

# THE FUNCTIONAL PURPOSE OF THE JUDICIARY IN THE SYSTEM OF CHECKS AND BALANCES

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**Annotation.** The article analyzes the system of checks and balances as a fundamental principle of the organization of state power and determines the role of the judiciary in the mechanism of ensuring the balance between the branches of power. It is substantiated that the system of checks and balances is a set of legislatively established powers, means and procedures, the main task of which is to prevent the dominance of one branch of power over another.

The special place of the judiciary in the mechanism of checks and balances is determined. It is argued that the judiciary acts as a guarantor of balance between the legislative and executive branches of power, ensuring the functioning of the state mechanism on the basis of the rule of law. The specific features of the judiciary are analyzed, in particular organizational separation, the functions of constitutional supervision and judicial control over the legality of the activities of other branches of power.

It is substantiated that the independence of the judiciary is a fundamental prerequisite for the effective implementation of its restraining function. Guarantees of such independence are defined: the binding nature of court decisions, legal liability for their non-execution, and compliance with legislative requirements regarding judicial procedures. It is emphasized that compliance with the principle of judicial independence is a guarantee of fairness of justice and contributes to the establishment of Ukraine as a democratic state based on the rule of law.

**Key words:** system of checks and balances, judiciary, separation of powers, independence of the court, constitutional control.

## **1. Problem statement.**

The principle of separation of powers constitutes the organizational and legal foundation of the functioning of state power in modern democratic countries. According to this principle, state power is structured on the basis of the separation of legislative, executive and judicial branches, each of which is autonomous and independent. At the same time, modern states not only ensure the separation of powers, but also pay significant attention to the mechanisms of their interaction, the key tool of which is the system of checks and balances.

A characteristic feature of the current stage of state formation is the contradictions between the branches of state power, primarily in the system of relations between the President, Parliament and Government. Such dynamics of political processes objectively require the improvement of the mechanism of checks and balances, taking into account the political incompleteness and insufficient level of development of democratic institutions, the lack of a clear relationship between the interests of citizens and the state, as well as the limited influence of civil society institutions on public authorities. In this context, the study of the functional purpose of the judiciary as a guarantor of balance in the system of separation of powers and ensuring the rule of law is of particular importance.

## **2. The purpose of the study.**

is to determine the functional purpose of the judiciary in the system of checks and balances, to clarify its role as a balancing element in the mechanism of interaction between the branches of state power,

and to substantiate the importance of judicial independence for the effective implementation of the restraining function in the conditions of modern constitutional development of Ukraine.

### **3. Scientific status of the problem.**

The issue of the system of checks and balances and the functional purpose of the judiciary in the mechanism of separation of state powers is the subject of scientific research by domestic and foreign scholars in the field of constitutional law, theory of state and law, and public administration.

The theoretical and methodological foundations of the concept of separation of powers and the system of checks and balances were developed in the works of classics of political and legal thought, in particular A. Schlesinger, who substantiated the mechanism of balancing the branches of power through the system of checks and balances and the influence of the body of constitutional justice. A fundamental study of the paradigm of Ukrainian constitutionalism was carried out by D. Belov, who analyzed the features of constitutional transit and the institutional state system of Ukraine. O. Prieshkina studied the constitutional system of Ukraine and the problems of interaction between the branches of power. Yu. Shemshuchenko examined the legal foundations of parliamentarism, emphasizing the need to strengthen the role of parliament in the formation of the government.

A comprehensive analysis of the system of checks and balances in the sphere of state-administrative relations was carried out by a team of authors under the editorship of V. Rebkala, M. Logunova and V. Shakhov. I. Salo investigated the mechanisms of checks and balances in the political systems of the EU countries and in Ukraine, and V. Obraztsova analyzed the specifics of this mechanism in public-administrative relations. D. Peca examined the system of checks and balances as a social phenomenon of state and legal development.

