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THE FEATURES OF THE SYSTEM OF CHECKS AND BALANCES IN FRANCE

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The article examines the system of checks and balances in the French Republic as a key institutional mechanism for ensuring the democratic functioning of the State power. The relevance of the study is stipulated by the need to analyze the institutional balance between the branches of power in democratic states, in particular in the context of strengthening the executive branch. France is a vivid example of a State which, based on the Constitution of 1958, for the first time formed a system of checks and balances in a presidential-parliamentary republic. The mechanisms of the French President's influence on the parliament, government and judiciary are described in detail. These elements include: the right of veto; dissolution of the Parliament; initiation of referendums; formation of the Government; participation in the appointment of judges. The French parliament is endowed with the following elements of the system of checks and balances in relation to other branches of government: impeachment procedure; vote of no confidence in the government; parliamentary inquiries; interpellation; work of temporary commissions. The government influences other state authorities through the institution of counter-signature; the right of legislative initiative. The judiciary is viewed as an independent branch that ensures the restraint of other branches of power through the activities of the Constitutional Council, which exercises preliminary and subsequent control over the compliance of laws with the Constitution. The terms of office of the supreme bodies of state power are different: members of the lower house of parliament are elected for a five-year term by direct elections, members of the Senate are elected for a six-year term by indirect elections, and the President of France is elected for a five-year term by direct elections. The author concludes that the system of checks and balances in France combines strong presidential power with the preservation of effective mechanisms of parliamentary control and judicial oversight, which guarantees the stability of the state power, its responsibility and accountability within the constitutional order.

Key words: system of checks and balances, France, presidential-parliamentary republic, president, parliament, government, judiciary.

Introduction. The system of checks and balances is one of the fundamental principles of democratic governance, which ensures the separation of powers between the legislative, executive and judicial branches and prevents any of them from usurping power. In France, the system of checks and balances has its own peculiarities, formed as a result of historical events, institutional crises and legal reforms that led to the establishment of the Fifth Republic in 1958.

Main studies and publications. Among the numerous studies and publications covering the issue of the system of checks and balances in France, the works of the following researchers deserve special attention: N. Haidaienko, L. Galagan, N. Zhuk, V. Ladychenko, L. Silenko, I. Protsiuk, etc.

The purpose of the study. The purpose of the article is to analyze the system of checks and balances in France.

Discussion. The formation of the system of checks and balances in France is closely related to the experience of instability of the political system of the Fourth Republic, which was

characterized by frequent changes of governments, fragmentation of the parliament and inability to effectively govern. In response to these challenges, General Charles de Gaulle initiated a new Constitution, which was approved by referendum on September 28, 1958, and entered into force on October 4 of the same year. The main idea was to strengthen the executive branch, in particular the role of the President, while preserving the mechanisms of control by other branches of government.

France is a presidential-parliamentary republic. The main features of a presidential-parliamentary republic are: election of the president in general elections and vesting him with broad powers in law and in fact; formation of the government jointly by the president and parliament with the predominance of one of them; dual political responsibility of the government – to the president and parliament; dualism of executive power – division of powers to exercise it between the president and the government; the president exercises general leadership of the government headed by the prime minister; independence of the president from the government (the absence of the institution of counter-signature or its formal nature); the right of the president to dissolve the parliament upon certain grounds; the right of the president to take legislative initiative [1, p. 457].

The President of France is elected for a term of five years by direct election (Article 6 of the Constitution of France of 1958) [5]. The President of the Republic is elected by an absolute majority of votes cast. If such a majority is not obtained in the first round of voting, a second round is held 14 days later. Only two candidates remain in the runoff who, at least after withdrawal of their candidacies by those candidates who were in a more favorable position, received the largest number of votes in the first round. In the second round, the candidate who received the largest number of votes wins (Article 6 of the Constitution of France of 1958) [5].

The French president is vested with broad executive powers that allow him to exert considerable influence on the government. In France, the government is formed by the president without the participation of the parliament. In other words, the head of state is free to act at his own discretion when appointing the prime minister. However, in practice, the president's choice must be approved by the parliament. In this case, the head of state should only appoint a person to the post of prime minister who will enjoy the support of the majority of MPs, since the parliament will not support him or her in the first vote. If the president and the parliamentary majority are from different parties, then the reserve of presidential freedom is small. In such cases, the head of state is forced to appoint his political opponents who enjoy the support of the parliamentary majority. Other members of the government are appointed by the president on the proposal of the prime minister (Article 8 of the Constitution of France of 1958) [5].

