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Place and role of the executive power in the theory of separation of powers

The article analyzes theoretical bases of the principle of separation of powers from its origin up to the present time. The article reveals that the principle of separation of powers was inactive and ignored wherever totalitarian and authoritarian regimes were established. It is shown that the peculiarity of the executive power lies in its law enforcement functions, it performs the implementation of the laws adopted by the Parliament. A special place in the article is given to the institution of delegation of executive power legislation. The strengthening of the executive power can be conditioned by the fact that when there is no unity among the various political forces in the society, this results in a critical situation. Any state that is in crisis should ensure strict parliamentary and judicial control. In this case, only a system of checks and balances ensures equality and sovereignty of power for uniting common goals – the creation of a legal and dynamically developing state.

Keywords: ideas of natural law, principle of separation of powers, executive power, three branches of power, Parliament, monarchy, Republic, mechanism of checks and balances, political regime.

When the certain period came, the human society, through creative labor and the development of its social and legal culture, began to think about the organization of such a state in which people could live freely under protection of the common law. Each of its citizens had the right to rule their country by participating in elections to parliamentary and local institutions. The executive power, acting according to the laws, protected the peace and order in society. Legislative bodies, consisting of deputies elected by the people, created legal norms aimed at improving the lives of their fellow citizens. Judicial institutions, also elected by the people from the most authoritative, professional and highly moral representatives of this society, acted only according to the letter of the law.

Moreover, these three branches, which constituted one powerful force – a state power, did not have the right to interfere in each other's affairs, to duplicate and impose their opinions, to assign certain powers, etc., since this was a grave violation of the democratic principles of this society. In the opinion of the majority of progressive thinkers, this is how a democratic state should have looked like, in which the principle of separation of power dominated, where the executive power played an important role.

Unfortunately, the humanity did not come immediately to such an ideal scheme, but only as a result of a complex and brutal struggle with the old monarchical form of government. It seemed that it was impossible to remake the monarchical system which had been dominating for hundreds of years over the peoples of that world, since it was an unassailable fortress.

The ideas of free thinking and equality were accumulated and arose in the minds of the enlighteners who passed them on to the people through their labors, as a result of which theoretical doctrines and views on the reconstruction of the human society arose.

These theories, developed simultaneously by the well-known thinkers such as Hugo Grotius, Thomas Hobbes, Benedict Spinoza, John Locke, Jean-Jacques Rousseau, Charles Louis Montesquieu, Emanuel Kant and many others, gave their real results in the pre-revolutionary years of the late XVI – early XVII centuries.

The above-mentioned classics of political and legal thought, in their turn, based their theories on the teachings of ancient philosophers – Aristotle, Plato, Pythagoras, Heraclitus, Socrates, Seneca, Cicero, etc. This demonstrates that each generation has invested its stone in the foundation of the future building of Justice and Democracy, to which civilized society aspired.

Europe in the pre-revolutionary years of the late XVI – early XVII centuries «was bursting with indignation». The deplorable situation of ordinary people deteriorated every year compared with the idle life of the aristocracy, the royal families and their associates – the highest officials of the ruling government and representatives of religion.

It should be mentioned that the main impact on despotism was the substantiation of the idea of natural human rights. Thus, Hugo Grotius (1583-1645) an educated lawyer, a famous Dutch writer and thinker became the ancestor of this theory [1; 189]. He wrote that natural law had an indisputable advantage, both over the divine and the human right, in its various varieties, since the mother of natural law was the very nature of man. Therefore, it is unacceptable to encroach on someone's freedom or other amenities, restrict people's freedom, not to compensate for damage, ignore contracts, etc. [1; 191].

According to Grotius, even the king's powers could be restricted by people; if the king went beyond their limits, he became a private individual with all the consequences that followed from this [1; 193].

His compatriot Benedikt Spinoza (1632-1677) wrote that people began to unite in a whole state in order to ensure their natural rights. The scientist gave special preference to democratic state. According to Spinoza, the republic was the most reasonable form of the state [1; 205, 206].

