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**PUBLIC ADMINISTRATION  
FOR SUSTAINABLE DEVELOPMENT**

Collective monograph

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The monograph examines the features and prospects for the formation of conditions for sustainable development on the territories under conditions of decentralization in Ukraine as well as the development of theoretical provisions, scientific methodological and practical recommendations to improve the mechanisms of public administration and effective social and ecological policy.

The perspective directions of development of state and municipal government support are defined as factors to improve the processes of interaction between state government, local authorities, business structures and the public in addressing the problems of regional development in the conditions of decentralization.

The monograph is designed for scientists, graduate students and undergraduates who are researching these above-mentioned problems in the Public Administration scientific sphere.

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## **1.5. THE METHODOLOGY OF THE AUTHORITATIVE POWERS INDEX ANALYSIS (ON THE EXAMPLE OF THE HEAD OF THE STATE AUTHORITY)<sup>1</sup>**

The assessment of the place and role of the institution of the presidency in the political system of society has to be carried out taking into account the analysis: firstly, the constitutional norms governing the legal status and scope of the presidency; second, the political processes taking place in the country, and the alignment of political forces in the system of state power; and thirdly, the individual characteristics of the person holding the presidential post. The President's authority in the system of power distribution is derived from the existing government model. However, within each system there are variations. The greatest dynamism differs from the "mixed" system, since it represents various combinations of the set of elements of the main systems – presidential and parliamentary. However, even if there is such a model of government in the country, it does not mean that there will be even distribution of power and fair state administration. In countries where democratic processes are still gaining momentum, there is a tendency to increase authorities among the legislative and executive branches of government by adopting the necessary laws or using gaps in existing constitutional and legal norms.

It is known that under such circumstances, which developed in the state after independence, the constitutional status of the President and his real authority changed substantially and acquired new meaning throughout the period of existence of an independent Ukraine. The process of the political system formation implies that state institutions which have to meet the requirements put forward by society to the system can change. That is why the process of the presidential institution transformation in Ukraine continues to this day, having passed difficult periods of formation and re-establishment in the event of the Constitution adoption and various legislative acts.

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The Constitution of Ukraine of 1996<sup>1</sup> formalizes the division of powers (Article 6), according to which the President may perform his/her duties. The scope of the constitutional powers from the outset is limited to this principle. It is also important to take into account the fact that the need to ensure the constitutional structure stability, unity and integrity of the state, the functioning of society in a consensual regime does not allow to raise the issue of which government is more important and has to have more powerful authority. All branches of government are interdependent and in a civilized state cannot function separately. It is known that the President of Ukraine does not belong to the three main branches of government, but functionally, he is closer to the executive power, although from the formal legal point of view, he still does not enter it. At the same time, the Constitution of Ukraine and laws, a number of subordinate acts give the President wide powers in the sphere of executive authorities<sup>2</sup>. As noted by American scholar D. McGregor: "The essence of presidential institutions is determined by the personnel and political powers of the head of the state"<sup>3</sup>. The Constitution of Ukraine provided great opportunities for the President as a representative of the "interests of all people" to remain the dominant element of the political system of Ukraine.

However, the political and legal practice of developed democracies shows that even where the balance of powers of different branches of government is established at the constitutional level, which implies their independence from each other and mutual control, very often there is excessive authority from the government and the parliament. It is not an exception, but a characteristic feature of modern statehood in a lot of democratic countries, despite the fact that their constitutions establish the principle of the power distribution. It is also peculiar for Ukraine. The significance of the Ukrainian President realization of the arbitration function in the conditions of the Ukrainian statehood establishment on a democratic basis of the transitional nature of society is substantially increasing. The main branches of state power may be in a tough

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<sup>1</sup> The Constitution of Ukraine. Adopted at the 5th session of the Verkhovna Rada of Ukraine on June 28, 1996. – K.: Yurinkom, 1996. – 80 p.

<sup>2</sup> Todyka Yu. Fundamentals of the Constitutional System of Ukraine. – Kharkiv: "Fact", 1999. – P. 203 – 208.

