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Usurpation of power under current conditions: political and legal concept

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Abstract

The purpose of the research was to determine the approaches to understand the emergence of the concept of “usurpation of power”. Accordingly, its political and legal nature as a phenomenon is analyzed and the investigation of its influence on the branches of public power is carried out. In addition, the current discussion is examined and the views of some scientists on this issue are criticized and, at the same time, relevant proposals are made. The methodological basis of the research was constituted by the comparative-legal and systemic analysis, the formal-legal method, the hermeneutic method and the methods of analysis and synthesis. As a conclusion it has been established that the development of the rule of law and civil society in Ukraine requires, first of all, ontological integration of the modern and current concept of the rule of law in public institutions and society, along with the observance of legal norms in all spheres of public life and; especially, it demands the prevention of conditions that determine the usurpation of power by civil society, judicial and law enforcement bodies to prevent signs of usurpation of power in public authorities.

Keywords: branches of public power; usurpation of power; corruption of public authorities; local government authorities; contemporary political theory.

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Usurpación del poder en las condiciones actuales: concepto político y jurídico

Resumen

El propósito de la investigación fue la determinación de los enfoques para comprender el surgimiento del concepto de “usurpación del poder”. En consecuencia, se analiza su naturaleza política y jurídica como fenómeno y se realiza la investigación de su influencia en las ramas del poder público. Además, se examina la discusión actual y se critican los puntos de vista de algunos científicos sobre este tema y, al mismo tiempo, se hacen las propuestas pertinentes. La base metodológica de la investigación estuvo constituida por el análisis comparativo-jurídico y sistémico, el método formal-jurídico, el método hermenéutico y los métodos de análisis y síntesis. Como conclusión se ha establecido que el desarrollo del Estado de derecho y la sociedad civil en Ucrania requiere, en primer lugar, de la integración ontológica del concepto moderno y actual de Estado de derecho en las instituciones públicas y en la sociedad, junto a la observancia de las normas legales en todas las esferas de la vida pública y; especialmente, demanda la prevención de las condiciones que determinan la usurpación del poder por parte de la sociedad civil, los organismos judiciales y de aplicación de la ley para prevenir signos de usurpación del poder en las autoridades públicas.

Palabras clave: ramas del poder público; usurpación de poder; corrupción de los poderes públicos; autoridades del gobierno local; teoría política contemporánea.

Introduction

The usurpation of power as a political and legal concept has existed for a very long time. Since the beginning of the division of society into classes, many problematic issues of regulating relations between themselves have arisen. Some classes seized power and exploited others. From the experience of centuries, it is known that any person who has power is inclined to abuse it and goes in this direction until he/she achieves his/her goal.

Power completely passed to one person – the leader, and this leadership continued for a long time, spreading its influence to others. In such conditions, the concept arose from late usurpation – “possession”, means seizing, (retention). All empires, kingdoms, states with dictatorial regimes, without exception, were and are an example of such usurpation of power. In this research, it is necessary to show the dialectics of the essence and the phenomenon of this concept. Justifying the impossibility of usurpation by separate branches of power, one sees such a possibility of its usurpation by

only one person, which can only be the guarantor of the Constitution, that is, the President of Ukraine. All other officials cannot usurp power, due to the specifics of their activities.

A misunderstanding of the very nature of usurpation can lead to different proposals by scientists to criminalize such action by supplementing the Criminal Code of Ukraine with the corresponding norm. The existence of such a norm and its substantiation in the Criminal Code of Ukraine will lead to misinterpretations of this concept, namely, the norm will be “dead”, since it is impossible to prosecute the President of Ukraine due to the complex mechanism of his impeachment and the lack of social conditionality of criminal liability for the usurpation of power. This would be contrary to the principle of expediency and the principle of inevitability of responsibility.

1. Literature review

The works of some domestic and foreign scientists is devoted to the research of the usurpation of power. At the same time, these works are superficial and do not fully reflect the political and legal nature of this concept. There are discussions, polemics, scientists' points of view on this important issue are analyzed, but there is no common understanding and approach to it. The issue itself is extremely difficult, because, in our opinion, there is more political than legal matter in it. To solve this important issue, there should be a systematic approach to research, and then, on the basis of its result, it is possible to develop a unified strategy to combat the usurpation of power.