Thus, for example, the English philosopher John Locke (1632-1704) determined that only the state has political power, that is, to create laws which provide various penalties up to the death penalty and to use the community force to enforce these laws [2; 263].

It should be noted that gradually, along with the ideas of natural human rights, the concept of a democratic society and the rule of law, as well as various forms of government – the principles of separation of powers began to appear. John Locke presented many interesting ideas about strengthening the principle of separation of powers. His most famous work is «Two Treatises on Government» (1690). According to the scientist, the state was created not by God, but by a voluntary association of people. Further, he writes, a single political organism is created, where all affairs are decided in accordance with the will of the majority of the population. Since then, the state on behalf of the population carries out justice, publishes laws, collects taxes, ensures public order, etc. [1; 208, 209].

Moreover, Locke defending the natural right of man makes a note: «... the state of freedom, nevertheless, is not a state of self-will ...» [2; 264]. As a result of this, it cannot damage the life, health, freedom or property of another person [2; 265].

It is interesting that, being a democrat and an extraordinary progressive man, J. Locke attached great importance to the principle of separation of powers, however he paid attention only to the legislative and executive authorities.

Developing further his ideas, John Locke makes a conclusion about separation of the legislative and executive powers [2; 347]. In his opinion, the legislative bodies must act continuously, at the same time, in emergency situations, with the consent of the population, they can give up their executive powers, thus go against the letter of the law in the name of the common weal [2; 351].

Another thinker Charles-Louis Montesquieu (1689-1755) continued the idea of separation of powers. He came from the provincial French nobility; it is interesting that he was born 100 years before the French Revolution. His works: «Persian letters» (1721), «Reflections on the causes of the greatness and fall of the Romans» (1734) and «On the spirit of the laws» (1748) have gained worldwide fame [3; 9]. Montesquieu was an ardent supporter of parliamentarism.

Like Locke, Montesquieu recognizes the theory of separation of powers and further develops it. In addition to the legislative and executive branches, he also includes the judiciary. In Chapter VI «On the State System of England» in the book «On the Spirit of Laws», Montesquieu noted that there would be no freedom in the state if the legislative and executive powers were combined in one person or body. Also, there will be no freedom if the judiciary power is not separated from the legislative and executive ones. According to the scientist, everything will perish if these three authorities are connected in one person or institution [3; 290, 291].

Continuing his thought, Montesquieu noted that the political freedom in society can function if it does not have conditions for abuse of power, and in order to ensure this principle, an organization of state power is necessary in which the three branches of power could restrain one another [4; 137].

Later, the leaders of the French Revolution referred to the works of Charles Montesquieu, and justified the establishment of the republican system in France. Although we should note that he was always in favor of compromise with the royal authority against blood and violence.

As we see, Montesquieu, like J. Locke, was guided by the revolution in England, which occurred in 1688, where on the basis of a compromise between the bourgeoisie and the aristocracy, the foundations of a constitutional monarchy were laid. In the history, this revolution was called the «Glorious Revolution» [3; 31].

English enlightener Thomas Hobbes (1588-1679) understood the executive as the power that was designed to enforce laws and judicial decisions, and to ensure the implementation of punitive measures in the event of disobedience to state power [5; 190].

Apparently, on the threshold of European revolutions and their victory over the monarchical regimes in their countries, the ideas of the above-mentioned philosophers, educators, thinkers and scientists, which theoretically substantiated practical steps towards revolutionary changes, played a valuable role. Natural human rights meant that the people had the right to overthrow the oppressing despotic regime and create a new statehood based on the principles of justice, separation of powers and the rule of law. Also the human right was to choose a form of government in the form of a constitutional monarchy or republic, which opened up broad prospects for the development of Western Europe, not only politically, but also socially and economically.

