

MODELS OF INSTITUTIONAL PROVISION OF EXTERNAL FUNCTIONS OF UKRAINE AND HUNGARY IN THE CONTEXT OF CONSTITUTIONAL AND LEGAL APPROACHES TO THEIR EXPRESSION

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Abstract. *The issue of the external environment of Ukraine has been and is an urgent issue of all times. The external position of Ukraine during the times of different Presidents for most of the history of independence was a place of throwing from the West to the East, or rather de jure to the West, de facto to the East. A full-scale war in Ukraine causes huge human, economic and cultural losses. Life was divided into "before the war" and "in the war". All this pushes Ukraine to the starting point of reference, where after the end of this agony-propaganda "military operation" there will be a period of great reconstruction and punishment of the guilty within the framework of international law. The purpose of each state, its directions of functioning, success, neglect, and limits of implementation can be vividly considered today under the prism of its external functions. The issue of state functions remains one of the key issues in the theory and practice of state formation. They play an important role in the implementation of state policy, because without influencing this or that phenomenon of social relations, the state is unable to solve the tasks set before it and achieve the set goals. Comprehensive implementation of state policy is a guarantee of peaceful and safe existence and further development of the entire society. Research on the issue of distinguishing models of institutional support is not researched in the territory of Ukraine and insufficiently researched in the territory of Hungary. In this scientific article, we try to consider models of institutional support under the prism of forms of implementation, which, in our opinion, adequately reveals the essence of legislative and theoretical approaches and distinguishes the practical inclination of such activities. In the theory of the state and law of both Ukraine and Hungary, there are different approaches to distinguishing approaches to forms of implementation, however, due to the relation to the republican type of both states, we find their similarities, which is quite convenient in the case of the implementation of experience, often at the stage of adaptation the borrowed experience.*

Keywords: *Ukraine; Hungary; models; institutional support; constitutional approaches; legal approaches; external functions.*

JEL Classification: K10, K20, K30

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Introduction. The issue of the course of Ukraine as a state was and is a discussed issue. Such events as 2014 and 2022 were set long before their beginning. We can assume it was a matter of time. And those countless sacrifices that we have today were laid by Ukrainian Presidents almost immediately with the declaration of independence, a wrongly chosen course. After all, it has been centuries to fight for independence from the Soviet Union, and with obtaining it, keep the course for rapprochement again. This is not development; this is the path of degradation. The question of independence, as well as the question of the EU, NATO, is currently under the statute of limitations, we are again fighting for independence at the cost of thousands of lost lives, thousands of destroyed lives from the former Soviet Union, today the Russian Federation. We come again to the spring of 1991, where de jure actions should coincide with de facto actions. It is in this case that Ukraine will be able to move on. Formed models of institutional support with a clear division of responsibilities should contribute to what we can observe in the case of Hungary.

Literature review. This scientific article used the works of: O. Soskina, K. Volinka, O. Bandurka, G. Samilo, Yu. Vedernikova, Ya. Kostyuchenko, Henes Botond, Jozef Petretei, as well as legislative provisions of both states.

Aims. The main goal of this scientific article is the issue of models of institutional support of external functions of Ukraine and Hungary in the context of constitutional and legal approaches to their separation.

Methods. Scientific knowledge is a complex and contradictory process. The same time is the highest level of cognitive activity. The methodology of scientific knowledge is a specific historical phenomenon. Philosophical methodology combines all general scientific methods into three large groups. The first includes: observation, comparison. To the second: idealization. To the third: analysis and synthesis, induction and deduction, abstraction, and modeling. In this article all three groups of methods were used. In addition, we highlight the historical method of learning in the context of recalling the events of 2008 by Russia in relation to Georgia.

Results. Analyzing the issue of Ukraine's international exchange rate, O. Soskin emphasized an unequivocal course towards the West, otherwise we will face the scenario used in Georgia. Considering the events of February 24, 2022, we find out the evidence of such emphasis. This author predicted two scenarios, the future of more than one generation will depend on the chosen one:

1. "Western", characterized by an active process of creating a single Europe, represented by single international organizations dealing with various aspects of activity. Economically, it is the European Union, whose members are focused on creating a single European market, it is a single European currency and other tools of joint development, it is military - NATO and the military integrated European rapid response forces, political - the European Parliament, the Council of Europe, the OSCE, etc. At the same time, many new countries join the EU. It is worth adding that today (and in the future) the world guarantor of the development of peace and democracy is the USA, which plays a huge role in the spread of integration processes in the European space. Therefore, orientation towards the West is the only realistically possible scenario of development that should be managed by Ukrainian leaders.

