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# Perspectives and Methodological Peculiarities in Developing the Form of Governance in the Republic of Armenia

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The current article considers the issues concerning perspectives and methodological peculiarities of developing the model of governance in the Republic of Armenia. The history of developing the form of governance in the Republic of Armenia, advantages and disadvantages of different forms of governance, factors and circumstances, which should underlie the selection of the form of governance are studied in the article. The author concludes that, while speaking on the forms of governance, we are often guided by fictional perceptions, which should be overcome and cannot serve as the basis for reforms concerning the aforementioned issue. Moreover, in the result of processes of legal convergence, the forms of governance have borrowed from each other the mechanisms that are not originally typical of them, and from this aspect their rapprochement can frequently be noted. The author notes that the problems, solution of which is the main reason for continuous changes of the form of governance, will not be solved in conditions of new reforms implemented by the same logic. Hence, the axis of the problem of the further improvement of the model of governance in the Republic of Armenia should be transformed from the issue of making a choice between this or that form of governance, and the attention should primarily be focused on improving the mechanisms of separation and balance of powers, as well as forming and strengthening constitutional and political traditions and culture.

**Keywords:** parliamentary, presidential, semi-presidential forms of governance; constitutional reforms; constitutional and political culture; politics; legal convergence; methodology of constitutional developments.

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## Introduction

The issues concerning the form of governance have always been subject to wide discussions in the Republic of Armenia. Moreover, all the constitutional reforms covered this issue, and viewpoints on both advantages and disadvantages of all the forms of governance have been raised in the framework of these discussions. Notably, since the restoration of independence in 1991, Armenia, at different stages, “tested” all the three forms of governance known in comparative constitutional law<sup>1</sup>. At the same time, extensive discussions on perspectives of the possible change of the existing, at concrete moment, form of governance have never stopped. Likewise, the debates persist in the context of ongoing constitutional developments. Notwithstanding the fact that the Constitutional Reforms Council of the Republic of Armenia voted for maintaining and developing parliamentary form of governance on 30 November 2022,<sup>2</sup> discussions on the need to change the model of governance are still continuing in the society, as well as legal and political communities.

Noting the aforementioned circumstance, the article will touch upon the perspectives of developing the form of governance in the Republic of Armenia.

The aim of the research is to reveal the perspectives and methodological peculiarities of the development of the model of governance in the Republic of Armenia, in particular, to present the perspective upon whether there is a need to change the form of governance of the state, or whether there should be improvements in the mechanisms of separation and balance of powers. In order to reach these aims, the following issues were studied: history of the development of the form of governance in the Republic of Armenia; peculiarities of different forms of governance in the modern world; advantages and disadvantages of different forms of governance; factors and circumstances, underlying the selection of the form of governance.

The following research methods have been used: literature review, historical, comparative, qualitative, quantitative methods, etc.

## 1. History of the development of the form of governance in the Republic of Armenia

In 1991–1995, the presidential model of governance existed in Armenia. The Constitution of 1995 adopted presidential-parliamentary model of the semi-presidential form of governance with extensive authorities defined for the president.<sup>3</sup>

<sup>1</sup> Constitution of the Republic of Armenia (the original text and the amendments). Available: <https://concourt.am/en/normative-legal-bases/constitution-of-ra> [last viewed 10.07.2023]. Պողոսյան Վ., «Կառավարման ձևի էվոլյուցիան Հայաստանում. Արդյունքներ և հեռանկարներ» // Հայկական քաղաքագիտական հանդես [Poghosyan, V. The evolution of the form of governance in Armenia. Results and perspectives]. Armenian Journal of Political Science, Vol. 2, issue 2, 2014, pp. 71–80.

<sup>2</sup> ՀՀ Սահմանադրական բարեփոխումների խորհրդի 30.11.2022 թվականի քվեարկության արդյունքներ [Voting results of 30.11.2022 of the Constitutional Reforms Council of the Republic of Armenia]. Available: <https://moj.am/article/3377> [last viewed 10.07.2023].

<sup>3</sup> Հայաստանի Հանրապետության Սահմանադրություն [The Constitution of the Republic of Armenia]. (05.07.1995). Available: <https://www.arlis.am/documentview.aspx?docID=1> [last viewed 10.07.2023].

