

CHAPTER 2

LEGAL RELATIONS: FROM THEORY TO PRACTICE

CONSTITUTIONAL AND LEGAL REGULATION OF THE STATUS OF THE HEAD OF GOVERNMENT IN THE MIXED-TYPE REPUBLICS

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Abstract: *the constitutional and legal status of the head of government in republics of the mixed type is marked by a special legal status. The main tasks of the head of government are the organization and management of the highest/supreme body of state executive power, the implementation of state domestic and foreign policy and political responsibility for it. Thus, the efficiency of the government directly depends on the implementation of constitutional duties of the head of government. The objective of the article is to determine the constitutional and legal status of the head of state in European republics of mixed type. Scientific works that are devoted to the processes of formation and development of the constitutional and legal status of the head of government have been studied. The methodology of this article is based on comparative and legal analysis techniques and includes system-structural method, method of generalization, method of analysis and synthesis, etc. A comparative analysis of the constitutional and legal status of the head of government in different European countries with a mixed form of government, which gave grounds to note the general and special features that indicate a certain constitutional development of these countries has been held.*

Keywords: *government, head of government, republic of mixed type, constitutional and legal status.*

JEL classification: H10, K10, K33

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Introduction. The exercise of executive power in the country as a whole, as well as the effective operation of the government itself largely depends on the performance of constitutional duties by the head of government, which in its turn affects the nature of political, economic, social and other processes in the country. The constitutional and legal status of the head of government directly determines the specifics of the segregation of authorities between different branches of power, as well as it determines the tactics and strategy of making important state decisions in the sphere of life of society and the state.

Sharing the opinion of Professor L.M. Entin, we should note down that the constitutions of modern European states mostly do not enshrine detailed provisions that would consolidate the competence of the government and its head, which, in its turn, ensures the widespread implementation of discretionary powers, but it narrows constitutional regulation [1, 349].

In our opinion, there is an urgent need to conduct a constitutional and legal analysis of the legal status of the head of government, taking into account his relationship with other government bodies, as well as the study of legal acts that specify this status.

Literature Review. The issues related to the formation and development of the constitutional and legal status of the head of government have been researched by scholars, but a range of scientific issues remains, and some of them were considered in the scientific works of such Ukrainian researchers as Dakhova I., Georgitsa A., Kolomiets Y., Marchenko V., Seryogin V., Shapoval V. and foreign researchers, namely, Amelera M., Baglay M., Bara A., Boitsova V., Haiti L., Entina L., Kerimova A., Krutogolov M., Maklakov V., Medushevskiy A., Mishin A., Mogunova M., Oriu M., Prelo M., Hesse K., Chirkin V. and others.

Aims. The objective of this article is to determine the constitutional and legal status of the head of state in European republics of mixed type.

Methods. The author used the methods of logical comparison, systematization and generalization, which made it possible to achieve the goal of the study.

Results. Analysing the constitutional and legal status of the head of government, it should be said that this position, regardless of the form of government, is extremely important. It can be safe to say that the head of government is a deterrent and stabilizing factor in the system of state bodies of executive power, as the head of state is deprived of such powers as an arbiter between the branches of power and the guarantor of the constitution, to represent the nation in international relations, as it is clearly seen in the constitutional practice of purely parliamentary republics, such as the German Federal Republic, Italy, which reflects a weak position of the head of state. In cases where the head of state is endowed with broader powers, for example, in Ukraine, France, and the Russian Federation, the head of government has a significant influence on social relations.

The head of government in Ukraine is appointed by the Parliament on the submission of the President of Ukraine, who receives a proposal for the candidacy of the Prime Minister from a coalition of parliamentary factions, which includes the majority of deputies of Ukraine (Article 114 of the Constitution) [2]. In accordance with the Constitution of Ukraine (Article 114), the Prime Minister directs the work of the government, directs it to implement the Program of Activities of the Cabinet of Ministers of Ukraine, approved by the Verkhovna Rada of Ukraine. The peculiarity of the constitutional and legal status of the head of the Cabinet of Ministers of Ukraine is that the Constitution does not contain provisions on public policy management and the responsibility of the Prime Minister of Ukraine for national domestic and foreign policy. But the Constitution of Ukraine [2] and the Law of Ukraine *On the Cabinet of Ministers of Ukraine* (Article 2) [3] determine the government as a whole responsible for ensuring the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy, comply with the Constitution and laws of Ukraine, acts of the President of Ukraine [2].

