediately before a series of revolutions in Europe, which marked the transition to the industrial era. This period coincides with the formation of the general theory of the rule of law, which allows us to approve the thesis of the inseparable unity of the rule of law and the separation of powers [Chapter 2, 2.1].

6. The classical doctrine of the separation of powers is based on the ideas of the French philosopher and statesman Charles Louis Montesquieu, who derived the triad of power from his reflections on ways to resist tyranny. The main postulates of his work in terms of the formation of the concept of separation of powers should be considered the necessity of dividing the activities of state bodies into three groups, separating their performance of lawmaking, executive, government and judicial activities. He gave priority to legislative activity, but at the same time he demanded that special efforts be made to ensure the independence of the judiciary. For all the progressiveness of Montesquieu's ideas, in modern conditions some deviations from it are permissible, for example, it is possible not to attribute any state body to one or any branch of government; the potential increase in the number of authorities is also obvious. We believe that the most important achievement of the classical Montesquieu concept of the separation of powers, which has not lost its relevance to this day, is the message of finding means against the concentration of power in the hands of one person, anybody or branch of government [Chapter 2, 2.1; Chapter 3, 3.1,3.2].

7. When characterizing the models of separation of powers that arose as a result of the previous periods of socio-political development and the accumulation of historical experience, only in historical and theoretical terms it is possible to reveal the content of this principle in a particular state, show its practical meaning, state purpose and the potential inherent in it. [Chapter 1, 1.1.; Chapter 2, 2.1, 2.2].

8. The study of the features of understanding and practical implementation of specific national models of separation of powers led to the conclusion that the classical version of the concept and the classical understanding of the principle of separation of powers can be used in modern conditions as a common platform that involves the implementation of the functions of the state in the legislative, executive and judicial spheres. Therefore, the classification of the functions of the state, thus, in modern legal science can be based on the principle of separation of powers. Accordingly, the addition of new branches to the existing three branches of power should not be considered as a negation of the classical triad, these are only attempts to improve it, which in some cases can lead in practice to a violation of the balance of power. Only such an approach will contribute to a flexible, non-dogmatic understanding and application of both the theory itself and the principle of the separation of powers. the inclusion in the thesaurus of the state mechanism of other state bodies and even the allocation of independent branches of power should not change the fundamental approaches to understanding the essence, architectonics and functioning of the principle under study [Chapter 1, 1.1, 1.2, 1.3; Chapter 2, 2.2, 2.3; Chapter 3, 3.1].

9. The main task of the modern state is a clear definition and distribution of its functions, which are then embodied in the functioning of the state mechanism. In turn, this requires the creation of a certain system of public authorities based on the principle of separation of powers,

within which competences and powers should be delineated, preventing their overlap and repetition. Moreover, we consider it equally important to create and legally consolidate legal forms of interaction between state authorities belonging to its different branches [Chapter 3, 3.2].

10. In the modern practice of implementing the principle of separation of powers, one has to state a sufficient variety of its forms, which is associated with various factors: the form of the state, national legal and democratic traditions, the political situation in a particular state at a particular historical stage of its development, and other key factors. Influencing the legal design of the principle of separation of powers of the modern state, we consider the form of government, the political-territorial structure and the current political regime. Indeed, in the conditions of dualistic forms of government, it is possible to most optimally solve the issue of separation and balance of the branches of power, but many modern states are moving away from the classical signs of dualism of power, moving to its mixed forms, which confirms our assumption that it is necessary to consider the classical theory and apply the principle of separation of powers, moving away from its strict signs. In addition, it is necessary to take into account the uniqueness of the political system of a particular society and the role of political parties, whose activities can radically change the ratio of the legislative and executive branches of power [Chapter 3, 3.1].

11. The principle of separation of powers has been recognized since the time of Montesquieu and retains its significance to the present day as a guarantee of people's freedom, a guarantee of individual freedom, respect for human and civil rights. This principle is closely related and is an integral attribute of such qualitative characteristics of a modern state as: the rule of law, a democratic state, a constitutional state [Chapter 1, 1.1; Chapter 3, 3.1, 3.2].