Myslyvyi V.A. believes that the observance of the democratic principles of the principle of separation of powers, and, consequently, its social value, should be facilitated by the provision of criminal legal protection of these branches of state power, and, consequently, the prevention of manifestations of its usurpation (Myslyvyi, 2017).

In our opinion, such a position does not adequately reflect the very nature of the concept of usurpation. It levels its origins and does not provide an opportunity to more deeply explore and fully understand this phenomenon. In fact, this problem is much more complicated than it might seem at first glance. A logical question arises, what actually constitutes usurpation? The term “usurpation” is a political and legal concept that has deep historical roots.

It is obviously related to the law violation. In various sources, the term “usurpation” (from lat. *usurpatio* – possession) means the seizing (retention) of power by force, committed in the law violation, or the misappropriation of power or the seizure of power.

As Myslyvyi notes, political practice and historical and legal experience show that the usurpation of power is understood as both violent actions and the established strategy of non-violent seizure of state power by high-ranking officials, heads of military structures, leaders of separatist movements and terrorist groups, etc. (Myslyvyi, 2017).

The urgency of the research topic lies in the fact that in-depth research of such political and legal concept as the usurpation of power will provide the possibility to obtain as much information and relevant knowledge as possible in order to develop a common understanding of it.

This will lead to further theoretical developments to prevent the usurpation of power and to make specific proposals. The existing scientific developments differ in their views and positions on this important theoretical and practical issue. Further developments and scientific researches will make it possible to more specifically detail the concept of the usurpation of power and develop a single and correct mechanism for combating this phenomenon.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches to understanding public relations from the point of view of legal theory, administrative law, civil law, etc.

Through the use of the gnoseological method, the essence of public relations was clarified from the point of view of the legal theory, administrative law, civil law, etc., thanks to the logical-semantic method, the conceptual framework was deepened, the essence of the theoretical, administrative, civil-legal aspects of regulating public relations from the point of view of legal theory, administrative law, civil law, etc. Thanks to the existing methods of law, we were able to analyze the essence of public relations from the point of view of legal theory, administrative law, civil law, etc.

3. Results and discussion

The development of the rule-of-law state and civil society in Ukraine requires, first of all, the establishment of the rule of law in the state and society, the observance of legal norms in all spheres of state and public life. This task is especially important in the application of legislation on criminal liability, which entails the most severe means of state coercion, the most severe measures of state punishment. The law requires that everyone who committed a crime to be brought to criminal liability and that no innocent person be punished (Article 2 of the Criminal Procedure Code of Ukraine).

Responsibility for guilt, for the guilty infliction of socially dangerous damage is the main basis and foundation of criminal liability. Only the person guilty of a crime can be prosecuted. No one can be found guilty of committing a crime, as well as subjected to punishment until his/her guilt is proved legally and established by a guilty verdict of the court (part 2 of Article 2 of the Criminal Code of Ukraine) (Vorobei, 1999: 87).

This corresponds to the principle of the rule of law, which means that the declared legislative provisions guaranteeing the protection of the most important public relations in the state must be provided with appropriate criminal legal means. Most of the declared constitutional provisions for the development of Ukraine as a rule-of-law state have the appropriate provision (Tylchuk *et al.*, 2022).

The theory and practice of state formation consistently implement the idea of the conceptual significance of the provisions of the constitution of Ukraine regarding the principles and tasks of the legislation on criminal liability, its institutions and norms, which are reliable tools for ensuring constitutional guarantees.

The Criminal Code of Ukraine ensures the protection of the constitutional order and state power of Ukraine, its sovereignty and independence (Articles 1,109 of the Criminal Code of Ukraine). Establishing the conformity of the criminal law with the constitution of Ukraine should be based on constitutional provisions relating not only to the sphere of public protected law, but to all constitutional prescriptions taken in a systemic unity (Baulin, 2014).