The President of France has the right to participate in and preside over government meetings. According to the Constitution of France of 1958, the President presides over the Council of Ministers (Article 9) [5]. This country has certain peculiarities regarding the status and name of the government. There is a distinction between the Council of Ministers and the Cabinet. The Council of Ministers is the government that meets under the chairmanship of the head of state, and the most important decisions are made at such meetings. For example, the Council of Ministers discusses draft laws before they are submitted to the parliament, appoints senior public administration officials (state advisors, prefects, etc.), adopts acts on the introduction of martial law and a state of emergency, etc. The Council of the Cabinet is understood as a meeting chaired by the Prime Minister, which considers issues of a current nature.

The President of France has certain levers of influence on the legislature. He has the right to dissolve the parliament. In France, the prerequisite for dissolution of the Parliament is the consultation of the President with the head of the government and the heads of the chambers of the Parliament (Article 12 of the Constitution of France of 1958) [5]. Article 16 of the Constitution

of France of 1958 states that the National Assembly cannot be dissolved during the exercise of emergency powers [5]. Also, the National Assembly cannot be dissolved within 12 months after the newly elected parliament begins to meet.

The President of France has the right to initiate a referendum, which allows him to directly address the people, bypassing the Parliament (Article 11 of the Constitution of France of 1958) [5].

The President of France has the right of veto, but not the right of legislative initiative. Only the head of government and members of parliament have the right of legislative initiative. According to the Constitution of France of 1958, the President of the Republic promulgates laws within 15 days after the finalized law is transmitted to the government (Article 10) [5]. The promulgation of the law by the President is a formality that allows the law to be enacted. After the text of the law that has been adopted by the parliament (Article 10) or the people (Article 11) is handed over to the government, the president promulgates it by decree within two weeks. As F. Ardan notes, in practice, the head of state does not stop at this limitation and formal interference in the process of lawmaking. He can take the initiative to pass laws or ask the government to make certain amendments to the draft law or even withdraw it from consideration. It also happens that before the beginning of the parliamentary debate, he announces measures that are within the competence of the chambers (the cancellation of the debt obligations of some African states to France by President F. Mitterrand in 1989). Thus, according to this author, we can talk about "the President as a legislator" [3, p. 69].

In the area of legislative power, the president has the right to send messages to the parliament. This right of the head of state is the main means of communication between the president and the parliament. Thus, the 1958 French Constitution states: "The President of the Republic shall communicate with both Houses of Parliament by means of messages, which shall be read out in the Houses and shall not be subject to any discussion. In the period between sessions, the Parliament shall meet specially on this occasion" (Article 18) [5]. In terms of content, this power is a reproduction of Article 37 of the Constitution of France of 1946 ("The President of the Republic shall communicate with Parliament by means of messages sent to the National Assembly") [4]. However, as noted by M. Prelo, in the Fourth Republic, messages were counter-signed by the head of government and a minister (and even a minister of state) [6, p. 598], while today this action of the head of state is a unilateral act of the president. Presidential messages are not subject to debate. The head of state is "beyond criticism" due to his political irresponsibility. The content of the messages can be very diverse. Among them, we can single out S. de Gaulle's message on the reduction of the presidential mandate from seven to five years in 1973; F. Mitterrand's message in 1986 on the occasion of the 100th anniversary of the birth of R. Schuman, the founder of European integration. Thus, presidential addresses in France do not become the subject of debate in parliament.

The President of France has a limited but important influence in the judiciary. He heads the Conseil Supérieur de la Magistrature, which is responsible for the appointment of judges, which allows him to exercise indirect control over the career of judges (Article 65 of the Constitution of France of 1958) [5].

The Parliament of France is bicameral. It consists of the lower house of the National Assembly and the upper house of the Senate. The lower house is formed by direct elections, and the upper house by indirect elections.

Deputies of the lower house of the National Assembly of France are elected for five years in 577 constituencies under the two-round majority system. In the first round, the candidate who receives an absolute majority of votes (more than 50%) and at least 25% of registered voters is elected. If no candidate meets these conditions, a second round is held. Candidates who receive at

least 12.5% of the votes cast in the first round participate in the second round. If there is only one such candidate, the second highest vote-getter is added. The winner of the second round is determined by a simple majority of votes. This system promotes the formation of a stable majority, but at the same time may reduce the representation of smaller political forces.

