



THE FEATURES OF THE PRINCIPLE OF SEPARATION OF POWER IN STATE GOVERNANCE

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Abstract: *The principle of separation of powers is the main principle of the state mechanism. Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. This principle is political-legal doctrine and practice.*

Keywords: *Governance, State, Power.*

According to legal scholars A. Saidov, U. Tadjikhanov and H. Odilkariyev, among the principles of state activity, the principle of separation of powers is recognized in a state governed by the rule of law, which ensures the division of a single state power into three independent legislative, executive and judicial branches and they relate mutually¹. It is obvious that the principle of separation of powers is one of the main principles of cooperation in the activities of the state mechanism and between the branches of government and their bodies.

Russian law scholar MN Marchenko described the principle of separation of powers as “a theory of the existence of independent authorities for the normal functioning of the state²”.

It should be noted that some scholars argue that the principle of separation of powers contradicts the theory of unity of power, but does not affect the socio-political unity of state power, but rather strengthens state power. The formation of the principle of separation of powers has a long history, and now the term separation of powers is used in research and legal documents on the system of higher authorities, in particular, in the constitutions of most democracies.

The first ideas about the division of powers were first put forward by the ancient Greek and Roman philosophers - Lycurgus, Plato, Aristotle, Polybius and others. In particular, Aristotle wrote in his book "Politics" that in any state, the state system includes the legislature, magistrates, the judiciary.³ It should be noted that the first roots of the theory of separation of powers go back to the "mixed regime" in ancient times. Because this regime incorporated tyranny, aristocracy, and democracy into government, power was not concentrated in the hands of a single social class, and a system of checks and balances was provided. For this reason, the mixed regime was highly praised by Aristotle, Polybius, Cicero, Confucius, Thomas Aquinas, Machiavelli. For example, it can be seen that the Roman Republic lasted a long time due to its mixed regime form of government, or that Machiavelli recognized the mixed system of government in the Republic of Venice.

The first root of Aristotle's theory of separation of powers recognized the "mixed regime" in ancient times, according to him, because the state administration includes tyranny, aristocracy

¹ Saidov A., Tadjikhanov U., Odilkariyev H. Fundamentals of state and law. - T.: Shark, 2002. - p. 83.

² Marchenko M. N. Problems of the theory of statehood and law: Textbook. - Moscow: Prospekt, 2011. - p. 291.

³ Mirzaeva G. Legislative power (theoretical and legal analysis) diss. for candidate of Legal Sciences. ... - Tashkent: 2004. - p. 30.



and democracy, power is not concentrated in the hands of a single social stratum, and a system of checks and balances is provided⁴.

The development of the scientific basis of the theory of separation of powers in the world took place during the transition to new forms of government in Europe and the United States, the transformation of the political system and its consolidation in the first constitutions. In addition to this definition, it can be said that it was at this stage that the theory of separation of powers emerged as a logically complete political-legal doctrine and practice.

In the literature on the history of the separation of powers, the English philosopher John Locke is recognized as the first author of the theory of the separation of powers. This scholar noted in his book "two tracts on government" that "a person creates his own laws while in power, but he himself may not obey these laws because he has the right to control the implementation of these laws".⁵ J. Locke puts forward the idea of dividing power into legislative, executive, and federal branches (which liaise with other states). The French philosopher Charles Louis Montesquieu is recognized by many scholars as the author of "the creation of a complete doctrine called the separation of powers." A key aspect of Montesquieu's views is that he not only divides power into three branches, but also implies a mutual agreement of these three powers. His publication, *Spirit of the Laws*, is considered one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States. Under his model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently. The ideas of the French scholar soon became the principles of constitutionalism. It is noteworthy that the foreign scholar M. Kimbru claims that S. Montesquieu did not use the term "separation of powers" in his works. In his view, the term was later used by lawyers and politicians in the process of drafting a constitution based on his works⁶.

The practical expression of the theory of separation of powers was reflected in the 1787 Constitution of the United States of America.

The traditional characterizations of the powers of the branches of American government are:

The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government.

The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.

The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

J.Locke's ideas were first used as a basis for the principle of separation of powers in the United States. However, as a result of the fact that the legislative, executive and judicial powers remain in the hands of a single legislature, the Montesquieu model of separation of powers was chosen by the "Fathers of the Constitution". In the U.S. experience, the separation of powers in the United States has been enriched by the principle of vertical separation of powers and a system of constraints and equilibrium in the American context.

⁴ S.Calabresi, M.Berghausen, S. Albertson The rise and fall of the separation of powers: Northwestern University Law Review // Printed in U.S.A., Vol. 106, No. 2, 2012, P. 5.

⁵ Mirzaeva G. Legislative power (theoretical and legal analysis) diss. for candidate of Legal Sciences. ... - Tashkent: 2004. - p. 30.

⁶ M.Kimbrough English influences on the thought of Montesquieu: a re-evaluation – for the Degree of Doctor of Philosophy, University of Illinois, Ph.D., 1966 P. 14.



Different models of separation of powers are recognized in the modern literature. In particular, the principle of separation of powers is divided into two main models: "flexible" and "rigid". The first model is based on the ideas of J. Locke and is more specific to states with a more parliamentary form of government, recognizing the superiority of one of the branches of government (the United Kingdom). The second model is based on the concept of Montesquieu and his followers, the system of equality, independence and reciprocity of power.⁷

Authorities are also divided into institutional, functional, and personnel components.

Institutionally, the division of state power implies that the powers of government are exercised by different institutions of state power that are independent of each other. The functional aspect is the distribution of decision-making function among equal branches of government. Separation of powers by persons is reflected in the fact that one state body or an official cannot simultaneously manage a state body belonging to another branch of government. For example, Article 106 of the Constitution of the Republic of Uzbekistan stipulates that the judiciary in the Republic of Uzbekistan operates independently of the legislative and executive branches, political parties and other public associations. Although some scholars believe that it has many advantages, the theory of separation of powers has not been fully implemented. The separation of powers is recognized in the legislation of the country in Article 11 of the Constitution of the Republic of Uzbekistan.⁸ According to this, the system of state power is based on the principle of separation of powers into legislative, executive and judicial branches. The powers are divided between the legislature - the Oliy Majlis, the executive - the Cabinet of Ministers and the judiciary.

The study of parliamentary and government relations on the principle of separation of powers requires, first of all, to clarify the essence and content of these two institutions, as well as their place and role in the system of state power.

It should be noted that although it has many advantages, the theory of separation of powers has not been fully implemented, but remains important in the case of various modifications. The study of parliamentary and government relations on the principle of separation of powers requires, first of all, to clarify the essence and content of these two branches of government, as well as their place and role in the system of state power. The principle of separation of powers is a special element of democracy, a guarantee of freedom of political rights of citizens, the basis of the principle of the rule of law.

⁷ Problems of the theory of state t prava / Under ed. V.M. Syrix. - M.: Eksmo, 2008. - p. 159.

⁸ Constitution of the Republic of Uzbekistan - T.: «Uzbekistan», 2018. – p. 80.