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## **ПРАВОВІ МЕХАНІЗМИ ДЕРЖАВНОГО УПРАВЛІННЯ В УКРАЇНІ**

**Анотація.** Розглядаються питання щодо аналізу поточних та можливих майбутніх змін у конституційному статусі органів державної влади в Україні та правових механізмах державного управління в країні. Суттєвою особливістю державних органів є те, що лише вони наділені державними повноваженнями. Вони виконують свої функції від імені держави у чітко визначених формах. Зроблено спробу проаналізувати законодавчо визначену організаційну структуру правових механізмів державного управління в державі. Основною метою дослідження є проведення теоретичного аналізу та системного підходу до правових механізмів державного управління в Україні та конституційних відносин гілок влади в державі, розкриття особливостей складових елементів системи конституційного управління. відносини державної влади в Україні. У конституційній державі першочерговим актом постанови державної влади завжди має бути закон, а єдиним джерелом утвердження державної влади має бути народ. Найосвіченіші правителі, в руках яких були зосереджені всі мережі влади, рано чи пізно ставали норовливими тиранами, які визнавали лише свою владу, що нехтували свободою і не вважали невідчужуваними права людини. Тому подальша передача повноважень державного управління від місцевих органів державної влади до органів місцевого самоврядування має стати предметом подальших досліджень у цьому напрямі

**Ключові слова:** політика, інститут, система, реформування, соціально-правова держава, конституційні відносини

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## **LEGAL MECHANISMS OF PUBLIC ADMINISTRATION IN UKRAINE**

**Abstract.** *Issues related to the analysis of the current and possible future changes in the constitutional status of public authorities in Ukraine and the legal mechanisms of public administration in the country are considered. An essential feature of state bodies is that only they are endowed with state powers. They perform their functions on behalf of the state in clearly defined forms. An attempt is made to analyze the legally defined organizational structure of legal mechanisms of public administration in the state. The main purpose of a research consists in carrying out the theoretical analysis and system approach to legal mechanisms of public administration in Ukraine and the constitutional relations of branches of the power in the state, disclosure of features of the constituent elements of a system of the constitutional relations of the state power in Ukraine. In the constitutional state the law always must be the primary act of a statement of the state power, and people have to be the only source of a statement of the state power. The most enlightened rulers, in whose hands unlimited all webs of power were concentrated, sooner or later became wayward tyrants who recognized only their authority, that they neglected freedom and, did not consider inalienable human rights. Therefore, further transfer of powers of public administration from local public authorities to local self-government bodies should be the subject of further research in this direction*

**Keywords:** *policy, institute, system, reforming, social and legal state, constitutional relations*

## **INTRODUCTION**

Issues of state power have always been one of the most important components of constitutional law. However, the very concept of the constitutional and legal institution of state power, unfortunately, did not receive an appropriate theoretical development. New conceptual approaches to understanding state power in Ukraine require filling this gap since the study of this phenomenon is not only purely theoretical but also practical in the difficult period of development of Ukraine. The need to devise ways of overcoming the problems of state power at the present stage of the establishment of the state relating to the consolidation, organization and functioning of state power is of particular importance. Therefore, a study of the category of state power as a constitutional and legal institution is relevant, which makes it possible to analyze the constitutional foundations of the organization and implementation of state power in Ukraine and the legal mechanisms of public administration in the state [1-5].

Analysis of recent research and publications. This question was studied by scientists such as N. Shuklina [6], and others. Aristotle, Plato, T. Hobbes, Locke's [7] certain social and philosophical ideas, J.J. Rousseau, Che. Montesquieu, J. Bentham, J. Mill, Kant, and Hegel [7] allowed deepening understanding of the essence of the state power. The main purpose of a research consists in carrying out the theoretical analysis and system

approach to legal mechanisms of public administration in Ukraine and the constitutional relations of branches of the power in the state, disclosure of features of the constituent elements of a system of the constitutional relations of the state power in Ukraine.

In democratic countries, to which, according to Article 1 of the Constitution of Ukraine [8], also Ukraine belongs, the state power has to be legitimate. Therefore in the constitutional state the law always must be the primary act of a statement of the state power, and people have to be the only source of a statement of the state power. Concerning a form of the legal act of approval of the will of the people, it is the Fundamental law of the state – the Constitution of Ukraine. An intrinsic sign of the modern period of development of Ukraine is its transformation from the part of a former great state which was depending on the center and owned only nominal attributes of statehood, in the independent state, a full subject of the international community [9-12].

