ISSN: 0025-1569

MAN IN INDIA

Volume 97 Number 23 2017

Serials Publications Pvt. Ltd.
Publishers & Distributors

Man in India

ISSN: 0025-1569

Abstracted/Indexed/Reviewed

Indexing and Reviews: Mathematical Reviews, MathSciNet, IndexCopernicus Zentralblatt fur Mathematik, EBSCOhost, SCOPUS, Elsevier's bibliographic database, Ei databases index, EMBASE, EMCare, CAP International, Indian Sciences Abstract and Indian Citation Index (ICI).

Man In India, 97 (23) : 239-253

FORMATION AND EVOLUTION OF "SEPARATION OF POWERS": GLOBAL AND SOCIOCULTURAL STATE-LEGAL PRACTICE

Valentin Lyubashits[*], Alexey Mamychev[**], Yulia Zueva[***], Julia Nadtochiy[****] and Sergey Shestopal[*****]

Abstract: Subject of this research is the process of formation and evolution of the concept of separation of powers, its theoretical and conceptual shaping and state-legal practice of its implementation, as well as the problems of implementing this concept in modern Russian political and legal reality. The article proves the relevance and relevance of the conceptual-theoretical core of this idea. Separation of powers remains intact, although its transformations are possible in forms, ways and modes that help achieve a "balance of power", coordination in the practice political-political interaction, mechanisms of power control, etc. In this regard, it seems necessary to trace the formation and development of this concept, in order to define the essence and its conceptual and theoretical core, and also to consider the problems of its practical implementation in the domestic state-legal reality.

Keywords: State, law, separation of powers, public-power organization of society, evolution.

INTRODUCTION

A modern state needs day-to-day effective management of social processes, which objectively requires rational and optimal distribution of power functions between various state bodies, as well as the creation of an internally ordered, integral and dynamic mechanism for their interaction.

The principle of "separation of powers" is a permanent feature of the constitutional and legal mechanism of most modern countries, since the system of state government built on its basis serves as a form of resolving the contradictions between the interests of different social strata and allows achieving its general social goals. Our state is not an exception.

The "separation of powers" in combination with the idea of "balance of power" and the concept of "checks and balances" is reflected in virtually all modern constitutional and legal acts. The constitutional and legal entrenchment of the

[*] Doctor of Law, Professor, Southern Federal University, Rostov-on-Don, Russia. *Email: kafedra_tgp@mail.ru*

[**] Doctor of Political Science, Candidate of Legal Sciences, Associate Professor, Vladivostok State University of Economics and Service, Vladivostok, Russia. *Email: mamychev@yandex.ru*

[***] Candidate of jurisprudence, Associate Professor, Taganrog Institute named after A.P. Chekhov (branch) of the Rostov State Economic University, Rostov-on-Don, Russia

[****] Associate Professor, Criminal Law and Criminology Department, the School of Law Far Eastern Federal University. *Email: juliana_2004@rambler.ru*

[*****] Candidate of jurisprudence, Associate Professor, Vladivostok state university of Economics and Service, Vladivostok, Russian Federation. *Email: ss.shestopal@ya.ru*

principle of separation of powers aims, firstly, to establish the legal status of each body as an independent subject of state power acting on its own within its powers, and secondly, to create a system of means for mutual regulation, balancing and control, the balance of rights and duties, "checks and balances" that prevent any of the power authorities, let alone one person, from concentrating absolute power.

In the theory of law, the concept "separation of powers" has a very important place. In Western academic and popular literature, it has long been considered traditional (Hesse, 1988; McClenaghan, 1970; Ladd, 1989). In domestic and foreign Eastern European publications, it still viewed as a topical issue in need of research and scientific and practical adaptation (Chetvernin, 1993).

The interest to this very old concept, does not weaken with the development of society, on the contrary, it is ever growing. There is every reason to believe that such a trend will continue in the near future. Of course, this concept can be made more complex and adapted "to the challenges of time", to the requirements of the modern state-legal space. There are many reasons for this. The main of them are following: the undeniable efficiency and practical significance of the theory of separation of powers; vitality of many of its conceptual provisions and requirements; its potential as a means of preventing the concentration of power in the hands of one person or group of individuals, and the possibility of establishing their dictatorship or tyranny.