As a result of 2005 constitutional reforms, the Republic of Armenia made a transition to the parliamentary-presidential model of semi-presidential form of governance.<sup>4</sup> After the 2015 constitutional reforms, the Republic of Armenia adopted the parliamentary form of governance.<sup>5</sup>

Although a new model of governance was adopted, as a result of every reform, in the context of the processes preceding the changes, the model existing at that stage was presented as non-viable. The main problems included inconsistent implementation of the principle of separation and balance of powers, as well as the low level of constitutional and political culture. Moreover, it has been emphasized in the context of all the reforms that the suggested new solutions and the change of the model of governance, along with strengthening the proper level of constitutional and political culture, would solve the aforementioned problems.<sup>6</sup> The reality is that notwithstanding the continuously specified problems and the new solutions suggested for them, the existence of those problems and non-viability of the model of governance existing at any given stage have been a subject of discussions to date, and many problems have not been solved yet. Clearly, the methodology of revealing the existing problems and suggesting solutions for them has not served its main goal, hence, it needs to be re-evaluated.

The following question arises in this context: which is the main problem in the implementation of this methodology, and should how this methodology be re-evaluated?

## 2. Distinctive traits of different forms of governance in the modern world

The first issue is that, as a rule, while speaking about the forms of governance in our society, we are frequently guided by “mythical” perceptions. For instance, we often believe that in the parliamentary form of governance the parliament has the primary role, and vice versa, – in the presidential system the primary role belongs to the president, etc. Meanwhile, the aforementioned perceptions cannot be considered

<sup>4</sup> Հայաստանի Հանրապետության Սահմանադրություն [The Constitution of the Republic of Armenia]. (27.11.2005). Available: <https://www.arlis.am/documentview.aspx?docID=75780> [last viewed 10.07.2023].

<sup>5</sup> Հայաստանի Հանրապետության Սահմանադրություն [The Constitution of the Republic of Armenia]. (06.12.2015). Available: <https://www.arlis.am/documentview.aspx?docID=143723> [last viewed 10.07.2023].

<sup>6</sup> The following problems have continuously been defined: expressions of shadow relations and subjectivism in implementing state-power authorities; over-personalization and over-centralization of the political system; obvious disproportion of the real scope of authorities of various constitutional bodies and their political responsibility; overcoming the differences between the Constitution and the real life; excluding convergence of political, administrative and economic potential; necessity of establishing constitutional guarantees for: ensuring public-legal responsibility and program-aimed activities of the state power; more consistent implementation of the constitutional principle of separation and balance of powers; guaranteeing the balance between functional, balancing and restricting authorities of state power bodies; ensuring proper functionality and functional independence of different branches of power; increasing the role of the National Assembly in the issues of formation of state power and governance bodies to the necessary level; effective activities of the parliamentary minority and strengthening its balancing role; effective legislative activities; parliamentary oversight mechanisms (Concept Paper on the Constitutional Reforms of the Republic of Armenia, Elaborated by the Specialized Commission on Constitutional Reforms adjunct to the President of the Republic of Armenia. Yerevan, September 2014. Available: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2014\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2014)033-e), [last viewed 16.06.2018].

as thorough and precise from the professional viewpoint. Particularly, in presidential system of governance the parliament has serious parliamentary oversight mechanisms. At the same time, numerous heads of executive power with high reputation are known in many modern states with parliamentary form of governance. In this context, there is an interesting opinion, according to which, while presenting a general definition on this complicated issue, it is important not to overestimate the differences between various classifications<sup>7</sup>.

In its classical definition, the parliamentary form of governance is the system of governance, where executive is elected by the legislature and is responsible to it, while in case of the presidential form of governance the power is divided between two separately elected bodies – parliament and president. Presidential elections are usually direct, and presidential power cannot be terminated by the parliament, except in the cases of gross violations related to official authorities.<sup>8</sup>

Hence, the first circumstance, which should be stated in this context, is that the functional sphere of all the branches of power is the same, no matter which model of governance is chosen. More precisely, in all the systems, the parliamentary functions are implemented by parliament, which has corresponding mechanisms of parliamentary oversight. The executive or judicial functions, in turn, are not transmitted from one power to another. For instance, in the United States, which is the most successful system with the presidential form of governance, implementation of many presidential authorities is conditioned with the existence of the advice, consent or approval of the Congress or one of its houses. According to the Constitution, the Congress may impeach the President and remove him/her from the office for treason, bribery, or other high crimes and misdemeanours. Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court are nominated and appointed by the President with the advice and consent of the Senate, Treaties are also made with the advice and consent of the Senate.<sup>9</sup> The noted role of the Senate is not ceremonial, and can be axial for implementing presidential authorities. For instance, after the death of Justice Antonin Scalia in 2016, Barack Obama nominated Merrick Garland to fill the vacancy of the Justice of the US Supreme Court. Meanwhile, after this nomination by the Democratic President, the Republican majority of the Senate factually blocked the appointment of the candidate. The Senate majority leader declared any appointment by the sitting president to be null and void, and that the Supreme Court justice should be appointed by the next president. The Republican majority of the Senate Judiciary Committee held no proceedings on the issue, and there was no voting in the Senate. As a result, the President could not implement his constitutional authority until the end of his tenure.<sup>10</sup> The example shows that serious mechanisms of parliamentary oversight and separation and balance of powers exist and are factually operational in the United States.