2. "Eastern", which entails the strengthening of effects on the Eurasian continent. The central place here is occupied by a conglomerate called the Russian Federation. The goal is one-man rule, the use of blackmail, lowering the threshold for the use of nuclear weapons, increasing spending on military equipment [1, p. 9-10].

In August 2008, the invasion of Russian troops on the territory of Georgia broke out. Not for the first time since the collapse of the Soviet Union, the whole world saw that the historical essence and thirst for conquest was not shared anywhere. Such events served as proof, as O. Soskin noted, that it is impossible to cooperate with Russia based on equal partnership. And the main reason for the capture of Abkhazia and South Ossetia was the first was the mass distribution of Russian citizenship, the second was the "rescue" of its citizens, respectively, the military group was created from the same places. There were no legal grounds for leaving Georgia in these territories. However, for Russia, this is nothing but self-determination, even though genocide has been used for years on the example of Ichkeria (Chechnya), which expressed a desire for such

self-determination and to leave the Russian Federation. It is also demonstrated itself as a state of double standards. The first is strengthening the word by military force. Accordingly, an increase in the level of totalitarianism. Further, based on such a course of events, the author provoked the disintegration of the Russian Federation into separate parts, of which today it is the largest state in the world [1, p. 11].

In our opinion, the scenario of the Russian Federation is approaching that of the former Soviet Union - a great disintegration into separate republics. As for the role of Belarus, O. Soskin predicted their alliance with the Russian Federation, which would only increase the level of totalitarianism and military power. That is why this author strongly recommended to unequivocally choose a course to the West, and to strengthen the state border and introduce a visa regime against the totalitarian-increasing power of the states. Otherwise, Ukraine will become a "gray zone" with waves of possible totalitarian cataclysms rolling through its territory and a military attack, according to the scenario of Georgia, where Crimea and Transcarpathia will be the reason [1, p. 12, 16].

As we can see, the events of 2014 and 2022 were planned long before they began. Based on O. Soskin, we can assume that it was a matter of time. And those countless sacrifices that we have today were laid by the helmsmen almost immediately with the declaration of independence, a wrongly chosen course. After all, it has been centuries to fight for independence from the Soviet Union, and with obtaining it, keep the course for rapprochement again. This is not development; this is the path of degradation. The question of independence, as well as the question of the EU, NATO, is currently under the statute of limitations, we are again fighting for independence at the cost of thousands of lost lives, thousands of destroyed lives from the former Soviet Union, today the Russian Federation. We come again to the spring of 1991, where *de jure* actions should coincide with *de facto* actions. It is in this case that Ukraine will be able to move.

The theory of the state and law, regardless of the author, the composition of the authors, contains different approaches to distinguishing the forms of implementation of the functions of the state, which are in their external design of the practical activities of state authorities. For example, K. Volinka distinguishes law-making, law-executive and law-enforcement [2, p.49]. O. Bandurka singles out the legislative, executive, judicial and control-supervisory [3, p.102]. It should be noted that based on O. Bandurka, the forms practically coincide with the heads of government, while such limits practically do not foresee the activities of the President and his ability to issue decrees that are legally significant throughout the territory and are on a legal level with the resolutions of the Verkhovna Rada and Cabinet of Ministers, while it is not constitutionally considered in any of the forms proposed by this author. H. Samilo in his time singles out: law-making - a form of implementation of state functions through the issuance of laws and other normative acts related to the adoption, change and cancellation of legal norms; the right to apply – the activity of state authorities to implement the imposition of legislative and regulatory requirements; operative-executive - the work of state bodies and officials who use the procedure of the function and study the activity by issuing the application of legal norms, on the basis of which

acts create, disappear and change legal relations; law enforcement - the activity of state authorities to protect legal norms from violation, protect rights and freedoms, and ensure the fulfillment of duties [4, p. 61].

