

## THE HEAD OF STATE "NEUTRAL" POWER: CONCEPTUAL BASIS

Malyarchuk Oksana, PhD Student  
e-mail: [oxmalyarchuk@mail.ru](mailto:oxmalyarchuk@mail.ru)

University of Political and Economic European Knowledge "K. Stere "  
200 Stefan cel Mare si Sfint Street, Chişinău, Republic of Moldova  
Web page: [uspee.md](http://uspee.md)

**Abstract:** *the author presents one of the non-traditional aspects of the theory of separation of powers in the historical and legal framework of the development of the concept of neutrality of the head of state, and at the present stage. The article reveals the controversial issues of the correlation of the powers of the head of state with the powers of other state authorities, reveals his position in the state mechanism.*

**Key words:** *the theory of separation of powers; the concept of the neutral power of the head of state; system of public authorities; a system of checks and balances; form of government, arbitration authority.*

### JEL CLASSIFICATION: Z18

#### 1. INTRODUCTION

Considering the theory of separation of powers, its content, questions about the existence and number of branches of power in the state, the problem of the legal status of the head of state - the monarch or the president - and his interaction with the government and parliament are inevitably raised. This allows us to solve the problem of determining the place of the head of state in the state mechanism, taking into account the peculiarities of the political and constitutional development of each country. In general terms, the head of state is recognized as the highest representative of the state within the country and in the international arena, a symbol of the stability and integrity of the state and its political and legal institutions. However, it is not always possible to agree with such a statement of the question, because the head of state often has real powers in the field of management, executive and administrative activities. One of the aspects of the problem of the status of the head of state is the concept of his "neutrality", which will be described in this article.

#### 2. THE CONCEPT OF NEUTRAL POWER ACCORDING TO B. CONSTAN

The concept of "neutral power" was introduced into science by B. Constan, who thereby revised the original structure of the division of powers. In contrast to the classical interpretation of the theory of separation of powers, Constan singled out royal power as an independent branch, personifying at that historical moment the power of the head of state. He described its place and role in the state mechanism as follows: "The royal power is located among all these four powers, but it is higher than them, it possesses both supreme and mediating power, being at the same time interested not in upsetting the balance, but, on the contrary, in maintaining it" (Констан, 2000, с. 39). Constan B. (Констан, 2000, с. 40) does not enter into a direct dispute with Locke and Montesquieu, but significantly corrects their construction of the monarch as the head of the executive branch. B. Constan (Констан, 2000, с. 41) considered the British system to be the real personification of neutral power: "If the action of the executive power is dangerous, control removes the ministers. If the action of the chamber of peers is destructive, the king gives it a new development, the creation of new peers. If a threat comes from the electoral house, the king either uses his veto or dissolves the elective house. Finally, even if the action of the judiciary becomes unbearable, because it applies too severe punishments to certain actions, the king mitigates her actions by using the right of pardon." This confirms that Constan's theory is characterized by a sober attitude to the principle of separation of powers, since already modern

practice has shown that a mechanistic adherence to it does not guarantee against imbalance in the system of public power. Moreover, such an imbalance can be caused by the disproportionate dominance of not only the executive, but also the legislature. Constan (Констан, 2000, с. 44) therefore writes that "the vices of almost all constitutions can be attributed to the fact that they did not create a neutral power, but placed the entire aggregate of power that it should have in one of the existing authorities." He rightly believed that society needs an institution that will not be designed to govern in the narrow sense of this concept, but to ensure a balance between the branches of government - this will be the institution of neutral government.

### **3. CRITICISM OF B. CONSTAN'S CONCEPT**

It is interesting to note that Russian researchers perceived the meaning of neutral power in a slightly different way. So, B.N. Chicherin (Чичерин, 2006, с. 41) wrote: "Standing over the parties that are not involved in their struggle, he abstains from them, moderates them, gives advice and directions." N.I. Lazarevsky (Лазаревский, 1908-1910, с.287), analyzing Constan's ideas, used the word "pacify": "Royal power is irresponsible, neutral. Her high position creates peace of mind for her bearer, placing him outside the struggle of parties. She hovers over everything. B. Constant calls her "pacifying" power as such she humbles the ministers, dissolves the chamber, pardons the unjustly condemned. "

B. Constan's concept contains another fundamentally important idea: the institution of neutral power must have the strength necessary to fulfill its mission (Констан, 200, с.39): "Executive power, legislative power and judicial power are three forms of power, each of which in its own area should contribute to general development; but when these confused powers intersect, collide, interfere with each other, it takes strength to put everything back in place. "

O.E. Kutafin (Кутафин, 2013, с.7), who believed that the head of state could be such "nominally or realistically", at the same time made an absolutely correct reservation: the state is called upon to find a way out of the most difficult situation, being a kind of reserve of state power".