We believe that countersigning of acts of the President of Ukraine in cases provided by the Constitution of Ukraine (Article 106 of the Constitution) and membership in the National Security and Defense Council of Ukraine (Article 107 of the Constitution) [2] are essential powers of the Prime Minister of Ukraine. It should

be pointed out that the institution of countersignature, enshrined in the Constitution of Ukraine, is legally binding in the context of the political responsibility of the head of government. The Constitution of Ukraine establishes the need to countersign acts of the President of Ukraine on a number of issues, such as the appointment and dismissal of diplomatic representatives of Ukraine, decisions of the National Security and Defense Council of Ukraine and the imposition of a state of emergency in Ukraine or in its certain areas.

In addition to the said powers of the Prime Minister of Ukraine his right to resign should be mentioned (Article 115 of the Constitution). The resignation of the Prime Minister of Ukraine, as well as the raise a motion of no confidence by the Verkhovna Rada of Ukraine to the Cabinet of Ministers of Ukraine, the death of the Prime Minister of Ukraine is a consequence of the resignation of the entire government [2].

The issue of the activity of the Government of Ukraine in connection with the termination of the activity of the parliamentary coalition during the term of office of the current Verkhovna Rada of Ukraine remains unresolved in the constitutional law. The lack of proper regulation of the said issue gives grounds for the Prime Minister of Ukraine to exercise his constitutional powers with and without the formed parliamentary coalition, or when there are changes in the political composition of the formed coalition. In its decision No. 16-rp / 2008 of September 17, 2008 [4] the Constitutional Court of Ukraine noted that the issue of the coalition government's activity under the circumstances of changes in the parliamentary coalition or changes in its political composition is not constitutionally regulated. Thus, it would be logical to regulate this issue at the legislative level in such a way that the dissolution of the parliamentary coalition be the basis for the resignation of the entire Cabinet of Ministers of Ukraine.

We should note that Article 42 of the Law of Ukraine *On the Cabinet of Ministers of Ukraine* of February 27, 2014 No. 794-VII as amended on March 20, 2020 No 524-IX, regulates the powers of the head of government, which are not reflected in the Constitution of Ukraine. The said powers may include submission on the appointment of government members to the parliament, as well as the submission on the appointment or dismissal of heads of local state administrations to the government, and also submissions on the formation, reorganization and liquidation of ministries and other central bodies of executive power; convening government meetings and forming the agenda of its meetings; signing government acts; participation in international relations in accordance with the Constitution of Ukraine and laws, etc. [3].

Analysing the constitutional and legal status of the head of government of the Russian Federation, one can find a certain identity of the constitutional provisions that regulate his legal status owing to the same form of government, ie a semi-presidential republic similarly to that in Ukraine.

According to Article 110 of the Constitution of the Russian Federation [5] executive power in the Russian Federation shall be exercised by the Government of the state. The Prime Minister of the Russian Federation is appointed by the President

with the consent of the State Duma (Article 111 of the Constitution) [5]. The peculiarity of the procedure for appointment of a candidacy for the post of Prime Minister is that after the candidacy, proposed by the President, has been rejected three times by the Parliament, the President can still nominate a proposed candidacy for the post of Prime Minister and dissolve the State Duma (Part 4 of Art. 111 of the Constitution) [5]. In this case, the dissolution of the lower house of Parliament no longer belongs to the discretionary powers of the President, and the system of checks and balances comes into play.

On December 11, 1998, the Constitutional Court of the Russian Federation issued Resolution No. 28-II related to the case of interpretation of the provisions of Part 4, Article 111 of the Constitution of the Russian Federation, stating that the President may submit a rejected candidacy for a new vote only after mutual consultations with the consent of the State Duma and after a candidacy or candidacies has/have been rejected three times, regardless of whether previously rejected candidacies are among them, the State Duma shall be dissolved and new elections shall be announced at the same time. In addition, the Constitutional Court of the Russian Federation stated in its Resolution that after such actions of the Parliament the President may appoint any person to the post of Prime Minister [6].

