GENERAL THEORETICAL CHARACTERISTICS OF PARLIAMENTARISM AND THE PRINCIPLE OF POWER SEPARATION

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Abstract

The study of the general theoretical characteristics of parliamentarism and the principle of separation of powers is currently of particular scientific interest and has practical significance on the path of development of our state, since in this topic we touch on parliamentarism and the principle of separation of powers.

In the article, the author puts forward the idea that the principle of separation of powers in the Republic of Armenia and the influence and role of the legislative body in the formation of parliamentarism in modern conditions can be included among the important issues in terms of theoretical and methodological foundations. The development of parliamentarism, its essence, is also largely determined by the legal status of the head of state in the country, and the form of government.

Having studied the general theoretical characteristics of parliamentarism and the principle of separation of powers, the author of the article proposed his definition of parliamentarism, according to which parliamentarism is a special system of organising and exercising state power, formed through free elections with the participation of political parties, and based on the principle of the rule of law and the separation of powers.

Keywords: Parliamentarism, constitutional amendments, democracy, principle of separation of powers, public relations.

ՊԱՌԼԱՄԵՆՏԱՐԻԶՄԻ ԵՎ ԻՇԽԱՆՈՒԹՅՈՒՆՆԵՐԻ ԲԱԺԱՆՄԱՆ ՍԿԶԲՈՒՆՔԻ ԸՆԴՀԱՆՈՒՐ ՏԵՍԱԿԱՆ ԲՆՈՒԹԱԳԻՐԸ

ՆԱԻՐԱ ԱԼԱՎԵՐԴՅԱՆ

ՀՀ ԳԱԱ փիլիսոփայության,սոցիոլոգիայի և իրավունքի ինստիտուտի ասպիրանտ,
Հայաստանի ազգային պոլիտեխնիկական համալսարանի հասարակական գիտությունների ամբիոնի դասախոս

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Համառոտագիր

Պառլամենտարիզմի և իշխանությունների բաժանման սկզբունքի ընդհանուր տեսական բնութագրի ուսումնասիրությունը ներկայումս առանձնահատուկ գիտական հետաքրքրություն է ներկայացնում և գործնական նշանակություն ունի մեր պետության զարգացման ճանապարհին:

Հոդվածում հեղինակն առաջ է քաշում այն գաղափարը, որ տեսամեթոդաբանական հիմքերի առումով կարևոր հիմնահարցերի թվին կարելի է դասել Հայաստանի Հանրապետությունում իշխանությունների բաժանման սկզբունքը և ժամանակակից պայմաններում օրենսդիր մարմնի ազդեցությունն ու դերը պառլամենտարիզմի ձևավորման գործում: Պառլամենտարիզմի զարգացումը, նրա էությունը մեծապես պայմանավորված է նաև երկրում պետության գլխի զբաղեցրած իրավական դրությունից՝ կառավարման ձևից:

Ուսումնասիրելով պառլամենտարիզմի և իշխանությունների բաժանման սկզբունքի ընդհանուր տեսական բնութագիրը՝ հոդվածի հեղինակն առաջադրել է պառլամենտարիզմի իր սահմանումը, ըստ որի՝ պառլամենտարիզմը քաղաքական կուսակցությունների մասնակցությամբ, ազատ ընտրություններով ձևավորված, պետական իշխանության կազմակերպման և իրականացման հատուկ համակարգ է, որը հիմնված է օրենքի գերակայության և իշխանությունների բաժանման սկզբունքի վրա:

Բանալի բառեր՝ պառլամենտարիզմ, սահմանադրական փոփոխություններ, ժողովրդավարություն, իշխանությունների բաժանման սկզբունք, հասարակական հարաբերություններ:

Introduction

Parliamentarism and the principle of separation of powers are of particular importance in the process of forming and developing a democratic and legal state. The mentioned principle is intended to ensure the effectiveness of the organisation of state power, the rule of law, political responsibility, and the limitation of power within the framework of democratic values.

The principle of the separation of powers aims to ensure functional separation among the branches of state power.

