

ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВНОГО УПРАВЛІННЯ

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THE PRESIDENT'S HISTORICAL ROLE AND PLACE IN THE SYSTEM OF PUBLIC AUTHORITIES OF CONTEMPORARY UKRAINE

The article deals with the history of the formation of the Presidency institute and its transformation in modern Ukraine. The Presidency institute is considered as one of the highest bodies of state power, which must consolidate the efforts of all public authorities in order to achieve the development of the state. Attention is drawn to the fact that the effectiveness of the functioning of the Presidency institute depends not only on the scope of powers, but also on the historical development of a society, which is particularly relevant at the present stage of the reconstruction of a democratic country. The relation between the concept «president» and «head of state» is considered.

Key words: head of state; institute of the Presidency in Ukraine; state administration, division of power; state policy.

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ІСТОРИЧНА РОЛЬ І МІСЦЕ ПРЕЗИДЕНТА В СИСТЕМІ ОРГАНІВ ДЕРЖАВНОЇ ВЛАДИ СУЧАСНОЇ УКРАЇНИ

Постановка проблеми. Розглядаючи інститут президентства, особливо в умовах децентралізації, виникають питання щодо обсягу повноважень, взаємодії між владними інституціями та механізмів їх реалізації. Державну владу необхідно будувати виходячи з реалізації принципу, передбаченого статтею 6 Конституції України, яка регламентує, що державна влада в Україні здійснюється на засадах її поділу на законодавчу, виконавчу та судову. Органи законодавчої, виконавчої та судової влади здійснюють свої повноваження у встановлених цією Конституцією межах і відповідно до законів України [9].

Як слушно зазначає Віра Гопоненко: «Успішність функціонування вибраної форми правління залежить від багатьох чинників, зокрема історії становлення державності, урахування традицій, менталітету тощо. Адекватність форми правління суспільним потребам зумовлює швидкість вирішення нагальних політичних проблем, ефективність впроваджуваних реформ і в цілому – рівень демократизації політичного життя» [5].

Саме ретельне вивчення історії виникнення (формування) інституту президентства надасть нам можливість спрогнозувати його подальший розвиток.

Аналіз останніх досліджень і публікацій. Дослідженням історії становлення інституту глави держави в Україні займалися В. Бараєв, Г. Кривчик, М. Кармазіна, Н. Кононенко [2; 7; 8]. Суспільно-політичні передумови запровадження інституту Президента на початку 1990-х рр. розкриті у своїй статті І. Процик [11]. І. Д. Хутінаєв, аналізуючи поняття «соціальний інститут», зазначає, що інститут президентства є предметом аналізу різних галузей наук, які використовують різні методи, через що питання змісту даного поняття залишаються дискусійними [13]. Інші автори, зокрема М. Чобан [14], розглядають суть інституту президентства як систему норм, що спрямовані на регулювання процесу виборів президента, його повноважень і функціональних обов'язків і всі інші аспекти виконання ним владних повноважень.

Розглядаючи інститут президента в контексті поняття глави держави слід зазначити, що інститут глави держави досліджувався в працях значної кількості представників юридичного профілю. Серед них слід виділити відомих українських вчених: В. Авер'янова, Ф. Бурчака, М. Козюбру, А. Колодія, В. Мельниченка, Н. Нижник, Н. Плахотнюк, В. Погорілка, Ю. Тодіку, О. Фрицького, В. Шаповала, Ю. Шемшученка, В. Яворського та інших. Як зазначали у своїх працях ці науковці, сутність глави держави у парламентських державах є похідною від влади монарха при монархічній формі правління.

Отже, незважаючи на численні дослідження, залишається багато питань щодо історичних передумов виникнення інституту президента, його особливої ролі та місця серед інституцій публічної влади.

Метою статті є обґрунтування необхідності дослідження історичних передумов виникнення інституту президента.

Висновок. Ретельне визначення історичної суті виникнення інституту президента надасть можливість окреслити його місце у сучасній ієрархії органів публічної влади. А це, надасть можливість створювати реальні механізми взаємодії між різними гілками влади та посилювати інститут президентства.

Ключові слова: глава держави; інститут президентства України; державне управління; розподіл влади; державна політика.

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Постановка
проблеми

Considering the institution of the presidency, especially in the context of decentralization, there are questions about the scope of powers, interaction between authorities and mechanisms for their implementation. State power must be built on the basis of the implementation of the principle envisaged by Article 6 of the Constitution of Ukraine, which regulates that state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial. The legislative, executive and judicial authorities exercise their powers within the limits established by this Constitution and in accordance with the laws of Ukraine [9].

