Social Contexts | Konteksty Społeczne
2021, Vol. 9, No. 2 (18), 5-21
http://doi.org/10.17951/ks.2021.9.2.5-21

Constitutional Changes in the Form of Government in Modern Ukraine

Roman Martyniuk
ORCID: 0000-0003-4469-7762
Ostroh Academy National University, Ukraine*

Oleksii Datsiuk
ORCID: 0000-0003-2293-6371
Ostroh Academy National University, Ukraine**

Abstract: The aim of the article is to analyze the causes and nature of constitutional changes in the form of government in modern Ukraine. In the article the genesis of the form of government in Ukraine according to the content of the Constitutional Treaty of June 8, 1995, the Constitution of Ukraine of June 28, 1996 and the Law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004 is examined. The legal features have been analyzed and an attempt has been made to correctly classify all variations of the form of government adopted in Ukraine.

Keywords: form of government, mixed republic, law, constitution, Ukraine.

Throughout the period of existence of the modern Ukrainian state restored in 1991, the search for its optimal form of government has been continuing. At the same time, that search does not involve the choice of one of the classical republics: neither presidential nor parliamentary. Both the presidential republic is unacceptable for Ukraine due to its immanent attraction to authoritarianism, and the parliamentary republic due to the characteristics of the country's party system. In fact, the choice of form of government for Ukraine is

* roman.s.martyniuk@ukr.net

** 909.stv@ukr.net

ISSN 2300-6277, https://journals.umcs.pl/ks

limited by variations of the mixed republican form of government. In a mixed republic, the shortcomings of the classical republics are significantly mitigated and their consequences are less obvious. It is a mixed republic that makes it possible to overcome the authoritarianism of the head of state as the disadvantage of a presidential republic as well as the government instability as the imperfection of a parliamentary republic.

The emergence of the first "full-fledged" mixed republic is associated with the adoption of the Constitution of the Fifth French Republic on October 4, 1958. The composition of the state apparatus of the Fifth Republic, the organization of its most important structural units became a model for many European states. At the same time, initially, almost until the end of the twentieth century, only the presidential-parliamentary form of mixed republican form of government was known to political practice. In the balanced Fifth French Republic, the situation of "coexistence" of the President and the Prime Minister, in which these entities embodied opposing political forces and the form of government took on the features of a parliamentary-presidential republic, first emerged and lasted from March 1986 to April 1988. As there were no parliamentary-presidential mixed republics for a long time, there was a tradition to identify the mixed republic with its presidential-parliamentary variety (Protasova, 2009, p. 124). In this circumstance, it is worth looking for an explanation of the reasons for the emergence and establishment in the professional circles of the incorrect term "semi-presidential republic".

With the beginning of the fourth stage of constitutional rule-making, a mixed republic was introduced in many of the newly formed states of Central and Eastern Europe, Asia, and Africa. A new one has emerged – a parliamentary-presidential version of a mixed republic. Among modern states there are presidential-parliamentary, parliamentary-presidential and balanced-mixed republics. The variability of a mixed republic testifies to its ability to either gravitate to any of the classical republics, or to combine their elements in a balanced way.

Although at present the tendency to spread a mixed republic has become stable, there is no integral theory of this form of governing. It explains why many modern states having chosen a mixed republican form of government have moved so far away from the French prototype and why the differences between the mixed republics are so significant.

An analysis of a number of constitutions shows a certain conditionality in the classification of the form of government enshrined in them. In many cases, the form of government demonstrates more or less significant deviations from the norm. In particular, in a number of countries in the Western and Central Europe, the form of government reveals an incomplete set of features of a mixed republic and is transitional in nature, combining the features of a mixed and parliament-

ary republics. Austria, Bulgaria, Ireland, Iceland, Northern Macedonia, Slovenia, and Finland are such transitional parliamentary republics. On the contrary, in the territory of the former Soviet Union due to the situation of underdeveloped civil society as well as the institution of political parties as its attribute, a transitional presidentialized republic emerged, which combines the features of a mixed and presidential republics. Currently, the transitional presidential republics are Azerbaijan, Belarus, Kazakhstan, Russia, Tajikistan, and Turkmenistan.

Both the form of government established by the original version of the Constitution of Ukraine and the form of government established by its current version do not significantly meet the criteria of a mixed republic. Primary version of the Constitution of Ukraine introduced a form of government that mimics a mixed republic. The hypertrophied constitutional status of the President of Ukraine, administrative subordination of the Cabinet of Ministers of Ukraine to the President, and, as a result, significant erosion of the dualism of executive power make it possible to classify this form of mixed republican government only conditionally. Although the current version of the Constitution of Ukraine has established a form of government that largely meets the criteria of a parliamentary-presidential republic, a number of key institutions of the mixed republic in that form of government are distorted.

