

DEMOCRATIZATION OF EXECUTIVE POWER AND MANAGEMENT – THE MOST IMPORTANT PRIORITY OF FURTHER DEVELOPMENT OF DEMOCRATIC REFORMING IN THE COUNTRY

Yuldash Djumayev

Candidate of juridical sciences, Deputy Director of the Center of development of Higher and Secondary vocational-professional Education of the Ministry of Higher and Secondary vocational education of the Republic of Uzbekistan

Abstract

In this article, the author analyses the democratization of executive power and management as the most important priority of further developing of democratic reforms in the country. It is known, that main support of democratic image of government, is provided by division of power. An article represents examples from history concerning division of power, principles of introduction of checks and balances system in public administration.

Moreover, opinions of the article's author are proved by opinions on the matter of such great thinkers of history, as Pláton, Aristotle, Polibiy, S.L. Montesquieu, D. Lilbern, J. Lock and others.

Besides, the thoughts of President of the Republic of Uzbekistan I.A. Karimov, which are actual even nowadays, are brought in the article. The statements, which have been put forward in article, are actively realized in the country. Additionally, the Concept of further developing the democratic reforms and formation of civil society in the country, which is offered by the President of the Republic of Uzbekistan, forms the base of the actual state and public construction in the Republic of Uzbekistan. Offers in this Concept, for example, amendments and supplements in the Changes and additions are brought in the Constitution of the Republic of Uzbekistan with a view at further deepening of democratic reforms and formation of civil society, democratization of governmental authorities and management, ensuring more balanced distribution of powers between three subjects of the government.

In the majority of developed countries, the institute of a vote of no confidence in which the disapproval of governmental activities is expressed,

acts as a key instrument of influence of parliament on the government. Same a way adheres also to the Republic of Uzbekistan.

In addition, it is remarkable, that according to the offer of fractions, the reports from heads of the ministries and departments are included in the Program within parliamentary hearings on such questions.

Keywords: Republic of Uzbekistan, Constitution, President, Parliament, formation of civil society, authorities division, Government, executive power

The reforms in the Republic of Uzbekistan in the sphere of state construction and management are directed to consecutive realization of the constitutional principle of division of power branches, and creation between them effective system of «*checks and balances*».

The President of the Republic of Uzbekistan I.A. Karimov in the program report «The concept of further development of democratic reforms and formation of civil society in the country»⁴⁸ has offered serious suggestions on further improvement of branches of power.

The following chapter will considered the comparative and legal analysis of the volume of imperious and control powers of the central governing bodies of different states, system of authorities correlation within the states in foreign countries, occurrence of the modern «*checks and balances*» concept.

In the most general view, such antique thinkers as Pláton⁴⁹, Aristotle⁵⁰, Polibiy⁵¹, etc. expressed the ideas of differentiation of state authorities' activities.

On the eve of Great bourgeois revolutions, the authorities' division theory was formulated by Frenchman D. Lilbern (1614-1657). Authorities division in Lilbern's judgment is directed not onto the division of power between various classes, but onto ensuring democracy and prevention from usurpation of power by any separate establishment or the individual⁵².

Great idea of J. Lock (1632-1704) and S.L. Montesquieu (1689-1755) about authorities division has a leading value for the organization of governmental mechanism of management throughout centuries. Lock and

⁴⁸ Karimov I.A. Konsepsiya dalneyshego uglubleniya demokraticeskix reform i formirovaniya grajdanskogo obshestva v strane. Doklad Prezidenta Respubliki Uzbekistan Islama Karimova na sovmestnom zasedanii Zakonodatelnoy palati i Senata Oliy Majlisa Respubliki Uzbekistan // Narodnoye slovo. 2010 goda 13-noyabrya.

⁴⁹ Platon. Gorgiy. Soch. v 3 tomax. T.1.M., 1968.- S.28.

⁵⁰ Aristotel. Politika. Soch. v4tomax. T.4. M., 1983. - S. 481; -S.514.

⁵¹ Polibiy. Vseobshaya istoriya v 40 knigax. T. I. M., 1890. - S.40.

⁵² Zorkin V.D. Politicheskiye vzglyadm Djona Lilberna // Vestnik Moskovskogo un-ta. Seriya 11. Pravo. 1969. IZ.-S.28.