## 1. MATERIALS AND METHODS

The Ukrainian society departs from the totalitarian model of development and moves in the direction of democracy promotion in all spheres of life as the unitary state (Fig. 1) which model of management significantly differs from federal structure (Fig. 2). The question of power, the search for an effective, optimal form of its organization is constantly somehow accompanied by the development of society during its world history. The system of power is extremely complex. It is formed with an extensive network of political, economic, military, diplomatic, bureaucratic, financial, and legal institutions [13; 14]. The subjects of the exercise of power include individuals, social communities, organizations, and movements. At the institutional macrosystem level subjects of the power can include the structured government branches, institute of the ombudsman, the head of state, political parties, political opposition, etc. [15-18].

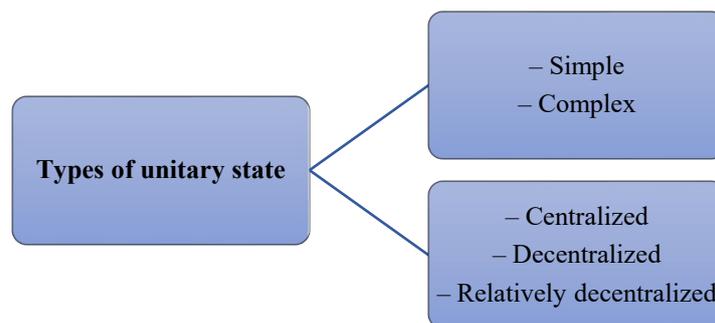


Figure 1. Types of unitary state

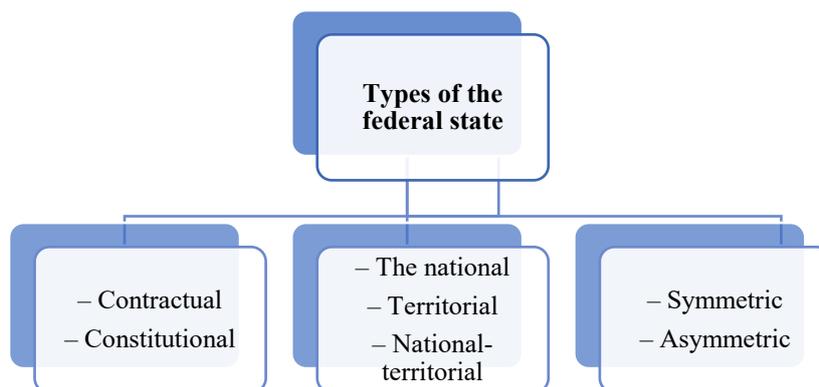
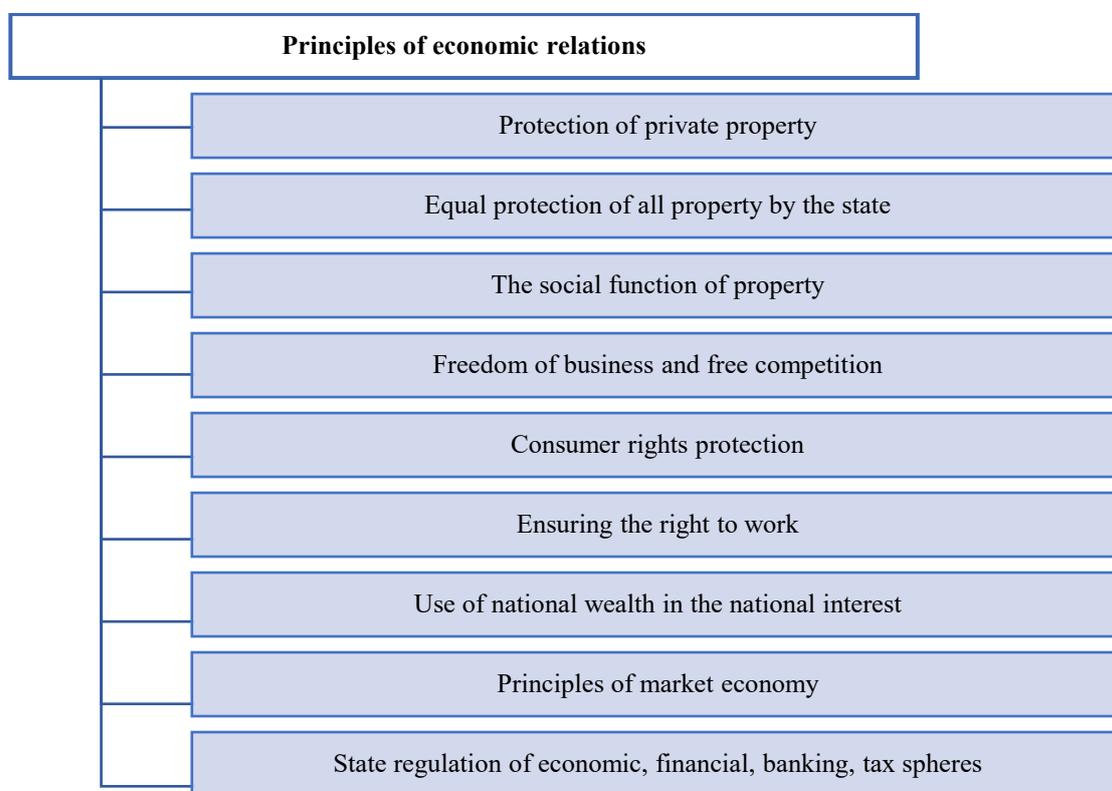