Vera Goponenko notes: «The success of the functioning of the chosen form of government depends on many factors, in particular the history of statehood formation, taking into account traditions, mentality, etc. Adequacy of the form of government for social needs determines the speed of resolving urgent political problems, the effectiveness of implemented reforms and, in general, the level of democratization of political life» [5].

It is a thorough study of the history of the origin (formation) of the Presidency institute that will enable us to predict its further development.

Аналіз
останніх
досліджень
і публікацій

V. Baraev, G. Krivchik, M. Karmazin, N. Kononenko studied the history of the establishment of the head of state in Ukraine [2; 7; 8]. Public-political preconditions for the establishment of the Presidency institute in the early 1990's were disclosed in his article by I. Protsyk [11]. I. D. Khutinaiev, analyzing the concept of «social institute», notes that the institute of presidency is the subject of analysis of various branches of science, which use different methods, because of which questions of the content of this concept remain controversial [13]. Other authors, in particular M. Choban [14], consider the essence of the Presidency institute as a system of norms aimed at regulating the presidential election process, its powers and functional responsibilities, and all other aspects of the exercise of its authority.

While considering the Presidency institute in the context of the concept of the head of state, it should be noted that the institution of the head of state was investigated in the writings of a significant number of legal field experts. Among them there are distinguished Ukrainian scientists V. Averianov, F. Burchak, M. Koziubra, A. Kolodii, V. Melnychenko, N. Nyzhnyk, N. Plakhotniuk, V. Pogorilka, Y. Todich, O. Frytskyi, B. Shapovala, Y. Shemshuchenko, V. Yavorskyi and others. As these scientists noted in their writings, the essence of the head of state in the parliamentary states is derived from the power of the monarch in the monarchical form of government.

Consequently, despite numerous studies, many questions remain about the historical preconditions for the establishment of the Presidency institute, its special role and place among the institutions of public authority.

Мета

The purpose of the article is to justify the need to study the historical preconditions of the Presidency institute.

Виклад
основного
матеріалу

The analysis of the reasons for the emergence of such a state authority as the «President» gives the possibility to distinguish in science at the same time

such concepts as: «Institute of President», «Presidency Institute» and «Head of State». First of all, it should be noted that the «Academic Explanatory Dictionary of the Ukrainian Language» [1] gives the following definition of the institute:

1. Name of some higher educational establishments and scientific institutions.

2. In pre-revolutionary Russia, a closed type female secondary school for children of noblemen.

3. A set of legal norms in any field of public relations – a set of formal organizations that meet the social need.

The concept of the president in the «Academic Explanatory Dictionary of the Ukrainian Language» is defined as:

1. Elected chairperson, head of the institution, organization, corporation etc.

2. In a number of countries – head of state elected for a certain period.

Thus, the institute (from the Latin institutum – the direction, institution) in the system of the general law is a set of rules of law that regulate homogeneous relations and are separated from other subjects and objects. When considering the institute as a public institution, it can be seen as an integral organization, the structure of which consists of the relevant departments (divisions) and which may include other institutions that provide its activities.

Thus, «the head of state» is the highest state official, whose powers depend on the form of government, but in any case, he occupies the highest place in the system of state authorities, exercises a supreme representation in internal and external politics, is a symbol of statehood and national unity.

In view of the above, there is a difference between the Presidency institute and the head of state, and this difference is very important, since the Presidency institute is broader than the one of the head of state. Historical prerequisites for the emergence of these institutions are different.

Considering the state with the monarchical form of government, we see that, on the basis of historical processes. The monarch, who is irresponsible for his own actions towards his own society, becomes the head of state by redistributing power among the branches of power and having responsibility. A striking example is the emergence of the so-called dualistic monarchy or parliamentary / constitutional one. A. A. Mishin in one of his works argued that the head of state is a purely bourgeois institution, owing its appearance, at the same time, to the world of absolute monarchy [10].

The emergence of the Presidency institute is an attempt by society to combine in one public body of state power such features as significant amount of authority and responsibility to the community. Responsibility to the community can be achieved through the selectivity of the president's position. In addition, in its essence, the Presidency institution can be represented either by an individual body or by collegiate one, while the head of state is always an individual body, which has primarily a general political function.

Conclusions based on the above are:

1. The Presidency institute is an organically linked system, whose activities are based on the relevant normative legal acts (primarily the Constitution, the constitutional laws governing the activities of the President

of Ukraine and ensure the fulfillment by the President of the duty entrusted to him and provide the opportunity to exercise certain rights). It is organizationally integrated structure consisting of relevant departments (divisions), which may include other institutions that provide the president's activities.

2. The head of state is a derivative in its historical origins from the monarch, while the president – from the head of state.