Yu. Vedernikov refers to the following forms: law-making - activity of state authorities on the preparation and adoption of legislative acts; law enforcement - the activity of judicial and law enforcement authorities is related to the protection of human rights and freedoms, prevention of offenses and bringing to legal responsibility; law-enforcement – activity of state authorities regarding the resolution of specific legal cases through the adoption of acts of application of legal norms with the presence of a personalized character; legal interpretation - the activity of state authorities is related to the adoption of acts of interpretation of legal norms, where the content of the legal norm itself is explained; law enforcement - the activity of primary state authorities to create secondary ones [5, p. 64].

According to the interpretations of the Constitutional Court of Ukraine, the Verkhovna Rada, the President and the Cabinet of Ministers are endowed with separate constitutional powers in the field of foreign policy activities, but only the President, as the head of state, has the right to manage such activities in general. According to the Constitution of Ukraine, the powers of the President and other subjects of foreign policy activity are norms of direct action. This means that the head of state not only carries out general management of the foreign policy direction of the state in accordance with the principles of foreign policy of Ukraine, determined by the Verkhovna Rada of Ukraine, but also uses appropriate means of influencing the foreign policy direction of the state to ensure the national interests and security of Ukraine. Implementation of the foreign policy principles of the state, determined by the Verkhovna Rada of Ukraine, which is carried out under the leadership of the President of Ukraine and ensured by the Cabinet of Ministers of Ukraine and the Ministry of Foreign Affairs of Ukraine, requires coordination of the activities of these executive bodies by the head of state, including issues of personal support in this area. Managing the foreign policy activities of the state, the President of Ukraine influences the activities of the Cabinet of Ministers of Ukraine and the Ministry of Foreign Affairs of Ukraine with his decrees and instructions [6].

In our opinion, the components proposed by H. Samilo are the most successful within the scope of this issue, that is why we take them as a basis.

Institutional support, or as Ya. Kostyuchenko suggested, "state management", is the activity of state authorities, within legally defined and stipulated limits [7, p.136].

The model of institutional provision of external functions has not been paid attention at the scientific level to date. For our part, we consider this direction under the prism of the forms of implementation, which, in our opinion, adequately reveals the essence of legislative and theoretical approaches and highlights the practical inclination of such activities. The above is depicted in Figure 1.

Such models of institutional activity of the state authorities of Ukraine proceed directly from the constitutional and legal provisions on the division of state duties into spheres. According to the provisions of the Basic Law of Ukraine, the President acts as the head of the state's foreign policy activities [8, Art. 106], the Verkhovna Rada is

a body that determines the foreign and domestic policy of Ukraine at the legislative level [8, Art. 106], the Cabinet of Ministers of Ukraine - ensures the implementation of foreign policy [8, art. 106].