Moreover, originally the founding fathers were thinking about the Congress as a branch of power with more important and axial authorities than those of the president and Supreme Court. At the same time, they defined numerous mechanisms of checks

<sup>7</sup> *Gerring, J., Thacker, C. S., Moreno, C.* Are Parliamentary Systems Better? *Comparative Political Studies*, Vol. 42, issue 3, 2009, p. 15. Available: <https://www.bu.edu/sthacker/files/2012/01/Are-Parliamentary-Systems-Better.pdf> [last viewed 04.01.2022].

<sup>8</sup> *Ibid.*

<sup>9</sup> US Constitution, Article II.

<sup>10</sup> What Happened with Merrick Garland in 2016 And Why It Matters Now. 29 June 2018. Available: <https://www.npr.org/2018/06/29/624467256/what-happened-with-merrick-garland-in-2016-and-why-it-matters-now> [last viewed 04.01.2022].

and balances in order to prevent concentration of absolute power in its hands.<sup>11</sup> The founding fathers had no goal to establish a strong presidential power, as they did not want to have a monarch resembling the English monarchy.<sup>12</sup> The Congress was the dominant power in 1800s–1930s. However, strong personalities of presidents have increased the factual role of the presidential power in the system of the US state power over time.<sup>13</sup>

We should also take into consideration that processes of transformation of mechanisms typical for various models of governance are taking place in the modern world. In contemporary parliamentary republics, for instance, a tendency of personalization of parties is visible. On the basis of this circumstance, the researchers even draw a conclusion that in such cases the institute of the prime minister gradually becomes similar to the institute of the president in the presidential model of governance. Notwithstanding these conclusions, in the literature of early 1990s the unequivocal assertion was common, according to which even in these cases prime minister cannot directly apply to the people as the president does, cannot require dissolution of the parliament and new elections.<sup>14</sup> In the author's opinion, this conclusion cannot be considered to be universal in the modern world, as the opposite situations factually exist in different parliamentary countries.

It is also important that many heads of executive power in the countries with parliamentary form of governance have a high reputation, hence, an axial role in the victory of the concrete party in parliamentary elections. This very often automatically leads to non-thorough implementation of parliamentary oversight mechanisms, when, as a consequence of personalization of political parties, the axial role of the leader of the party and the future head of the executive power in parliamentary elections, the executive and its leader become dominant in the system of the state power. In this context, it is a frequent occurrence that, despite formal preservation of the idea that is underlying parliamentary form of governance, according to which the executive is elected by the legislature and is responsible to the latter, nevertheless, in many cases the opposite logic factually prevails.

Moreover, originally the institute of the president in parliamentary republics was based on the idea that he/she will have a symbolic and ceremonial role in the system of power. The president was elected via indirect mechanisms, for instance, by the parliament or by a body specially established for this purpose. Remarkably, many modern parliamentary states have transformed the aforementioned idea and, in some countries, the president is now elected in direct election. For instance, in Czechia, which is a republic with parliamentary form of governance, the president has been elected via direct elections since 2012.<sup>15</sup> It is also interesting that in comparison with other parliamentary republics, the Czech President has serious authorities in

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<sup>11</sup> The Powers of Congress. American Government. Available: <https://www.ushistory.org/gov/6a.asp> [last viewed 04.01.2022].

<sup>12</sup> The Presidency: The Leadership Branch? American Government. Available: <https://www.ushistory.org/gov/7.asp> [last viewed 04.01.2022].

<sup>13</sup> Essential increase of this role took place during the presidency of Franklin Roosevelt (see The Evolution of the Presidency. American Government. Available: <https://www.ushistory.org/gov/7a.asp> [last viewed 04.01.2022].

<sup>14</sup> See Linz, J. J. The Perils of Presidentialism. *Journal of Democracy*, Vol. 1, issue 1, Winter 1990. The Johns Hopkins University Press, p. 52. Available: <https://scholar.harvard.edu/levitsky/files/1.1linz.pdf?fbclid=IwAR3JCDm0TJdkqoyV1nW4LHjiIxVISQ4sUshROMjySMtLRIFanoHcZNgdVgw> [last viewed 04.01.2022].