Form of government established by the Constitutional Treaty of June 8, 1995

Concerning the countries with underdeveloped civil societies, the choice between presidential and parliamentary forms of government is essentially a choice between dictatorship and party anarchy (Medushevskii, 2002, p. 211). Under such conditions, a mixed republic becomes the only acceptable one. In Ukraine, the need to create an effective executive branch against the background of the weak development of political parties made it natural to choose a mixed republic. However, this choice was influenced by such a detrimental and abnormal factor in terms of democratic development of the country, as the attempts of the President of Ukraine as a leading actor to ensure its own self-preservation (i.e. to maintain and strengthen its power). Therefore, the constitutional adjustments initiated by him took place autonomously in relation to real social needs and requirements (Shapoval, 2009, p. 38). Like the conclusion of the Constitutional Treaty of June 8, 1995, the adoption of the Constitution of Ukraine of June 28, 1996 consolidated the results of the struggle between the President of Ukraine and the Verkhovna Rada (Parliament) of Ukraine for influence over the executive (Konstytutsiina reforma v Ukraini, 2007, p. 3). Given the underdevelopment of political parties, the winner in this struggle was the President of Ukraine, who constitutionally has subordinated the executive branch.

The Constitution of the USSR of 1978, which was formally in force before the entry into force of the Constitution of Ukraine on June 28, 1996, de facto lost its legal force long before that. However, the development and adoption of the new Constitution of Ukraine was hampered by the permanent confrontation between the President and the Verkhovna Rada of Ukraine. Trying to prevent the dangerous marginalization of power relations, those political actors resorted to a constitutional agreement entitled "Constitutional Treaty between the Verkhovna Rada of Ukraine and the President of Ukraine on the Basic Principles of Organization and Functioning of State Power and Local Self-Government in Ukraine". The Constitutional Treaty, which entered into force on June 8, 1995, was designed primarily to ensure the legal preconditions for the functioning of the state mechanism, so the main object of legal regulation of the Treaty was the form of government. The Constitutional Treaty of June 8, 1995 defined the key features of the form of government institutionalized by the Constitution of Ukraine of June 28, 1996.

The form of government established by the Treaty is sometimes classified as presidential. That classification, however, is incorrect. That form of government showed some features of a presidential republic, but no more. In Art.19 of the Treaty, the President of Ukraine was named as "the Head of state and the Head of the State Executive Power of Ukraine" (Konstytutsiinyi Dohovir). At the same time, the Treaty did not establish a "rigid" separation of powers and established institutions that were not typical to the presidential form of government. According to the Agreement, the President of Ukraine did not have the right to dissolve the Verkhovna Rada of Ukraine. However, this did not correspond to the lack of parliamentary responsibility of the Cabinet of Ministers of Ukraine, but the lack of the Verkhovna Rada of Ukraine's right to remove the President of Ukraine from office by impeachment. Such features of the form of government reflected its atypicality, not the "rigid" separation of powers. Nevertheless, the form of government established by the Treaty showed the predominance of elements of presidentialism and in its most essential features corresponded to the presidential republic. The provisions of Art.19 of the Treaty confirming that "the President of Ukraine as the head of the state executive power exercises this power through the Government headed by him – the Cabinet of Ministers of Ukraine and the system of central and local bodies of state executive power"; Art. 22 that "the President of Ukraine shall appoint the Prime Minister of Ukraine within one month after taking office or from the date of resignation of the previous Government, form a new composition of the Government of Ukraine – the Cabinet of Ministers of Ukraine"; Art. 24 that the President of Ukraine "heads the system of state executive bodies of Ukraine; creates, reorganizes and liquidates ministries, departments, other central and local bodies of state executive power appoints (approves)

and dismisses the heads of these bodies"; Art.29 that "the Government of Ukraine – the Cabinet of Ministers of Ukraine is a central collegial body of state executive power, subordinated to the President of Ukraine and responsible to him"; Art.30 that "the Prime Minister of Ukraine organizes and coordinates the work of the Government – the Cabinet of Ministers of Ukraine, acting within the limits set by the President of Ukraine" (Konstytutsiinyi Dohovir) were the evidence of the reception of characteristics of a presidential republic. Finally, Art.35 of the Treaty provided for the responsibility before the President of Ukraine of ministers, heads of other central and local executive bodies.

The treaty also established the characteristics of a mixed republic, in particular, the parliamentary investiture of the Cabinet of Ministers of Ukraine (Art.22) and its parliamentary responsibility (Art. 17, paragraph 23). The adoption of the Constitutional Treaty has been preceded by a political compromise between the President of Ukraine and the Ukrainian parliament on the issue of the influence of these entities on the executive branch. The mentioned compromise defined the basic features of the form of government established by the Treaty. The executive branch headed by the President was at its core, but it was also accountable to Parliament.