In any case, we believe that the conceptual and theoretical core of this concept will remain unchanged, although it is possible for it to be transformed in forms and ways of achieving a "balance of power", coordination in political-political interaction, mechanisms of power control, etc. In this regard, it seems necessary to trace the formation and development of this concept in order to define its essence and its conceptual and theoretical core, and to consider the problems of its practical implementation in the domestic state-legal reality.

It should be noted that the theory of separation of powers is an important link in the history of the development of political and legal thought and constitutional practice. The main condition of the latter, put forward by John Locke and Charles Louis Montesquieu in the period of the struggle of the bourgeoisie with feudal absolutism, was that for the establishment of political freedom, the provision of lawfulness and the prevention of abuse of power by any social group, institution or individual, it is necessary to separate power into the legislative, executive and judicial branches. Each of these "branches", being independent and mutually restraining each other, should carry out its functions through a special system of bodies and in specific legal forms.

However, this concept has a fairly long history, its origins can be traced back to Antiquity.

THE APPEARANCE OF SEPARATION OF POWERS: FROM ANTIQUITY TO THE LATE MIDDLE AGES

The idea of differentiation between public authorities and their functions was expressed by ancient thinkers (Plato, Aristotle, Polybius, and others), although this does not mean that they elaborated the doctrine of the separation of powers in detail. Thinkers of antiquity, proceeding from contemporary historical reality, talked about the need for a division of labor between separate classes in a slave owning system, about the existence of various state bodies, their composition, tasks and functions, and noted the importance of distinguishing their powers.

For example, according to Plato (427-347 BC), the basic principle of the "ideal society", which is "a single and indivisible organism," is the division of labor between different classes: philosophers-rulers, warriors and workers of productive labor, each of which groups must act in a strictly designated area, without interfering in other group's affairs, thus ensuring the overall needs of the polis as a joint settlement.

Plato saw the main reason for the division of society into strata in the natural inequality of people, and therefore the division of labor between classes in his ideal state did not mean the separation of functions of power between them. He stressed that the reins of government in the state should be assumed by one group, that is, the "noble people" (the first stratum), who are specially prepared for this, who comprehended the complexity and wisdom of leading state affairs and who should be given full power in the interests of the ruling aristocratic circles. Plato considered the hierarchical structure of strata to be vital for the state.

At the same time, Plato advocated a mixed view of the state system in which the elements of the two main forms of the state, namely monarchy and democracy, would be combined, and their balance guaranteed. These ideas were later used by John Locke and Charles Louis Montesquieu to justify the concept of separation of powers and, in particular, the need for an equilibrium between them.

Aristotle (384-322 BC), more distinctly and consistently than Plato, distinguished between the "three elements" of any political system. He believed that the welfare of society and the structure of the state system itself depended on the organization of these elements. The political structure, in his opinion, is the order that forms the basis of the distribution of state powers and determines both the supreme power in the state, and the norms of communal life in it.

Aristotle explained the variety of forms of political system by the fact that the state is a complex whole, a unity in a multitude that consists of specifically different, non-similar parts. First, it is a "legislative body" (people's assembly), in which all free citizens must take part. The second element is administrative, or governmental, in the person of a magistracy, who has the authority to command. And the third element are the judicial bodies that administer justice.

According to Aristotle, the fundamental element of the state should be the "legislative body". The law should rule over everything, he stressed. Consequently, the government body must be subordinate to it. That is, no decree issued by magistrates can be of a general nature and should only detail the issues regulated by law. At the same time, in many important questions of management, the magistracy must have a decisive voice, while the people's assembly should have only deliberative function. With regard to the organization of the judiciary, Aristotle considered it an indispensable for judges to be elected from among all citizens and believed there should be a strict separation of certain types of courts, depending on the nature of the cases being examined.

In his opinion, the organization of state power on the basis of the division of labor is a means of "correct", more perfect work of all state bodies.

Aristotle's ideas were based on the peculiarities of the ancient Greek polis, in which the legislature not only adopted laws, but also exercised some functions of government, and could also act as a higher judicial institution. At the same time, the magistrates carried out not only legislative, but also administrative functions. Therefore, Aristotle did not develop the idea about the necessity of fulfilling only one specific function by each of the three branches of government. He did not object to the fact that the same people could participate in the activities of various state bodies. Being a representative of the middle strata of ancient Greek society, Aristotle considered it necessary to achieve the consolidation of state power on the basis its moderate use.