<sup>15</sup> Articles 54, 56 of the Czech Constitution.

certain spheres. For instance, the latter shall dissolve the Chamber of Deputies in cases defined by the Constitution, shall be the Commander in Chief of the Armed forces, etc.<sup>16</sup>

The above leads to a conclusion that, although the main distinctive feature between the aforementioned two models of governance from the classical viewpoint is the order of formation of the executive power and its responsibility mechanisms, the processes of convergence have resulted in a situation when in the modern world even the models of governance have borrowed from each other the mechanisms originally non-typical for them, and in many cases their rapprochement is noted from this viewpoint.

At the same time, the following idea should serve as the basis for the solution of the discussed issue: the “mythical” perceptions on forms of governance should be overcome, and it must be noted that the functional sphere of each branch of power is the same in any model of governance – the legislative power is always implemented by the parliament with corresponding mechanisms of parliamentary oversight. The executive or judicial functions, in turn, are not transformed from one branch of power to another.

### 3. Advantages and disadvantages of different forms of governance

Literature presents both advantages and disadvantages concerning all the forms of governance. Moreover, while presenting the same model of governance, some authors highlight the advantages of the latter, whereas for the other group of researchers the same form of governance shows numerous disadvantages. For instance, some authors, touching upon the disadvantages of the presidential system of governance, mention that it is less probable for this system to have a presidential cabinet composed of strong and independent members. Moreover, it is emphasized that, in comparison with the head of executive in parliamentary form of governance, it is extremely difficult to remove the president in the presidential model of governance, when he/she loses the trust of the party or the people. Even if the polarization increases to the level of violence and illegalities, the president can persistently continue to occupy his/her office. Besides, the absence of a monarch or “a president of republic” with a symbolic role in presidential model deprives this system of flexibility and possibilities of restricting the power. Dual legitimacy is presented as the next disadvantage of the presidential form of governance. The reason thereof is that in conditions of having both president and parliament elected via direct elections (hence, representing the will of the people), there is no democratic mechanism to solve the conflicts between the executive and legislative powers.<sup>17</sup> Another group of researchers believes that the parliamentary form of governance has the following advantages: stronger political parties, concentrated electoral accountability, more flexible possibilities for policy-making, more institutionalized political environment, decisive leadership, etc.<sup>18</sup>

There is not much literature, pointing out the disadvantages of the parliamentary system of governance. The existing viewpoints concern the following circumstances: in this system, the members of parliament become too strong, “arrogant” and there is a high probability of misusing the power; the prime minister is loyal and faithful

<sup>16</sup> Certain decisions of the President defined by the Constitution shall be countersigned by the Prime Minister or by a member of the Government so authorized by the Prime Minister (Articles 35, 63 of the Constitution of Czech Republic).

<sup>17</sup> See *Linz, J. J.* The Perils, pp. 62–68.

<sup>18</sup> See *Gerring, J., Thacker, C. S., Moreno, C.* Are Parliamentary Systems, pp. 28–29.

to his/her party; there is an uncertainty of the system of governance and instability of government; an overload of the functions of cabinet; an absence of specialization of leaders, which can lead to inefficiency; an uncertainty of the term of office of the prime minister.<sup>19</sup>

The same situation concerns the advantages and disadvantages of the semi-presidential system of governance. According to some researchers, the main advantages of this form of governance are the following: flexibility, stability of the executive, its addressed responsibility. The same arguments lead other authors to the opposite conclusion, in particular, that semi-presidential form does not suggest solutions for the problem of contradiction of different majorities formed in the result of dual democratic legitimacy. Moreover, the semi-presidential form of governance does not result in stability of governments. For instance, the stability of governments is low in Finland (45 governments over 54 years – 1944–1988), Portugal (14 governments over 20 years – 1976–1998), the Eastern European semi-presidential countries do not attest to the stability of governments either. Although the direct election of the president is considered by the proponents of the semi-presidential form of governance as a possibility for the people to directly choose the head of executive, the president does not automatically become the head of executive power or the parliamentary majority just as a result of direct election. “Semi-presidential form is a system, where both the parliamentary and the presidential elections separately have an impact on the formation of the government. This firstly concerns France. A person, having an axial role in the sphere of executive power, is directly elected via presidential elections, nevertheless, he/she, in comparison with the presidential form of governance, is not the head of executive power. Hence, it is impossible to disregard the political orientation of the parliamentary majority. In case of “coexistence”, there are no direct elections of executive power, besides, suspicions and uncertainties emerge in social opinion on the issue of what kind of role shall each of the two heads of executive power have separately. In case of coincidence of majorities, there is no precise identification of the prime minister and his/her team because of their frequent changes”.<sup>20</sup>

The above examples show that researchers present both positive and negative perspectives concerning the same form of governance. Moreover, often the same circumstances lead them to essentially different, even opposite conclusions, when the same factor is presented by one group of authors as an advantage, whereas the others consider it as a disadvantage. In this context, Sartori’s idea is worth mentioning, according to which, as a rule, while fairly criticizing the system, in which we live, we are often mistaken, defining alternatives for that system and providing the alternative with mythical advantages. If the presidential system is criticized, this does not yet mean that the opposite model – parliamentary one – is a “good alternative”.<sup>21</sup>

<sup>19</sup> See *Chukwuemeka, E. S.* Advantages and Disadvantages of Parliamentary System of Government. 17 May 2020. Available: <https://bscholarly.com/advantages-disadvantages-parliamentary-system-government> [last viewed 04.01.2022].