Figure 2. Types of federal state

The social system of the power as integrity contains a number of subsystems – legal, administrative and managerial, military, teasing and educational, etc. where the relations, characteristic of each of the subsystems are established horizontally, as well as vertically [19]. Power is a primary condition of realization of the right which is a cornerstone of the existence of the state. At the same time, it submits to the right which is designed to define accurately imperious prerogatives and functions of the state. Basic social functions of the authorities in the political system:

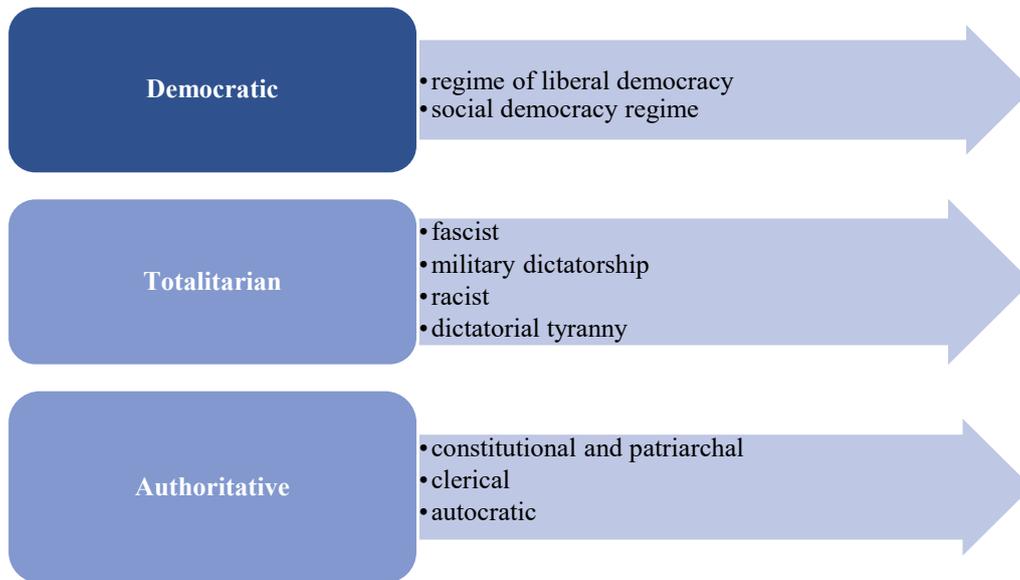
- integrative, that is, the unification of all social forces, political, material, and intellectual resources and their subordination to political, socially important goals;
  - motivational – formation of motives of political activity, subordination to them of other motives and interests;
  - social control – ensuring proper control in order to maintain the legitimacy of the state;
  - regulatory – directing the will of subjects of political relations to create political mechanisms for regulating the life of society;
  - unification (consolidating) – political and legal provision of participation in the formation and functioning of bodies of all institutions of the political system;
  - repressive – maintenance of the existing rule of law and political order, compliance with political and legal norms;
  - stabilizing – promoting the sustainable development of society and all structures of its political system [20].
- Stability of the power means strengthening and development of political and legal systems, free and effective development of an economic system, continuous democratic updating of social and economic and political life of society, improvement of democratic political structures, effective protection of the rights and freedoms of the person and citizen (Fig. 3).