He said that everything must be proportional in the state, and advised against the concentration of power in the hands of anyone, because the more limited the power is, the stronger it is. Aristotle considered the correct form of the state to be a policy that combines the positive elements of the oligarchy and democracy, but is free from their shortcomings, thereby ensuring moderation, "reconciliation" of the rich and poor, the rule of law and the rule of the majority, that is, the "middle people". The reason for this was that, considering the different forms of the state, Aristotle took into account the social composition of his contemporary society, the place and role of various classes and strata in political life, while giving preference to the most numerous "middle class" that, in his opinion, should prevail over the "extreme elements". The ancient concept of combining various forms of government is designed to produce the same as the theory of the separation of powers in modern times: in the "mixed form" of the state, the powers of representatives of different forms of government do not unite into one single body, but, being separate, combine and coexist, mutually restraining and balancing each other and thereby stabilizing the entire state system.

A significant difference in the political views of the ancient Greek thinkers from the bourgeois theory of separation of powers was that John Locke and especially Charles Louis Montesquieu proclaimed the separation of powers to be not simply

a technical distribution of functions between state bodies but a division of power in order to achieve a class compromise between various socio-political forces that fought for domination in the period of bourgeois revolutions.

With the disintegration of the slave owning organization of society system and the establishment of feudalism, the process of development of state power became contradictory. During the period of feudal disunity, the strength and importance of the central power falls, the monarch's influence rarely goes beyond his domain, the feudal lords exercise all the functions of ruling within their possessions, only symbolically obeying the royal administration. In the struggle against the centralization policy of kings, feudal lords demand the formation of representative institutions, which are first endowed with the exclusive right to establish taxes and collect fees, and then acquire legislative functions. Thus, for example, Commune Concilium Regni was established in England (1215), Estates General were convened in France (1302), which became the prototypes of future parliaments.

In the course of socio-economic development, big centralized states are formed with large territories and population. Along with this, the differentiation of the forms of state activity increases and, accordingly, the ideas about the necessity of division of labor in the sphere of state life are developed. As a result, in the institutions that are close to the monarch, the desire for a clearer delineation of the functions of state power is gradually manifested. In the intensified and expanded central apparatus, headed by the Royal Council, various departments and ministries are formed. K. Marx noted that "centralized state power with its ubiquitous bodies the army, the police, the bureaucracy, the clergy and the judiciary – built on the principle of systematic and hierarchical division of labor – has existed since the appearance of absolute monarchy" (Marx & Engels, 1961).

The aim of absolutism was the establishment of firm centralized power, the elimination of all kinds of civil unrest that undermined the order in the country. The penetration of the state power is deepening in all spheres of life, which naturally leads to an increase in the specialization of state activity, differentiation of the functions of power; the forms and methods of its implementation become more complicated. All this meets the interests of the middle class of society, the burghers, which supported the strengthening of royal power, the strengthening of its apparatus, as opposed to the arbitrariness of individual feudal lords, and at the same time hoped that the adoption of permanent laws and their strict enforcement would prevent abuses of power and guarantee their rights and freedoms.

The political-legal basis for such views was given by the Italian thinker Marsilius of Padua. In his book "The Defender of Peace" he substantiated the idea of the need for a clear distinction between the legislative and government (executive) power. Marsilus of Padua believed that the people were the source of all state power, and therefore he called them the supreme legislator. However, it should be noted that the people, as he understood it, was not the entire population of the country,

but only free people, above all, burghers. In his opinion, the people, taking part in the exercise of the legislative power, will be more willing to obey the laws created by themselves than the ones that are imposed on them. He wrote that the legislator is the "root cause of all state affairs", but he himself cannot and should not be in charge of enforcing laws, as a result of this will abstracted of everyone from their main and necessary occupations.

THE DEVELOPMENT OF THE TRADITION OF SEPARATION OF POWERS AND ITS CONCEPTUAL AND THEORETICAL DESIGN

Due to the necessity of the division of labor, the legislator creates a governmental authority to administer the country, which is vested with administrative and judicial powers. Regardless of the way of its organization, the government should exercise the will of the legislator, that is, the people, and take into account the "common good", otherwise there will be strife among the classes in the state, which then will not constitute a unified whole.