From a legal perspective, the separation of powers is viewed as a method of organising state power, determined by a society's social structure of society, political culture, and level of legal awareness.

Parliamentarism, in turn, is viewed in the theory of state and law as a special function of the exercise of power, based on the idea of representation and the formation of the legitimacy of political power. Parliamentarism appears as a legal and political phenomenon that combines the theoretical elements of the organisation of state power, political responsibility, and legal regulation. In this context, it is considered an important indicator of the degree of development of the relationship between society and the state.

In the modern era, the theoretical study of parliamentarism and the principle of the separation of powers is gaining new relevance due to globalisation, constitutional reforms, and the transformation of public governance models. The experience of various states shows that the effective application of the above principles requires not only legal codification but also their in-depth theoretical understanding and comprehensive scientific analysis.

The purpose of this article is to present the general theoretical characteristics of parliamentarism and the principle of separation of powers, to reveal their essence, ideological foundations, and interrelationship as legal and political phenomena.

Theory and Methodology

The highest state representative body in the Republic of Armenia is the National Assembly, which, in accordance with Article 88 of the Constitution, exercises legislative power.

Since legislative activity is not the only function of a representative body, the collective expression "parliament" is used.

Since legislative activity is not the only function of representative bodies, the collective expression "parliament" is used to refer to them.

It comes from the Latin word "Parlare" (to speak), which means a body where people speak (in Armenian, it is called a parlour or parliament).

The prototypes of parliament were formed in ancient Greece and Rome as law-making bodies, known in the history of law as the "Council of 400" and the "Council of 500".

An example of a classical parliament and parliamentarism is the English Parliament (1215) and its activities, which was the first state body with independent legislative authority in the world.

In terms of theoretical and methodological foundations, important issues include the principle of separation of powers in the Republic of Armenia and the influence and role of the legislative body in the formation of parliamentarism in modern conditions.

The analysis of the scientific, theoretical, and methodological foundations of the organisation and activities of the National Assembly shows that the parliament is a body formed by the people, develops general rules for the people and society, and exercises a certain degree of control over the executive branch. Thus, the people directly or through their representatives participate in the exercise of state power. Democratic constitutions are based on the methodology of the principle of separation of powers, which mainly implies an equal division of governmental powers, and, if necessary, the application of a system of checks and balances to prevent the concentration of powers in one branch of government and to ensure the stable, harmonious development of society.

Parliamentarism is a special system of organising and functioning of state power, based on the principle of the separation of powers and the rule of law, with a formally privileged position of the parliament, elected through free elections with the participation of political parties.

Among the most important elements of parliamentarism, we distinguish:

- adherence to the principle of separation of powers,
- the unconditional supremacy of law,
- the existence of a legislative and representative institution in society, namely, the parliament,
- the democratic process of forming a parliament and its publicity.

In this context, the issue of the separation of powers is being viewed anew and in a new light today (Harutyunyan et al., 2020, p.36).

One of the founders of the theory of the principle of the separation of powers was the French philosopher Charles Louis de Secondat, Baron de Montesquieu (1689–1755). He was the first to propose the principle of separation of powers in the state. Based on Montesquieu's ideology, the state is like a human organism: the heart of a person is the legislative body, the brain is the executive, and the judiciary is the blood vessels. They must act in concert; otherwise, that organism, the state, cannot function normally and naturally, and this will lead to various arbitrariness.

The separation of powers implies three separate functions: legislative, executive, and judicial.

The problem of ensuring a clear separation of powers and an operational balance is most difficult to solve in the so-called semi-presidential systems of government, where disputes over constitutional powers are most frequent and acute. This system is mainly dualistic in nature: it is a parliamentary system with two executives: the president and the government. It contains elements of both a presidential and a parliamentary republic, as well as features that are not characteristic of either.

This form works well when the president, parliament, and government share the same political orientation; however, a political crisis may arise if they do not. It is noteworthy that in recent years, many of the states that abandoned

totalitarian regimes – Armenia, Russia, Ukraine, Poland, Croatia, Slovenia, Lithuania, Macedonia, Portugal – have adopted this form of governance. However, effective solutions have also been found in such systems.