Form of government established by the original version of the Constitution of Ukraine of June 28, 1996

Although the provisions of the Constitutional Treaty significantly affected the nature of the form of government introduced by the Constitution of Ukraine of June 28, 1996, this form of government, despite obvious similarities, had differences from those established by the Treaty. The main one is to determine the status of the President of Ukraine as the head of state, not as the head of state and head of the executive branch. Despite this definition, the President of Ukraine had the powers to ensure his decisive influence on government policy. At the same time, the status of the head of state allowed the President of Ukraine to maintain legitimacy regardless of the consequences of his leadership of the executive branch.

The form of government enshrined in the original version of the Constitution of Ukraine is similar to that of the French Fifth Republic. At the same time, its legal features testify to a significant departure from the mixed republic and rapprochement with the presidential form of government. Elements of the mixed republic are the procedure for electing the President of Ukraine, the participation of the Verkhovna Rada of Ukraine in the process of forming the Cabinet of Ministers of Ukraine, the right of the Verkhovna Rada of Ukraine to approve the Cabinet of Ministers of Ukraine, parliamentary accountability, executive dualism and countersignature.

Significant differences between the form of government established by the original version of the Constitution of Ukraine and the "full-fledged" mixed republic are also striking. Such important differences were the lack of a classic parliamentary investiture of the government, the unconditional discretion of the President of Ukraine to terminate the powers of the Cabinet of Ministers of Ukraine or any of its members, the right of the President of Ukraine to repeal government acts. Administrative subordination of the Cabinet of Ministers of Ukraine to the President made the institution of countersignature formal and eliminated the dualism of executive power. The imbalance of "divided powers" has led to a significant functional attraction of the form of government to the presidential republic.

The original version of the Constitution of Ukraine did not enshrine the classical form of parliamentary investiture of the government. In accordance with paragraph 11 of Art. 85 of the Constitution of Ukraine, the powers of the Verkhovna Rada of Ukraine include "consideration and decision-making on approval of the Program of Activities of the Cabinet of Ministers of Ukraine" (Konstytutsiia Ukrainy). At the same time, the Constitution of Ukraine does not set requirements for the approval of the Program of Activities of the Cabinet of Ministers of Ukraine as a condition of its authority. Therefore, the Constitution does not establish a direct link between the fact of disapproval of the Program of Activities of the Cabinet of Ministers of Ukraine and his resignation. Provisions of Part 1 of Art. 10 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" of October 7, 2010 stated that "The Program of Activities of the Cabinet of Ministers of Ukraine is based on the election program of the President of Ukraine" (Zakon Ukrainy, 2010) and confirmed the parliamentary investiture of the Cabinet.

Although the original version of the Constitution of Ukraine provided for such an element of a mixed republic as parliamentary accountability of the government, the possibility of accountability of the Cabinet of Ministers of Ukraine to the Verkhovna Rada of Ukraine depended on the political will of the President of Ukraine. The condition of the resignation of the Cabinet of Ministers of Ukraine as a result of the adoption of a resolution of no confidence in the Verkhovna Rada of Ukraine, in accordance with Art. 115 of the Constitution of Ukraine, has been the fact that the Prime Minister of Ukraine submitted to the President of Ukraine a resignation from the Cabinet of Ministers of Ukraine (Konstytutsiia Ukrainy). This fundamentally complicated the parliamentary responsibility of the Cabinet of Ministers of Ukraine. The resignation of the Government at the initiative of the Parliament was impossible if the Prime Minister of Ukraine did not submit the said application or the President of Ukraine did not sign it. However, the Constitution of Ukraine did not stipulate the obligation

of the President of Ukraine to sign the statement of the Prime Minister of Ukraine on the resignation of the Cabinet of Ministers of Ukraine.

The administrative subordination of the Cabinet of Ministers of Ukraine to the President of Ukraine not only prevented the parity interaction of these entities, but also gave the character of legal fiction to the provisions of Art. 113 of the original version of the Constitution of Ukraine on the control and accountability of the Cabinet of Ministers of Ukraine to the Verkhovna Rada of Ukraine.

The criteria of the mixed republic were also contradicted by the provisions of Art. 115 of the original version of the Constitution of Ukraine on the resignation of the Cabinet of Ministers of Ukraine before the newly elected President of Ukraine.

The destructive feature of the form of government established by the original version of the Constitution of Ukraine was the elimination of such a fundamental attribute of a mixed republic as the dualism of executive power. The dualism of the executive branch was impossible given the status of the President of Ukraine as its real chief. That status was ensured by the personal powers of the President of Ukraine in relation to the system of executive bodies, the responsibility before him of all key officials of the executive power, his unconditional right to repeal government acts.