12. In the countries of the post-Soviet space, the recognition, consolidation and implementation of the principle of separation of powers came about after the collapse of the socialist system in the early 1990s. last century. In the Republic of Moldova, the principle of separation of powers is constitutionally enshrined in the model of a parliamentary republic, but at present its implementation in political and legal practice is shifting towards a mixed one [Chapter 3, 3.3, 3.4].

13. Assessing the possibilities of the principle of separation of powers in ensuring the rationality and efficiency of public administration, we note that modern interpretations of the separation of powers essentially mean the organizational unity of state power. This means the need to interpret the separation of powers not only as their relative isolation, autonomy, but as their coordinated interaction and functioning. The separation of powers in this sense is a guarantee of legal freedom, meaning that different power institutions must be effective within their competence, but they must not act exclusively unidirectional or exclusively jointly [Chapter 3, 3.1, 3.3, 3.4].

14. Exploring the evolution of approaches to the content of the principle of separation of powers, we note a somewhat contradictory trend: on the one hand, this is the return of modern doctrine to the ideas of J.J. Rousseau, who identified the separation of powers with the correct and precise redistribution of state functions between various state bodies, on the other hand, the problem of applying the principle of separation of powers in a modern state is more connected with the issues of ensuring civilized and effective interaction between the branches of government, establishing partnerships between them, contractual relations [Chapter 1. 1.1; Chapter 3, 3.1, 3.2].

The presented conclusions and generalizations contributed to the solution of the scientific problem of a comprehensive and systematic study of the development and current state of the concept of separation of powers, on the basis of which we offer a number of recommendations:

1. Analyzing various approaches to the periodization of the history of the development of the principle of separation of powers, we propose to distinguish three main stages:

Stage I - the emergence of the idea of the need to limit the power of the state (VII century BC - XVI century), covering the ancient and medieval historical periods;

Stage II - formalization of the classical concept of the theory of separation of powers and its implementation in the first democratic states (end of the 16th century - 19th century) as the principle of organizing the state mechanism, covering the bourgeois period;

Stage III - the modern stage of establishing the principle of separation of powers as an element of the rule of law (XX century - early XXI century), covering the industrial and the beginning of the post-industrial period.

2. The modern idea of creating an organizational and legal structure of power is acquiring an ever newer sound: unity, separation, interaction and mutual control of authorities. In this interpretation, the issue of the separation of powers should be reflected in the norms of modern constitutions, since it is almost never recorded as a general principle in a clear formulation. Based on the analysis of modern approaches to the separation of powers in the countries of young democracies, we propose the following definition: "The principle of separation of powers is a set of basic requirements for the organization of the highest bodies of state power, determining the scope of their competence and specific powers, as well as the forms of their interaction and cooperation on an equal footing principles, with the use of methods of mutual deterrence and control in order to ensure the principles of the legal and democratic nature of the state and prevent the possibility of usurpation of power.

3. We offer the following modern doctrinal understanding of the separation of powers as a system of the following features and characteristics:

a) the triad of power, which is classical, is the base, the typical form of separation of powers;

b) individual branches of power act autonomously exclusively within the framework of competence determined by law and legally secured powers, without intruding into the sphere of other bodies and branches of power;

c) all branches of power operate within a strictly legal framework determined by the Constitution and legislation, exercising their functions and powers within the framework of the general domestic and foreign policy of the state;

d) the system of checks and balances should be recognized as an obligatory sign of the separation of powers and mean a thorough development of organizational, legal, material and financial, institutional mechanisms that ensure the equal position of individual branches of power;

e) the interaction between the legislative and executive branches of government is carried out depending on the form of government in the state, at the same time, it is important for the judiciary to be at an equidistant distance from other branches of government;

f) in a state that is complex in political and territorial form, the separation of powers is carried out both between national authorities and between the authorities and authorities of the region, autonomy, subject of the federation, that is, along with the "horizontal" division of power, it is necessary to take into account its division and vertically";

g) the proclamation and guarantees of local self-government as a special system of democracy and one of the elements of the "vertical" separation of powers.

4. The principle of separation of powers in the countries of young democracies can be defined as a set of basic requirements for the organization of the highest bodies of state power within the established and transforming varieties of the republican form of government and the forms of their interaction, based on the postulates of constitutionalism and taking into account the implementation of a common, unified state policy.