<sup>3</sup> Slyusarenko A., Tomenko M. The history of the Ukrainian constitution. – K.: Publishing house "Knowledge", 1993. – P. 112-113.

confrontation with one another, and then, according to the logic of the Constitution founders, the head of state can take the "right decision" and resolve conflicts by virtue of the fact that he does not formally belong to any of the government branches.

In order to assess the powers of the Ukrainian head of state (their volume), it would be expedient to use the index analysis of the presidential authority when examining the Constitution norms, which establish the rights, duties and powers of the President. It was described by Matthew Shugart and John Carey in the work "Presidents and Assemblies. Constitutional Design and Electoral Dynamics"<sup>1</sup>, it has been actively used in recent years in comparative studies in the West. For a numerical assessment of the powers of the presidents elected at the general election, researchers use the interval method and distinguish between two groups of powers – legislative and non-legislative. Among the indicated powers there are: the dissolution of parliament, the appointment of the Cabinet, the right of legislative initiative, etc. Indexing presupposes assigning each "5" to the full authority, a partial "3-2", and the lack of authority is indicated by "0".

Based on these techniques, the authors have developed own method of determining the presidential power index. The author's method was developed and adapted to the norms of the Ukrainian Constitution and political practice.

As criteria, the most important provisions of the 1996 Constitution (without future changes) which then, in order to achieve in-depth analysis and a real assessment of the presidential power in Ukraine, can be compared with the practical power implementation.

The authors have analyzed the so-called classical text of the Constitution of Ukraine, adopted on June 28<sup>th</sup>, 1996, without amendments. It simplifies the understanding of the methodology of index analysis and helps to implement it in further practical research.

The scale of assessment of the head of state authority is coded: 1 – for full possession of one or another type of authority, 0.5 – for the distribution of authorities with other branches of power, 0 – if the

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<sup>1</sup> Shugart M., Carey J. President and Assemblies. Constitutional Design and Electoral Dynamics. – Cambridge: Cambridge University Press, 1992. – 142 p.

authority does not belong to the president or its use does not depend on him.

Variable powers can be coded as follows:

1. Presidential foreign policy activities: 1 – complete independence in decision-making on international politics of Ukraine, 0.5 – the need for consent of the parliament and / or government members to hold a separate foreign policy course, 0 – non-interference of the president in this sphere.

2. Appointment to the post of prime minister and ministers: 1 – the president appoints the entire composition of the government on his/her own, 0.5 – divides the powers of appointment of members of the Cabinet of Ministers with others, 0 – the president has no right to appoint a government.

3. The ability to create subsidiary organizations and influence state policy through these bodies: 1 – the president may create subsidiary bodies and services, 0.5 – may create similar bodies with the consent of other branches of government or their representatives, 0 – the president has no right to create separate state institutions.

4. The powers of the executive: 1 – the powers of the executive body belong exclusively to the president, 0.5 – the president divides these powers with the government, 0 – the head of state has no right to exercise executive powers.

5. The right of legislative initiative and the veto of the president: 1 – the president has these powers in full, 0.5 – the president may veto the bills of parliament, but has no right of legislative initiative, 0 – there is no right to create laws and the right of veto.

6. The dissolution of Parliament: 1 – the prerogative of dissolution of the parliament belongs exclusively to the president, 0.5 – the president divides this authority with other bodies or for this the president needs the consent of other actors, 0 – the head of state does not have formal powers to dissolve the parliament.

7. The right of inviolability: 1 – the president cannot be removed from office by other branches of power, 0.5 – the president can express distrust solely through state betrayal with the consent of the parliament and by decision of the court, 0 – the president can deprive the right of inviolability,

even through immoral behaviour (the procedure for impeachment is simplified, for example, through the decision of the general referendum).

The presidential index is determined by compiling the numerical data of existing variables, for which the “+” signifies some increase of the index. Three “+” mark make an extra 0.5 points (see Table 1).