A significant feature of the form of government established by the original version of the Constitution of Ukraine is the weakened constitutional status of the Cabinet of Ministers of Ukraine. The Cabinet of Ministers of Ukraine had the only means of influencing upon the Verkhovna Rada of Ukraine using the right of legislative initiative. As the Cabinet of Ministers of Ukraine was administratively dependent on the President of Ukraine, the government's use of checks and balances concerning the President has been impossible. Therefore, the provisions of the Constitution on the appointment of chiefs of central executive bodies on the proposal of the Prime Minister of Ukraine (paragraph 10, Part 1 of Art. 106); on countersignature of a certain range of acts of the President of Ukraine (Part 4 of Art. 106); on the appointment of heads of local state administrations only on the proposal of the Cabinet of Ministers of Ukraine (Part 4 of Art. 118), etc., could not prevent the subordination of executive power to the President of Ukraine.

Given that the term of office of members of the Cabinet of Ministers of Ukraine depended on the political will of the President of Ukraine, these officials could not oppose the chief of the state, even if there were legal grounds for doing so. As a result, the application by members of the Cabinet of Ministers of Ukraine or the government in general of constitutional restrictions on the President of Ukraine became of formal significance (Koliushko and Kyrychenko, 2007,

p. 44). This shortcoming of the form of government was directly pointed out by the Venice Commission in its Opinion on the Constitutional Situation in Ukraine of 17-18 December 2010 (Vysnovok, 2010).

According to the original version of the Constitution of Ukraine, the Prime Minister of Ukraine and the ministers of the Cabinet of Ministers of Ukraine had the right to sign a number of acts of the President of Ukraine. At the same time, the Constitution of Ukraine left unanswered the question of the consequences of the refusal of the Prime Minister of Ukraine or the relevant minister to countersign the act of the President of Ukraine. However, the administrative subordination of the members of the Cabinet of Ministers of Ukraine to the President of Ukraine nullified the possibility of such a refusal.

The Cabinet of Ministers of Ukraine also did not have the right to submit a constitutional petition to the Constitutional Court of Ukraine to review the constitutionality of acts of the President of Ukraine and the Verkhovna Rada of Ukraine.

According to Art. 113 of the original version of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine was "the highest body in the system of executive bodies". The status of the Government as a leading link in the system of executive bodies has been reflected in the provisions of paragraph 9 of Art. 116 of the Constitution of Ukraine that it "directs and coordinates the work of ministries and other executive bodies" (Konstytutsiia Ukrainy). However, in reality, the Cabinet of Ministers of Ukraine did not address issues related to both the structure of the executive branch and the chiefs of relevant bodies, and hence did not exert sufficient influence on these bodies and their heads (Dakhova, 2011, p. 243). The degree of influence of the President of Ukraine on the executive branch nullified the possibility of the Cabinet of Ministers of Ukraine to take any independent action.

The dominance of the President of Ukraine in the state mechanism led to a significant concentration of state power in the presidential division, for which it was impossible to apply constitutional and legal responsibility. An extensive shadow government of the President has been formed, which replaced the executive branch and took the form of a super-presidency.

The mixed republic is characterized by the maximum balance of "spread powers". However, the competent relations of the President of Ukraine with other higher bodies of the state did not ensure parity. The President of Ukraine has always dominated in those relations.

In fact, the form of government established by the original version of the Constitution of Ukraine imitated a mixed republic. Distorting the essence of a mixed republic, this form of government ensured the dominant role of the President of Ukraine not only in the executive branch, but also in the sphere of

government in general (Shapoval, 2016, p. 211). In the end, it led to authoritarian tendencies and, as a result, a lack of legitimacy of state power.

The form of government enshrined in the original version of the Constitution of Ukraine had a high potential for conflict, as it created the basis for confrontation between the legislature and the executive. The absence of a parliamentary investiture of the Cabinet of Ministers of Ukraine in the presence of its parliamentary responsibility made this confrontation inevitable.

In its Conclusion on the Constitutional Situation in Ukraine of 17–18 December 2010, the Venice Commission pointed to the concentration of power in the hands of the President and the constant confrontation between the legislature and the executive (Vysnovok).

The political situation in Ukraine has been marked by permanent confrontation between the President of Ukraine as the head of state and the Verkhovna Rada (Parliament) of Ukraine, government instability and general irresponsibility of the ruling entities.

Under the conditions of a transitional society, the dominant role of the President of Ukraine in the state mechanism could ensure a certain efficiency of power. However, authoritarian presidentialism made it illegitimate.