According to M.A. Krasnov (Краснов, 2017, с.60-69), B. Constant, putting forward the concept of "neutral power", "did not imply their reserve role. He quite rightly proceeded from the mission of the monarch, which was not to actively include him in politics, but to constantly protect the constitutional system and thereby protect statehood from collapse in difficult situations for the country, and at the limit - to prevent such situations ... The exercise of power within the framework of such a mission is not at all a reserve. "

### **4. THE PRACTICE OF APPLYING THE CONCEPT OF NEUTRALITY OF THE HEAD OF STATE**

Already from the end of the XIX century in the literature, opinions began to be expressed that the property of political neutrality can be attributed to presidents in parliamentary and mixed models. G. Jellinek (Еллинек, 2004, с.412), in particular, wrote that the Third Republic in France "implemented a system of parliamentary government on the basis of the teachings of B. Constan, Thiers and Prevost-Paradol, and the head of state occupies the position of a neutral element, standing above other states by factors, but without real participation in the management of state affairs".

K. Schmitt (Шмитт, 2010, с.44), saying also that the king becomes "invisible, resolving all contradictions and frictions of various state actions and functions, the regulating and modeling moment, invisible moderateur" republican president of the state ". The Norwegian King Haakon VII remarked in the 1940s: "I am king even for the communists."

In this regard, we can agree with M. A. Krasnov (Краснов, 2017) that it is permissible to apply the concept of "neutrality" to a constitutional monarch: indefinite and irresponsible allows

him (regardless of the method of replacing the throne) not to participate in politics. Presidents, however, are "generated" by politics, and therefore, naturally, they are also under the influence of the party.

It cannot be denied that if the president's influence on the political course is weakened (for example, in Poland, Slovenia, Bulgaria, Moldova, etc.), then the president may well look like a politically neutral institution. However, here, on the one hand, he remains a hostage of the party that nominated him, which, in turn, was rightly emphasized by V.V. Komarova and Sh.B. Magomedov (Комарова, Магомедов, 1999, с.123-124), on the other hand - "such a president is institutionally too weak to exercise neutral power, which, as noted, cannot remain powerless."

Meanwhile, presidents, even in a presidential republic, usually seek to convince society of their external commitment and political neutrality. It is significant that the American Founding Fathers usually thought of presidential elections without the participation of political parties, perceived as a political evil. And although, since the election of the second president of the United States, the main candidates have been nominated by parties, as Agaev (Агаев, 1994, с.15) says: "every president-elect wanted to appear before the public as a national figure." Wilson (Wilson, 1908, p. 68-69) deduced the presidential "suprapartisan" state from the fact that the people prefer to choose a person, rather than a prize. Therefore, according to him, the popularly trusted president leads the nation, and "his party can hardly oppose him."

The idea of "neutrality" of the president in the mixed model is even more controversial, since this model formally denies that the president belongs to the executive branch and thus presents him as "the president over everything." However, the lack of clear criteria and the institutional structure of neutral power leads to the fact that such presidents take a certain political position.

In the context of the semi-presidential model in France, the concept of "presidential arbitration" appeared, which became a kind of replacement for the concept of "neutral power". It should be borne in mind here that B. Constan wrote about the neutrality of power as a separate branch and at the same time had very clear tasks to "pacify" the political sphere. De Gaulle's construction, however, does not prejudice the president's belonging to a separate branch of government, but at the same time represents him as the de facto head of the executive branch, but responsible for it precisely because he acts as an "arbiter" for all branches of government.

## **5. CONCLUSION**

Based on the analysis of different positions on the issues under study, it can be concluded that the "presidential arbitration" due to uncertainty opens up wide opportunities for the president for uncertainty and even some abuse of competence. French researchers themselves speak about the vagueness, the extraordinary breadth of this concept in real state life. For example, according to S. Formery (Formery, 2012, p. 20), it "carries" ever greater ambiguity ", i.e. assumes two roles of the "arbiter president": "neutral" and "active". J. Wedel (cit. ex.: Formery, 2012) criticized: "It was expected, in fact, that the president is not considered a member of the political struggle. But in practice, it was quickly discovered that General de Gaulle accepted arbitration as "active arbitration", which meant, in fact, that the rights granted to the president must be used in order to work in his own country and guide its development. " Formery himself is quite approving of the idea of "arbitration", although he understands: "if the president has a parliamentary majority, he is the real head and cannot be limited to the role of a neutral arbiter. "

Other French authors also speak of the actual use of "arbitration" as an invasion of the operational administration of the country. Thus, B. Mathieu (Матье, 2014, с.116) wrote, characterizing the French practice of exercising presidential power: "The function of an arbiter includes a number of powers specifically provided for by the Constitution ... Ordinary time

directs the activities of the government, sets specific tasks for it, leaving it to the cabinet to implement day-to-day politics. "

Studying and analyzing the legal and practical aspects of consolidating and implementing the theory of "arbitration", we come to the conclusion that it has become a doctrinal justification for the actual expansion of presidential powers, which, in fact, does not correspond to the concept of "neutrality" of the head of state, the very arbitration function, which presupposes finding the highest official at an equal distance from all other bodies and branches of government in the state.

We believe that it is quite possible to find arguments and adhere to the position that the presidential power is an independent branch of government. But the signs of such independence today are extremely difficult to discern, since, as a rule, the president, under the conditions of most models of power, is too closely connected with the executive branch, which may significantly violate the principle of separation of powers.

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