Montesquieu opposed the idea of power concentrations in hands of one «despot» (the individual or body) and also demanded to disperse the government on three branches: legislative, executive and judicial.

In the works of J. Lock the theory of «authorities division» received the interpretation, which corresponded to new arrangement of class forces in England at the end of the XVII century and his own position of «a class compromise of 1688»⁵³.

Principle of authorities division in the doctrine by S.L. Montesquieu stated that executive authorities do not have the right to legislate; executive authorities should belong to representative institutions; executive bodies of power should be under jurisdiction; ultimately, the court should be administration-independent.

During the entire XIX century, the theory of «authorities division» was supported and developed by many western thinkers and statesmen from England, France, the USA, Germany, Russia, the countries of Latin America, Japan, Italy, etc. Everyone brought contribution in the solution of questions on concrete features of the organization of definite authorities, their interaction and collateral subordination, however general principles of the doctrine have already been developed in XVII-XVIII centuries⁵⁴.

In the USA during fight for independence, there was a number of supporters of the theory of «authorities division» (A. Hamilton, T. Jefferson, T. Peyi). In 1787, Montesquieu triad has initially received an attachment in the USA Constitution in the form of accurate separation of Congress powers, but it underwent some changes as well. Nevertheless, executive power was given neither to king and to his ministers, who were appointed by the President and were not responsible before Parliament, nor the President could dismiss the Parliament ahead of time (even with simultaneous appointment of new elections)⁵⁵. The government, as the joint body, did not even exist (it is not present in the USA even today), ministers – advisers of the president, thus decisions are accepted only by public authority. It is possible to consider such authorities division «rigid». Today, the «rigid» mode of authorities division exists, generally, in the presidential republics (Brazil, Venezuela, Nigeria, etc.⁵⁶).

In Germany of the end XVIII – the beginnings of the XIX centuries, I. Kant and G. Hegel acted as adherents of the «authorities division» theory. I. Kant considered «authorities division» the main condition of recognition of the government form as the republic, having hidden his constitutional /

⁵³ Dj. Lokk, Izbrannme filosofskiye proizvedeniya. T.N.M. 1960. - S.92.

⁵⁴ «Trudm VYUZI». T. XXII, ch. 2, M. 1971. - S.61-88.

⁵⁵ Yershov V. Razdeleniye vlastey. K voprosu o kompetensii sudov po razresheniyu administrativnix sporov // «Rossiyskaya yustitsiya», N11, noyabr 2001 g.

⁵⁶ Tam je.

monarchic ideal under this term⁵⁷. G. Hegel gave even more conservative interpretation of a practical embodiment of the proclaimed principles: he suggested putting the monarch, with the right of a final decision of all public affairs, over peculiar-formed bourgeois and landowner legislature and bureaucracy of executive⁵⁸.

The classical doctrine of «authorities division» in all its options had bourgeois character. The concept of «authorities division» provided creation of specifically bourgeois system of the governmental organization⁵⁹. Therefore, the modern concept of authorities division has essentially changed.

In Europe, and later in Asia, Africa, some countries of Latin America (after disintegration of colonial systems) the monarchies were abolished, kings have lost the former power (it remains in the countries of Islamic world and some others). Instead of ministers – advisers of king or the president, there were joint governments, in which the political parties began to play the main role: the leader of the parliamentary majority in the lower house (unicameral parliament) formed the government⁶⁰.

However, the head of state (The president or – or the monarch in a parliamentary monarchy), still rules the Government which, without having support of the majority in Parliament, could be immediately dethroned by the way of vote of no confidence announcement. The head of state cannot appoint another Government, which did not base on the parliamentary majority. The government and certain ministers bear responsibility before Parliament. The government, operating through the head of state has the right to dismiss Parliament. The key role in creation of representative and executive bodies is allocated for voters (people).

Quite naturally, the system of authorities' correlation in the state underwent considerable changes. Formation of the modern «checks and balances» concept is mainly obliged to the American executive system, according to which power should not only counterbalance each other, but also cooperate at implementation of objectives and functions of the state.