The French philosopher Jean Bodin (1530-1596) expressed the views of the appearing bourgeoisie, which sought to overcome feudal disunity. As a supporter of a strong centralized state, he put forward the idea of state sovereignty. Bodin considered the supreme, sovereign nature of state power as an absolute, unified, permanent, independent and unrestricted laws of power, extending throughout the country and on all subjects, to be the distinctive feature of the state. He pointed out that sovereignty is one and only and cannot be divided either between any strata of society, or between the monarch and the people, or between the constituent parts of the state apparatus. Therefore, sovereignty can belong either to the king, or to the aristocracy, or to the people. Defending royal absolutism, Bodin believed that only in the monarchy does sovereignty find its best embodiment, guarding the rule of law, order and peace in the state, since above all its institutions there is an "impartial monarch" reconciling opposing interests.

However, J. Bodin notes that the greatness of the supreme power is lost if it deals with functions that are not characteristic of it, that is, not the king alone exercises administers the country through his decrees. In particular, Boden warns monarchs against interfering in the administration of justice or in petty affairs of government, because the more the monarch extends his power, his rights, the more he diminishes his strength and authority. In addition, he believed that if the legislator carries out judicial activity, impartiality will disappear; justice and mercy, observance of the law and arbitrariness will be confounded; the parties in court will be deprived of firm guarantees of their rights.

However, very soon absolutism lost its progressiveness and became a deeply reactionary force, hampering the development of new capitalist relations arising in the depths of feudalism. For bourgeois-democratic movements, the main tasks

are combating despotism of the royal power, the desire to eliminate the survivals of feudalism, to guarantee the immunity of private property. In their teachings, thinkers of the emerging bourgeoisie explore the legal nature of state power from a new perspective and justify the need for a strict separation of the main branches of government activities.

John Lilburne (1614-1657), the ideologist of the democratic wing of the British bourgeoisie, characterized the state as an inevitable evil, which must be limited in order to ensure the "inherent" rights and freedoms of man. To guarantee lawfulness and prevent possible abuses in the state, Lilburn proposed to divide power into legislative, executive and judicial. Only when these powers are exercised by various bodies and individuals, can arbitrariness be rid of and the strength of the power itself secured. He did not admit that legislators could execute laws, although at the same time he believed that only the parliament, expressing the interests of the people, should have legislative power and exercise control over the activities of the administration.

In his view, representatives and officials should not interfere in the administration of justice or the formation of judicial bodies, as only the people themselves can elect the jury. "The people," wrote Lilburn, "are the source of all just power." The people to him are all full-fledged citizens who possess certain property, that is, mainly the "third class," the bourgeoisie, expressing at that time the interests of broad masses of the working people. According to him, not only the government and the court, but also the parliament should be a servant of the people. Therefore, the separation of powers, according to Lilburn, is not aimed at dividing the sovereignty between different classes, but at ensuring the rule of the people and preventing the usurpation of power by one or another institution or individual.

However, the progressive ideas of the bourgeois democrats were never put into practice. Strengthening its position in the struggle for political power, the bourgeoisie withdrew from cooperation with the masses and tended to compromise with the liberal nobility through the division of political privileges.

As F. Engels noted, "the struggling classes achieve such a balance of power that the state power for a time gets a certain independence in relation to both classes, as a mediator between them. Such was the absolute monarchy of the 17th and 18th centuries, balancing the nobility and the bourgeoisie against one another" (Marx & Engels, 1961).

As an independent political doctrine, the theory of separation of powers was formed in the period of the bourgeois revolutions of the 17th – 18th centuries. The basic postulates of the "classic version" of this doctrine were first put forward by John Locke and then by Charles Louis Montesquieu as ideologues of moderate bourgeois circles who sought to gain peaceful access to state power on the basis of a compromise with the liberal nobility.

John Locke (1632-1704) presented his political ideas in a series of works, among which the most notable is the "Second Treatise of Government", published in 1690 two years after the so-called "Glorious Revolution," the political coup of 1688, which established constitutional monarchy in England. Unlike some of his predecessors and contemporaries (for example, J. Milton, O. Sidney, J. Harrington, and others), whose political views reflected the interests of only a few groups of the rising class, Locke was able to theoretically express the general class interests of the bourgeoisie, the awareness of which allowed it to unite its forces and gain victory in the fight against feudal absolutism, even if it was a compromise with the new bourgeoisized nobility.