The peculiarity of forming a government is that the Prime Minister directly submits a proposal on the structure and setup of federal bodies of executive power, as well as the names of the Government's members to the President of the Russian Federation (Article 112 of the Constitution), which formally gives him more independence [5].

The powers of the Prime Minister of the Russian Federation are determined by the Constitution of the Russian Federation, federal laws and decrees of the President of the Russian Federation. The Prime Minister of the Russian Federation determines the main directions of activities for the Government of the Russian Federation and carries out organizational operations of government work. The main powers of the Prime Minister include the general leadership of the government, informing the President of the country about its work. The Prime Minister also chairs government meetings with a casting vote right, submits proposals on the structure of federal bodies of executive power to the President and distributes responsibilities among government members (Article 24 of the Law) [7].

Considering the powers of the Prime Minister of the Russian Federation, it is necessary to note his relationship with the President and note a rather strong position of the latter in this relationship. In accordance with Article 31 of the Law *On the Government of the Russian Federation* [7] the President of the Russian Federation has the right to chair government meetings and sessions of the Presidium of the Government of the Russian Federation. The strong position of the head of state in relations with the government, taking into account the constitutional provisions, is the key to stable work of the latter. Pursuant to Article 30 of the said Law it is the head of state who ensures the functioning and interaction of the government with other authorities of the state power; pursuant to Article 32 of the said Law the head of state leads the activities of federal bodies that ensure the solution of issues of defense,

security, domestic affairs, justice, foreign affairs; accepts the resignation of the government, etc. The analysis of this constitutional norm gives grounds to recognize the dominant role of the President of the country in the system of executive power bodies, which, in our opinion, contradicts Article 110 of the Constitution of the Russian Federation, which stipulates that executive power is exercised by the Government of the Russian Federation [5]. In this sense, it is safe to say that the Russian Federation is being transformed from a mixed republic to a presidential one, despite the fact that the State Duma still has the right to express a vote of no confidence in the Government (Article 117 of the Constitution) [5].

Analysing the constitutional and legal status of the head of the French government, some features inherent in the French Republic should be noted. The head of France chairs at government meetings (Article 9 of the Constitution), he is endowed with the constitutional right to sign ordinances and decrees, which have been considered by this body (Article 13 of the Constitution) [8]. The head of the state has a number of other leverage over the state administration system, however, and the Prime Minister of France has significant constitutional powers. The Constitution of the French Republic of 1958, contains Section III, called "Government" that regulates the legal status of the government [8]. But the constitutional and legal status of the head of government is enshrined in other sections of the Constitution and a number of other legal acts. In particular, the Government, whose activities are led by the Prime Minister appointed by the President of the Republic, determines and pursues the policy of the nation (Article 20 of the Constitution), is responsible for national defense, ensures enforcement and execution of laws (Article 21) [8]. According to Article 39 of the Constitution, the Prime Minister has the right of legislative initiative, which strengthens the position of the head of government in the system of supreme state bodies of executive power. In addition, he enjoys the right to appeal to the body of constitutional jurisdiction, ie the Constitutional Council of France, in order to establish the compliance of the draft, voted for by the chambers of the Parliament, with the Constitution of the French Republic. Following the proposal of the Prime Minister, extraordinary sessions of the Parliament are convened (Article 29 of the Constitution). Moreover, Part three of this Article stipulates that the Prime Minister only may demand the convening of a new session before the end of the month following the issuance of the decree on closing the session. He may also make proposals to extend the regular sessions of the supreme representative body. Following the proposal of the Prime Minister of France, closed sittings of the Houses of Parliament are held in the form of a secret committee.

The Prime Minister, within the framework of competence set by the Constitution, exercises regulatory powers (Article 21). This provision is extremely important, although laws are adopted by the Parliament, but by-laws (decrees and orders of ministers) are initiated by the government, ie by the Prime Minister and ministers. In this regard, the Constitution of 1958 contains innovations; it clearly delimits the scope of application of the law, now stipulated in accordance with Article 34, and the scope of administrative regulation of all the issues not related to the legislative sphere (Article 37). In exceptional cases, the scope of administrative regulation may be extended if the Parliament instructs

the government to carry out the above functions for a limited period by issuing ordinances of actions that usually lie in the sphere of the adoption of law (Article 38) [8].