Constitutional guarantees should be provided with criminal law protection, given their importance, because the practice of state formation in the context of reform processes requires the completeness and consistency of such an approach (Marchenko *et al.*, 2022).

The analysis of scientific research devoted to counteracting crimes against the constitutional order and state power testifies to their general nature in relation to the criminal law protection of the foundations of the national security of Ukraine.

The number of crimes committed in Ukraine against the foundations of Ukraine's national security is rather insignificant compared to the total number of crimes (Bantyshev, 2014). In today's realities, the problem of criminal law protection of the foundations of the national security of Ukraine and the functioning of the state power itself is of particular relevance and attention.

According to the Constitution of Ukraine, the separation of state power in Ukraine into legislative, executive and judicial powers means the implementation of their powers through power structures within the established limits and in accordance with the law.

The principle of separation of powers is applied in most countries of the world, where there is a constant struggle between the separation of powers and the legal status in the system of public authorities. As you can see, there are many views and disagreements on the theory of separation of powers (Villasmil Espinoza *et al.*, 2022).

However, if actions aimed at the violent overthrow of the constitutional order or the seizure of state power are, as a rule, obvious in their social danger and illegality, non-violent usurpation of power, as, in particular, the experience of state formation in Ukrainian territories, is a more complicate, often disguised phenomenon associated with the illegal actions of completely legitimate representatives of the branches of state power (Matviichuk *et al.*, 2022).

This approach to understanding this issue is not only wrong, but also illogical. Its negative lies in the fact that without even a legislative basis for criminal liability for the usurpation of power, there is an opinion that representatives of different branches of state power can usurp power. One gets the impression that there is some kind of imposition and persuasion of the possibility of usurpation of power by representatives of different branches of state power.

This thesis is confirmed by the relevant provisions on the basics of lustration, provided for by the Law of Ukraine “On the Lustration of Power” dated September 16, 2014, where in part 2 of Article 1 it is noted:

The lustration is carried out in order to prevent participation in the management of state affairs of persons who, by their decisions, actions or inaction, implemented measures (and/or contributed to their implementation) aimed at the usurpation of power by the President of Ukraine, undermining the foundations of national security and defense of Ukraine or unlawful violation of human rights and freedoms (Leheza *et al.*, 2022: 344).

As we can see, this law is about the usurpation of power only by the President of Ukraine, and not by representatives of different branches of state power. From this law, it is only clear that the above-mentioned persons did not usurp power separately, independently from the President of Ukraine, but carried out their official duties. To date, there is not a single case of signs of usurpation of power by such persons.

Moreover, a huge number of lustrated representatives of different branches of power went to court demanding the protection of their constitutional rights and freedoms. We consider this law unconstitutional, because many innocent citizens suffered because of it. There is no relation of representatives of different branches of state power specified in this law to the usurpation of power by the President of Ukraine.

Myslyvyi (2017) considers: “The twenty-five-year history of Ukraines” independence shows that in the system of relations of power on its territory,

from time to time, situations arise when separate branches of power try to violate the existing balance, that, as a rule, is associated with the challenges of usurpation of power.

It is obvious that such actions are of a diverse nature and are manifested in violation of the legislation regulating the status, functions, competence, forms and methods of activity of high-ranking officials, reflected in various kinds of collusion between representatives of separate branches of power, inter-factional and inter-party agreements, accompanied by corruption, using bribery of government officials and public officers, that was often recognized by power holders themselves.

At the same time, despite the fact that these actions often demonstrate obvious arbitrariness and violation of the law, they are by no means always characterized by violent actions and, on the contrary, are disguised under the guise of political rivalry (Myslyvyi, 2017).

In our opinion, this is an insufficient analysis and argumentation of the organization of the work of separate branches of power, considering that their activities are connected with the challenges of the usurpation of power. Myslyvyi notes:

The usurpation of power occurs, as a rule, in cases where at least one of the three branches of power gradually loses the signs of a democratically formed body, and its functions are concentrated by an official who has the authority or ability to influence the activities of the branches of power (Myslyvyi, 2017: 155).