From the study of the international practice of the new constitutions of the mentioned states, the following stable trends can be concluded:

- the operational powers of the branches of power are being further clarified, they are being harmonised with the functions of the given branch of power and the guarantees of the independent exercise of these powers are being strengthened,
- the counterbalancing and restraining powers are being clarified and strengthened,
- the cooperation of the authorities is to a greater extent anchored on the principle of cooperation and solutions ensuring dynamic balance,
- the importance of the principle of the rule of law in the sphere of normative–judicial activities of the branches of power is evident.

In modern scientific literature, the meaning of the phrase «separation of powers model» varies among researchers.

For example, in states with a federal form of state structure, the model of separation of powers is sometimes understood in a broad sense as the delimitation of subjects of jurisdiction between the state and its constituent parts (Tarkhanov, 2011; Cherepanov, 2004), considering the vertical separation of powers. Some authors determine the specific model of the separation of powers primarily by the peculiarities of the form of government of the state (Cheprasov, 2013, p. 134; Maksimova, pp. 101–104). In our opinion, the model of separation of powers should be understood as the social relations enshrined and regulated by legal norms, governing the procedures for defining the jurisdiction of bodies belonging to different branches of state power and the methods of their interaction. The model of separation of powers is conditioned by a number of factors, including the form of state governance, the form of state structure, and the system of checks and balances operating between the branches of state power.

According to V. S. Shevtsov, the separation of powers implies the division of the unified state power into branches in the process of their interaction. The separation of powers does not imply merely the division of state power bodies. It is the division of qualitatively predetermined functional manifestations of the unified state power into such main branches, each of which is conventionally called a separate “power” of the unified state power (legislative, executive and judicial) (Shevtsov, 2004).

In terms of content, the expression “separation of powers” is closely related to the expression “branch of state power”, the perception of which is subject to a variety of approaches. According to some authors, a branch of state power should be understood as the relevant sphere of state activity, within the framework of which state authorities independently and in a prescribed manner solve the problems set before them, and carry out specific functions (Bezrukov, 2009, p. 4).

Some authors believe that state power is not itself divided among state bodies. Its implementation is conditioned by the division of certain functions and powers among the legislative, executive and judicial bodies, which (these bodies) are independent in carrying out the functions of state power assigned to them by the Constitution and laws (Vedyakhina, 2002). According to another group of authors, the separation of powers implies not the separation of government bodies, but, first of all, the separation of powers that constitute the content of state power (Maly, 2001). Taking into account the views available in legal literature, by saying "branches of state power", perhaps, one should understand the totality of the three traditional groups of state power bodies (legislative, executive and judicial), which are endowed with state functions, are characterized by their specific order of formation, specific ways and methods of activity, are endowed with relative independence, as well as a supervisory relationship with each other (Pakhomov & Mayorova, 2016) (with powers of a restraining and counterbalancing nature). It should also be noted that the expressions "separation of powers" and "balance of powers" can be viewed in the context of their unity, since the mere separation of powers without constitutional and legal mechanisms for balancing them has a completely different semantic meaning. In this regard, it is no coincidence that, as a result of the 2005 constitutional amendments, the expression "separation of powers" enshrined in the Constitution of the Republic of Armenia was replaced by the expression "separation and balance of powers", the content of which is incomparably broader.

In search of the most perfect model of the structure of power, humanity has strived and strives to create the most effective system of checks and balances between the branches of state power, which today has become an integral part of the rule of law. In this regard, the question of the priority of the author(s) who formed the principle of separation of powers remains controversial in modern constitutional law, in connection with which the existing approaches can be conditionally divided into three groups:

a) in this matter, the priority belongs to the thinkers of antiquity (Plato, Aristotle, Cicero, etc.), whose views were based on the idea of the separation of powers based on the functional principle,
b) the fundamental ideas of the separation of powers and the independence of the courts are set out in the Book of Books, the Bible (P. D. Barenboim),
c) J. Locke and C. L. Montesquieu are recognised as the "founding fathers" of the theory of the separation of powers (Nikolenko, 2006, p. 14).