Being an exponent of liberal and moderate positions, J. Locke substantiated a kind of program of supporters of new social and political order and formulated a number of general principles of the bourgeois state system. John Locke was essentially a classical exponent of the legal notions of bourgeois society as opposed to feudalism.

To ensure basic human rights, Locke considered it necessary to limit the political power by certain frames. One of the most important means of achieving this goal was separation of powers by means of which it was possible to prevent the concentration of absolute power in the hands of the same people who, having the opportunity to create laws, might want to enforce them for their personal benefit, contrary to common interests. Therefore, he proposed to separate the executive power from the legislative one and oblige the legislators themselves to obey the established laws (Locke, 1960).

Locke distinguishes three branches of power: legislative, executive and federal (unionist). He classifies them according to the specifics of their functions - creation of laws, their enforcement and the conduct of relations with other states. According to Locke, the legislative power should be separated from the rest of the branches and placed in the hands of "many persons properly united in assemblies", i.e., the parliament. The other two branches, the executive and the federal must be entrusted to one person - the monarch, to whom and the power to protect the common good in cases that cannot be delayed should belong.

He also noted that the monarch should not abuse his prerogative, which is legitimate only insofar as it is used in the common interests. Locke did not single out the judiciary branch, but considered it an integral element of the executive branch, stressing at the same time that people must take part in the administration of justice. Locke sought to divide power between parliament and the king, that is, between the bourgeoisie and the nobility, using a complex political mechanism capable of "balancing the power of government by vesting its various parts in different hands" (Locke, 1960). He talked about the need for "checks and balances" that would ensure communication and equilibrium, and at the same time a certain subordination between the branches of power.

Locke calls the legislative power superior to the other two, which must obey it, although they can exert active influence on the legislature, without turning into its appendage. However, he believes that the legislative power is not absolute; it "represents only a trusted authority that must act for certain purposes, and the people still have the supreme power to remove or change the composition of the legislature when the people see that the legislature abuses the trust granted to it" (Locke, 1960).

With all this, we see that Locke's political doctrine was limited, since "the people" to him were the working masses, but the bourgeoisie and the nobility, who at that time were forced, because of the balance of power between them, to cooperate with each other to achieve their class goals. In this "balance of power" that creates the appearance of taking into account the interests of the entire people, was the meaning of the concept of separation of powers in the treatment of John Locke.

More clearly and consistently, this aspect of the doctrine of separation of powers was expressed and developed in the theory of the outstanding French political thinker Charles Louis Montesquieu (1689-1755), aimed at preventing the concentration of supreme power in the hands of one class or stratum.

In his treatise "On the Spirit of the Laws" (1748), Montesquieu proclaimed separation of powers to be not simply a technical distribution of functions between state bodies, but the division of powers between various socio-political forces fighting for domination in pre-revolutionary France.

The essence of the doctrine of separation of powers developed by Montesquieu consisted in substantiating the class compromise between the warring social groups, taking into account the real balance of their forces and influence in France in the middle of the 18th century.

The author of "On The Spirit of Laws" says that political freedom can only exist under moderate governments, so it not in the aristocracy, where all power belongs to nobility, or in democracy dominated by the people. To avoid abuse of power, an order of things is necessary in which the legislative, executive and judicial powers would be divided and could restrain each other. According to Montesquieu, it would be a catastrophe if the same person or institution composed of dignitaries, from noblemen or ordinary people, assumed these three powers. As an example, he cites the state structure of the Venetian Republic, pointing out that the officials of the legislative, executive and judicial authorities are representatives of the same class, representing the same power. Therefore, Montesquieu offers to give each class a part of the supreme power (Locke, 1960).

Montesquieu divides legislative power between the bourgeoisie and the feudal lords, thus forming a bicameral parliament consisting of the assembly of representatives of the people and aristocratic nobility. The executive power belongs to the royal government, that is, the nobility, which must be accountable to the

people's representation, that is, the bourgeoisie. Finally, unlike Locke, he entrusts the judiciary not to any permanent body, but to elected representatives of the people involved in the administration of justice, for a certain time. Montesquieu considered it essential that judges should have the same social status as the defendant, thus the judiciary would not be connected either with any position or with a certain occupation.