The Senate of France is formed by indirect elections, in which the so-called major electors participate. The Senate of the French Parliament is formed mainly by three-tier and partially by two-tier elections. Senators are elected by departments (administrative-territorial units of the middle level) by colleges consisting of: elected deputies of the lower house of parliament (National Assembly) and regional councillors (members of the regional council – representative body of the region, which is a higher-level administrative-territorial unit); general councillors (members of the general council – representative body of the department); delegates of municipal councils (representative bodies of administrative-territorial units of the lower level) or In total, there are about 162,000 “large voters,” of which more than 95% are municipal representatives, making the Senate the body that represents local authorities. Senators are elected for six years, and half of the Senate is renewed every three years. In departments with fewer than four senators, a two-round majority system is used. In departments with four or more senators, a proportional system with open lists and no preferential voting is used. The French Senate is formed through indirect elections by large electorates representing local territorial communities. This ensures a balance between national and local interests. This system is designed to ensure that the Senate does not depend on political waves that can dramatically change the composition of the National Assembly.

Thus, different terms of office of the chambers of parliament and different electoral systems contribute to the functioning of the system of checks and balances in France.

Although the parliament has no direct mechanisms to influence the president, it can limit his initiatives, for example, by refusing to support proposed legislation. The French parliament can remove the head of state through impeachment. The President of France may be held liable for high treason: “The President of the Republic shall not be liable for acts committed in the exercise of his functions, except in cases of high treason” (Article 68 of the Constitution of France of 1958) [5]. The impeachment procedure is initiated by one of the chambers of parliament (the National Assembly or the Senate), which must approve the impeachment proposal by an absolute majority of its members. After that, the two chambers convene a meeting of the Haute Cour. This is the only body that can remove the president. The President of the Haute Cour is the President of the National Assembly. The House decides on the removal of the President of the Republic within a month. A qualified majority of 2/3 of the total number of deputies and senators is required for the decision to be adopted. If the impeachment is approved, the president is immediately removed from office. No trial is held against him or her – it is a political and legal procedure, not a criminal trial. Impeachment of the French president is a rare and unlikely tool in the French system. So far, no president of the Fifth Republic has been subjected to this procedure.

The Parliament of France has a number of constitutional instruments to control the government, which contributes to the system of checks and balances. The most important element of the system of checks and balances is the political responsibility of the government. Article 49 of the Constitution of France of 1958 states that the Prime Minister may address the National Assembly with a statement of confidence in the government’s program or in the government’s statement of general policy. If the parliament does not support it, the government is considered to have resigned. The article goes on to say that the National Assembly may pass a motion of no confidence in the government. For such a decision to be effective, the support of an absolute majority of the members of the chamber (i.e. 289 out of 577) is required. In case of approval of

a no-confidence resolution, the government must resign (Article of the Constitution of France of 1958) [5]. The third part of Article 49 states that the government has the right to pass a law without a vote of the parliament if a no-confidence motion is not introduced within 24 hours. This is a powerful but risky tool – the government may be forced to resign in response.

Other forms of parliamentary control over the government are:

- questions to the Government is a regular form of control that allows MPs to ask questions to the Prime Minister and ministers live (Article 48) [5];

- interpretation. Article 50(1) of the Constitution of France of 1958 states that one of the chambers of parliament may adopt a resolution following a statement by the government or a statement by one of its members, provided that such a statement has been the subject of debate [5];

- control over the budget execution through the Accounting Chamber (Article 47-2) [5];

- control over delegated legislation. Although the government may issue ordinances by delegation from the parliament (Article 38) [5], these acts must be approved by the parliament to have the force of law;

- the activities of permanent and temporary parliamentary commissions, which have the right to: hear government officials; inspect documents; and conduct investigations into specific issues of public administration (e.g., corruption, budget expenditures, crises).

The parliament's influence on the judiciary is limited, but parliamentarians can initiate an audit of the judiciary within parliamentary committees and pass laws regulating the judiciary.

The Government of France is formed by the head of state. The President appoints the Prime Minister and other ministers upon his proposal (Article 8 of the Constitution of France of 1958) [5]. At the same time, the acts of the President of the Republic require the counter-signature of the Prime Minister or the relevant minister. Article 19 of the Constitution of France of 1958 states that acts of the President of the Republic, other than those provided for in Articles 8 (paragraph 1), 11, 12, 16, 18, 54, 56 and 61, must be counter-signed by the Prime Minister and, where appropriate, by the ministers responsible [5]. The following acts of the French President do not require counter-signature: appointment of the Prime Minister; calling a referendum; dissolution of the National Assembly; emergency powers in times of crisis; addressing the Parliament; addressing the Constitutional Council on the compliance of international treaties with the Constitution; appointment of the Constitutional Council; addressing the Constitutional Council to verify the constitutionality of a law. The institution of countervailing powers is an element of the system of checks and balances between the president and the government.