**Table 1**

**Indices of the Ukrainian presidential power  
under the 1996 Constitution**

	1	2	3	4	5	6	7	Total indicator
According to the Constitution	0.5	0.5	1	0.5	1	1	0.5	5

As it can be observed that the powers of the Ukrainian president are very broad (even by the letter of the law he scored 5 points out of the 7 maximum possible).

Thus, for instance, in the international relations sphere, the functions of the President include: representation of the state in international relations, leadership implementation of the state foreign policy, negotiation and conclusion of international agreements, and also the decision to recognize foreign states. The President has the right to appoint and dismiss heads of diplomatic missions of Ukraine in other countries, and to accept the credentials and certificates of diplomatic representatives of foreign states.

According to the Constitution, the independence of the head of the state in the areas of foreign policy, national security and defense is somewhat limited due to the need to implement the relevant decisions by the Prime Minister of Ukraine or other ministers (Article 106, paragraph 31). This procedure is known as the "contrasignature" or "consortium", and in the context it has to mean that the decree signed by the president, that is, the act, and not the draft act, is signed by the Prime Minister of Ukraine and the minister responsible for the act and its execution. The existence of an institution of contrasignation in legislation is due to the establishment of a "mixed republic" in Ukraine, for which, as for a parliamentary republic, it is characteristic, because it is the government responsible for the actions of the head of state (in the parliamentary republics it is completely fulfilled, in mixed – limited to a certain range of powers).

It ought to be noted that, formally, the signature of the Prime Minister of Ukraine and the Minister has to be reflected on the original decree that is to be published. Since none of the decrees of the President of Ukraine from this category, published in official journals, did not contain the signature of the Prime Minister and the Minister responsible for its execution, one can say that the signature procedure in Ukraine was not applied. Anticipating opponents' precautions that the draft acts (or already signed acts) of the President of Ukraine for the moment are "vised" by the Prime Minister and Minister on the reverse side of the original of the act, the following has to be noted: the importance of the procedure of counter-signature is that it prevents the head of the state from exercising certain powers at own discretion. The signatures of the Prime Minister of Ukraine and the minister on the act testify that the government is involved in a certain decision and thus shares with the head of the Ukrainian state the responsibility to the citizens for the consequences of this particular decision<sup>1</sup>.

The second indicator in the analysis of the presidential power is the appointment of the government. It has to be stated that the Prime Minister was appointed by the President with the consent of more than half of the constitutional composition of the Verkhovna Rada. The personal composition of the Cabinet of Ministers was appointed by the head of state on the submission of the Prime Minister. However, there was a procedure under which both the President and the Verkhovna Rada could influence the activities of the government, because the Constitution, within its boundaries, was the responsibility of the Cabinet of Ministers to the President and is accountable to the Verkhovna Rada<sup>2</sup>.

A clear definition of the prime ministerial status and approval of this position by the parliamentary majority undoubtedly increased the role of the Prime Minister in the Ukrainian system. The Prime Minister also had to rely on the fact that the Cabinet of Ministers, headed by him, along with the Verkhovna Rada, the President, people's deputies, the National Bank, had the right of legislative initiative. Consequently, for the constructive work of

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<sup>1</sup> Syroid O., Yashina Y. The activities of the President of Ukraine in the field of drafting and legislative process – K.: Ukrainian Legal Foundation, Abstract, 2004. – P. 22.