The ideas of natural law and the principles of separation of powers no longer had borders and they gradually penetrated into the territory of the New World, the United States of America, in which there was a favorable situation for the implementation of many projects of political reforms that could not be completely brought to Europe. The unique situation was that North America as a state was formed from a «clean slate», and many revolutionary democrats who fled from Europe for anti-monarchist mentality and revolutionary activity were able to implement interesting democratic projects into the arrangement of a new American statehood. And, finally, in America there were not those powerful forces that supported the monarchy, as it was in Europe.

Analyzing the theory of separation of powers and the place of the executive power in it, it is necessary to dwell on some historical subjects of the formation of the United States of America, which became an example of building a legal democratic state.

The American revolution of the 18th century was even recognized by Karl Marx, one of the irreconcilable critics of capitalism and the founder of the idea of building a communist society. In his letter to the President of the United States of America Abraham Lincoln in 1864, in connection with his re-election, Karl Marx wrote that for the first time in North America the idea of a single great democratic republic arose, the first Declaration of Human Rights was proclaimed and the impetus to European revolutions was given [6; 17].

At the same time, the founders of communism did not recognize the ideas of bourgeois democracy, in particular, the principle of separation of powers. In this connection, Marx's colleague Frederick Engels noted in his writings that the separation of powers was an ordinary division of labor applied within the state mechanism for simplification and control [7; 203].

The emergence of American statehood was in the acute struggle against English absolutism, whose most prominent figures would later lead this country and become the founding fathers of American statehood and its Constitution. These were George Washington, Thomas Jefferson, Benjamin Franklin, James Madison, Alexander Hamilton, Thomas Paine, and others.

The states made several attempts to create a new constitutional treaty, but, however, they did not have a common opinion on the principal issues of the further development of the country [8; 18]. A meeting was convened where J. Washington was elected as a chairman; a delegation from Virginia presented the plan developed by Madison for the establishment of a new national Government [8; 22];

There was a struggle between different states about the legislative power, the strengthening of presidential powers, etc. Franklin, Madison and their associates played a great role in settling the conflicts.

In the Constitution of 1787 the «Bill of Rights» was drafted, which enabled the Constitution to adapt to the new conditions of the developing society [8; 27].

Alexander Hamilton in his work on the structure of presidential power noted that the executive must be necessarily energetic and, undoubtedly, be concentrated in the same hands. The weakening of the executive power, according to Hamilton, will lead the country to disobedience to the laws and undermine the effectiveness of the entire system of government. The principle of executive power is undivided authority, whereas the legislative is multiple authority. This makes them effective each in their field.

At the same time, Hamilton warned that the executive power was a potential threat to the republican freedoms and interests of the people, since it was provided with undivided authority.

During the construction of the American statehood, disagreements arose over the future form of state government. For example, A. Hamilton proposed the Project of an oligarchic republic headed by a President elected by a narrow circle of privileged electors, endowed with broad powers and essentially representing the position of an elected king [9; 83].

Another American statesman James Madison, struggling with conservatives for the republic, believed that a representative democracy system, compared to the immediate, had a great perspective in the vast territory of America. The representative system, in his opinion, was aimed at ordering political demands to release them from trifles and extremes and to give them a generalized character. In a large state, representative bodies are most favorable [10; 51].

Madison strongly criticized the deprivation by the majority of state constitutions of the traditional prerogatives of the executive power and their transfer to legislative power. However, Madison was against the life-long election of the president, for which A. Hamilton, J. Dickinson, G. Morris, and others advocated. He proposed to establish a seven-year term of presidential authority [11; 146].

Thanks to J. Madison, who fought for freedom of conscience, freedom of speech and convictions, the suffrage was democratized in America, «... the suffrage, he wrote, is a fundamental article of every republican constitution» [10; 58]. And it was only thanks to his influence that in 1821 many states established a suffrage for the entire white male population in elections to both legislative chambers. According to Madison, such system in the future would become possible for the entire population of the country [10; 60].

The events that took place in America and Europe could not but affect the teachings of the advanced thinkers of the Russian state. Among them was M.M. Speransky, whose ideas also reflected the principle of the separation of powers. In his opinion, the bicameral Duma was supposed to represent the legislative power of Russia, the emperor of the reigning house of the Romanovs should become the head of the executive power, and the judiciary power had to be represented by the court operating in Russia [12; 101].