5. We propose to understand the branch of government as a relatively separate part of the state mechanism, which is a set of public authorities that perform uniform functions based on common competence.

6. In order to clarify the legal status of the body of constitutional control in the Republic of Moldova, which provides the constitutional regime and legal character of the state, presupposing the separation of powers and control over the implementation of checks and balances, we propose to improve a number of procedural points for its formation by amending Law No. 317 from 13-12 - 1994 about the Constitutional Court in the form of:

a) normative fixing of one-time appointment to the position of judge of the Constitutional Court of the Republic of Moldova, which must ensure the independence of the members of this body, as it is the case in many countries of foreign stable democracies;

b) increasing the term of office of the members of the Constitutional Court of the Republic of Moldova to 7-9 years, which is also confirmed by the world practice of the constitutional court system and allows to ensure the high professional level of the judicial corps of the bodies of constitutional justice and also positively affects the degree of its independence;

c) the introduction of an odd number of judges in the composition of the Constitutional Court of the Republic of Moldova, which may solve the problem of making general decisions when the opinions of the members of such an organ are divided;

d) the expansion of the quantitative composition of the Constitutional Court of the Republic of Moldova, which implies the possibility of realizing ideological and political diversity and the availability of a greater number of opinions when discussing issues subject to this body;

e) expansion of the circle of subjects of the right to appeal to the Constitutional Court of the Republic of Moldova, in particular, at the expense of judicial bodies, in addition to the Supreme Council of Magistracy, also citizens of the Republic of Moldova with constitutional complaints about the violation of their constitutional rights, which corresponds to the generally accepted practice in the world and expands the sphere of competence and the powers of the organ of constitutional control, which will allow, in the end, to a greater degree to ensure constitutional law enforcement in the state.

7. Taking into account the development of modern doctrinal provisions on the separation of powers and the formulated conclusion about the need to ensure the general policy of the state and the joint efforts of the branches of government in this direction, as well as for the practical purposes of preventing protracted political crises, including the formation and work of the Government and other public authorities, we propose the following version of Article 6 of the Constitution of the Republic of Moldova: “In the Republic of Moldova, the legislative, executive and judicial powers are separated and constructively interact in the exercise of their prerogatives in accordance with the provisions of the Constitution, ensuring the unity of state policy. The branches of power function on the basis of equality and prohibition of appropriation of the powers of other branches of power in order to prevent its usurpation by one of the branches, body or official. Misappropriation of power is punishable by law.”

The proposed imperative will oblige to take various measures to overcome disagreements between the branches of government in order to jointly fulfill the goals and objectives of national policy.

The Advanced Research Plan includes the following:

a) the topic of research on the principle of separation of powers is complex and multifaceted both in theoretical and practical aspects, which predetermines the prospects for its further development at the level of not only the General Theory of State and Law, but also sectoral

legislation. First of all, the conceptual apparatus associated with the theory of the principle of separation of powers is subject to further improvement;

b) constitutional models for the implementation of the separation of powers, their varieties, features and characteristics require clarification;

c) the question of the vertical separation of powers and the role of local self-government as the primary level of democracy requires further legal research. For states with complex political and territorial structure, it will be relevant to analyze the features of the separation of powers in states with autonomous entities, federal states, and unions of states.

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ANNOTATION (IN ROMANIAN, RUSSIAN, ENGLISH)

ADNOTARE

Malearciuc Oxana. «Principiul separării puterilor: evoluție și stare actuală». Teză pentru obținerea titlului științific de doctor în drept. Specialitatea: 551.01 - Teoria generală a statului și a dreptului, 2022.

Structura tezei: introducere, 3 capitole, concluzii, bibliografie din 328 surse, 176 de pagini de text.

Cuvinte-cheie: separarea puterilor, concept, teorie, ramuri ale puterii, puterea legislativă, puterea executivă, puterea judecătorească, echilibrul puterilor, «verificări și balanțe», puterea «neutră».

Domeniul de studiu: Drept public. 551.01. Teoria generală a statului și a dreptului.