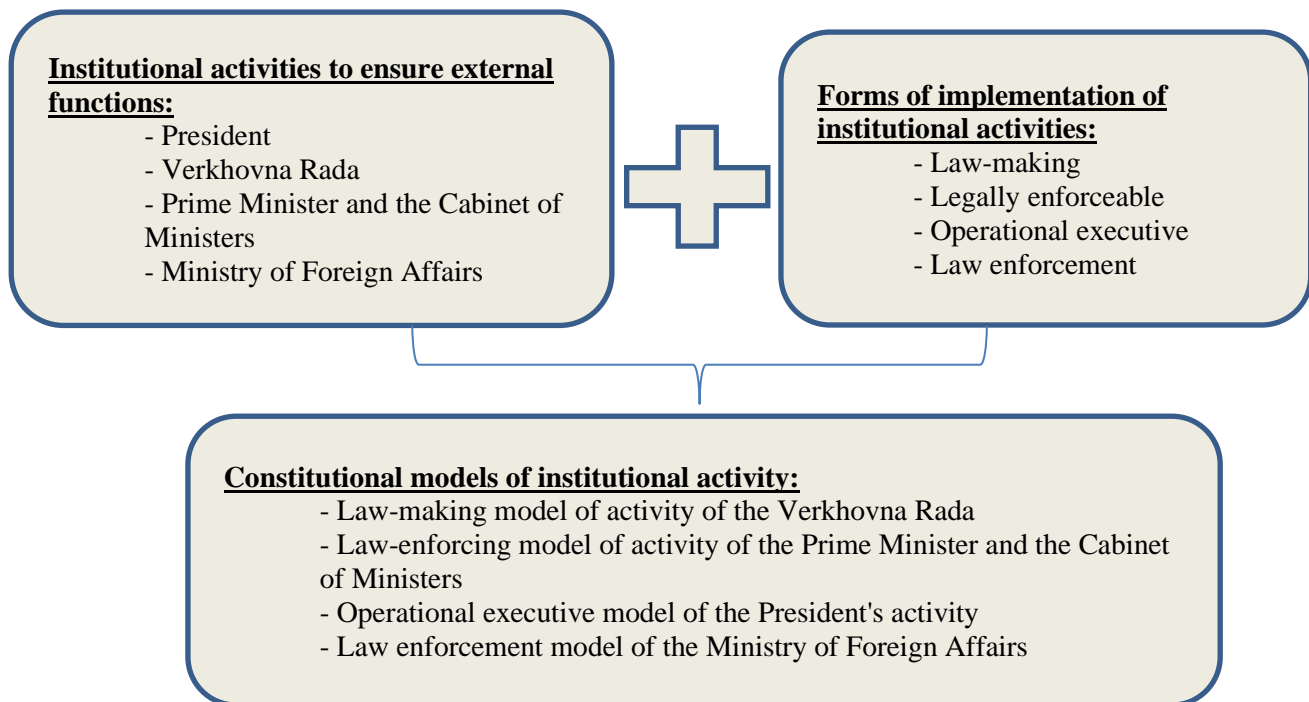


Figure 1. The model of institutional provision of external functions

The Prime Minister heads the Cabinet of Ministers of Ukraine [8, Art. 114]. Institutional provision of external functions is nothing more than a comprehensive approach. Resolution of the CMU "Regulations on the Ministry of Foreign Affairs" dated March 30, 2016, under No. 281 - the Cabinet of Ministers is the coordinating body of the Ministry of Foreign Affairs, which in turn is the central executive body in the field of institutional support of the state's foreign policy activities. According to the above-mentioned Resolution, the main goals and purpose of such a central body of executive power are:

1. ensuring the formation and implementation of state policy in the field of international relations;

2. to ensure the protection of the national interests of Ukraine in international relations; diplomatic means and methods of ensuring sovereignty, international security, territorial integrity and inviolability of Ukraine's borders, political, trade-economic, cultural, humanitarian and other interests; development of relations with foreign Ukrainians and their public organizations, coordination of the activities of internal affairs bodies regarding the development of such relations; state bodies with information necessary for effective foreign and domestic policy in Ukraine;

3. implements a foreign policy course in Ukraine aimed at the development of political, economic, cultural-humanitarian, scientific and other relations with foreign countries and international organizations;

4. coordination of the activities of state bodies in order to implement a unified foreign policy of Ukraine;
5. protection of the rights and interests of citizens and legal entities of Ukraine abroad;
6. to promote the establishment of Ukraine's international prestige and increase its image as a reliable and predictable partner in the world;
7. study and analysis of the political and economic situation in the world, foreign and domestic policy of foreign countries, activities of international organizations;
8. participation in the implementation of the state foreign economic policy, the policy of integration of the national economy into the world economic system within the limits of competence provided by law;
9. participation in the formation and implementation of state policy aimed at the integration of Ukraine into the European political, economic, security and legal space, membership in the European Union and the North Atlantic Treaty Organization;
10. participation in ensuring the development of international law [9].

From the point of view of Hungary, in our opinion, the models of institutional support are like Ukrainian ones. Based on Henes Botond, we can distinguish the following models: 1. model of executive activity; 2. model of legislative activity; 3. model of law enforcement activity [10]. Which is quite like O. Bandurka.

Proceeding from the Basic Law of Hungary, we can emphasize that the forms of implementation adequately reveal the essence of legislative and theoretical approaches and distinguish the practical inclination of such activities. However, based on the latter, we can single out the constitutional models of activity of the state authorities of Hungary on the example of Ukraine.