Not so long ago, the practice of constructing the administrative relations actualized the emergence of subsidiaries of power branches, according to which the power branches should assist each other at implementation of state functions; only if there is no ban in constitution and the assisted branch of power does not mind to get help and support⁶¹.

⁵⁷ Nersesyans V.S. *Filosofiya prava Gegelya*. M., «Yurist». 1998.-S.78

⁵⁸ Tam je.

⁵⁹ Dj. Lokk, *Izbraniye filosofskiye proizvedeniya*. T.I.M. 1960. - S.95.

⁶⁰ Yershov V. *Razdeleniye vlastey. K voprosu o kompetensii sudov po razresheniyu administrativnykh sporov* // «Rossiyskaya yustitsiya», N11, noyabr 2001 g.

⁶¹ Tam je.

Further, it became clear that formation of theoretical concepts is already impossible without mentioning the collisions of political realities, which deduce executive power on the leading positions. The everlasting aim of increasing the effectiveness of executive system acted as an impetus for growth of state importance under present-day conditions.

Thus, there is a particular tendency of actualizing and raising the separate public institutes up to a government rank. For example, researchers noted the constituent power (adoption of new constitution). In such countries of Latin America as Brazil and Nicaragua the electoral power (its bodies – electoral tribunals and the electoral register), was classified the fourth power directly in the Constitution.

At the present stage of state organization in foreign countries, the central executive body turned into the main source of a legislative initiative, e.g. in Western Europe from 70 to 90 % of bills proceed from the Governments⁶². In democratic countries the governments, to essential extent supervises not only initial, but also all subsequent stages of legislative process, actually influencing on its full establishment. Therefore, the vast majority of laws adopted in these countries have a «governmental» origin (including cases of lobbying by executive power). Thus, for example, from 1162 legislative texts accepted by the French Parliament from 1978 to June, 1990, only 154 texts (that accounts for 13,2 %) had a parliamentary origin. In Great Britain 95% of laws is accepted by the governmental initiative⁶³. In fact, it means that expansion of executive power is explained by narrowing the legislative power prerogatives.

All this shows that, « ... life convincingly confirms correctness of the electee with us and the way of development of the country which has received the name put in our Constitution of «the Uzbek model».

The further we keep away from that become obsolete totalitarian, centralized, command, planned and distributive system, the we are more convinced, how correct there were those principles and norms on which our model is constructed.

We achieved the main thing – process reforming and democratization of the country gained irreversible and forward character»⁶⁴.

⁶² Intervyu glavnogo redaktora jurnala s M. Lesajem, professorom universiteta «Parij-1» // Gosudarstvo I pravo. 1999, N 1.-S.14.

⁶³ Chirkin V.YE. Konstitutsionnoye pravo zarubejnmx stran. 2-ye izd., pererab. i dop. M.: Yurist, 1999. - S.387.

⁶⁴ Karimov I.A. Konsepsiya dalneyshego uglubleniya demokraticeskix reform i formirovaniya grajdanskogo obshestva v strane. Doklad Prezidenta Respubliki Uzbekistan Islama Karimova na sovmestnom zasedanii Zakonodatelnoy palati i Senata Oliy Majlisa Respubliki Uzbekistan // Narodnoye slovo. 2010 goda 13-noyabrya.

The law of the Republic of Uzbekistan «On amendment and supplements in separate articles of Constitution of the Republic of Uzbekistan (articles 78, 80, 93, 96 and 98)» became one of the fundamental acts, which was approved at the Fifth plenary session of Oliy Majlis Senate from March 25-26, 2011. It was directed on implementation of the major legislative initiatives stated in the Concept of further development of democratic reforms and formation of civil society in the country, and was offered by the head of state during the report at joint meeting of parliaments' chambers on November 12, 2010. On April 19, 2011 this Law was officially published in the press and was put into action.

Amendments and supplements in the Constitution of the Republic of Uzbekistan are brought in with a view at further deepening of democratic reforms and formation of civil society, democratization of the governmental authorities and management, ensuring more balanced distribution of powers between three subjects of the government: The president (the head of state), legislative and executive powers. Moreover, the constitutional changes were made because of need for strengthening the role and influence of political parties in implementation of social-economic, political reforms, and country modernization.