<sup>20</sup> Detailed approaches on advantages and disadvantages of the semi-presidential system of governance can be found in *Poghosyan, V.* The evolution, pp. 71–80.

<sup>21</sup> See *Zaznaev, O.* Sovremennaya diskussiya o luchshej forme pravleniya. Uchenye zapiski Kazanskogo universiteta, Gumanitarnye nauki [Zaznaev, O. Contemporary debate about the best form of governance]. Scientific Notes of Kazan University, Humanitarian Science, Vol. 155, issue 1, 2013, p. 201. Available: [https://kpfu.ru/portal/docs/F1642033109/155\\_1\\_gum\\_23.pdf](https://kpfu.ru/portal/docs/F1642033109/155_1_gum_23.pdf) [last viewed 29.08.2023].

Notwithstanding the above, the viewpoint prevails in literature, according to which from the aspect of strengthening democratic systems, overcoming conflicts between the branches of power, parliamentary form of governance is much more beneficial and efficient, as well as has numerous advantages in comparison with the presidential one.<sup>22</sup> Moreover, it is highlighted that the absolute majority of stable democracies in the world are parliamentary systems, where executive is formed by parliamentary majority and is dependent on it. Whereas the only presidential democracy with long history of continuity exists in the United States.<sup>23</sup> The interesting fact here is that the mentioned viewpoint prevails also in the American research.

Regarding the semi-presidential model of governance, the author of the current article holds that from the doctrinal viewpoint the main disadvantage of the presidential form – the absence of proper mechanisms for overcoming conflicts between the two elected bodies due to dual legitimacy – is not overcome in conditions of this model, either. Moreover, the president elected in direct elections does not become the head of executive power or parliamentary majority, simultaneously implementing particular authorities, which presuppose factual governance of the executive. This leads to dualism in the governance of the executive power, as a result, neither the president, nor the prime minister implement their functions with a thorough and complex responsibility. Serious disproportion between the axial authorities of the president in the sphere of executive power and his/her political responsibility emerges, since in semi-presidential system of governance there are no proper and sufficient mechanisms of adequate political responsibility of the president.

Concerning the experience of implementation of various forms of governance in practice, the world has the most versatile forms of governance. For instance, the parliamentary form of governance exists in such countries, as Estonia, Germany, Greece, India, Hungary, Israel, Italy, Latvia, Czechia, Armenia, Bulgaria, Croatia, Austria, Bosnia and Herzegovina, Iceland, Serbia, Slovakia, Slovenia, Lebanon, Malta, Pakistan, etc. The presidential form of governance exists, for instance, in US, Argentina, Brazil, Bolivia, Chile, Dominican Republic, Indonesia, Kenya, Liberia, Mexico, Nigeria, Nicaragua, Paraguay, Turkey, Turkmenistan, Venezuela, Belarus, Kazakhstan, Tajikistan, Uzbekistan, etc. Semi-presidential form of governance exists in Algeria, Egypt, France, Lithuania, Poland, Portugal, Romania, Tunisia, Ukraine, Azerbaijan, Russia, Syria, etc.

The presented list of states shows that all the forms of governance have both successful and unsuccessful practices of implementation. At the same time, as mentioned above, from the aspect of strengthening a stable democracy, the number of countries, which adopted parliamentary system, is greater.

On the basis of the aforementioned ideas, can a conclusion be drawn that there is no perfect form of governance that represents only advantages and disadvantages? If yes, which should be the main factors, underlying the choice among the different forms of governance?

From the doctrinal viewpoint one can certainly specify the advantages and disadvantages of models of governance, which, as stated above, are not always perceived unanimously. From this viewpoint, the author considers classical forms of governance more acceptable,<sup>24</sup> as in these systems there is a clear separation and

<sup>22</sup> See, for instance, *Linz, J. J. The Perils. Gerring, J., Thacker, C. S., Moreno, C. Are Parliamentary Systems.*

<sup>23</sup> See *Linz, J. J. The Perils*, p. 51.

<sup>24</sup> Wording “classical form of governance” is used in order to point out the parliamentary and presidential forms of governance.



balance of powers, there is no dualism in the governance of executive, the authorities and political responsibility of the bodies of executive power and its head are proportional, there are proper legal and political mechanisms for overcoming conflicts between the branches of power.