The need for parliamentarization of the form of government grew against the background of increasing influence on the state mechanism of political parties, which intensified the conflict between the Verkhovna Rada of Ukraine and the President of Ukraine. The confrontation between those entities ended with the appearance of the Decree of the President of Ukraine "On the proclamation of an all-Ukrainian referendum on the people's initiative" of January 15, 2000. Amendments to the Constitution of Ukraine of December 8, 2004 established a new form of government in which the Parliament (the Verkhovna Rada of Ukraine), not the President of Ukraine, has got a decisive influence on the organization and activities of the executive branch of power.

Change of the form of government as the result of the constitutional reform of December 8, 2004

During the Orange Revolution in December 2004, Ukraine underwent constitutional reform. The Orange Revolution has shown that civil society in Ukraine has reached a level of development at which political parties are able to seize the initiative in the implementation of state policy from the President of Ukraine. This meant that the center of political gravity had to shift from the Administration of the President of Ukraine to the coalition majority in the Verkhovna Rada (Parliament) of Ukraine. This majority, in turn, had to guarantee the stability of the government formed by it and the efficiency of its activities.

On December 8, 2004, the Verkhovna Rada of Ukraine, by a qualified majority of two thirds of its constitutional composition, approved the constitutional law "On Amendments to the Constitution of Ukraine". The mentioned law, which entered into force on January 1, 2006 (except for some of its provisions that came into force later, from the date of resignation entry into force of the Verkhovna Rada of Ukraine elected in 2006), significantly changed the form of government, giving it the features of parliamentary-presidential mixed republic.

The new form of government was designed taking into account the shortcomings of the previous one (Pidsumky, 2007, p. 42) and its main task was to limit the hypertrophied constitutional status of the President of Ukraine, in particular, his excessive influence on the organization and activities of the executive. For a long time, the essence of the President of Ukraine's influence on the executive branch has been a source of authoritarianism. Therefore, the constitutional amendments of December 8, 2004 limited the influence of the head of state on the executive branch in favor of the parliament. It has been expected that balancing "divided powers" would make it impossible to authorize power and ensure its accountability to society. By decentralizing the decision-making mechanism, the form of government was to give it greater transparency and openness, to make it clear to society. This mechanism was as follows: voters vote for parties, parties form a majority in parliament, and the majority forms the government. The government implements the political course of the parliamentary majority factions. Under conditions of political stability, this makes it possible to define clearly the subject of political responsibility. It is the parties forming the majority in the Verkhovna Rada of Ukraine. The mechanism of political responsibility of the ruling parties is parliamentary elections, in which voters can extend the credit of trust or deny it to the relevant political forces.

Now the composition of the Cabinet of Ministers of Ukraine and its political course are determined by the majority factions in the Verkhovna Rada of Ukraine. Thus, the form of government established by the constitutional reform of December 8, 2004, guarantees the right of citizens to participate in the management of state affairs to a greater extent than before. The form of government establishes a transparent and natural connection between the political will of the people, the composition of the parliament and the activities of the government.

The parliamentary decisive influence on the organization and activity of the executive branch ensures its key role in the state mechanism. Amendments to the Constitution of Ukraine of December 8, 2004 significantly expanded the constituent (personal) powers of the Verkhovna Rada of Ukraine and established additional guarantees of its legislative function at the stage of promulgation of laws.

Constitutional reform has significantly weakened the role of the President of Ukraine in the state mechanism. It did not lead to a revision of the constitutional functions of the President of Ukraine, but significantly reduced the scope of his powers. The specialization of the President of Ukraine in the management of the system of executive bodies has shifted in the direction of foreign policy representation of the state, ensuring its sovereignty and national security, constitutional legality, unity of state power.

The relationship between the head of state and the executive branch has fundamentally changed. The administrative dependence of the members of the Cabinet of Ministers of Ukraine on the President of Ukraine has been overcome. The President of Ukraine may only to a certain extent (indirectly) influence the activities of the Cabinet of Ministers of Ukraine through the Minister of Defense of Ukraine and the Minister for Foreign Affairs of Ukraine appointed on his behalf. He also has the right to suspend acts of the Cabinet of Ministers of Ukraine on the grounds of inconsistency with the Constitution of Ukraine with a simultaneous appeal to the Constitutional Court of Ukraine regarding their constitutionality. The President of Ukraine has no right to dismiss even those ministers appointed by the Verkhovna Rada of Ukraine on his proposal. Only the Verkhovna Rada of Ukraine may terminate the powers of the Cabinet of Ministers of Ukraine as a whole or any of its members. Therefore, although in Part 2 of Art.113 of the Constitution of Ukraine, the provision that the "Cabinet of Ministers of Ukraine is accountable to the President of Ukraine" was retained, and the responsibility of the Cabinet of Ministers of Ukraine to the President of Ukraine became conditional (Shapoval, 2009, p. 51). The subordination of the government to the parliament is evidenced by the provisions of Part 1 of Art.115 of the Constitution of Ukraine They confirm that "the Cabinet of Ministers of Ukraine resigns before the newly elected Verkhovna Rada of Ukraine" (Konstytutsiia Ukrainy).