Scopul și obiectivele tezei. Scopul lucrării: analiza complexă a problemelor de formare și dezvoltare a conceptului de separare a puterilor în temeiul principiilor teoretice, practicii de interacțiune a organelor puterii de stat în prezent în vederea transformării teoriei date într-un principiu fundamental și esențial al unui stat de drept democratic modern, precum și perfecționarea legislației Republicii Moldova cu privire la organizarea mecanismului de stat și a organelor puterii publice.

Obiectivele studiului: a analiza premisele istorice de formare a principiului separării puterilor; a cerceta particularitățile de dezvoltare a principiului separării puterilor în știința juridică în diferite etape, a identifica tendințele actuale în dezvoltarea acestuia; a dezvălui conținutul conceptual al principiului separării puterilor; a dezvălui intercondiționarea principiului separării puterilor de stat și a esenței statului de drept democratic; a identifica trăsăturile de fond ale realizării separației puterilor, specifice diferitelor modele de organizare a interacțiunii instituțiilor juridice de stat; a evalua potențialul principiului separării puterilor în asigurarea raționalității administrației de stat în statele moderne.

Noutatea și originalitatea științifică a lucrării este deteminată de faptul că se realizează studiul complex și interpretarea principiului separării puterilor din punct de vedere retrospectiv, cât și din punct de vedere actual, în condițiile statului modern. Caracterul novator al lucrării este determinat de recomandările formulate, ca rezultat al investigațiilor, orientate spre înlăturarea lacunelor existente în cadrul normativ național, fiind oferite soluții reale de îmbunătățiri și propuneri de lege ferenda. Este subliniată necesitatea depășirii situației respective prin analiza ei critică și sunt relevate direcții ale implementării eficiente a principiului separației puterii în statele respective (organizarea referendumurilor; consolidarea rolului Curții Constituționale; ralierea principiilor și normelor dreptului național la cele ale dreptului internațional, european; consolidarea instituției drepturilor și libertăților fundamentale ale omului ș.a.)

Problema științifică importantă soluționată. Problema științifică soluționată constă în abordarea complexă a principiului separației puterii și accentuarea potențialului funcțional (juridic și organizatoric) al acestuia în calitate de garant al asigurării esenței și durabilității unui stat de drept democratic.

Importanța teoretică și valoarea aplicativă a lucrării constă în faptul că cercetările, constatările din conținut dezvoltă și completează acele compartimente ale teoriei și istoriei statului și dreptului, dedicate studierii principiului separării puterilor, aducând un surplus informațional și analitic. Concluziile generale și recomandările formulate în rezultatul investigațiilor pot fi un suport solid pentru perfecționarea cadrului legislativ și de reglementare al Republicii Moldova și al altor țări cu democrații tinere.

Implementarea rezultatelor științifice. Rezultatele activității științifice, cu referire la aspecte importante ale cercetării au fost prezentate la multiple conferințe internaționale, elaborate și publicate articole în reviste științifice, ceea ce a contribuit la îmbogățirea bazelor teoretice ale teoriei separării puterilor din spațiul științific național. Rezultatele cercetării sunt utilizate în predarea teoriei statului și dreptului și a altor discipline juridice.

АННОТАЦИЯ

Малярчук Оксана. Диссертация на соискание ученой степени доктора права. Специальность: 551.01 - Теория государства и права, 2022.

Структура диссертации: введение, 3 главы, заключение, библиография из 328 источников, 176 страниц текста работы.

Ключевые слова: разделение властей, концепция, теория, ветви власти, законодательная власть, исполнительная власть, судебная власть, баланс властей, «сдержки и противовесы», «нейтральная» власть.

Область исследования: Публичное право. 551.01. Общая теория государства и права.

Цель и задачи диссертации. Цель работы заключается в комплексном исследовании вопросов возникновения и эволюции концепции разделения властей на основе глубокого анализа выработанных наукой доктринальных позиций, а также фактического взаимодействия органов государственной власти современных государств и трансформации данной идеи в форму основополагающего и краеугольного принципа современного демократического правового государства, формулирования предложений по дальнейшему совершенствованию законодательства РМ по вопросу организации государственного механизма и органов публичной власти.