However, the presented analysis leads the author to a conclusion that the criterion for selection of this or that model of governance cannot be based solely on the idea of highlighting advantages of one form and disadvantages of the other one, or on the presented doctrinal factor, – it requires a much more thorough and complex approach.

## **4. Factors and circumstances, underlying the selection of the form of governance**

### **4.1. Criteria and methodology for diagnosing the necessity of changing the form of governance**

One of the main disadvantages typical for many modern constitutional systems is “normative fetishism”. The essence of the latter is in the fact that in these systems there is a stable perception that social progress is achieved solely by means of improving the existing formal norms and creating new ones. The paradox is that though non-viability of normative fetishism is continuously approved by concrete examples of various scales, thinking and logic of this kind continue to underlie reforms.<sup>25</sup>

From the aspect of guaranteeing social progress, we should firstly overcome the presented way of thinking and exclude the role of the latter in the context of various changes, including constitutional reforms.

With this regard, the author believes that any change in the text of the Constitution, transformation of any institution and mechanism should satisfy the following important criteria and should be implemented, observing the methodology to be discussed further below: it is necessary to precisely reveal the problems, suggest solutions for them, assess the existence of casual relationship between the revealed problems and suggested solutions, assess the possible risks of the noted solutions, analyse problems and solutions from the aspect of all the relevant spheres (legal, politological, psychological, sociological, etc.), combine the received data and adopt a decision on the necessity of this or that amendment or its absence just in the result of this. In case of not maintaining these criteria, there is a serious threat to have “normative fetishism” as a consequence, which, as noted before, should not serve as the basis for constitutional amendments. Otherwise, any change can become a process with an end in itself.

The aforementioned general criterion concerning constitutional amendments is applicable also to the reforms concerning the form of governance. In particular, noting the history of continuous changes of the model of governance, it would be naïve to think that a new similar institutional change implemented with the same logic will lead to a successful result.

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<sup>25</sup> See also *Manasyan, A. Constitutional Stability as an Important Prerequisite for Stable Democracy. Yerevan, 2019, pp. 104–105.*

#### 4.2. Factors, conditioning efficient implementation of a model of governance

Besides the above-mentioned methodology, the circumstances explained below should be considered in case of any change in the model of governance.

The approach prevails in literature, according to which the efficiency of implementing this or that model of governance is conditioned by a number of additional factors – political, sociological, economical, historical, etc.<sup>26</sup> Moreover, it is stated that “it is necessary to combine the institutional advantages and disadvantages of forms of governance and their models with the context of a particular state, and try to find the most favourable option, corresponding to this context. While designing the form of governance on a particular state, firstly, it is necessary to take into account the political culture and political system of the state”.<sup>27</sup>

Therefore, in the conditions of the above-mentioned reality, when almost all forms of governance have been tested in the Republic of Armenia, nevertheless, the stated problems continue to be unsolved, the author holds that the solutions should be sought not through continuous changes of the form of governance, but in overcoming the mentioned factors. In particular, the improper level of constitutional and political culture, the continuous attempts of over-centralization and over-personalization of power, the permanent culture of violating even the existing mechanisms of separation and balance of powers, the instability of the party, hence, also the political system, etc., are the problems, which have been stated repeatedly, yet have not been solved in a satisfactory manner in the conditions of none of the models. Moreover, these are the problems, which mostly derive not from unperfect legal regulations, but from numerous political, economic, social, historical, psychological factors.

The analysis presented in the current article shows that at this stage the priority from the aspect of the development of the model of governance in Armenia should not be changing this or that legal regulation, but instead – overcoming the above-mentioned problems, as well as developing and implementing solutions in the framework of the noted criteria and methodology.

Developing and strengthening proper constitutional and political culture and traditions have the primary role in this context. Moreover, the following is axial from the viewpoint of the discussed issue: formation of culture and traditions requires time, it is not a process presupposing a little step, but a gradual one, which cannot be implemented over a short period of time. Hence, continuous changes of a model of governance, which appears “wrong”, is no less dangerous than holding on to a particular form – such changes almost exclude formation of traditions and culture, leading to instability of the political and constitutional system. Researchers emphasize that, while drawing a conclusion concerning the models of governance, not only the current situation in the country should be noted, but also its institutional history, in particular, how many years the parliamentary or presidential system has operated in the country. The reason is that time is needed in order to allow the institutions to visibly impact the quality of governance. The state, which fluctuates from one form of governance to another, cannot expect immediately visible, polar changes in the quality of governance. In reality, the aforementioned changes accumulate over time, when the new institutional rules begin to exert an impact upon actions and expectations.<sup>28</sup>

<sup>26</sup> See *Gerring, J., Thacker, C. S., Moreno, C. Are Parliamentary Systems*, p. 30.