It should be noted that in Uzbekistan during the realization process of a principle of authorities division, formation and development of market economy, institutes of civil society, functions and powers of public authorities are being consistently modernized. In the last ten years, in a result of large-scale reforms being carried out, the two-chamber parliament – Oliy Majlis of the Republic of Uzbekistan is created and effectively functioning now. Therefore, the transfer of powers of the state President to the upper house of parliament – to the Senate, and also strengthening of a role and expansion of powers of the Prime minister had great value in the solution of questions regarding the expansion of rights and powers of a two-chamber parliament of the country and ensuring equation of powers between legislative and executive powers.

The exception from 2007 from the Constitution of the Republic of Uzbekistan concerning the norms, which establish the President of the country simultaneously the chief executive, became an important step to consecutive democratization of governmental system. Nowadays, according to the Constitution, the President of the Republic of Uzbekistan is head of state and provides the coordinated functioning and interaction of public authorities. Responsibilities for organization of Cabinet of Ministers' activities are given to Prime minister, who, for this purpose, is allocated with all necessary authorities: presides over councils of Cabinet of Ministers, signs its documents, makes decisions on the public and economic administration. The adoption of Law «On strengthening of a role of political

parties in updating and further democratization of public administration and country modernization» played crucial importance in deepening the democratic reforms. The role of political parties has considerably increased in the light of advancement of political and public activities of citizens, expression of will and opinion of the population, first, at realization of electoral processes, formation of public authorities in the center and on places.

The legislative initiatives stated in the Concept of further development of democratic reforms and formation of civil society in the country (proved by the President of Uzbekistan in the report at joint meeting of chambers of parliament on November 12, 2010) became the most important stage in consecutive democratization of the state and public construction. The increased level of political culture and public consciousness of citizens and dynamically developing processes of democratization and society liberalization, strengthening of a multi-party system create nowadays the necessary preconditions to provide more balanced distribution of powers between the President – the head of state, and legislative and executive power.

Proceeding from this, a number of conceptual changes and additions are brought in articles 78, 80, 93, 96 and 98 of the Constitution of the Republic of Uzbekistan, which provide: establishment of constitutional orderliness, the offerings by the political party of the candidate of the Prime minister (which has gathered the greatest number of deputy places on Oliy Majlis elections), or several political parties which have received the equal greatest number of deputy places, the right of parliament to express a vote of no confidence to the Prime minister, to hear and discuss his reports on topical issues of social and economic development of the country, excluding from the of powers of the President the right of formation of executive power office, and others.

So, according to the amendments to the Constitution article 98, the political party, which has gathered the greatest number of deputy places on elections in Legislative chamber Of Oliy Majlis, or several political parties, which have received the equal greatest number of deputy places, offer the candidate of the Prime minister.

The president of the Republic of Uzbekistan, after consideration of the presented candidate to a position of the Prime minister in ten-day term offers it on consideration and approval by chambers of Oliy Majlis the Republic of Uzbekistan.

The candidate of the Prime minister is considered approved, if more than a half of voices from total number of deputies of Legislative chamber and members of the Senate of Oliy Majlis of the Republic of Uzbekistan will be submitted.

In case of steady contradictions between the Prime minister of the Republic of Uzbekistan and Legislative chamber of Oliy Majlis, according to the offer, which has been officially addressed to the President of the Republic of Uzbekistan by deputies of Legislative chamber in number of not less than one third of their total number, the question of expression of a vote of no confidence to the Prime minister is brought for discussion at joint meeting of chambers of Oliy Majlis of the Republic of Uzbekistan.

The vote of no confidence to the Prime minister is considered accepted, if not less than two thirds of total number of deputies from Legislative chamber and members of the Senate of Oliy Majlis will vote. In this case, the President of the Republic of Uzbekistan makes the decision on discharging the Prime minister from a position. Thus, the entire structure of the government retires together with the Prime minister.

These provisions, made in article 98 of the Republic of Uzbekistan Constitution, meet the highest democratic requirements and the international practice of democratic development. In particular, foreign experience of functioning of political systems shows that the growth of a role of parties in development of political system is directly connected with strengthening of their influence on formation and functioning of public authorities. Therefore in Great Britain, Canada, Germany, Portugal, France, USA, Japan and other countries the government is completely or mostly formed by political parties while taking into account the features of governmental systems, established in this or that country.