A significant contribution to the study of the role of the judiciary in the mechanism of checks and balances belongs to V. Kotskulich, who substantiated the expediency of separating the judiciary from other branches. O. Lemak investigated the right to an independent and impartial court in the context of human rights protection. N. Malyshkina analyzed the guarantees of the functioning of the judiciary and the features of its interaction with other branches of government. M. Kutsyn examined the judiciary in the system of separation of powers in the context of its independence. A monographic study of the judiciary in the system of separation of powers was carried out by Yu. Remyeskova, justifying the role of the court as a guarantor of balance between the branches of power.

However, despite significant scientific achievements, the functional purpose of the judiciary in the system of checks and balances requires further research, taking into account modern transformation processes and Ukraine's European integration aspirations.

### **4. Presentation of the research material.**

The study of the forms (sources) of law has significant theoretical and practical significance, since they not only provide an external expression of the essence and content of law, but also determine numerous aspects of the functioning of the legal system. The formation of a legal state and the development of civil society directly depend on the ability to ensure proper legal regulation of property relations and the protection of the legitimate interests of individuals and legal entities. Modern legal regulation of civil relations is characterized by the dynamic development of all branches of legislation, the application of international law, as well as the spread of self-regulation mechanisms.

The activities of an independent judiciary play a key role in ensuring the principle of the rule of law. Judicial bodies are increasingly considered as a balancing element that performs a stabilizing function in relation to the legislative and executive branches of government. That is why the growing importance of the judicial system at the current stage of state formation actualizes the need to rethink the complex of issues related to the administration of justice [1, p. 27].

The study of case law as a source of law is inextricably linked with the understanding of the role and place of the judiciary in the system of the state mechanism. After all, it is the courts, administering

justice, that not only apply the norms of law, but also form legal positions that acquire significance for further law enforcement. Therefore, the question of the legal nature of case law and its impact on the development of the legal system is directly correlated with the problems of the functioning of the judiciary as an independent branch of state power.

Thus, the study of case law as a source of law naturally leads us to a broader problem – determining the place and role of the judiciary in the system of public administration. After all, the nature and significance of case law directly depend on the place occupied by the judiciary in the constitutional architecture of the state, what powers it is endowed with and how effectively its independence from other branches of power is ensured.

At the same time, understanding the functional purpose of the judiciary is impossible without addressing the fundamental principles of the organization of state power, the central place among which belongs to the principle of its division. It is this principle that determines the constitutional and legal boundaries of the activities of each branch of government, the mechanisms of their interaction and mutual control. Therefore, to fully understand the role of the judiciary and the importance of judicial practice in the legal system, it is necessary to examine the theoretical foundations of the concept of separation of powers, its genesis and modern understanding.

In this regard, it is advisable to consider doctrinal approaches to understanding the principle of separation of state powers, its historical evolution and the features of constitutional consolidation in modern democratic states, which will allow forming an appropriate theoretical basis for further analysis of the place of the judiciary in the mechanism of checks and balances.

From a theoretical point of view, D. Belov notes, the institutional analysis of the processes of "constitutional transit" should cover at least two key areas of research. The first concerns the mechanism of formation and formation of the institutional system of the state, the second - the substantive characteristics, specificity and effectiveness of the activities of the main subjects of this system in the process of social transformations in Ukraine. The above-mentioned issues are extremely relevant and require a comprehensive, systematic study using a synergistic approach and appropriate methodological tools. This is, in fact, about the formation of such an institutional constitutional system, which, according to its functional purpose, would be able to ensure orderly in time and space, coordinated and purposeful activity of all subsystems of society. Within the framework of this system, the behavior of participants in transformation processes should be adjusted and stabilized, as well as the appropriate adaptation of their worldview to new socio-political realities [2, p. 301].

Western scholars in the field of political science and law have formed a theoretical model of implementing the principle of separation of powers, aimed at preventing crisis phenomena in the functioning of the state mechanism. In particular, A. Schlesinger argued that ensuring equilibrium and balance between the branches of power is achieved through a mechanism of checks and balances, supplemented by the influence of a body of constitutional jurisdiction, which exercises constitutional control and official interpretation of the Basic Law. It is this system, according to the scientist, that ensures the effective functioning of the state apparatus, built on the principles of the division of powers. At the same time, the state power, which is unified by its nature, is subject to functional differentiation in order to achieve optimal efficiency of the state mechanism, which at the same time should be perceived as a holistic system [3, p. 9].