In case of important charges, the defendant was given the right to challenge judges. Thanks to this organization, the judiciary becomes socialдн and politically neutral and cannot become despotic. Proceeding from this, Montesquieu concludes that, of the three authorities, the judiciary, in a sense, is not at all a power, and therefore there is no need to restrict it by other powers; the court, in turn, should not interfere in legislation and administration. Therefore, Montesquieu focused on the issues of separation of political forces and powers between the legislative and executive authorities.

Like his predecessor, Montesquieu believed that to ensure the effectiveness of governance, a rational division of labor in the sphere of state life is necessary. In his view, each of the branches of power in accordance with the specifics of its functions should be carried out by a special independent body. The functions of power and the bodies implementing them should be independent with regard to the conditions for their formation, the duration of their activities, and their mutual irrevocability. The same persons should not be able to take part in the exercise of the functions of more than one of the three governing bodies, for example, the minister or judge sit in parliament, and the representative enforce laws and administer justice (Montesquieu, 1955).

Montesquieu gave special emphasis to his idea of the balance of power through the system of "checks and balances". He believed that each branch of the government, solving state problems independently, at the same time should balance other branches, thereby preventing the possibility of usurping the authority of the supreme power by any institution. Thus, the executive power should limit the legislative assembly, which otherwise would assume despotic power. Therefore, the monarch is vested with the right to veto the adoption of bills, have a legislative initiative; according to his decree, the parliament is convened and dissolved. In turn, the legislature must control how laws are enforced, and the government must report to parliament on its work (Montesquieu, 1955).

While Locke interpreted the separation of powers as their interaction and close cooperation based on the prevalence of legislative power over the executive, Montesquieu was a supporter of complete equilibrium, independence and separation of powers, which, however, did not mean lack of limitation; on the contrary each branch had the right to control and restrain the other, protecting itself against possible usurpation and preventing abuse of authority and despotism.

The concept of separation of powers in the conditions of that time served to prevent lawlessness and arbitrariness on the part of the royal administration, ensuring basic human rights and freedoms. It also contributed to the strengthening of new bourgeois social relations and the creation of the corresponding organization of state power.

However, the class nature of this doctrine meant abandoning popular sovereignty, expressing the bourgeoisie's claims to political power and its readiness to share "moderate government" with the liberal nobility. Fearing the "despotism of the majority", Montesquieu believed that the people, being incompetent in state affairs, are not entitled to take active decisions related to the executive activity. He believed that the participation of the people in governance should be limited to the election of representatives.

Montesquieu's views were criticized by the more determined ideologists of the bourgeoisie who put forward the idea of the sovereignty of the people, rejecting the division of power between the classes. One of the greatest thinkers of the 18th century, Jean-Jacques Rousseau argued, for example, that the basis of the state system must be the sovereignty of the people. On this basis, he considered the legislative, executive and judicial powers to be only special manifestations of a single supreme authority, that is, "separation of powers" was interpreted in the organizational and legal sense. At the same time, according to Rousseau, the legislative power should be exercised by the people themselves (at assemblies), and the executive power by the government responsible to the former. Only in large states was it possible to create a representative body (Russo, 1960).

PRACTICAL IMPLEMENTATION OF THE PRINCIPLE OF SEPARATION OF POWERS WITHIN THE FRAMEWORK OF THE AMERICAN "NOBLE EXPERIMENT"

The principle of separation of powers, emerging as a theoretical concept, gradually turned into a political, and in many countries into a constitutional principle. This principle, both in its origin and in its further development as a "classical doctrine", has always been in direct connection with the material conditions of society, with the correlation of class forces and the state of political struggle in any country.

The original idea of separation of powers, borrowed from European thinkers, did not find an active expression in the text of the US Constitution, but the purely American system of "checks and balances" was thoroughly developed. This system was put in the basis of the organization and functioning of the central organs of state power of the United States. It is based on the following principles.

First, all three branches of power have different sources of their formation. Legislative power is vested in the Congress, which consists of two chambers, each of which is formed in a special way. The House of Representatives is elected by the

people, that is, the electoral corps, while the Senate is elected by state legislatures. The president is endowed with executive power. He is elected indirectly, by an electoral college, which in turn is elected by the people. The judiciary - the Supreme Court is formed jointly by the president and the Senate.