In the majority of developed countries, the one of key instruments of influence of parliament on the government the institute is expressed by vote of no confidence in which the disapproval of activity of the government is expressed. Thus the vote of no confidence, which is expressed to the head of the government, as a rule, attracts resignation of the whole government.

In Uzbekistan, while expressing a vote of no confidence by parliament at the same time it is not necessary, as it takes place in some foreign countries, a question of possibility of dissolution of parliament, thereby providing the last determination in the actions. Besides, according to the changes in article 98 of the Constitution of the Republic of Uzbekistan, in case of acceptance of a vote of no confidence, the new candidate of Prime minister is offered by the President of the Republic of Uzbekistan for representation on consideration and the approval by chambers Of Oliy Majlis, only after the corresponding consultations of all fractions of the political parties presented in the lower house of parliament. This mechanism, on the one hand, serves as a guarantee of observance of the rights and interests of all fractions, with another, excludes probability of emergence of the various abuses connected with use of a vote of no confidence for advance of the mercenary purposes of separate political forces.

The additions in article 78 of the Constitution, offer Oliy Majlis the rights of a hearing of reports of the Prime minister on topical issues of social and economic development of the country that, in turn, will considerably expand the possibilities of parliamentary control of activities of executive branches of power and becomes an important factor for deputies' and fractions' activities efficiency growth in sphere of interests assertion of the own electorate in actual social-economical problems solving.

According to the additions in article 80 of the Constitution, the Senate of Oliy Majlis is provided the right to approve decrees of President of the Republic of Uzbekistan about appointment and discharge from position of the chairman of Audit Chamber that will allow to expand power of the Senate and to improve the mechanism of parliamentary control in the sphere of implementation of state budget.

With the purpose of strengthening of independence and responsibility of government and the Prime minister, the article 93 is brought the norm about the about appointment and discharge to/from positions of regional and city Khokimiyats by the President of the Republic of Uzbekistan on representation of the Prime minister of the Republic of Uzbekistan. The President is deprived of the right of forming the office of executive power and to control over it.

It should be noted that consecutive work on realization in life of standards of the above-stated Law now is conducted. So, in these purposes on May 24, 2011 the lower house of our parliament accepted the separate Program of measures, defining prime measures for implementation of provisions of this major law which realization will give a serious impulse to value and role increase, real strengthening of powers of legislature on control of activity of executive bodies regarding unconditional performance of the adopted acts by them.

In particular, among the major tasks requiring the fastest decision, there are definite measures for development the Law of the Republic of Uzbekistan «On parliamentary control» in the Program, providing mechanisms and legal consequences of realization of forms of parliamentary control, an order of interaction of subjects of parliamentary control with executive authorities, and also the Law «On amendments and supplements in some acts of the Republic of Uzbekistan in connection with improvement of the budgetary process», directed on improvement of the passing projects of budget in chambers of parliament, and specification of separate provisions of law regulating the budgetary process and other questions.

In addition, the Program provides reports hearing of the Prime Minister of the Republic of Uzbekistan on measures, undertaken by the government on implementation of provisions and tasks, put in the Concept of further development of democratic reforms and formation of civil society in

the country regarding further deepening of democratic market reforms and economy liberalization.

According to the offer of fractions, the Program was included the reports of heads of ministries and departments within parliamentary hearings on such questions, as «On results of performance of the State budget of the Republic of Uzbekistan», «On a condition of realization of measures for employment of graduates of colleges according to the specialties received by them», «On a course of implementation of the Program of creation of workplaces and population employment for a year», «On a health care condition in the Republic of Uzbekistan: problems and development prospects» and others.

The significant attention is given in the Program of realization of a complex of organizational measures directed on further increase of transparency of work of Legislative chamber, to further work on increase of professional level of deputies, efficiency of information - analytical provision of legislative and control - analytical activities of Legislative chamber.

As a whole, measures, taken in this area, will contribute to further ensuring more balanced distribution of powers between the President – the head of state, the legislative and executive authorities, also, to strengthening of a role and influence of legislature, political parties and all civil society on democratic processes occurring in the country.

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