Задачи исследования: определить состояние научной разработанности принципа разделения властей, проанализировать и оценить вклад разных авторов в концепцию разделения властей; на основе авторских подходов, выявить предпосылки для формирования цельной системы признаков разделения властей; проследить трансформации идей о разделении властей; вычленить основные этапы развития принципа разделения властей; рассмотреть особенности практического воплощения принципа разделения власти в Республике Молдова; оценить возможность принципа разделения государственной власти в обеспечении рациональности государственного управления.

Новизна и научная оригинальность: предпринята попытка комплексного исследования трактовок принципа разделения властей, как в исторической ретроспективе, так и в условиях современного государства. Инновационные элементы определяются рекомендациями, сформулированными для устранения существующих пробелов в национальной нормативной базе. Подчеркивается необходимость преодоления соответствующей ситуации путем ее критического анализа, и выявляются направления эффективной реализации принципа разделения властей в соответствующих государствах (организация референдумов, усиление роли Конституционного Суда и др.).

Решенная важная научная проблема заключается в комплексном подходе к раскрытию юридико-организационного потенциала принципа разделения государственной власти, выступающего в известной мере гарантом обеспечения сущности и устойчивости демократического правового государства.

Теоретическая значимость и прикладная ценность работы заключается в том, что сформулированные в ней положения развивают и дополняют те разделы теории и истории государства и права, которые посвящены изучению исследуемого принципа разделения властей. Общие выводы и предложения могут быть использованы для совершенствования законодательной и нормативно-правовой базы РМ и других стран молодых демократий.

Внедрение научных результатов. Результаты были представлены на нескольких международных конференциях и опубликованы в научных журналах, что способствовало обогащению основ теории разделения властей. По теме диссертации был опубликован ряд научных статей. Результаты диссертации используются при преподавании теории государства и права и отраслевых дисциплин.

ABSTRACT

on PhD thesis of juridical science, specialty: 551.01 – General theory of state and law, title: «The principle of division of authorities: development and present state », author Oksana Maliarchuk, Chisinau, 2022.

Thesis structure: introduction, three chapters, conclusion, bibliography from 328 sources, 176 pages of work text.

Keywords: separation of powers, concept, theory, branches of power, legislative power, executive power, judicial power, balance of powers, «checks and balances», «neutral» power.

Field of study: General theory of state and law.

The purpose of the work: a comprehensive study of the problems of the formation and development of the concept of separation of powers on the basis of an analysis of theoretical principles, the actual practice of interaction between state authorities of modern states and the transformation of this idea in the form of a fundamental and cornerstone principle of a modern democratic legal state.

Objectives of the study: to analyze the historical background of the formation of the principle of separation of powers; to investigate the development of the principle of the separation of powers in legal science at different stages, to identify current trends in its development; reveal the conceptual content of the principle of separation of powers; to reveal the interdependence of the principle of separation of state power and the essence of democratic legal statehood; identify the substantive features of its implementation inherent in various models of the organization of interaction of state-legal institutions; to assess the possibility of the principle of separation of state power in ensuring the rationality of public administration in modern states.

The scientific novelty of the work is expressed in the fact that it contains an attempt to comprehensively study the interpretations of the principle of separation of powers both in historical retrospective and in the conditions of the modern state. The need to overcome the respective situation is emphasized through its critical analysis and directions for the effective implementation of the principle of separation of powers in the respective states are revealed (organization of referendums; strengthening the role of the Constitutional Court; aligning the principles and norms of national law with those of international and European law; strengthening the institution of rights and fundamental human freedoms, etc.)

The solved scientific problem lies in a comprehensive approach to unlocking the legal and organizational potential of the principle of separation of state power, which to a certain extent guarantees the essence and stability of a democratic state of law.

The theoretical and practical significance of the work lies in the fact that the provisions formulated in it develop and supplement those sections of the theory and history of state and law that are devoted to the study of the principle of separation of powers under study. The general conclusions and suggestions formulated as the results of the study can be used to improve the legislative and regulatory framework of the Republic of Moldova and other countries of young democracies.

The introduction of scientific results. The results of scientific activity on various aspects of the topic of this dissertation research were presented at several international conferences and published in scientific journals, which contributed to the enrichment of the theoretical foundations of the theory of separation of powers. A number of scientific articles have been published on the topic of the dissertation.

MALIARCHUK Oksana

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