Considering the legal status of the Prime Minister of the French Republic, it is necessary to dwell in more detail on the provisions of Part 3 of Article 49 of the Constitution, according to which the Prime Minister may raise a motion of confidence in the government in connection with its political action program, general political declaration or in connection with voting on one act or another before the Lower Chamber of Parliament. The draft law is considered adopted if the majority of deputies of the National Assembly do not vote for a motion of no confidence. Otherwise, the Prime Minister must submit a request for the resignation of his government to the President of the Republic. Such a norm allows avoiding systematic obstruction regarding the government actions by the Parliament. In our opinion, a similar article could be useful for the Ukrainian legal reality.

The Prime Minister of France has a privileged position over other ministers and state secretaries of state, and has his own administrative services, including the General Secretariat of the Government. The practice of the Republic gives examples of cases when the head of government also headed a ministry at the same time. However, in such cases he was usually assisted by the relevant state secretary or the authorized minister. In addition, there are cases when the head of government simultaneously served as mayor. Holding both a position of the head of government and mayor of Bordeaux by Alain Juppe in 1994 is such a striking example of the above, and during 1986-1988 Jacques Chirac held the post of the head of government and mayor of the French capital [9, 112].

Summarizing the above, we would like to highlight the general legal status of the head of government in mixed republics, namely, 1) the competence of the heads of supreme bodies of executive power enshrined in constitutions and other legal acts, is quite broad, in fact they form the government. Of course, this procedure has some differences; 2) the head of government in the described republics represents the government in relations with other state bodies; 3) the constitutional right to raise a motion of no confidence in the government in the supreme representative body is granted to the head of government; 4) the head of government is endowed with the right of legislative initiative, which strengthens his authorities in the system of supreme bodies of state power; 5) the head of government is empowered with authorities to convene an extraordinary session of the parliament.

Discussion. Certain differences between the constitutional and legal status of the head of government in mixed-type republics, can identified with a more detailed analysis. Mixed or semi-presidential republic, into a category of which France falls, has its own specifics, ie the chairmanship of the head of state in the Council of Ministers (Article 9 of the Constitution) [8]. A similar norm is enshrined in the Constitution of the Russian Federation, in Article 31, which states that the President of the Russian Federation has the right to chair meetings of the Government of the Russian Federation and sessions of the Presidium of the Government of the Russian Federation. Thus, the role of the head of state in leading the government is not nominal, for example, the President of France not only chairs at meetings of the Council of Ministers, but also signs ordinances and decrees that

were considered in the Council of Ministers in accordance with Article 13 of the Constitution of the French Republic [8].

Another difference in the legal status of the heads of government of the republics under our research is the legal consequences of the parliament's vote of no confidence in the government. Article 50 of the Constitution of the French Republic stipulates that if the National Assembly adopts a resolution of condemnation or did not approve a political action program or a general political declaration of the Government, the Prime Minister shall submit a resignation request to the President of the Republic. The above, in our opinion, indicates a certain weakening of the position of the National Assembly of France regarding the resignation of the Government [8].

Conclusions. The head of government in the republican countries of the mixed type is endowed with a special legal status. According to constitutional norms, the head of state represents the entire government, the entire vertical of the state executive branch of power, whose main tasks and duties are the organization and governance of the supreme body of the state executive power, carrying out of state domestic and foreign policy and political responsibility for implementation.

A comparative analysis of the constitutional and legal status of the head of government in different European countries with a mixed form of government gives grounds to recognize the general and special features that indicate a certain constitutional development of the described countries.

It should be noted that it has already become a current trend that the dominant role of the head of government is influenced by political conditions, both positively and negatively. In the former case, as a rule, a leader of the political majority in the parliament becomes the head of the supreme body of executive power. He is usually a leader of both his party and government. In the latter case, on the contrary, there is no unity in the government if its head represents a coalition or a fragmented broken-up party. As a result, it is becoming more difficult to make an agreed policy and decisions, which undoubtedly affects the authority of the head of government and the effectiveness of the entire political system.

When it comes to the study of the above legal problem of the constitutional and legal status of the head of government, further research of the topic remains promising, and future publications will have a positive impact on the formation and development of the legal status of both the head of government and the government as a whole.

Author contributions. The authors contributed equally.

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