<sup>27</sup> See *Poghosyan, V. The evolution*, p. 70.

<sup>28</sup> See *Gerring, J., Thacker, C. S., Moreno, C. Are Parliamentary Systems*, p. 16.

Hence, a necessity of strengthening political and constitutional culture and traditions, as well as excluding continuity/frequency of such serious changes should be considered axial.

#### 4.3. Excluding supremacy of political factor in selecting the model of governance

The next important circumstance is that, although the selection of the model of governance is, *inter alia*, a result of political choice, the political factors cannot and should not prevail in the process of decision-making about the aforementioned issue. In other words, if the aim is to ensure successful, efficient and professional constitutional development, amendments to the text of the Constitution, transformation of this or that institution cannot be implemented just on the basis of political interests and preferences of particular political force/forces.

It is obvious that the political environment has an undeniable impact on the choice of constitutional solutions and their factual realization. The reason is that almost in all modern constitutional systems the constitutions are adopted and amended as a result of direct participation of political forces, notwithstanding the fact whether the constitutional regulations are adopted by the parliament, special body established for this aim, or the people. At the same time, participation and impact of political forces in the process of constitutional developments cannot transform the Constitution to a document, having an exceptionally political nature. For political forces, constitutional developments are necessary primarily for gaining and preserving power, as well as forming and developing a desirable model of separation and balance of powers. This becomes essential from the viewpoint of their entire role in the process of constitutional developments. Hence, an approach must be noted, according to which Constitution-makers are usually interested just in the idea of inseting such a system, which would be beneficial for them personally, for their party, or their voters. From this perspective, the model of governance defined in the Constitution is a result of a very conditional political struggle, which has little or no connection with the long-term potential of state governance.<sup>29</sup>

Hence, notwithstanding the undeniable impact of the political environment on the Constitution, the latter is not a document solely of a political nature. Legal and political aspects are closely interrelated from the viewpoint of Constitution, and guaranteeing proper balance between them has an exceptional importance from the aspect of ensuring constitutional stability. From this viewpoint, one should be guided by the logic that law and politics should have one main common goal – regulation of social relations by guaranteeing the principle of rule of law. And in such conditions it becomes obvious that the Constitution should not be a tool for politics, but instead – a bound, a framework for it. Moreover, constitutional developments should not express the current political preferences and interests, yet be superior to them and define a fundamental legal framework for political actors and events.<sup>30</sup> In other words, constitutional policy should be clearly differentiated from the current politics, and the Constitution should not be a part of the ongoing political game, but have a role of defining the rules of that game.

<sup>29</sup> See Gerring, J., Thacker, C. S., Moreno, C. Are Parliamentary Systems, p. 27.

<sup>30</sup> With this regard see also CDL-AD(2010)001, Report on Constitutional Amendment, Adopted by the Venice Commission at its 81<sup>st</sup> Plenary Session (Venice, 11–12 December 2009). Available: <http://www.venice.coe.int/docs/2010/CDL-AD%282010%29001-e.pdf> [last viewed 20.01.2018].

It is worth mentioning in this context that, according to various studies, in all the situations, when political elites have been trying to use the Constitution to gain political dominance, the final result has been the paradox “Constitution without constitutionalism.”<sup>31</sup> This, in the author’s opinion, is unacceptable from the viewpoint of guaranteeing constitutional stability and stable democracy.

Moreover, the author believes that Constitution should not be subject to amendment with every change of political situation in the state, or formation of a new political majority. The Constitution has a fundamental role from the aspect of regulating social relations and cannot be used as a tool for solving ongoing political problems. Moreover, the Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law holds a symbolic significance. Hence, the Constitution should in reality be perceived by the society as a fundamental document, the symbol of the constitutional system, it should create a feeling of the factually existing constitutionalism, and not of a political declaration accidentally adopted or amended pursuant to each political event. Hence, the frequency of constitutional amendments cannot be conditioned exclusively by the balance of political forces and its mathematical calculation. The ways of constitutional amendments and the process of their realization should form such a public perception that the Constitution is a stable document, a symbol of a concrete constitutional system and cannot be amended at a whim of political will formulated by the political majority of the day. The opposite situation can make the proper realization of constitutional norms impossible and lead to the distortion of values, underlying constitutional stability, as well as of such values typical for the Rule-of-Law State as predictability and legal certainty, excluding the perception of the Constitution as a symbol of a concrete constitutional system.