Although the constitutional reform stopped the authoritarian tendencies in the organization of state power and ensured a qualitatively higher level of its responsibility to society, the form of government established by the reform has its own fundamental shortcomings, which were not present in the previous one. First of all, the constitutional amendments of December 8, 2004 led to the functional inadequacy of the presidential institution and government instability. The consequences of these defects in the form of government are becoming most noticeable against the background of fierce rivalry between the ruling political forces.

Excessive parliamentarization of the form of government has caused the President of Ukraine to lose sufficient constitutional instruments of influence on the executive branch. The President of Ukraine can effectively perform certain

functions only with the support of the Cabinet of Ministers of Ukraine. At the same time, the constitutional means for the head of state of influencing on the government do not guarantee this support. Therefore, under the conditions of "coexistence" of different parties of the President of Ukraine and the Prime Minister of Ukraine, effective implementation of the functions of the President of Ukraine, which should be provided by the Cabinet of Ministers of Ukraine, becomes impossible.

Like the original, the current version of the Constitution of Ukraine does not enshrine the classic form of parliamentary investiture of the government: the disapproval of the program of the Cabinet of Ministers of Ukraine by the Verkhovna Rada of Ukraine does not lead to its resignation.

The change in the form of government has had a detrimental effect on its functionality and has led to a number of serious problems that have made it difficult to meet public expectations. Those problems were based on gaps in the constitutional text, insufficient clarity of constitutional provisions, inconsistencies and imperfections of the institutions established by the Constitution of Ukraine (Konstytutsiina reforma v Ukraini, 2007, p. 23).

Amendments to the Constitution of Ukraine of December 8, 2004 did not solve a number of important problems in the organization of state power. In particular, they have not created an effective mechanism for cooperation between public authorities.

It is obvious that the initiators of the constitutional reform relied mainly on theoretical arguments and did not take into account the specific shortcomings of the primary organization of state power as a starting point in constructing a form of government. The consequences of that approach haven't been foreseen in the development of the relevant institutions. As a result, the expected improvement of the state mechanism resulted in its general inefficiency (Konstytutsiina reforma, 2007, p. 59).

Serious inconsistencies in the actions of the highest bodies of the Ukrainian state escalated into fierce constitutional conflicts threatening the loss of legitimacy of power. Already in early April 2007, the increase in constitutional conflicts caused a deep political crisis. Constitutional conflicts have revealed the inability and often unwillingness of the ruling parties to reach compromises as well as to adhere to the agreements reached (Naslidky zmin, 2007, p. 56).

An ill-considered and contradictory system of competent relations of the highest bodies of the Ukrainian state destabilizes the state mechanism and makes it impossible to pursue a responsible policy. Under conditions when the President of Ukraine and the parliamentary-governmental majority represent opposing political forces, the interaction of the highest bodies of the state becomes significantly more difficult. A form of government is functioning, in fact, only through

the achievement of political agreements by the ruling parties. Examples of such agreements include the Universal of National Unity of 3 August 2006 and the Joint Statement of the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine and the Prime Minister of Ukraine on Urgent Measures to Resolve the Political Crisis by Holding Early Elections to the Verkhovna Rada Council of Ukraine of May 27, 2007. According to the Universal, its goal was "to create a balanced system of checks and balances" (Universal natsionalnoi yednosti, 2006). It was expected that the Universal would become the programmatic basis for a "broad coalition" that would ensure the functioning of the form of government. However, the Universal was a declaration of intent, the implementation of which required political will. The lack of a responsible attitude of the ruling parties to the Universal nullified its importance and made possible the continuation of conflicts.

Permanent constitutional conflicts have highlighted the need for further revision of the form of government. The decision of the Constitutional Court of Ukraine of 30 September 2010, which annulled the results of the constitutional reform of 8 December 2004, gave new breath to the idea of changing the form of government. The desire of the president V. Yanukovych as the protege of the Party of Regions to reflect its political interests in the Constitution of Ukraine led to the emergence of a special body named the "Constitutional Assembly". The task of this body was to prepare a draft law on amendments to the Constitution of Ukraine, which V. Yanukovych intended to submit later to the Verkhovna Rada of Ukraine in order to exercise the right of legislative initiative. However, the Revolution of Dignity put the end to V. Yanukovych's intentions under the guise of the constituent will of the people of Ukraine to implement its own political project and introduced completely new conditions for reforming the state mechanism. During the Revolution of Dignity, the insurgent Ukrainian society demanded that the Verkhovna Rada of Ukraine immediately renew the Constitution, as amended on December 8, 2004. On February 22, 2014, the Verkhovna Rada of Ukraine adopted Resolution № 750-VII, which "overcame" the Decision of the Constitutional Court of Ukraine of September 30, 2010 (Postanova, 2014) and renewed the wording of the Constitution of Ukraine of December 8, 2004. A "restoration" of Ukraine's parliamentary-presidential mixed republic has taken place.