**Figure 3.** Principles of economic relations

## 2. RESULTS AND DISCUSSION

Developed state power is possible only if there is a powerful state mechanism. It provides for the legal consolidation of the powers of each state body, its functions, rights and duties, the delineation of these powers, the distribution of power functions, the presence of a developed right as a lever in the streamlining of state power, etc. All this applies to the political regime (Fig. 4). Restrictions on the power by law in practice means, in particular, the prevention of its sole concentration, the distribution of its functions among various authorities. Such a mechanism, as the experience of most of the world's leading countries shows, makes it possible to avoid abuse of power, since its branches act relative to each other as a counterweight and controllers in this case [21]. Such a fuse in the state mechanism seems very appropriate.

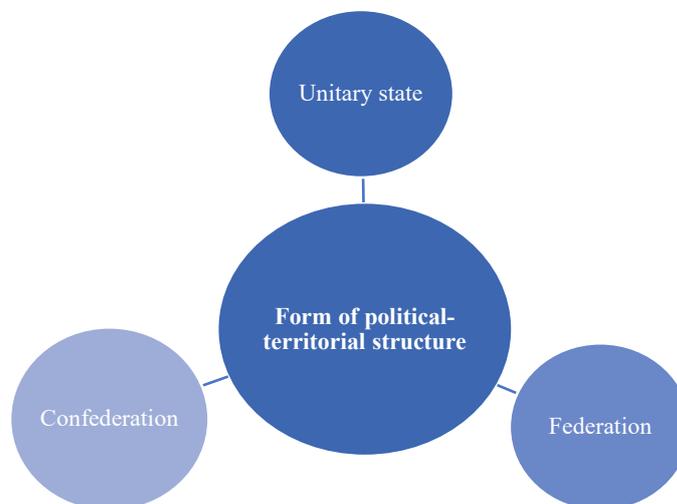


**Figure 4.** Political regime

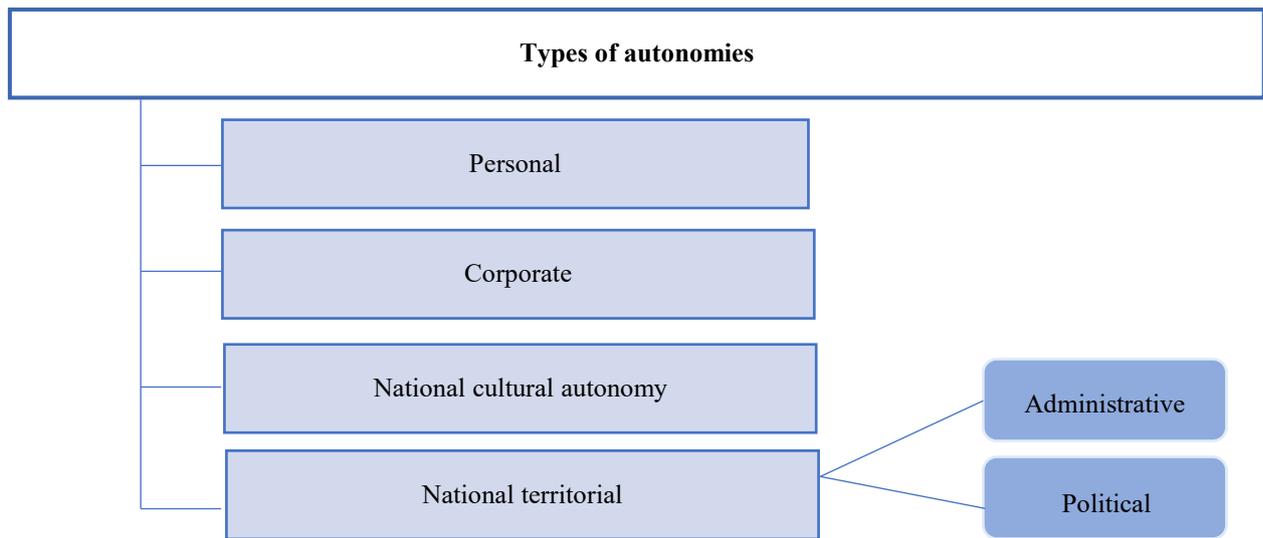
The term “separation of powers” (from the English separation of powers) has now become traditional and common in political science, although, perhaps, it does not accurately reflect the essence of this concept. First of all, we are talking about the distribution of powers or the separation of functions of a single (actually indivisible by definition) state power between its various bodies. Prominent legal scholars, political scientists, and philosophers have repeatedly drawn attention to this fact. Modern scientists note the need to consider state power as a holistic phenomenon, divided and simultaneously interconnected in structural and functional terms by the organizational and legal mechanism of checks and balances. In the science of constitutional law, there is no unified approach both to the classification of legal institutions of the branch of constitutional law in general and to the attribution of the institution of state power to a certain type of constitutional legal institutions; it is only the recognition of the critical importance of this institution that is common. Not all scientists even use the concept of “constitutional and legal institution of state power.” So, for example, V.M. Shapoval [22] identifies in general three groups of constitutional legal institutions:

- 1) general complex normative formations, most often complex content;
- 2) the main ones, which are usually included in the general;
- 3) initial, which, as a rule, includes several legal norms.

At the same time, as the institution of the beginning of the organization and activities of the state mechanism calls it, and also the constitutional and legal institution of the territorial organization of the state refers to it as general (Fig. 5). In terms of its content, the two main institutions can be considered as the institution of state power. It should be noted immediately that there are no autonomous entities for comparison in Ukraine (Fig. 6).



**Figure 5.** Form of political-territorial structure



**Figure 6.** Types of autonomy

V.F. Melashchenko [23] classified constitutional and legal institutions depending on their content, structure, methods, and tasks of legal regulation. The institution of state power also belongs to the superinstituts of constitutional law, along with the institutions of people's power, state sovereignty. From the references of the theory of law, it could be provided the following classification of constitutional legal institutions:

- 1) general, the content of which is normative provisions related to the entire branch of constitutional law;
- 2) material and regulatory constitutional and legal institutions that make up a system of norms, the purpose of which is to directly regulate the behavior of subjects of public relations of a certain type;
- 3) protective constitutional and legal institutions consisting of protective norms;
- 4) process and procedure institutions containing constitutional rules of a process, procedural nature (for example, the constitutional and legal institution of the legislative process) [23].

According to this classification, it would seem a good idea to attribute the institution of state power to general constitutional and legal institutions. M. Povaliaeva [24] identifies general constitutional and legal institutions that cover a significant range of public relations and include smaller structural elements. The author refers to the general institutions the constitutional and legal institutions of the foundations of the constitutional system, the constitutional and legal status of the individual and citizen, and state power. Thus, state power as an institution of constitutional law is a system of constitutional legal institutions and norms, which is relatively separate within the branch of constitutional law, which regulates public relations regarding the organization and implementation of state power. As can be seen from this definition, the constitutional and legal institution of state power has a complex structure: being in its content a superinstitut, it has peculiarities characteristic of this type of legal institution – it is composed of basic institutions as less complex systems and separate constitutional legal norms; all these elements interacting with each other, form a wide variety of connections and relationships, make this constitutional and legal institution complex and multilevel.

The dominant position in the science of constitutional law is that the constitutional and legal institution of state power consists exclusively of the norms of the Constitution of Ukraine: “The latter, of course, is considered as an organizationally integral division of the normative and legal content of not all norms of constitutional law, but only the Constitution, whose norms regulate the corresponding type of related political and legal social relations, imbued with a certain unity and allocated to a separate complex” [25]. It is the state power, through its formal acts in the conditions of civilization, that provides the norms and principles of positive law with the characteristics of general obligation, the possibility of strict legal certainty of the content of the regulation, and it is the state power that gives the necessary powers and appropriate means of influence to law enforcement agencies, jurisdiction, justice authorities, determines the grounds and procedure for their activities, which guarantees in a certain way the implementation of legal regulations. The constitutional and legal institution of state power is a complex system that is formed from many interacting parts and elements that characterize the internal structure of the institution of state power and distinguish it from other state institutions. The structure of the system of the institution of state power is due to the systemic relations between its constituent elements (institutions), which are in corresponding subordination to each other. Each of these