Secondly, all public authorities under the Constitution have different terms of service. The House of Representatives is elected for two years, and the Senate is renewed every two years by re-election of one third of its members. Senators do not have a fixed term of office. The president is elected for a term of four years, and the members of the Supreme Court hold their posts for life. This should ensure that the branches of government have a certain independence in relation to each other and prevent simultaneous their renewal.

Thirdly, a mechanism is necessary, by which each of the branches of power would have the opportunity to neutralize the usurper attempts of the other. Therefore, Congress got the right to reject the President's legislative proposals, the Senate can reject any candidacy offered by the President for holding senior federal positions. In addition, the Congress can bring the President to justice by impeachment and remove him from office before his term expires.

In turn, the president is endowed with the most important constitutional means of influencing the Congress – a suspensive veto. However, the veto of the head of state can be overcome if the bills and resolutions are re-approved by the qualifying majority of both chambers.

As for the judiciary, it should be noted that formally the Supreme Court was established as the highest appellate for a certain category of cases, the listed in Art. III of the Constitution. In fact, the Constitution contains the provisions for granting the Supreme Court the power of judicial review. This allows the Court to limit the legislative activity of the Congress and the normative activity of the President. In turn, the justices of the Supreme Court can be removed from office through the impeachment procedure.

The system of "checks and balances" is good against the usurpation of power, because it does not only prevent the usurpatory attempts of one of the three branches of power, but also ensures the stability of state and legal institutions and the continuity of the functioning of the state power itself.

With the development of state-monopoly capitalism, the separation of powers continues to occupy an important place in the political thought of bourgeois countries. Separation of powers is interpreted as a necessary attribute of a constitutional, legal state or liberal democracy, in which the dignity of the individual is respected, freedom is guaranteed, etc.

American political scientist A. Vanderbilt argues that individual freedom and the progress of civilization can be achieved only if each of their three branches of power acts on the basis of the principle of separation of powers. Therefore, he calls

this principle the most important principle of free government. K. Eichenberg, a Swiss lawyer, considers the main problem of the modern state wishing to preserve "pluralistic democracy", the problem of effective separation of powers into legislative, executive and judicial.

Many authors argue that "moderate government" that prevents the "tyranny of the people" is achieved due to the fact that the principle of separation of powers provides, on the one hand, "the power of the majority" through a representative body, and on the other hand restricts this power through a system of "checks and balances".

THE PRINCIPLE OF SEPARATION OF POWERS IN THE MODERN WORLD AND IN RUSSIA

German state scientist K. Hesse notes that the principle of separation of powers is still working and is the main organizational principle of state power, its rationalization, stabilization, restriction and control. He believes that the main purpose of this principle is to help achieve a certain balance of political forces, regulate and support the joint organized activity of people, appropriately define and subordinate state functions, balancing the competence of bodies, exercising these functions. All this will make the state power unified (Hesse, 1981).

Translated into life, the theory of separation of powers, as an integral part of the theory of democracy, represents a valuable experience of control over the state alienated from the civil society.

The problem of separation of powers is one of the most topical issues in the process of forming Russian statehood. Its solution in a certain way forms either stabilizing or destructive factors for the state apparatus itself, and, consequently, for the effectiveness of its role in external and internal functions.

The course of political reform in the Russian Federation confirms great influence of the unresolved problem of separation of state power into its traditional structures - legislative, executive, and judicial – on economic and social reforms. Much energy is wasted in confrontation of the executive and legislative branches of power, and intra-organizational relations. The confrontation of these branches of power horizontally is escalating due to the unresolved problems of its vertical division.

It seems that the phenomenon of statehood can act in the infrastructure of social organization as a unified political and legal mechanism. The state and the properties of statehood can be fully realized provided that it is a single and integral mechanism for organizing the decisions of its own (intra-organizational) affairs and the affairs of society, which forms the state. Consequently, power as the main characteristic of the state should be integral. The separation of powers implies the realization of this characteristic of statehood through different methods and methods. That

is why the principle of separation of powers into branches is applied according to the criteria of the subject areas of state activity and the methods for implementing its tasks and functions.