A mixed republic is able to change its functional characteristics depending on the location of political forces in the highest organs of state power. That is why in the special literature a mixed republic is described as a variable form of government, in the sense of changing its functional characteristics. In the period of "coexistence", when the parliamentary majority and the government are in opposition to the president, a mixed republic may aspire to a parliamentary form

of government. On the contrary, at a time when the president, on the one hand, and the parliamentary majority and his protégé, the prime minister, on the other, are "monochromatic" in terms of their party affiliation, a mixed republic may aspire to a presidential form of government. Currently, V. Zelensky, the President of Ukraine is representing the political party "The Servant of the People". According to the results of the early parliamentary elections held on July 21, 2019, this political force created a mono-majority in the Parliament of Ukraine of the ninth convocation, and that majority has formed the Cabinet of Ministers of Ukraine. Such political situation has provided some stability in the sphere of government and significantly adjusted the effect of constitutional norms that establish the form of government. The form of government in Ukraine functionally began to resemble the presidentialized version of a mixed republic. However, it is important to understand that the current attraction of the mixed republic in Ukraine to presidentialism is changing and the next parliamentary election may fundamentally change the situation, leading to the attraction of the form of government to parliamentarism. This means that Ukraine will once again have a period of "coexistence" between the President of Ukraine and the Prime Minister of Ukraine, and the shortcomings of that form of governing can be devastating. Thus, it is obvious that the return to an inefficient and contradictory organization of state power, the foundations of which were enshrined in the Law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004, is temporary. It should be expected that under favorable circumstances it would allow appropriate amendments to the Constitution and further constitutional corrections of the form of government would take place.

Conclusion

The form of government adopted in Ukraine is generally based on the idea of a mixed republic. However, this idea turned out to be significantly distorted due to the adoption of the Constitution of Ukraine against the background of the struggle of the President of Ukraine and the Verkhovna Rada of Ukraine for influence over the executive branch. The stronger side of the confrontation was the President of Ukraine. Therefore, the original version of the Constitution of Ukraine enshrined the predominant influence on the executive branch not of the Verkhovna Rada of Ukraine, but of the President of Ukraine. The President was not a structural part of the executive branch, however, given the nature of his competencies with the executive branch system, he was its real chief. First of all, the method of the President of Ukraine's relationship with the executive branch does not allow determining the form of mixed republican government enshrined in the original version of the Constitution of Ukraine.

Establishing the dominant role of the President of Ukraine in the state mechanism, the form of government distorted such fundamentally important elements of a mixed republic as the parliamentary way of forming government and the dualism of executive power. However, despite the obvious functional attraction of the form of government to the presidential republic, it was not identical to it. The form of government enshrined in the original version of the Constitution of Ukraine did not show a "rigid" separation of powers and provided for institutions that are not typical of the presidential form of government. Therefore, the form of government established by the original version of the Constitution of Ukraine cannot be defined as mixed republican or presidential. Obviously, it can be correctly classified as a transitional presidential republic.

Amendments to the Constitution of Ukraine on December 8, 2004 enshrined key elements of a mixed republic. They abolished the administrative subordination of the President of Ukraine to the Cabinet of Ministers of Ukraine and ensured a real dualism of the executive branch. The form of government has changed the mechanism of government accountability to society. During the parliamentary elections, this mechanism allows to identify the parties whose political course was pursued by the government. The clear relationship between the results of the parliamentary elections and the government's course creates the necessary causal link between the people's will and public policy.

Although the form of government established as the result of the constitutional reform of 8 December 2004 was designed in the light of the shortcomings of the previous form of government, it has a number of serious shortcomings. The appointment of members of the Cabinet of Ministers of Ukraine on the proposal of two different entities – the President of Ukraine and the Prime Minister of Ukraine – creates serious obstacles to the collegial nature of the government. Given the status of the Cabinet of Ministers of Ukraine as the governing body of executive power, it is abnormal to appoint heads of local state administrations by the President of Ukraine. The parliamentary investiture of the Cabinet of Ministers of Ukraine is still not a condition of its authority. The form of constitutional consolidation of the institution of countersignature meets the criteria of a presidential republic. The President of Ukraine has been deprived of sufficient constitutional instruments to influence the Cabinet of Ministers of Ukraine, which significantly complicates the implementation of certain functions of the President through the system of executive bodies in his party confrontation with the Prime Minister of Ukraine. In general, the form of government is fraught with the risks of constitutional conflicts, which become inevitable under the conditions of different party "colors" of the President of Ukraine, on the one hand, and the parliamentary-government bloc, on the other.