The idea of the functional separation of state power, which ancient thinkers accepted, acquired the status of a classical theory in the 17th–18th centuries. If it originated in ancient times, then during the reign of J. Locke and C. L. Montesquieu, its demand was substantiated, and the logical connections between the theory of the separation of powers and the sources of the legitimacy and unity of state power were revealed.

The priority in the practical implementation of the separation of powers as a constitutional principle belongs to the "founding fathers" of the US Constitution of 1787: T. Jefferson, A. Hamilton and D. Madison, who distinguished between the constitutional principles of "separation of powers" and "checks and balances". In the USA, the system of checks and balances between state authorities has been revised many times, but the principle of the separation of powers has remained in place continuously. The latter, initially implemented at the level of separate administrative–territorial units, soon became an integral element of democracy.

Currently, there are significant differences in perceptions of the theory of the separation of powers. The opinions on it often differ fundamentally, sometimes to the point of excluding each other. For example, disputes do not cease on the issue of the place and role of the concept of separation of powers in the theoretical and practical spheres. In this regard, an opinion has been expressed in legal literature, according to which the principle of separation of powers is not the result of the works of any thinker or any of the trends in political thought of any era. Different legal principles and political concepts of the separation of state powers, with varying degrees of theoretical and practical formulation, can be encountered at any point in the history of the development of the theory of state and law and of political and legal doctrines. In this regard, according to some authors, there is no doubt about the need to form a unified, universally recognised theory of the separation of powers even now, during the period of constitutional fixation of the mentioned principle (Ivanov, 2000).

According to another position, a "pure", "classical", universally recognised and logically complete version of the theory of the separation of powers has never existed. Moreover, if we consider the theory of Ch, L. Montesquieu, as a classical theory of the separation of powers, we should not forget that his theory has never been implemented in the form in which he imagined it and has always been interpreted quite freely, taking into account the historical, political, and other features of a particular state. At the same time, it is obvious that the principle of the separation of powers must be in harmony with the specific historical, political, ideological, cultural and other features of the state where this principle is implemented. And not at all because it is required to take into account the mentioned features, but because the principle of the separation of powers in a "pure", classical, "equivalent" to its name form has never existed and, perhaps, cannot exist (Marchenko, 2004).

The theory of separation of powers has undergone significant changes since its formation, and perhaps this is why the issue of its revision is being raised in legal literature, given the new approaches proposed (Chirkin, 2008; Stanskikh, 2004).

The principle of separation of powers can be considered from the perspective of its place in the system of constitutional law science and its practical implementation. In the first case, the mentioned principle is considered as the beginning of the theory of separation of powers. The task of the theory is to

reveal the content of this principle, its explanation and justification. As a result, the mentioned principle is raised to a higher level of theoretical generalisation, merging with reality (Bogdanova, 2001, p. 167).

In the second case, the principle of separation of powers does not constitute the best solution to the constitutional–legal problem. However, it is given concrete embodiment in the legal source. In the process of such legal formulation, a significant role is played by the constitutional control bodies, in the practice of which, when examining specific cases, the need to address the issue of separation of powers often arises.

The Parliamentary Assembly of the Council of Europe has recognised the principle of separation of powers as a fundamental part of Europe's constitutional traditions, Council of Europe standards and «an inherent feature of a democratic institutional system.» (PACE Resolution No. 1154 (1998) "Democratic functioning of national parliaments"). The universality of the aforementioned principle is increasingly emphasised by both theorists and practitioners.

In the modern world, almost all democracies build the infrastructure of their central bodies of power on the principle of the separation of powers (Garlicki L., 2001). In every country, issues of interaction between key state institutions are of cornerstone importance (Anthony Bradley, 2003). However, the principle of separation of powers has not been recognised in the constitutional doctrine and practice of all states. Moreover, in those states where the mentioned principle has been enshrined and recognised, approaches to its perception differ.