The government is accountable to the parliament. It is not endowed with significant means of influence on the parliament. An element of the government's influence on the parliament is the right of legislative initiative (Article 39 of the Constitution of France of 1958) [5]. The government annually submits a draft state budget to the parliament (Article 47 of the Constitution of France of 1958) [5].

The government's influence on the judiciary is limited, but it is possible through the Ministry of Justice, which coordinates the work of the prosecutor's office.

The judiciary in France is independent, which is guaranteed by the Constitution of France of 1958 (Article 64) [5]. The President of the Republic is the guarantor of the independence of the judiciary, but its bodies act autonomously. The Constitutional Council monitors the constitutionality of laws, including the possibility of reviewing laws already adopted through the procedure of preliminary or subsequent control (Articles 61 and 61-1 of the Constitution of France of 1958) [5]. This allows it to influence both the executive and legislative branches of government.

Also important is the High Council of Magistracy, which is responsible for the appointment of judges, which reduces the influence of political bodies on the judiciary. The judiciary cannot directly influence the President or the government, but it has an important function of ensuring the legality of their actions, including the possibility of appealing administrative acts.

Conclusion. Thus, the system of checks and balances in France ensures the effective functioning of the state power based on its division into legislative, executive and judicial branches. Although the French model has the features of a presidential-parliamentary republic with an enhanced role of the president, it still provides for a balanced mechanism of mutual control between the institutions of power. The main elements of the system of checks and balances in France are: counter-signatures of presidential acts by the government; the right of the parliament to express no confidence in the government; the government's obligation to report to the parliament, in particular through debates, inquiries, interpellations; veto power of the president; initiative of a referendum by the president; dissolution of the parliament by the president; the Constitutional Council as a judicial arbiter; the procedure for impeachment of the president; different terms of office of public authorities. The peculiarity of the system of checks and balances in France is the balance between the president, who has a strategic role, and the parliament, which retains levers of control over the government. At the same time, the judiciary is not an active player but a guarantor of legal balance.

Bibliography

1. Шляхтун П.П. Конституційне право: словник термінів. Київ : Либідь, 2005. 568 с.
2. Шляхтун П. П. Сучасний зарубіжний конституціоналізм. Основні поняття та інститути: підручник. Київ : Київський університет, 2021. 511 с.
3. Ardant Philippe, Mathieu Bertrand. Institutions politiques et droit constitutionnel. LGDJ. 2024. 658 p.
4. Constitution de 1946, IVe République. URL: <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1946-ive-republique>
5. Constitution of France of 4 October 1958. URL: <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958>
6. Prélôt Marcel. Précis de droit constitutionnel. Dalloz. 1950. 606 p.

ОСОБЛИВОСТІ СИСТЕМИ СТРИМУВАНЬ І ПРОТИВАГ У ФРАНЦІЇ

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У статті досліджується система стримувань і противаг у Французькій Республіці як ключовий інституційний механізм забезпечення демократичного функціонування державної влади. Актуальність дослідження зумовлена необхідністю аналізу інституційної рівноваги між гілками влади у демократичних державах, зокрема в контексті посилення виконавчої влади. Франція виступає яскравим прикладом держави, яка на основі Конституції 1958 року вперше сформувала систему стримувань і противаг у президентсько-парламентарній республіці. Детально охарактеризовано механізми впливу Президента Франції на парламент, уряд і судову владу. До таких елементів належить: право вето; розпуск парламенту; ініціювання референдумів; формування уряду; участь у призначенні суддів. Парламент Франції наділяється наступними елементами системи стримувань

і протигаг щодо інших гілок державної влади: процедура імпічменту; висловлення вотуму недовіри уряду; депутатські запити; інтерпеляція; робота тимчасових комісій. Уряд впливає на інші органи державної влади за допомогою інституту контрасигнатури; наділення права законодавчої ініціативи. Судова влада розглядається як незалежна гілка, яка забезпечує стримування інших гілок влади через діяльність Конституційної ради, що здійснює попередній і подальший контроль за відповідністю законів Конституції. Різними є строки повноважень вищих органів державної влади: члени нижньої палати парламенту обираються строком на п'ять років шляхом прямих виборів, члени Сенату обираються строком на шість років шляхом непрямих виборів, Президент Франції обирається строком на п'ять років шляхом прямих виборів. У підсумку, зроблено висновок, що система стримувань і протигаг у Франції поєднує сильну президентську владу із збереженням ефективних механізмів парламентського контролю та судового нагляду, що гарантує стабільність державної влади, її відповідальність та підзвітність у межах конституційного ладу.

Ключові слова: система стримувань і протигаг, Франція, президентсько-парламентарна республіка, президент, парламент, уряд, судова влада.