The shortcomings of the organization of state power in Ukraine testify to its instability and the inevitability of further constitutional development. At the same time, the experience gained in state-building gives grounds to believe that further constitutional changes in the form of government will be able to bring it significantly closer to a "full-fledged" mixed republic.

References

Dakhova, I. (2011). Rozpodil povnovazhen mizh Prezydentom Ukrainy i Kabinetom Ministriv Ukrainy. *Forum prava*, *1*, 241–245.

Koliushko, I., Kyrychenko, Yu. (2007). Problemy diievosti Konstytutsii Ukrainy ta udoskonalennia yii zmistu. *Vybory ta demokratiia*, *3*(13), 43–54.

Konstytutsiina reforma v Ukraini: perebih, stan i perspektyvy. Analitychna dopovid. (2007). *Natsionalna bezpeka i oborona*, *1*, 2–41.

Konstytutsiina reforma: naslidky ta perspektyvy prodovzhennia. (2007). *Natsionalna bezpeka i oborona*, *1*, 58–61.

Konstytutsiinyi Dohovir mizh Verkhovnoiu Radoiu Ukrainy ta Prezydentom Ukrainy pro osnovni zasady orhanizatsii ta funktsionuvannia derzhavnoi vlady i mistsevoho samovriaduvannia v Ukraini na period do pryiniattia novoi Konstytutsii Ukrainy vid 8 chervnia 1995 r. *Vidomosti Verkhovnoi Rady Ukrainy*, (18), 133.

Konstytutsiia Ukrainy vid 28 chervnia 1996 r. *Vidomosti Verkhovnoi Rady Ukrainy*, (30), 141.

Medushevskij, A. (2002). Sravnitel'noe konstitucionnoe pravo i politicheskie instituty: kurs lekcij. GU VSHEH.

Naslidky zmin do Konstytutsii Ukrainy, dotsilnist i stsenarii podalshoho reformuvannia: pohliady ekspertiv. (2007). *Natsionalna bezpeka i oborona*, *1*, 47–57.

Pidsumky i problemy diialnosti vlady za novoi Konstytutsii, priorytety podalshoho rozvytku konstytutsiinoho protsesu. (2007). *Natsionalna bezpeka i oborona*, *1*, 42–57.

Postanova Verkhovnoi Rady Ukrainy vid 22 liutoho 2014 r. "Pro tekst Konstytutsii Ukrainy v redaktsii 28 chervnia 1996 roku, iz zminamy i dopovnenniamy, vnesenymy zakonamy Ukrainy vid 8 hrudnia 2004 roku № 2222-IV, vid 1 liutoho 2011 roku № 2952-VI, vid 19 veresnia 2013 roku № 586-VII". *Vidomosti Verkhovnoi Rady Ukrainy*, (11), 151.

Protasova, V. (2009). Parlamentsko-prezydentska respublika: sutnist, osoblyvosti, riznovydy. Pravo.

Shapoval, V. (2009). Forma derzhavnoho pravlinnia yak konstytutsiinyi modus vivendi suchasnoi derzhavy. *Pravo Ukrainy*, *10*, 38–56.

Shapoval, V. (2016). Vykonavcha vlada v Ukraini u konteksti formy derzhavnoho pravlinnia (dosvid do pryiniattia Konstytutsii Ukrainy 1996 roku). *Pravo Ukrainy*, *3*, 200–212.

Ukaz Prezydenta Ukrainy vid 15 sichnia 2000 r. "Pro proholoshennia vseukrainskoho referendumu za narodnoiu initsiatyvoiu". *Ofitsiinyi visnyk Ukrainy*, (3), 68.

Universal natsionalnoi yednosti vid 3 serpnia 2006 r. http://zakon5.rada.gov.ua/laws/show/n0010100-06.

Vysnovok "Pro konstytutsiinu sytuatsiiu v Ukraini" vid 17-18 hrudnia 2010 r. Yevropeiska Komisiia za demokratiiu cherez pravo (Venetsianska komisiia). http://zakon3.rada.gov.ua/laws/show/994_a36.

Zakon Ukrainy "Pro Kabinet Ministriv Ukrainy" vid 7 zhovtnia 2010 r. *Vidomosti Verkhovnoi Rady Ukrainy*, (9), 58.