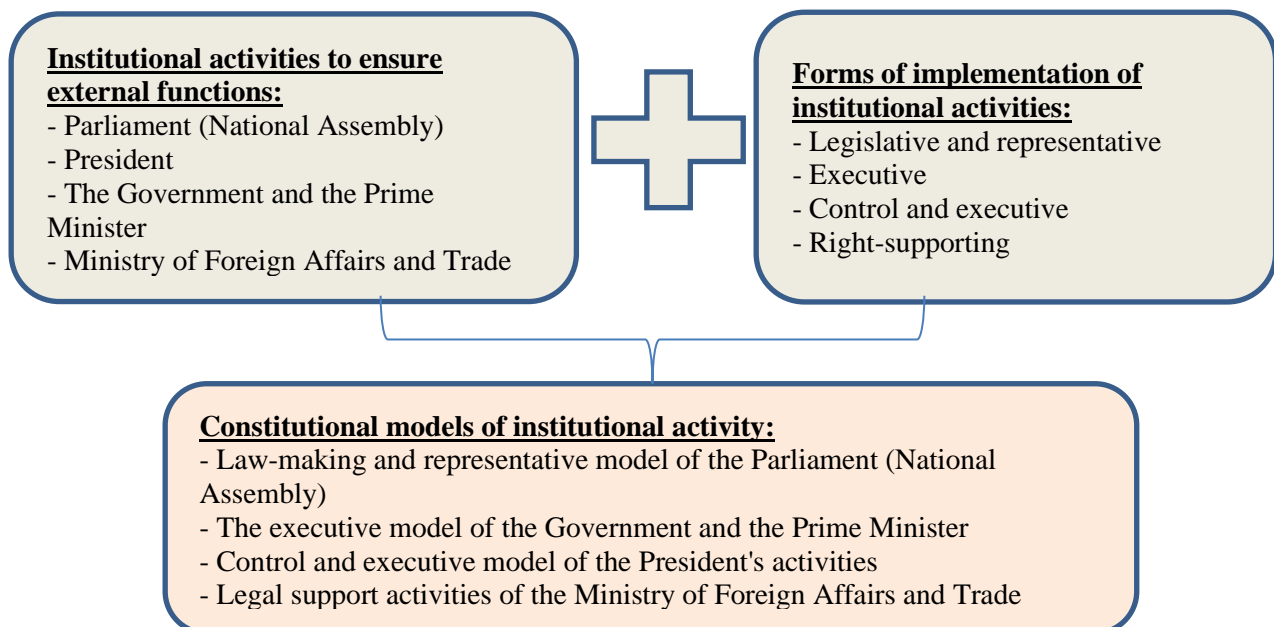


Figure 2. Constitutional models of activity of the state authorities of Hungary on the example of Ukraine

According to Article 1 of the Constitution of Hungary, the Parliament is the highest representative body of Hungary, which creates and amends the Basic Law of Hungary; creates laws; authorizes recognition of the binding force of an international agreement; decides to declare martial law and conclude peace; makes decisions regarding the special legal order and participation in military operations; performs public charity [11]. According to Article 9 of the Constitution of Hungary, the President is the Head of Hungary, who expresses the unity of the nation and monitors the democratic functioning of the state system. Is the Commander-in-Chief of the Armed Forces of Hungary, recognizes the binding scope of the international agreement based on the authority of the Parliament; commissions and receives ambassadors and emissaries [11].

Article 15 of the Constitution of Hungary provides that the Government is the general body of the executive power, whose tasks and powers cover everything that is not directly assigned to the tasks and powers of other bodies in the Basic Law or legislation. The government is responsible to the parliament. Regarding the Prime Minister, Article 18 states that he determines the general policy of the Government [11]. It is worth noting that, unlike the Constitution of Ukraine, the Constitution of Hungary does not contain clear powers of state authorities in matters of foreign affairs. To obtain a complete answer, the Constitution is not enough, for this it is necessary to additionally refer to other normative legal acts, in the context of the Resolution of the Government of Hungary 182/2022 (vol. 24) "On the Duties and Powers of the Government" provides in the matter of the Prime Minister of the Minister: must represent Hungary in the European Council, and must organize the representation of Hungary on all matters concerning the European Union, which require the participation of the state at the highest level, unless otherwise decided by the Basic Law or the Law; determines and coordinates the activities of ministers, in which he can give instructions to ministers regarding the implementation of their activities; determines the general policy of the Government and manages its implementation.