It should be noted that M.M. Speransky was once the Governor-General of Western Siberia, the «Charter of the Siberian Kirghiz» was written by him in 1822. Along with the «Charter of the Orenburg Kirghiz» in 1824, developed by Governor-General P.K. Essen, tsarism intended to abolish the Khanate-Sultan power in the Lower and Middle Juzes of Kazakhstan, having prepared a legal basis for the expansion of the colonization of the Steppe lands and the assimilation of nomads [13; 246-247].

As G.Z. Kozhakhmetov noted, M. Speransky's Charter differed from the Charter of P. Essen by more flexible and liberal elements, especially in the field of the election of local authorities, for the first time in Kazakhstan the legal status of nomads was defined – they were equated with peasant migrants, etc., which facilitated the life of the Steppe region population [13; 247-252].

Interesting projects were offered by the representatives of the dekabrists movement P. Pestel and N. Muravyov. According to the Muravyov Constitution, Russia was to become a constitutional monarchy with bicameral Parliament and the judiciary power. The monarch, as the Head of the executive power, must be accountable to the Parliament [14].

The liberal ideas of the nineteenth century of the Russian educator B.N. Chicherin are noteworthy. According to him, constitutional monarchy would be the most rational form of government in Russia, but at the same time, the sovereignty of the people would be limited by laws. The suffrage was to be based on a high qualification.

It should be noted that Russia by the beginning of the 20th century experienced serious problems related to the bourgeois democratic revolution of 1905. The tsarism, struggling for survival, published the Manifesto of October 17, 1905, where the Parliament, political freedoms and other democratic rights were promised, which had been covered in the Declaration of the Rights of Man and the Citizen of 1789.

Already from the tribune of the First State Duma, the Parliament of the Russian Empire convened in 1906, the ideas and projects on the renewal of the country and its national suburbs began to be declared. Thus, the monarchist parties offered to weaken the regime a little, leaving the political system the same, bringing some cosmetic changes:

– the Cadets (Constitutional Democratic Party of Russia) demanded strengthening of the role of the Parliament, accountability of the executive power to the legislative institution, implementation of broad democratic reforms not only in Russia but also in the colonial regions. Their ultimate goal was the creation of a parliamentary republic with a limited monarchy [15; 51, 52];

– the Social Democrats (the Bolsheviks) demanded to overthrow the existing regime and transfer all state power to the people. They used the State Duma to promote their ideas. From its tribune they stated that radical changes in the state and society would be possible only with creating real Parliament in the person of the Constituent Assembly elected on the basis of universal democratic rights [15; 48].

It is known that Emperor Nicholas II did not use the Parliament for a compromise between the nobility and the nascent bourgeoisie, democratic and revolutionary parties, as it was in the countries of Europe. As a result, the state slowly went to the new destructive events – the October Revolution of 1917.

The revolutionary situation in Russia at the beginning of the twentieth century gave birth to the desire of democratic forces to make cardinal changes in the country, which were presented in the ideas of Russian liberal thinkers. These included V.M. Gessen, L.I. Petrazhitsky, P.I. Novgorodsky, B.A. Kistyakovsky, N.I. Lazarevsky, K.D. Kovelin, N.M. Korkunov and many others. Most of them were lawyers, professors of famous universities. For example, in his article V.M. Gessen, a professor at St. Petersburg University, a member of the State Duma of the second convening, a member of the Cadet Party, wrote that the rule of the legislative power was based on the separation of powers, which was a necessary condition for the subordination of government power. «The subordinate government power is determined by the law ... exceeding its authority or inactivity, it violates its duties in relation to the supreme authority ... The unlawful nature results in the people lawlessness». According to Gessen, the legal state recognizes certain rights and freedoms of the individual, «... beyond which the intervention of state power does not and cannot take place» [16].