The unity and integrity of statehood do not allow us to raise the question of which branch of power is more important and more "domineering". None of them can exist without two others. In this sense, it is fruitless to attempt to concentrate executive functions at the level of legislative power and vice versa. Stabilizing effect of statehood, its constructive purpose in society can be achieved with a high degree of self-organization of the state apparatus in all its structures and interaction of these structures both horizontally and vertically.

We believe that the constitutional consolidation of the unity and integrity of statehood in the Russian Federation and the certainty of the spheres of its implementation for the structures of the legislative, executive, and judicial branches of government will significantly advance the process of reforming the political and state system (Lyubashits et. al., 2013).

It should be noted that the disorder of power entails a break of integrity of the state and legal system. This leads to the "war of laws", the opposition legislative acts, which weakens the mechanism of the rule of law and its implementation (Mamychev & Mordovtsev, 2016).

The opposition of the branches also leads to increased corruption. The struggle for economic domination in the multifaceted system of the economy is inevitably transferred to the state structures, increasing corruption within them.

The underdevelopment of the political structure of society in modern conditions creates difficulties in the legalization of one of the stereotype forms of organization of power. The choice between a parliamentary and presidential republic is not completed; it is carried out primarily by groups in the power structures themselves and it happens against the growing political inactivity of the population. These are the consequences of the protracted period of perestroika, when reforms without a clear goal of development led to a destructive political and economic situation.

Without the constitutional consolidation of state institutions and the consistent adherence to the Constitution in the relations of all branches of power, it is difficult to imagine a way out of the existing situation. It is during the writing of the draft Constitution that the significance of the new conditions and factors shaping the modern statehood – its goals, content, mechanisms, structures, should be realized (Shirshov, 2015).

Without taking into account new circumstances and trends of integration in the world, the problem of the form of the state system cannot be solved. The Federative Agreement of the Russian Federation was certainly a stabilizing step in the design of the structure of the Russian state of the 1990s. However, uncertainty remained in the legal status of the subjects of the Federation. Fundamental decisions are needed

regarding the statehood of the historically formed national and territorial regional units that form the Russian state and its population.

We believe that the problem of equalization of the legal status of the republics, territories and regions is one of the most urgent issues on which the regional development of the country depends. Territorial administrative units could be enlarged taking into account their natural resources and economic ties, ethnic composition of their population and then as republics on a territorial basis (Ilinskii, Krylov & Mikhaleva, 1992). This would allow to equalize their status with the status of the national republics of the country. In this case, the federation would acquire a one-dimensional character, and the current situation, in which the ethnic Russian population does not have its own state structure, could be eliminated. This is also important in terms of solving the problems of the rule of law.

Acknowledgement

The work was carried out with the financial support of the grant of the President of the Russian Federation No. MD-6669.2016.6.

References

Chetvernin, V.A. (1993). *Democratic constitutional state: an introduction to theory*. Moscow.

Marx, K. & Engels, F. (1961). *Works*: *in 21 volumes.* Moscow.

McClenaghan, W. (1970). *American Government*. Boston, pp. 50-51;

Hesse, K. (1981). *The fundamentals of the constitutional law of Germany.* Moscow, pp. 234-245.

Hesse, K. (1988). *Grunzuge des Verfassungsrechts der Bundesrepublik Deutschland*. Heidelberg, pp. 236-238;

Ilinskii, I.P., Krylov, B.S. & Mikhaleva, N.A. (1992). The new federal structure of Russia. *State and the Law, 11*, pp. 29-36.

Ladd, Ev. (1989). *The American Polity*. New York.

Locke, J. (1960). *Selected philosophical works: in two volumes*. Moscow, pp.83-84

Lyubashits, V.Ya., Mordovtsev, A.Yu. & Mamychev, A.Yu. (2013). *State power: the paradigm, methodology and typology. Monograph*. Moscow.

Mamychev, A.Yu. & Mordovtsev, A.Yu. (2016). Legitimacy of public authority in modern Russia: features of understanding of sociocultural foundations. *History of state and law, 21,* pp. 49-54.

Montesquieu, C. (1955). *Selected works*. Moscow, pp.291.

Russo, J. J. (1960). *Treatises*. Moscow, pp.168-169.

Shirshov, A. (2015). Criminal Liability for Illegal Production and Distribution of Pornographic Materials and Objects: Theory and Practice. *Mediterranean Journal of Social Sciences*, *5* (S3), pp. 126-130.