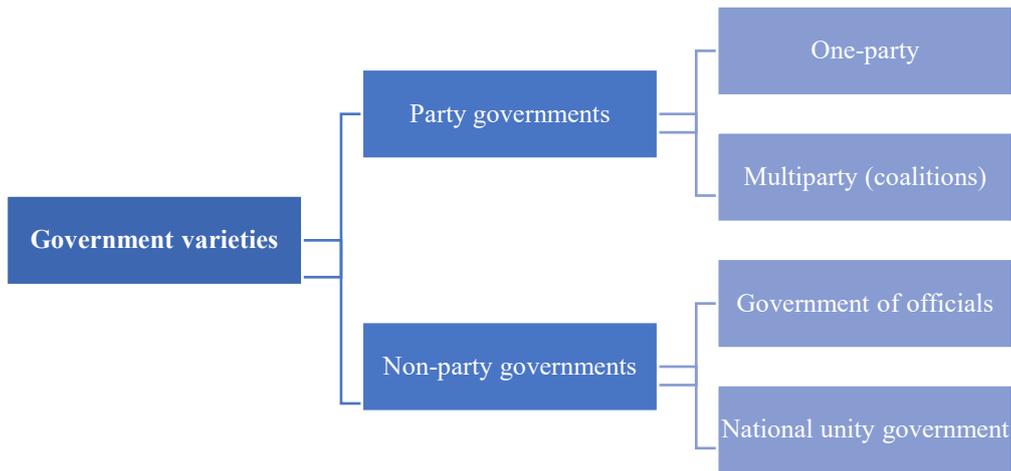
elements of the constitutional and legal institution of state power is inherent in internal unity, which, in turn, distinguishes them from other institutions.

The system of the institution of state power consists of the most important institutions, which primarily include institutions: the legislative branch, the presidency, the executive branch, the judiciary, and the institution of the prosecutor's office. The relationship between these institutions and their interaction is based on the real relationship and interaction of those areas of public relations that are the subject of constitutional regulation. Regulations for the operation of one institution create the necessary prerequisites for the operation of another or several institutions, determine their content and orientation. The Constitution of Ukraine defines the structure, status, competence of the executive branch, decides on the relationship between the head of State and the Government, the Government and the highest representative body of the legislative branch, and answers questions related to the constitutional responsibility of the executive branch and the exercise of parliamentary control over the activities of the executive branch. The Constitution of Ukraine answers questions related to the status of the judiciary: establishes fundamental provisions regarding the judicial system, determines the types of the jurisdiction of the courts, answers questions related to the subordination of the courts, the activities of the prosecutor's office, the bar, bodies that enforce judicial decisions.

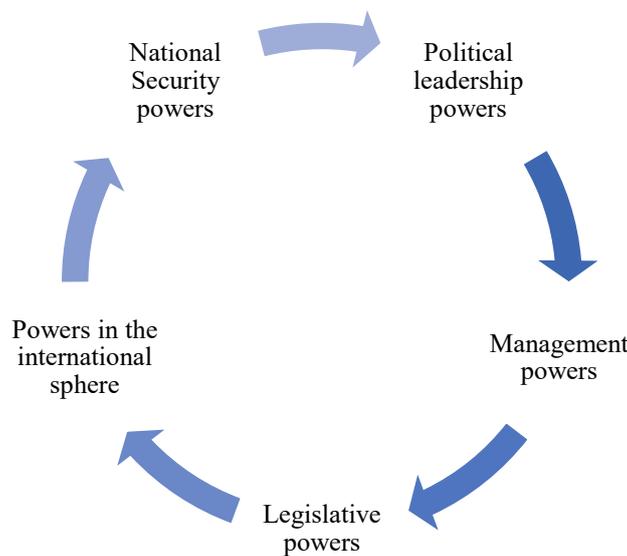
The question of the status of the president as head of state is separate and very difficult. The “Head of State” formula of the Constitution of Ukraine is aimed at emphasizing in the status of the President his leading role precisely in the organization of state power, the formation of the state, ensuring unity in the actions of the entire state apparatus, the removal, and resolution of certain misunderstandings in the system of the state mechanism, on combining the efforts of state and self-government structures in order to implement state policy most effectively. On the basis of the Constitution, it is the state that determines the system of the institution of state power. Therefore, a state body is a certain state organization, which is founded by the state, is formed by it in the established order, and acts on its instructions. State bodies of Ukraine are characterized by certain basic features. Any such body represents Ukraine as a state both domestically and externally. The state body acts on the instructions of the state, which determines the legal status of each of these bodies by law. The body of the Ukrainian State is a relatively independent part of the unified system of state bodies of Ukraine, which is based on the principle of separation of powers. It is acting on behalf of the state and at the same time on its own behalf and occupies a well-defined place in the state apparatus. The state body shall be formed in accordance with the procedure established by the Constitution and the relevant laws.