Along with this, in the matter of the European Union, we note that the Prime Minister can act both personally and through the State Secretary. Responsibilities include:

- a) to conduct negotiations with the member states of the European Union and with representatives of the institutions of the European Union;
- b) participate in the preparation and holding of thematic meetings of the EU government;
- c) participate in the government coordination system related to membership in the European Union;
- d) maintain contact and coordinate with the minister and ministers responsible for the government's position on EU membership; e) seek advice and consult with state bodies [12].

In the matter of the Minister of Foreign Affairs and Trade:

1. to formulate the foreign economic policy of the Government, within the framework of which it evaluates and analyzes foreign economic and international processes that affect them;

2. to participate in the defense of Hungary's economic interests abroad, in relevant activities for the development of trade and in creating a favorable image of Hungary, within the framework of which it contributes to the strengthening of foreign economic activity and civil relations, supports the implementation of foreign economic goals and forums that promote international cooperation;

3. preparation and coordination of the implementation of agreements on strategic cooperation with large companies;

4. to manage the system of regional investment assistance, which can be provided by separate decisions of the Government;

5. bear responsibility "for" and "in" the context of multilateral trade policy;

6. in cooperation with the interested member of the government, formulate the position of the government regarding the common commercial policy of the European Union;

7. ensure compliance of international trade policy obligations with domestic legislation;

8. be responsible for the implementation of the Agreement on Trade and Cooperation between the European Union and the European Atomic Energy Community, on the one hand, and the United Kingdom of Great Britain and Northern Ireland, on the other hand, as well as for the coordination of relations between the Parties in this regard;

9. is responsible for managing the foreign economic diplomatic network;

10. perform tasks related to investment protection agreements;

11. develop the position to be taken at international energy negotiations and present it at bilateral and multilateral negotiations [12].

Jozef Petrety successfully summarizes that the division of power serves both the division of labor and, at the same time, the effective performance of state tasks. The effective performance of the functions of state bodies can be ensured by the precise distribution of tasks and powers, as well as the establishment and implementation of firm, clear and binding material, and procedural rules. An important element of the guarantee is that these powers are defined in the normative Constitution, as this can ensure that if the performance of the tasks and powers of the public body under the basic law is violated, it can be corrected. body of constitutional protection due to unconstitutionality.

As a result of the institutional division, the principle of separation of powers is the most important organizational principle of the state system. The purpose of models of institutional distribution of power is the rule of law, that is, the distribution of state tasks and powers - thus, the exercise of state power - among different bodies, which prevents or at least reduces the concentration of state power and the risk of abuse of power for the sake of citizen freedom and security. On the other hand, the separation of powers also has a democratic purpose, as it enables through elections the representation of various political currents and groups in the people's representative, ensures their participation in the formation of the will of the state. Thanks to the constitutionally regulated interaction of state bodies, it unites the existing pluralistic political forces in society, thus complementing representation with integration. Finally,

the separation of powers serves the division of labor and the efficient performance of state tasks, namely through professionally and competently formed state bodies. However, the goals of the separation of powers – limitation of power under the rule of law, democratic representation, and rational performance of tasks – are only guiding principles, the implementation of which depends on the conditions of the time and related legal norms [13].

Conclusions. The division of power serves both the division of labor and, at the same time, the effective performance of state tasks. The effective performance of the functions of state bodies can be ensured by the precise distribution of tasks and powers, as well as the establishment and implementation of firm, clear and binding material, and procedural rules. An important element of the guarantee is that these powers are defined in the normative Constitution, as this can ensure that if the performance of the tasks and powers of the public body under the basic law is violated, it can be corrected. body of constitutional protection due to unconstitutionality. The constitutional and legal models of institutional support of Ukraine and Hungary are related, which, in our opinion, is quite convenient in the case of implementing experience, especially at the stage of inculcating borrowed experience.

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