3. The powers of the head of state and the president are not identical.

4. The emergence of the president's institution is an attempt to implement the principle of separation of powers and unite in the hands of a single person the considerable volumes of public authority in order to ensure democratization in society in the states with a republican form of government.

5 The question of the President's responsibility as head of state before the community remains unresolved.

Let's consider the historical peculiarities of the formation / occurrence which are inherent in the modern Presidency institute of Ukraine.

The formation of the Presidency institute in modern Ukraine is a long and complicated process that is realized and is associated with socio-political phenomena having taken place at the end of the 20th century.

Let's consider the emergence of the president's institute through the prism of several issues, namely:

What state power institution was trying to be built by introducing the Presidency institute – monarch or head of state?

What powers will this institution have first?

In the past times the lands of modern Ukraine were territorially included in different states. As a result, the state power prevailing in these lands, was usually borrowed. Consequently it had some differences, both in the emergence of power and in the power scope. In the period of the formation of the Ukrainian state on the ethnic Ukrainian lands, colonial authorities were created. These controls were derived from the power of the monarch. It was studied in the scientific works by such scholars as O. Subtelnyi, L. Voytovych, Y. Vermenych, M. Hrushevskiy [3,4,6,12].

The general state structure of the past of Ukraine was based on the separation of powers. The highest legislative, judicial, military and administrative power in the state belonged to the Grand Duke, who came to power on the basis of a strong army or later – was a protégé of the metropolis. All power was concentrated in the hands of one person, and in essence it was the power of the monarch. However, despite such a division of powers, it should be noted that the volumes of power at the times of Kyivan Rus princes and in the 15th - 19th centuries were different. The boyars' дума (council) including the closest aristocratic entourage of the prince and the local nobility was an advisory body of the executive power under the prince. The people's meeting – Viche, convened in rural communities – the *vervs* and in the cities remained the local self-government body from previous times.

The struggle for independence, which was conducted for a long time, in the first place required / foresaw the creation of strong state power. Such attempts are testified by the times of development of our state, which took place during the Hetmanate. Such Ukrainian historians

as V. Smoli, O. Boyko, G. Temko, who investigated the period of the Hetmanate believe, that taking into account scale, character, forms and purpose of struggle, the changes taking place in political, sociopolitical and spiritual life of the Ukrainian people, these events can be named «Ukrainian national revolution». Considering the Hetmanate as a period of the formation of the Ukrainian state, we will focus on the authorities.

Thus, legislative, executive and judicial powers were concentrated in the hands of the Hetman. He was an official representative of Ukraine, signed important normative acts (articles, universals, letters, orders, etc.). In fact, the hetman's power had the features of a modern president. However, the substantial difference was that the Hetman was initially appointed. Only in the future, trying to strengthen their own power hetmans came to the need to propose the hetman post to be an elective one. By concentrating all power in their hands, the hetmans were able to put and solve the question of Ukraine's independence.

According to historical events, the interim alliances with the powerful states and the internal struggle for power gradually led to the decline of the Hetmanate and the restoration of the protectorate.

The following historical events occur in the early 20th century. This period covers the time from 1900 to 1920. At that time an attempt was made to create a state authority in the form of a parliament in Ukraine. During that period, the struggle for power lies within a separate group of political activists and civil activists who claim to be power. As a result of the inconsistency between the pro-government forces, there was a need for a strong leader who would be able to unite and direct joint efforts in order to create a strong state. Some historians call Mikhail Hrushevskiy - the first President of Ukraine. But the legislative acts of that time testify that, in accordance with the Constitution of the Ukrainian People's Republic, adopted on April 29, 1918, Ukraine is a sovereign parliamentary state. Her supreme body was the National Assembly, and Mikhail Hrushevskiy was an elected Chairman. However, in my opinion, to identify the Chairman of the National Assembly with the president in the modern sense of the word is wrong. These posts assumed different volume of powers. In addition, it is important that the Chairman of the National Assembly was elected at the congress from among the deputies. So, the power of the chairman primarily concerns the work of the National Assembly. It is limited by procedural rules, and the chairman is not a representative of the society because there were no popular elections.

The next attempt of the Presidency institute creation can be linked to the emergence of the Directory. The long struggle for power within the Directory enabled S. Petliura to gain sole power at the end of 1919. According to a joint resolution of the Directory and CPM (Council of People's Ministers) (15 November 1919), «the supreme control of all public affairs of the Republic is given to the Directorate head, Mr. S. Petliura, who on behalf of the Directorate approves all laws and regulations adopted by the Council of People's Ministers». Next Directory Law «On Temporary supreme administration and legal order in the UPR» and «State People's Council of UPR» secured Petliura's power, authorizing the Directorate Head to adopt laws approved by the State People's Council, appointment and dismissal taken by CPM and approved by the State People's Council,

the terms of relations with other states, to issue, on a CPM proposal acts of amnesty and pardon, to represent the UPR to other states, to appoint the Chairman and to approve CPM members. In essence, these powers were inherent in the powers of the president in countries with a presidential form of government.