<sup>2</sup> Shatilo V.A. Institute of Presidency in the system of state power of Ukraine. – K.: Ukrainian Center for Political Management, 2004. – P. 8.



the executive with the President and his cooperation with the legislature, it was necessary that the bills coming to the parliament from the Cabinet of Ministers coincide with the presidential direction on the economic strategy. While projecting a hypothetical situation where the Prime Minister and the President belonged to diametrically opposed political groups, then, using the right of legislative initiative and support of the majority in parliament, the Prime Minister would be able to introduce a policy that does not coincide with presidential one. However, under the conditions of the then political system of Ukraine, this situation remained hypothetical, as the Prime Minister, even supported by the parliament, is powerless before the President's desire to resign. The prime minister, if he was willing to remain on the post, was supposed to be as loyal as possible to the President, he was forced to remain unbiased from political ambitions. Comparison of the mechanisms for the formation of executive power in Ukraine and France (as countries with a semi-presidential system of government, according to which the model of public administration was established in the 1996 Constitution) leads to the conclusion that the very fact of the appointment of the government by the President on the proposal of the premier does not yet prove the influence of the latter. The main thing in author's opinion is who initiates the resignation of government officials. In France, such a figure is becoming a premiere; in Ukraine, the President also has absolute autonomy for changes in the executive branch of government.

The powers of the President of Ukraine, stated in the Constitution, were carried out in a lot of directions and affected a wide variety of spheres of public life. First of all, he took the most active part in the formation of key state bodies. The Constitution established a different procedure for the formation of such bodies, the appointment of their leaders. In some cases, it was carried out directly by the President, in others – he acted with the consent of the Verkhovna Rada or on the submission of the Prime Minister.

The next indicator relates to the President's ability to create subsidiary bodies through which the influence on state policy is realized. Consequently, he was entitled to create, within the limits of the funds provided for in the State Budget of Ukraine, for the exercise of his authority, advisory and other subsidiary bodies and services. The structure

of these subsidiary bodies, the order of their activities remained outside the constitutional settlement. They had different status and were headed by well-known officials in the country. These could be committees of various kinds, but above all it is the Presidential Administration – a fairly extensive organization, whose powers are not clearly defined in the Constitution and which, while assisting the President in the execution of his powers, also performed functions that belong to the sphere of executive power. The duties and powers of this body were not regulated by the Constitution, but by the President's decree, i.e. the presence of the Administration is not mandatory in the system of executive power of Ukraine. Certain critics of the Presidential Administration reproached it for having tended to deal with matters that, under the Constitution, belonged to the Cabinet of Ministers, and were more likely to act in the government's sphere of activity, duplicating and replacing it.

Consequently, according to the analysis of the text of the Constitution, the creation of subsidiary bodies allows the head of the state to act as the actual head of the executive branch, especially when the President can rely on the parliamentary majority in the Verkhovna Rada<sup>1</sup>.

Furthermore, the authors analyze the variable "executive body authority". As has already been mentioned, the Constitution did not attribute the President of Ukraine to the executive (he was only "the head of the state"), since the exercise of such power was entrusted to the government. But the Cabinet of Ministers of Ukraine largely lost its independent significance and turned into a body essentially subordinated to the President, who, through his notice, pursued own policy. This means that there was a certain dualism in the executive sphere: the officially executive branch was headed by, on the one hand, the head of the executive branch, the Prime Minister, and, on the other, the President. However, the government did not have the autonomy in making key decisions. De facto the Cabinet's policy was completely determined by the head of the state, and the government turned into a body of the President's administration.

The issue of the staffing of the President of Ukraine can be considered

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<sup>1</sup> Tsvik M., Protsyuk I. About the state-legal nature of the power of the President of Ukraine in the system of power distribution // Bulletin of the Academy of Legal Sciences of Ukraine. – 1999. – No. 1. – P. 57.

fundamental in assessing the range of his power in general, because the duty of selection and placement of personnel on key posts in the state (as well as in order to make a decision by the head of state on dismissal) has given him the opportunity to influence on the decision-making process in the executive structures, indicating the identification of the President with the executive branch of power, both in fact and in public consciousness. In this area, for instance, typical presidential decrees are "encouraging" for the government as one of the levers of influence on the adoption of specific "necessary" decisions<sup>1</sup>.

The right of legislative initiative and the president's veto in assessing the system in the legislation has a maximum rate. The Institute of the President of Ukraine, his powers as head of state is closely linked with both law-making and the implementation of laws. All these powers of the President are inseparable prerogatives of the head of the state. Although for its constructive cooperation with the Verkhovna Rada, namely, for legislative initiatives through parliament, the existence of a pro-presidential majority in the parliament is required.