A characteristic feature of the modern stage of state formation, notes O. Prieshkina, is the contradictions between the branches of state power, primarily in the system of relations between the President, parliament and government. Such dynamics of political processes after the adoption of the Constitution objectively requires an appropriate response [4, p. 178]. In this regard, representatives of the scientific community and political figures of different ideological orientations have formed a consensus on the need to transform and optimize the model of state power organization. Yu. Shemshuchenko emphasizes the direct relationship between the problems of legislative regulation and issues of interaction between government institutions, noting that the parliament should play a more significant role in public life, in particular, form the composition of the government and bear joint responsibility with the central executive authorities for the processes of state transformations [5].

Improving the mechanism of checks and balances is gaining particular relevance and practical significance. M. Onishchuk justifies this need by the incompleteness of political transformations and the insufficient level of development of democratic institutions in Ukraine, the lack of a clear

relationship between the interests of citizens, the nation and the state, on the one hand, and the corporate goals of political parties, on the other, as well as the limited influence of civil society institutions on public authorities [6].

From the moment of its inception, state power and its functional implementation have become a powerful factor in ensuring social order and progressive development of society. In the conditions of traditional (modern) society, effective power is an unconditional carrier of the regulatory function, while in a postmodern society it plays a decisive role in the process of choosing alternative political courses and vectors of social development. The implementation of state and government activity is inextricably linked with the social conditions of its functioning, in particular with the need to coordinate the actions of subjects of social production, as well as ensuring control over the distribution and use of public goods and values [7, p. 4].

The historical and legal analysis of the genesis of the system of checks and balances carried out by D. Pecs gave grounds to assert that: firstly, the human community from the very beginning of the formation of public-power institutions objectively conditioned the emergence of elements of power limitation. This indicates that the mechanism of checks and balances is not an artificial theoretical construct, but is an organic continuation of the social essence of man and his desire for justice in power relations; secondly, the components of the system of checks and balances as an essential component of the state mechanism are derived from the level of social development at each historical stage. The evolution from elementary forms of power limitation in ancient Eastern civilizations through the democratic mechanisms of antiquity and the estate-representative institutions of the Middle Ages to the modern system of constitutional checks indicates a direct relationship between the level of democratization of society and the complexity of the mechanisms of power balancing; Thirdly, the objective need of society is the presence of mechanisms of public power that would ensure the social stability of the state system. Elements of checks and balances create conditions for mutual control of authorities and prevention of concentration of power, and also enable democratic adjustment of the competences of government institutions. In the conditions of modern globalization processes, this system needs constant improvement, while maintaining its role as a guarantor of democratic development and protection of human rights [8, p. 96].

The principle of separation of powers, notes I. Salo, constitutes the organizational and legal foundation of the functioning of state power in modern democratic countries. In accordance with this principle, state power is structured on the basis of the separation of legislative, executive and judicial branches, each of which is independent and autonomous. At the same time, it is worth emphasizing that modern states not only ensure the separation of powers between the branches of a single state power, but also pay significant attention to the mechanisms of their interaction. The key tool for the practical implementation of the principle of separation of powers and ensuring effective interaction between its branches is the system of checks and balances [9, p. 66].

The system of checks and balances is an integral part of the concept of the separation of state power as a form of its organization. The modern understanding of the principle of separation of powers and the mechanism of checks and balances defines them as basic elements of a democratic system and legal statehood, which guarantee an adequate level of political freedoms and protection of human and citizen rights. The level of practical implementation of these principles is an indicator of the maturity of a democratic state and is one of the key values of democratic governance [7, p. 8].

The formation of a modern mechanism of checks and balances is due primarily to the expansion of the functions of the state in the field of regulating social processes, the effective implementation of which is impossible without constant interaction between the branches of state power. According to V. Obraztsova, the introduction of the principle of separation of state powers, supplemented by a system of checks and balances, is aimed at forming such an institutional mechanism that would ensure the coordinated functioning of all bodies of a single state power. Some researchers, the scientist notes, point to the dualistic nature of the system of checks and balances: on the one hand, it promotes cooperation and mutual adaptation of government bodies, on the other hand, it creates the prerequisites for the emergence of conflicts, which are usually resolved through negotiations, reaching agreements and finding compromise solutions [10, p. 108].