Another colleague of his, Professor L.I. Petrazhitsky, an outstanding theorist, founder of the psychological school of law, who was also a deputy of the State Duma of the first convening and a member of the Cadet Party [15; 52] believed that a change in the state was possible only with the establishment of a parliamentary form of government, in which the constitutional rights of citizens would be protected [17; 69].

Famous lawyers P.I. Novgorodsky and B.A. Kistyakovsky, saw Russia's future in a democratic legal state [18; 31].

B.A. Kistyakovsky in his article «The State of Legal and Socialist» noted that the distinctive principle of the rule of law is that the state power is limited in it. In his opinion, the power of the state must be subordinate and controlled. Continuing his idea, he noted that the limited state power ensures provides every individual residing in that state with the inviolability of their right [19].

Apparently, during the late 19th and early 20th century, there appeared a hope for the weakening of the autocratic regime during the 1905 revolution and the February 1917 revolution that inspired the country's intellectual forces, in the person of the liberal and democratic intelligentsia, to create projects for the future Russian statehood in which law would rule, not autocracy. Almost all ideas of the above-mentioned scientists in Russia were connected with the principles of separation of powers based on the experience of European revolutions. They attached special importance to the executive power, since it concentrated all the power of the state, both military and material. Because of its great opportunities, it had to be subordinated to the people elected by the Parliament, and not to the emperor.

The ideas of each enlightener have their own peculiarities, but they were united by a single goal – the creation of a real democratic society and the liberation of the country from autocracy.

In the first quarter of the twentieth century, in the theory of separation of powers serious changes occurred due to the outbreak of World War I and the collapse of the major empires of that time – Russia, Austria-Hungary, Germany and Turkey. The main issue was about the restoration of the economy, state structures and social stability in these countries. With the existing military and post-war economic situation, the states required the modernization of industry and the concentration of political power. Because of this, even in states with old traditions of democracy and parliamentarism, the principles of separation of powers fell into the background.

The principles of the separation of powers began to be reduced to a more rational organization and a functional differentiation of the authorities. The principle of separation of powers became inactive and completely ignored, where totalitarian and authoritarian regimes were established, for example, in Soviet Russia since 1917, in Germany with the rise of Hitler in 1933, in Spain since 1936, etc. In these countries with one-party or military dictatorships, the principle of separation of powers was ignored as an unnecessary element of liberal-bourgeois democracy.

After the October coup d'etat and the establishment of Soviet power in accordance with socialist ideology, the principle of the rule of law and the separation of powers was not accepted by the Bolshevik leadership of the country. The founders of Marxism-Leninism pointed out that bourgeois parliamentarism had crashed and turned into empty talkers. They advocated new representative bodies, which in their activities could unite the legislative and executive powers, thereby undermining the roots of bourgeois bureaucratic ministerialism [20; 115].

It should be noted that the Soviet state, forming its political system and public authorities, approached to it from class positions: it denied all that humanity had gained, considering it to be a bourgeois element of an obsolete system. Accordingly, the system of separation of powers, as we noted above, was a compromise between the bourgeoisie and the nobility. This was supported by the communist ideology and censorship, which controlled the works of Soviet scholars of jurisprudence, philosophers, political scientists, etc.

The theory of separation of powers as the doctrine gained popularity again after the elimination of Nazism in Germany, Spain, Italy and other European countries. In the 1960s and 1970s a modern concept of the principle of separation of powers was being formed, which still exists nowadays.

Proceeding from the foregoing, it can be noted that the model of organization of political power, which was proposed by Montesquieu and was reflected in the theory of separation of powers, has passed the check of time and still remains relevant for the development of legal democratic states. In addition, with the time, the concept of separation of powers began to undergo modifications. In a number of new Constitutions there appeared a disproof stating that the three branches of state power were not enough for the functioning of the state. For example, V.E. Chirkin cites the example of the Constitutions of a number of Latin American countries: Nicaragua (1987), Brazil (1988), Colombia (1991), which put forward ideas about the fourth branch of power – electoral. To this, special electoral tribunals (courts) from supreme to local as well as an electoral register (special body) were established in these countries [21; 96].