It is impossible to usurp power by definition, since the very principle of the activities of the branches of state power is inextricably linked with law enforcement and judicial systems. They are generally out of politics, so considering some factors of their influence on other branches of power in order to usurp power looks somewhat illogical. The legislative branch of power has the most democratic system of its own activities, as it is based on the will of the people and has a representation of different segments of the population.

The activities of this legislative body are normalized in such a way that none of its decisions can be taken without the attention of civil society, and therefore it is not only out of place, but also incorrect to talk about the usurpation of power in this case. The supreme executive branch of power carries out its activities on the basis of the Constitution of Ukraine and is responsible to the President of Ukraine and is controlled and accountable to the Verkhovna Rada of Ukraine within the frameworks provided for in Articles 85, 87 of the Constitution of Ukraine.

The specified branch of power is dependent in its activities on the President of Ukraine and the Verkhovna Rada of Ukraine, and therefore, as we see, there can be no usurpation of power by the specified branch of

power in Ukraine, either from the point of view of the very specifics of its activity, or from the point of view of formal logic (Kobrusieva *et al.*, 2021).

The usurpation of local power cannot be perceived as real at all, since local government authorities operate in such a legislative system of coordinates that even theoretically makes such a phenomenon impossible (Chorny, 2018).

The history of the state formation of independent Ukraine has clearly demonstrated that signs of usurpation of power in some places characterized the activities of the President of Ukraine, who, according to the Constitution, is the head of state and the guarantor of state sovereignty, the territorial integrity of the state, compliance with the requirements of the Constitution, human and civil rights and freedoms.

At the same time, the inviolability of the President of Ukraine during the exercise of his official powers (Article 105 of the Constitution of Ukraine), as well as the absence of legislation on his impeachment and the lack of a criminal law prohibition of the usurpation of power, deprive society of the opportunity to legally prevent violations (Halaburda *et al.*, 2021).

Despite the democratic, social and legal system of Ukraine (Article 1 of the Constitution) and without real levers and means of influence and stopping the violation of the law, people are the bearer of sovereignty and the only source of power in Ukraine (Article 5 of the Constitution), resorting to peaceful mass protests, rallies and demonstrations, exercising their right, guaranteed by Article 39 of the Constitution of Ukraine (Constitution of Ukraine, 1996).

Conclusions

Therefore, it can be argued that in the context of the reform processes in Ukraine and the desire to become a full member of the European Community, civil society poses new challenges to the state power to deepen democratic processes. This is the key to the further fight against corruption with the help of institutions, civil society, law enforcement and the judicial system. Under such conditions, the President of Ukraine loses relevant important influences on the branches of power in order to usurp it.

In democratic countries, the question of the usurpation of power is not raised at all, since the system of power itself is built in such a way that it makes it impossible, even theoretically, to usurp power by its top leadership of the state. And vice versa, when public authorities at all levels in a country are too corrupt and these “corporate interests” are inextricably linked and subordinated not according to the principle of the vertical of power, but according to the principle of agreement, toadying, careerism and fear of

losing position, then there is a real threat of concentration of power in one person.

This leads to permissiveness and direct usurpation of power without the help of any forceful methods. There are enough such examples in world history, including in recent history, where the usurpation of power by one person gives rise to a dictatorship that develops into a dictatorial regime. An example of such regimes is the Russian Federation, North Korea, Syria, the Republic of Belarus, Iran and some African countries.

A long stay in the highest positions of the leaders of these countries gives rise to a feeling of permissiveness, impunity, a cult of personality. Such a top official of the state loses the sense of responsibility and reality and puts himself above the law and the state itself. Scientists have proven that the most serious disease of a person can be a disease of power, when, having become ill with it, a person sees no other way out than to be in power for life. Such persons become dangerous not only for the state itself and its citizens, but also for other countries of the world.

It is no coincidence that in developed countries the electoral laws and the tenure of senior positions are strictly observed. This allows us to systematically develop the institutions of civil society, ensure its further democratization, implement foreign and improve current legislation. Thus, the usurpation of power is clear evidence of the lack of effective activity of civil society institutions and its effective levers of influence on the highest officials of the state, as well as corruption in all branches of government.

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