The independence of the judiciary, according to V. Kotskulich, is one of the defining features of the rule of law and a developed civil society. The legal significance of the judiciary is manifested in the transformation of popular sovereignty into a special category with a national content. The place of the judicial branch of

power in the mechanism of checks and balances is revealed through the prism of its legislatively defined functions and methods of their practical implementation, the primary place among which is occupied by the administration of justice and the function of judicial control [11, p. 390].

The autonomy of the judiciary is directly correlated with its independence and autonomy. This, according to O. Lemak, means that the judicial bodies form a self-sufficient system of institutions that operates outside of any other state structures. However, such separation does not mean the isolation of the courts from the legislative and executive branches of government. Their interaction with other branches of government is carried out on the basis of legislative norms that ensure the independence of the judicial system as an organizationally independent institution. The guarantees of the independence of the court also serve as the generally binding nature of judicial decisions and legal liability for their failure to comply [12, p. 78].

From the standpoint of constitutional status, the judiciary is characterized by specific features that distinguish it from other branches of government both in terms of essential and functional parameters. In particular, unlike the legislative and executive branches, the judiciary is not concentrated in a single body, but is implemented by a set of judicial institutions of different levels - from local to higher (supreme), which function as an integral system of justice bodies in Ukraine. In addition, the judiciary is endowed with the functions of constitutional supervision and judicial control over compliance with the law in the activities of other branches of state power [13, p. 39]. At the same time, the position of M. Kutsyn is correct, who notes that the defining feature of power in general and the judiciary in particular is the strict compliance of judicial institutions and judicial procedures with the requirements of the law [14, p. 156]. After all, any violation of the procedure for determining a judge in a case or failure to comply with procedural norms during its consideration calls into question the fairness and impartiality of the court decision, which negatively affects the level of public trust in the judicial branch of power [13, p. 40].

Analyzing the role of the judiciary in its relations with other branches and the mechanisms of its influence on them, it is worth supporting the position of Yu. Remyeskova, who emphasizes the need to take into account the functional distribution of the main areas of state activity between the highest authorities. The judiciary plays the role of a kind of "balancer", ensuring balance between the branches of power and the smooth functioning of the system of checks and balances on the principles of the rule of law. At the same time, any form of interaction between the branches of power must be carried out with mandatory observance of the principle of independence of courts and judges [17, p. 39].

## 5. Conclusions.

The analysis conducted allows us to state that the system of checks and balances is an organic component of the doctrine of the separation of state powers and the basic principle of the organization of a modern democratic state. This mechanism encompasses a set of normatively defined powers, instruments, methods and procedures, the main purpose of which is to practically implement the principle of delimiting a single state power, prevent the concentration of power in one branch and maintain a stable balance between them. The formation of a modern model of checks and balances is associated with the expansion of state functions in the field of managing social processes, the effectiveness of which depends on systematic coordination and mutual control between the branches of state power.

The judiciary occupies a unique position in the mechanism of checks and balances, playing the role of an arbitrator and ensuring a balance between the legislative and executive branches of power. Its peculiarity lies in the fact that, unlike other branches, it functions not through a single body, but through an extensive network of judicial institutions of various instances, which form a holistic organizationally autonomous system. The main functions of the judiciary in the system of checks and balances are the administration of justice, the exercise of constitutional supervision and control over the observance of legality in the activities of other government institutions, which guarantees the stable functioning of the state apparatus on the principles of the rule of law.

The independence and autonomy of the judiciary are key conditions for the full implementation of its balancing role in the system of separation of powers. The guarantees of this independence are the institutional separation of courts from other state authorities, the mandatory execution of court

decisions, legal liability for evasion of their execution, as well as strict compliance with regulatory requirements for the organization of judicial bodies and judicial procedures. The relationship of the judiciary with other branches of government should be based on unconditional adherence to the principle of independence of courts and judges, which serves as a guarantee of fair and impartial justice and forms an appropriate level of public trust in the judicial system.

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