If consider this all, as V.E. Chirkin states, and whose opinion we share, we are talking about the same state power, which is divided into different branches [21; 98].

After the collapse of the USSR and the entire socialist camp, the countries of the CIS and Eastern Europe began to work on the creation of independent states. In this difficult social and political time in the countries of the former Soviet Union, including Kazakhstan, timid steps towards democracy were made, the work on the drafts of the first Constitutions began.

In drafting the first Constitution of Kazakhstan in 1993, academician S. Zimanov wrote that the creation of a rule of law implied the separation of powers into legislative, executive and judicial powers, each of which is independent in functions and is responsible for the performance of these functions [22; 36].

S.Zimanov pointed out that the executive power can be considered strong only when it is reasonably organized, based on the law, on the principles of democracy and is its defender. To be developed properly, certain mechanisms are needed – the institutions of checks and balances provided for in the Law of States. The scientist notes that without strong executive power in Kazakhstan it is impossible to solve the tasks of economic reform, to overcome the deadlock situation leading to catastrophic consequences for the society [22; 76].

A lot of attention to the principles of separation of powers and the role of executive power in it was paid in the works by other Kazakh scientists, such as G.S. Sapargaliyev, S.S. Sartayev, M.T. Baimakhanov, S. Sabikenov, A. Weissberg, A. Argynbayev, and others, who also participated in the drafting the Constitution of the Republic of Kazakhstan [22; 47].

With the strengthening of independence in the CIS countries, there were disputes and proposals to revise the principle of separation of powers. A number of Russian scientists proposed to identify the electoral power as a separate one. In this regard, G. Sapargaliyev wrote that in Kazakhstan a system of legislative and practical mechanisms was formed and was developing according to universally recognized world standards. Kazakhstan has a system of competitive and transparent elections that ensure openness and fairness of the electoral process. We share the opinion of academician G. Sapargaliyev that it is not justified to allocate the electoral system to a separate branch of power [23].

G. Sapargaliyev carefully studied the theory of separation of powers and paid special attention to the issues of checks and balances. In his work he gives nine basic attributes of this system, which, in his opinion, serve the dynamic functioning of the entire state mechanism, overcoming difficulties, crisis situations, and fulfillment by the state of all its functions [23].

The current Constitution of the Republic of Kazakhstan takes into account all principles of the separation of powers. As V.E. Chirkin, in the post-Soviet period in the former union republics there was an «enthu-

siasm» for the principle of separation of powers which resulted in a number of negative consequences, in particular a decrease of controllability, an abundance of presidents of the subjects of federations, an exaggeration of claims of local elites, problems with local self-government wishing to withdraw from under the control of the state. According to the scientist, the unity and separation of powers guarantee stability to the state. Further, he writes that in the post-Soviet space only the 1995 Constitution of Kazakhstan, Article 3, paragraph 3, states that «State power in the Republic is unified, implemented on the basis of the Constitution and law in accordance with the principle of its division into legislative, executive and judicial branches and their interaction with each other using a system of checks and balances» [21; 99].

Reforms of the construction of a legal democratic state in the Republic of Kazakhstan are continuing. An example of this is the Address of the President of the Republic of Kazakhstan N.A. Nazarbayev in January 2017 on the redistribution of powers between the branches of power, which corresponds to the implementation of the program of the Five Institutional Reforms. The draft law «On Introducing Amendments and Additions to the Constitution of the Republic of Kazakhstan» was submitted for nation-wide discussion. Currently, the Law was adopted on March 10, 2017, it includes 26 amendments to 19 articles of the Constitution of the Republic of Kazakhstan. The changes concern the redistribution of power between the Parliament, the Government and the President. For example, the President of the Republic of Kazakhstan handed a number of his powers in the social and economic sphere over to the executive power, i.e. to the local authorities. In addition, the Government will resign its powers to the newly elected Mazhilis and not to the President, as before. The role of the Parliament in the formation of the Government is strengthened, in particular, the responsibility of the Cabinet of Ministers to the deputy corps, the parties that won parliamentary elections will influence the formation of the Government, etc. [24; 1].