The implementation of the participation of the head of state in the legislative process took place, first of all, through the right of legislative initiative, the right to sign laws and the right to veto already passed laws by parliament. By comparison: within the presidential regime in the United States, the President has the prerogative of issuing decrees that come into force. The French President, also within the framework of the semi-presidential regime, has the right to issue decrees that are countersigned with the Premier. However, both the President of France and the President of the United States are deprived of the right to legislate, which belonged to the domestic head of state by Constitution.

The President of Ukraine also had the right to appoint an all-Ukrainian referendum on changes to the Constitution in accordance with Article 156, to proclaim an all-Ukrainian referendum on a people's initiative. Special powers of the President regarding amendments to the Constitution concerned, first of all, sections I "General principles", section III "Elections. Referendum" and section XIII Amendments to the Constitution of Ukraine". This right, besides the President, was used by no less than two thirds of the

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<sup>1</sup> Kononchuk S. Development of democracy in Ukraine – 2000. – K.: Agency "Ukraine", 2001. – P. 99.

constitutional composition of the Verkhovna Rada. If the Verkhovna Rada adopted such a bill by no less than two thirds of its constitutional composition, the President would have to appoint an all-Ukrainian referendum that would approve this law. Such a complicated procedure was established in order to prevent unwarranted, instant changes to the Constitution, its initial, principled provisions.

In addition, the President of Ukraine could influence the priority of consideration of laws, because, according to part two of Article 93, "bills that are determined by the President of Ukraine as urgent are considered by the Verkhovna Rada in an emergency". Although the Constitution of Ukraine does not regulate the responsibilities of the head of state in signing this group of laws, it is logical to assume that the president has to demonstrate his interest in the instant settlement of issues stipulated by the bills that he identified as urgent, which has to be reflected in the urgent signing of these laws<sup>1</sup>. That is, the President's duties regarding the procedure for signing the laws ought to be fixed in the legislation, firstly, would make the work of all those who have the right to legislative initiative more effective, and secondly, would force the President to treat the laws, which he defined as urgent, with all responsibility and sign them within the specified terms.

It has to be noted that the head of state had, as an integral part of his office, the right to address the message to the people and with annual and extraordinary messages to the Verkhovna Rada on the internal and external state of the country. Those appeals cannot be regarded as purely informational. After all, they outline the vision of the situation in which the state is located, outlines ways to overcome obstacles that prevent its progressive development, etc. It is clear that these provisions cannot be construed as obligatory for use by parliament. However, the position of the President as head of state, his vision of ways of society development cannot but affect the activities of other power structures. The Parliament, working on the state legal framework development, would have to reconcile its decisions with the President's position, since only under such conditions the coordination of the entire state mechanism functioning, the society stability and state power can be ensured. Therefore, the ways for

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<sup>1</sup> Burczak F. President of Ukraine. – K.: Yuriy, 1997. – ("The New Constitution of Ukraine"). – P. 10 – 13.

finding the compromises, built on taking into account the positions of each of these authorities, could be the most rational and logical in the state policy development<sup>1</sup>.

Finally, in accordance with paragraph 30 of Article 106 of the Constitution of Ukraine, the President has veto power, which allowed him to return adopted law for reconsideration, as the Constitution does not contain any restrictions on this law application. It has to be underlined that the term "veto" is used in the values set forth in the Basic Law and other legislative acts, in particular:

- proposals of the President of Ukraine – the veto of the President of Ukraine, which is proposed to amend the text of the adopted law;
- veto of the President of Ukraine for cancellation – veto of the President of Ukraine, which is proposed to repeal the adopted law;
- veto of the President of Ukraine – generalized notion of "proposals of the President of Ukraine" and "veto of the President of Ukraine for cancellation".