In particular, the Verkhovna Rada of Ukraine and the President of Ukraine are elected by general elections, the Cabinet of Ministers is formed by the President of Ukraine. Depending on their own legal status, each of the public authorities carries out its inherent tasks and functions of the state. Thus, the only legislative body in Ukraine is the Parliament – the Verkhovna Rada of Ukraine. The head of the Ukrainian State, the President of Ukraine, is the guarantor of state sovereignty, territorial integrity of Ukraine, respect for the Constitution of Ukraine, human and civil rights and freedoms. The Cabinet of Ministers of Ukraine exercises executive power. Justice in Ukraine is administered exclusively by the courts. Within the framework of the status, the state body acts on behalf of the state and, under its authority, is its official representative. In order to carry out its own tasks and functions, the state gives public authority to the state bodies, which is enshrined in a separate normative legal act and allows the exercise of state power in its three forms: legislative, executive and judicial. These powers define the specific rights and obligations of state bodies, within which they have the right to exercise the rights granted to them, to adopt relevant acts binding on subordinate bodies, officials and citizens, and to monitor their implementation.

At the same time, it must be taken into account that the state power delegated to the body absorbs the provision that it acts on behalf of the state since it is clear that the body cannot exercise its powers other than on behalf of the Ukrainian state. Government functions of public administration in each country are carried out by an multiple system of bodies. Among them are higher – the parliament, the government, and the head of state, higher judicial bodies. It is these bodies that exercise the main powers in the legislative and executive power, and their activities are of political importance. A separate role in author's opinion belongs to the government as the highest body in the system of executive power in the country. The varieties and powers of the government are presented in Figure 7 and Figure 8. The highest courts of general and special competence – the Supreme Court, the Constitutional Court, the Supreme Administrative Court, and the like – are also assigned to the highest bodies. However, the judiciary is formally excluded from the exercise of functions of a political nature (the exception is only the activities of the Constitutional Court, although it is generally considered a “non-political” body).

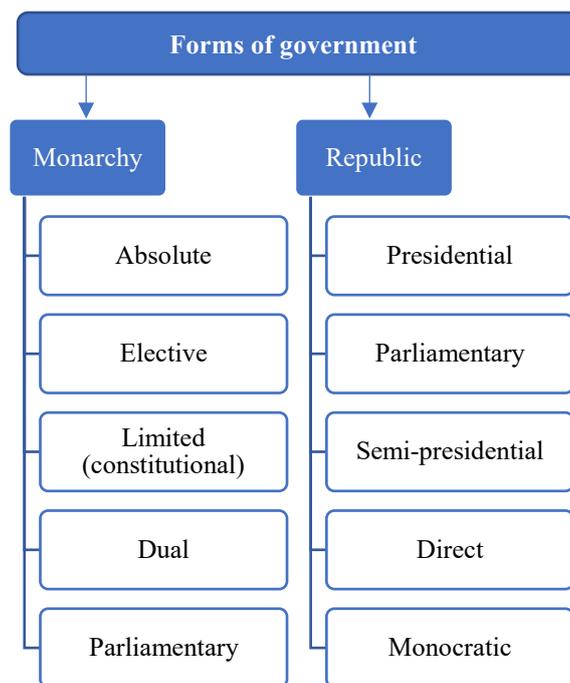


**Figure 7.** Government varieties



**Figure 8.** Powers of the Government

The Constitution of Ukraine of 1996 enshrined a qualitatively new organization of state power. By abandoning the hierarchical, vertical system of the organization of state power that has existed in Ukraine for several decades, it has adopted the universally recognized principle of the organization of state power – the principle of dividing it into legislative, executive, and judicial. The state authorities of Ukraine have become equal and independent of each other. At the same time, the Verkhovna Rada of Ukraine under the Constitution finally lost its former status as the highest body of state power, but for the first time acquired all the main features of the status of the Parliament of Ukraine – a single national, representative, collegial, elected, unicameral, the permanent legislative body of Ukraine [9].