Having investigated the theoretical basis of the principle of separation of powers from its sources to the present time, it can be concluded that the peculiarity of the executive power lies in its enforcement functions. The executive power implements the laws passed by the Parliament and in some cases, when an emergency requires it, it has a legislative basis for resolving specific urgent issues. Therefore, the executive power may take certain measures at its discretion. In addition, not only it applies laws and enforces their legal norms, but it can also issue normative acts or put forward a legislative initiative.

In emergency cases, especially during the pre-war and wartime, some constitutions were institutionalized by the delegated legislation of the executive branch. Also, the strengthening of the executive power can be conditioned when there is no unity among the various political forces in the society, which results in a critical situation. As history shows, the laws do not work at this time, the Parliament alone cannot solve the created problem, in the state there can be a transformation of the supreme authority towards the executive, and this leads to regime change and dictatorship. In order to avoid this situation, any state under the crisis conditions must ensure strict parliamentary and judicial control.

In this case only a system of checks and balances ensures equality and sovereignty of power, creates an agreed combination of all branches of power to unite the common goals of creating a legal and dynamically developing state.

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Биліктің бөліну теориясындағы атқарушы биліктің орны мен рөлі

Мақалада биліктің бөліну қағидасының қайнар көзінен бастап қазіргі уақытқа дейінгі теориялық негіздері зерттелген. Биліктің бөліну қағидасы тоталитарлық және авторитарлық құрылыс орнаған кезде әрекет етпегені және ескерілмегені анықталды. Атқарушы биліктің ерекшелігі оның құқық қолдану міндетінің болуында және Парламентпен қабылданған заңдарды іске асыруды жүзеге асыратыны көрсетілген. Авторлар атқарушы биліктің заң шығаруды табыстау институтына ерекше мән берген. Атқарушы биліктің нығаюы, дағдарыс жағдайының қалыптасуы нәтижесінде қоғамда әртүрлі саяси күштердің арасында бірліктің болмауы кезінде уағдаласуы мүмкін. Дағдарыс жағдайы кезіндегі кез келген мемлекет, қатаң парламенттік және соттық бақылауды қамтамасыз етуге тиіс. Бұндай жағдайда ортақ мақсатты біріктіру, яғни, құқықтық және серпінді дамуғағы мемлекетті құру үшін биліктің теңдігі мен егеменділігін тепе-теңдік және тежемелік жүйесі ғана қамтамасыз ете алатындығы көрсетілген.

Кілт сөздер: табиғи құқық идеялары, биліктің бөліну қағидалары, атқарушы билік, биліктің үш тармағы, Парламент, монархия, республика, тепе-теңдік және тежемелік тетігі, саяси тәртіп.

Н. Саулен, А. Лавничак

Место и роль исполнительной власти в теории разделения властей

В статье исследованы теоретические основы принципа разделения властей от его истоков до настоящего времени. Выявлено, что принцип разделения властей бездействовал и игнорировался там, где устанавливались тоталитарные и авторитарные режимы. Показано, что особенность исполнительной власти заключается в ее правоприменительных функциях, она осуществляет реализацию принятых Парламентом законов. Особое место в статье уделено институту делегирования законодательства исполнительной власти. Усиление исполнительной власти может быть обусловлено, когда в обществе нет единства среди различных политических сил, в результате чего создается критическая ситуация. Любое государство, находящееся в условиях кризиса, должно обеспечить жесткий парламентский и судебный контроль. В этом случае только система сдержек и противовесов обеспечивает равенство и суверенитет власти для объединения общих целей — создания правового и динамически развивающегося государства.

Ключевые слова: идеи естественного права, принцип разделения властей, исполнительная власть, три ветви власти, Парламент, монархия, республика, механизм сдержек и противовесов, политический режим.

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