However, at different times, theorists have developed universal and specific provisions that form the basis of the theory of the separation of powers.

Research Methods

The methodological basis of the work is the comparative–legal method. Given the research's goals and objectives, general methods of cognition (dialectical, historical, logical), general scientific cognition (analysis, systemic structural analysis), and special methods of jurisprudence (comparative–legal, formal–legal) were used.

Results

Parliament and parliamentarism are constantly evolving. In the context of the progress of society, numerous issues constantly arise that require practical solutions and legislative justifications.

Constitutional amendments lead to the improvement of the theoretical foundations of the parliament. The logic of developments in the Republic of Armenia led to the adoption of constitutional amendments that had matured through the Constitution's legal practice. On the other hand, our state, having joined the Council of Europe, assumed obligations that necessarily had to be reflected in the basic law. As a result, constitutional amendments lead to the improvement of the theoretical and methodological foundations of the parliament.

Moreover, today it is already a reality that the constitutional reforms adopted by referendums on November 27, 2005 and December 6, 2015, were serious progress in terms of balancing the powers of state bodies, introducing effective mechanisms of checks and balances, and enshrining the constitutional foundations of the activities of the National Assembly.

Over the past thirty years in the Republic of Armenia, the oversight powers of the parliament have gradually expanded, as constitutional reforms have led to an increase in the powers and functions of the parliament in the system of state power bodies (Hakobyan et al., 2025, p. 286).

Conclusion

As a result of the research, it can be concluded that the legal study of parliamentarism and the principle of separation of powers is of great importance for the development of a general theory of the organisation of state power. The mentioned principles act not only as organisational solutions of state governance, but also as fundamental categories of legal and political thinking, which reflect the deep patterns of the relationship between power and law.

The correct implementation of the principle of separation of powers is of great importance for every state, since the establishment of democracy depends on this principle. The principle of separation of powers is the correct organisation of state power in a democratic state, in the presence of which mutual control and interaction of the highest bodies of the state are carried out through a system of checks and balances. The essence of this principle lies in the fact that state power, divided into branches through mutual checks and balances, is limited, overcoming the danger of centralisation of power and creating the necessary prerequisites for the establishment of democracy. The starting point for the application of the latter is that the only source and bearer of power is the people, which has received its constitutional enshrinement in Article 2 of the Constitution of the Republic of Armenia, according to which: “In the Republic of Armenia the power belongs to the people” ((Constitution of the Republic of Armenia as amended (amended 06.12.2015)).

The legal literature also identifies several mandatory requirements for the content of the principle of separation of powers. In particular, it is noted that this principle is implemented differently in a particular state. However, in all its diversity, the separation of powers exists only where the law is endowed with the highest legal force and is adopted by the legislative (representative) body. The main mission of the executive branch is the implementation of laws; it is limited to sub-legislative norm-making activities and is accountable to the head of state or the legislative body. Viable legal structures that provide for the clearest separation of the restraining powers of state power and ensure the counterbalance of the latter.

A necessary condition for a proper understanding of the implementation of the principle of separation and balance of powers in a particular state is the

proposal of systematic solutions based on the results of the study of its form of government, since it is through the form of government that the features of the functioning of the state mechanism become visible. In this regard, we consider it necessary to note that although the main representative of the theory of separation of powers is Ch. Montesquieu, it is necessary to take into account the fact that the latter's works were written in the conditions of the realities existing in the 19th century. Meanwhile, today, the functions of the state, the tasks set before it, public relations, political and economic realities, and current problems and challenges are fundamentally different. Nevertheless, Montesquieu's fundamental political and legal ideas remain relevant and are reflected in the Basic Laws of many democratic states.

The analysis carried out in this article contributes to the enrichment of scientific understanding of parliamentarism and the principle of the separation of powers and can serve as a basis for further theoretical studies of these issues within the framework of the theory of the state and law.

Thus, a new definition of parliamentarism is proposed, according to which parliamentarism is a special system of organising and exercising state power, formed through free elections with the participation of political parties, and based on the principle of the rule of law and the separation of powers.

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