**Figure 9.** Form of government

To characterize the status of each of the highest authorities of the modern state, the concepts of the form of government are decisive. A form of government is a way of organizing power, conditioned on the principles of the relationship of higher bodies. Figure 9. At the same time, the relationship between parliament, the government, and the head of state is the starting point. The content of their relationship reflects, to one degree or another, the ideas of separation of powers. These ideas, known from an early time, in the clearest statement were formulated by the French enlightener and legal scholar of the XVIII century, Charles Montesquieu. His teaching played a significant role in the formation of modern political and legal thought and significantly influenced the development of state institutions in a new period of world history. Montesquieu distinguished the three powers – legislative, executive, judicial – and argued that in conditions of freedom, an unacceptable combination of these authorities and their exercise by one person or one body. This combination, in his opinion, led to arbitrariness. Therefore, Montesquieu considered it necessary that these three authorities be carried out by different bodies. At the same time, he recognized the distributed authorities as in principle equivalent and did not single out among them anyone that would be endowed with the quality of the rule in relation to other authorities. Developing his doctrine of separation of powers, Montesquieu put forward a provision on the need for their interaction and mutual balance. He wrote about such interaction of the authorities, in which the latter restrain each other and consistently move towards a common goal.

At the same time, Montesquieu pointed out the impossibility of practical delineation of them so that this completely excluded the interference of one government in the activities of another. The doctrine of separation of powers formulated by Montesquieu laid the foundations of the constitutional principle, which was recognized in the state-legal theory and practice of a number of countries at the end of the XVIII century. The Constitution of Ukraine of 1996 takes a differentiated approach to the problem of legislative consolidation, and then the organization and functioning of state power in the country. General issues of the consolidation and organization of this authority are reflected in section I “General provisions”. Concerning the definition in the Constitution of specific issues of the consolidation, organization, and exercise of state power, they are reflected in separate sections on both the principle of popular sovereignty and the organization and functioning of individual branches of state power. This approach is consistent with the legislative practice of modern constitutionalism.

In the context of the establishment of Ukraine as a democratic, legal and social state, the role of the judiciary is significantly increasing. The function of the administration of justice under the Constitution of Ukraine (Article 6) grants to the courts, which act independently of the legislative branch. No public authority other than the courts has the right to assume the function and authority to administer justice. Only the courts have the right to declare a person guilty of a crime and to subject it to criminal punishment. The courts protect the rights and freedoms guaranteed by the Constitution to everyone (Article 55). The provision, firstly enshrined in the Constitution that the competence of the court extends to all legal relations arising in the state,

is aimed at enhancing the role of the courts. The judiciary, like other branches of the state power, exercises its powers within the limits established by the Constitution and in accordance with the laws of Ukraine. The purpose of justice is to protect the constitutional order, the rights and freedoms of citizens, the rights and legitimate interests of enterprises, institutions, and organizations, regardless of forms of ownership.

## CONCLUSIONS

Perhaps people are trying to solve the problem of the rational structure of state power and its bodies as long as the state exists as a form of organization of society. The constitutional and legal institution of state power is a complex system that is formed from many interacting parts and elements that characterize the internal structure of the institution of state power and distinguish it from other state institutions. The structure of the system of the institution of state power is due to the systemic relations between its constituent elements (institutions), which are in corresponding subordination to each other. Each of these elements of the constitutional and legal institution of state power is inherent in internal unity, which, in turn, distinguishes them from other institutions. A state body is a certain state organization, which is founded by the state, is formed by it in the established order, and acts on its instructions.

The most enlightened rulers, in whose hands unlimited all webs of power were concentrated, sooner or later became wayward tyrants who recognized only their authority, that they neglected freedom and, did not consider inalienable human rights. However, power is a primary condition of realization of the right which is a cornerstone of the existence of the state. At the same time, it submits to the right which is designed to define accurately imperious prerogatives and functions of the state. Therefore, further transfer of powers of public administration from local public authorities to local self-government bodies should be the subject of further research in this direction.

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