Regarding the issue at hand, The Venice Commission has continuously stated that overly frequent changes of the Constitution have a negative impact from the viewpoint of constitutional and political stability.<sup>32</sup> Moreover, the Commission with regret emphasized<sup>33</sup> the constitutional amendments in Croatia – during a very short time<sup>34</sup>, the Constitution was amended twice, not permitting an opportunity to use the possibilities provided by the first amendment.<sup>35</sup>

Summarizing the above, it should be stated that if the aim of amendments is to ensure successful, efficient and professional constitutional reform, the change of the form of governance cannot be implemented solely on the basis of political interests and preferences of concrete political force/forces.

<sup>31</sup> See Vliet, M. van, Waihu, W., Magolowondo, A. Constitutional reform processes and political parties: principles for practice. The Hague: NIMD, 2012, p. 12. Available: <https://openaccess.leidenuniv.nl/bitstream/handle/1887/30222/ASC-075287668-3333-01.pdf?sequence=1> [last viewed 16.06.2018].

<sup>32</sup> See CDL-AD(2010)001, *Report on Constitutional Amendment*, Adopted by the Venice Commission at its 81<sup>st</sup> Plenary Session (Venice, 11–12 December 2009). Available: <http://www.venice.coe.int/docs/2010/CDL-AD%282010%29001-e.pdf> [last viewed 20.01.2018].

<sup>33</sup> See CDL-PI(2015)023, *Compilation of Venice Commission Opinions concerning Constitutional Provisions for Amending the Constitution // European Commission for Democracy through Law (Venice Commission)*, Strasbourg, 22 December 2015. Available: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)023-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)023-e) [last viewed 16.06.2018].

<sup>34</sup> The point concerns 2000 and 2001 constitutional amendments.

<sup>35</sup> See more detailed information on interconnections of constitutional stability and politics in Manasyan, A. Constitutional Stability, pp. 45–53, 64–66.

## Summary

Summarizing the above, classification of the forms of governance in the modern world is conditional. Moreover, as a result of the processes of legal convergence even the models of governance have borrowed from each other the mechanisms previously not typical for them, and from this viewpoint their rapprochement is visible in many cases. From the doctrinal viewpoint, the author considers the classical forms of governance more acceptable. The reason is that these systems of governance contain a clear separation and balance of powers, and there is no dualism in the governance of the executive. Moreover, the authorities and political responsibility of the bodies of the executive power and its head are proportional, there are proper legal and political mechanisms for overcoming conflicts between the branches of power.

At the same time, the analysis of the factors presented in the article leads to a conclusion that the problems that are present in our social system, which are always stated as bases for changes of the form of governance, will not be solved under conditions of new reforms implemented by the same logic. Hence, the author holds that the emphasis of reforms should not be the choice of this or that form of governance or definition of their advantages or disadvantages, and the debate should not be delineated along these issues. Moreover, in the author's opinion, it is not expedient to choose a particular classical form of governance and supplement it with the distinctive traits of another model. The reason is that in this case acquire a mixed form of governance instead of a classical one. Consequently, one of the main methodological aspects for properly regulating the mechanisms of separation and balance of powers is to keep them in compliance with the chosen form of governance.

Obviously, some mechanisms of separation and balance of powers in the Republic of Armenia need to be improved. For instance, the following circumstances can become a subject for discussion: Is there a need to inset mechanisms of self-dissolution of the parliament? Are constitutional regulations on the Armed Forces adequate for our legal, political and defense systems? Is there a need to change the process of selection of judges of the Court of Cassation prescribed by the Constitution? In the author's opinion, these are issues, which have led to problems from various perspectives, hence, they should be properly addressed during constitutional reforms.

At the same time, noting the whole analysis presented in the article, the author maintains that the necessity of improvement of the aforementioned constitutional mechanisms is not conditioned by the circumstance of non-viability of this or that model of governance, or the new choice among these forms. Moreover, ceaseless and continuous changes of the model of governance can increase the threat of instability of the political and constitutional system to a maximum level, excluding a possibility for development of adequate traditions and culture. This can lead to more disastrous consequences than the existence and maintenance of this or that model which appears "wrong". The negative consequences can essentially increase in case of making institutional transformations solely on the basis of political interests and preferences.

Hence, in case of any reform of the model of governance, we should refrain from "normative fetishism", noting the criteria and methodology of diagnosing the necessity of the change of the model and the factors, conditioning the efficiency of any form of governance.

Noting the above, the author believes that, from the viewpoint of the further improvement of the model of governance in the Republic of Armenia, the axis of the issue should be transferred away from the debate about making a choice between this or that form of governance, and the main attention should instead be concentrated

on the improvement of mechanisms of separation and balance of powers, as well as on the formation and development of proper constitutional and political traditions and culture.

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