Consequently, during the historical development of the state power of our country from time to time there were attempts to focus a significant amount of power in one hands, and to create a presidential institution. An important sign of the establishment of such an institution is the transfer of power to a single body. As noted above, the sole authority in the person of the head arose either on the basis of the administrative act of the protectorate, or the self-capture and the self-appointment took place. Thus, we can come to a conclusion, that there were attempts to

The Verkhovna Rada of the Ukrainian SSR took as the basis the relevant decree by the Supreme Council of the USSR and subject to the changes made to the Constitution of the USSR, by adopting the laws of the Ukrainian SSR «On the establishment of the post of the President of the Ukrainian SSR and the introduction of amendments and additions to the Constitution (Basic Law) of the Ukrainian SSR», «On the election of the President of Ukraine» redistributed its own powers, established the post of the President, as well as by making changes to the Constitution and in the part of political parties, and in terms of electoral law. In essence, in this way an attempt was made to put into practice the principle of the separation of powers between different branches of government.

The results can be seen by analyzing the state of administration system before the changes and after them.

Institutions of power	before changes	after the changes
Verkhovna Rada of the Ukrainian SSR	Adopts laws under the country development program approved by the congress of the Communist Party of the Ukrainian SSR	Adopts laws under the country's development program.
Council of Ministers of the Ukrainian SSR	Is the highest executive and regulatory authority of the Ukrainian SSR. The Council of Ministers of the Ukrainian SSR is formed by the Verkhovna Rada of the Ukrainian SSR, is accountable and controlled by the Verkhovna Rada.	Is the supreme executive and administrative body of state power of the Ukrainian SSR. Its composition is approved by the President. It is accountable and controlled by the President
President	Non-existent	Is a high official of the Ukrainian state and the head of the executive branch

establish a republican form of government led by the head of state who relied in his power on the elected bodies.

Considering the historical development of state authorities of modern Ukraine, it is necessary to take into account the events that took place at the end of the 20th century and lay the foundations for building such a democratic authority as the presidency institution.

One of the main reasons for the establishment of the Presidency institute was the radical change in the views on the formation of government bodies and their powers in the Soviet era.

Under the Soviet Union, the socialist political and legal doctrine dominated, in which the principle of separation of powers was rejected as bourgeois and unacceptable. The power of the Soviets, being the power of representative bodies was proclaimed as the only state power. In accordance with the Constitution of the Ukrainian SSR in the wording of 1978, Verkhovna Rada of the Ukrainian SSR was the supreme body of state power of the Ukrainian SSR. The Council of Ministers of the Ukrainian SSR, which was formed by the Verkhovna Rada of the Ukrainian SSR was the highest executive and administrative body of state power of the Ukrainian SSR.

Taking into account the world tendencies and basing on the political and legal theory of separation of powers, which is associated with the philosopher Charles-Louis de Montesquieu, according to which state power should be divided between independent branches: legislative, executive and judicial, a new model of state power was considered and proposed. Within the framework of this theory the relevant changes were made in the valid legislation of that time.

We can say that it was planned to establish a presidential form of government. In this case, the president was given a significant role in the administration and regulation of relations in society.

Let's consider the emergence of the President's institute from the historical point of view:

The Presidential Institute plays an important role in the state-building of modern Ukraine. During the historical development of our state there were numerous attempts to concentrate power in one hands – in the hands of the President, as the head of state. Non-military attempts were made to make this institute an elected institution, which took place in modern Ukraine. The historical position of our public, our mentality proves the need for a strong leader who could unite political elite around himself and would be capable of governing the state. It is impossible to separate powers between the Head of state and the President's institution. Such separation leads to a violation of the principle that state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial (Article 6 of the Constitution of Ukraine).

The dispersion of powers between the authorities, first of all between the President and the Verkhovna Rada, testifies to the insolvency and unwillingness of the public authorities to bring order in the country. The events happening now in the country may indicate an attempt to violate the principles laid down in the Constitution of Ukraine. Such actions can lead to the avoidance of liability, since the collegial body is not responsible to the public for its actions.

Висновки

Careful determination of historical origin of President's Institute will enable to define its place in the hierarchy of

modern public authorities. This will provide an opportunity to create real mechanisms of interaction between different branches of power and strengthen the Presidency Institute.

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