It ought to be stated that the President's position regarding the consideration of his proposals or the abolition of the law during his re-examination was not consistent: the application of the "veto for cancellation" in the preceding stage does not exclude the provision of proposals with the re-application of veto power, and vice versa – the provision of proposals initially does not exclude the veto for cancellation in the next step<sup>2</sup>.

The Verkhovna Rada of Ukraine had the opportunity to overcome the presidential veto no less than two thirds of its constitutional composition during the law re-examination.

Thus, according to the analysis of the Constitution provisions, the powers of the head of state in matters of legislative initiative and the right of veto equal to the highest point.

It ought to be emphasized that the Basic Law of 1996 contained a mechanism for resolving conflicts between the President and the

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<sup>1</sup> Syroid O., Yashina Y. The activities of the President of Ukraine in the field of drafting and legislative process – K.: Ukrainian Legal Foundation, Abstract, 2004. – P. 13.

<sup>2</sup> Political system of modern Ukraine: peculiarities of formation, tendencies of development / Editorship: F. Rudich (head) and others. – K.: Parliamentary View, 1998. – P. 116.

Parliament: the President received the right to terminate the powers of the parliament, which did not fulfill its obligations (the necessary condition for this was the inability of people's deputies to start a plenary session within thirty days of one session). Moreover, this prerogative belonged exclusively to the head of the state. The scheme of the implementation of the right of dissolution by the President of the Verkhovna Rada is as follows: if the consideration of conceptual issues took place in a disadvantageous direction for the President, the pro-presidential forces in the parliament refused to register, thereby blocking the beginning of plenary sessions and bringing the parliament closer to the moment of dissolution. However, for the realization of this situation, the existence of a pro-presidential majority in the parliament was necessary<sup>1</sup>.

The authors believe that according to an index estimate, the head of the state uses this right in full without exception, and then the score is equal to the highest score.

As the case may be, the President supported the right of inviolability at the time of the exercise of his powers (Article 105). According to the Constitution of Ukraine, he is responsible for the implementation of/non-fulfillment of official duties, for his actions, for intentional encroachments and violations of the Constitution and for transgression of laws, for his committing state treason, damage to state independence, bribery, other breaching the laws. Thus, the predominant form of dismissal of the President of Ukraine from office is impeachment (Article 111).

In Ukraine, in the text of the Constitution (since the law on the President's impeachment of Ukraine was neither adopted in 1996, nor nowadays) formally the decision on the President's compulsory dismissal should be taken only by the Verkhovna Rada by no less than two thirds of its constitutional composition. After this, the Verkhovna Rada establishes a temporary ad hoc commission to investigate all the actual circumstances of the case. The commission consists not only of people's deputies; it must include a special prosecutor and a special investigator.

This decision is then verified by the Constitutional Court, which makes a reasoned conclusion that the constitutional procedure for investigating and reviewing the case on impeachment is complied with. The decision has

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<sup>1</sup> Kis T. The Institute of Presidency in Ukraine // New Politics. – 2000. – No 1. – P. 28.

to receive the conclusion of the Supreme Court that the acts in which the President is accused contain signs of treason or other crime. For the removal of the President of Ukraine from the post at least 338 deputies have to vote. It is clear that the vote on such an acute issue ought to have been nominal to avoid misunderstandings.

Such a complicated procedure for making decisions on the impeachment of the President provided for the protection of the head of the Ukrainian state from unreasonable, false accusations. It is possible that opposition forces could, in order to achieve their goal, speculate on the initiation of the impeachment issue. The score of 0.5 points makes it possible to see that this procedure could not be implemented in law due to the complication of the impeachment procedure, and because of the lack of a law on impeachment.

Data obtained during the index analysis of the presidential power allows concluding that the thesis of excessive presidential power is confirmed in the conditions of the 1996 Constitution – the head of state had an extensive power. Although at that time in Ukraine the presidential-parliamentary form of government was fixed, however, an index analysis of the powers of the President of Ukraine in the text of the Constitution means that at that time it was more a presidential form of government headed by the head of state who had very broad authorities.