

**KAPITEL 7 / CHAPTER 7⁷****THEORETICAL AND LEGAL UNDERSTANDING OF THE PHENOMENON
OF STATE AUTHORITY****DOI: 10.30890/2709-2313.2023-20-03-013****Introduction and problem statement.**

Power revealed as a multidimensional phenomenon in the political, sociological, ideological, axiological, legal, ethical sense. Modern State power in a democratic transition of a society acquires conflicting potential for violation, so it requires the creation of instruments of social and legal restriction and control. The modern understanding of state power has a public-legal expression, institutional design and management abilities as a legal organization; therefore, it requires a synthesis of disparate general scientific and state knowledge legal approaches, focus on research within the ethical and legal discourse of its organization and functioning.

According to the perception of nature and purpose, state power is the factor of optimal social organization of large social groups in poor times. But in modern manifestation it acquires contradictory features, acquiring the potential for transgression – the existence of destructive qualities, therefore, makes it necessary to preserve the vector of research on the problem of understanding, The organization and functioning of its institutions, instruments of legal restriction and control, ideologically justified by the concept of the supremacy and primacy of law over it. This methodological approach identifies markers of legal interconnectedness of power as relevant and semantic criteria of its legitimacy and obstacles to its arbitrary operation.

The optimal organization of the entire system of state power preserves the potential of public choice with regard to the democratic transition of society to legal statehood. From the model of its representation to realities, actualizes the philosophical and theoretical legal discourse, methodological substantiation of its nature and definition of content, directions of organization, objectives, systemic unity of structural elements, legal forms and ethical and legal criteria and limitations of their functioning, study of the characteristics of factors of the state and legal regime forming the Government. In particular, civil society institutions, the constitutional institution of public opinion and control and others.

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7.1. Analysis of research and publications.

Scientific and practical understanding of the phenomenon of power remains relevant. In experiments this direction manifested in genesis of scientific ideas and generalizations of experience of methodological analysis of interrelation of power and law and substantiation of conditions of constitutional stability; analysis of system qualities of state power [1, p. 62-66]. Review of its functioning in the context of the protection of national security [2, pp. 40-46]; analysis of the concept and criteria and the manner of its limitation; procedural and restrictive regulation of PR power. The scientific search for its essence and philosophical understanding, as well as psychology and psychoanalysis of behavior of subjects of authority is noticeable.

Power reflected as a socio-philosophical and legal category, as an object of attention to analysis of features of its functioning, which requires updating of its understanding and methodology of research [3, pp. 373-379]. There is still no limit to the force of international law. However, the concept of limitations on power still not well understood in the science of public administration.

Political and legal thinking have traditionally supported interest in the essence and definition of the boundaries of power. The significance of its limitations in countering the dictatorial shades of N. Bobbio [4], its limits – K. Grisinger [5], fair borders – C. Escwith [6, p. 237-262] and S. Guzzini [7, p. 443-478]. As the dominant factor influencing the dynamics of state power, the scope of its powers and the degree of their exercise analyze the influence of globalization on power [8, p. 359-360; 9, pp. 53-78; 10, pp. 62-87; 11; 12, pp. 130-147; 13]. Experiments of new technologies in the field of public administration [14, pp. 1-14].

The definition of socially conditioned necessity, value and elements of the mechanism of state power returns to the reasoning justifying its legal character both in philosophical and methodological paradigms of the past and modernity.

7.2. Chief idea presentation.

Awareness of the importance of power in the being of man conditioned by his existential experience, circumstances of social practice. The pursuit of freedom and equality requires that the authorities recognize and preserve their value in a modern society where power can suppress, but even without its interference, it is difficult to



imagine the liberation of the human being.

Power is judged in political history: how will attitude and reasonable power affect the integrity of society through submission to one will (Aristotle, Plato); it depends on the primacy of natural law (Cicero); it is based on will and the ability to assert oneself (F. Nietzsche). The philosophical and sociological category of power comprehends its manifestations in societies of the state and pre-state type. In the anthropological dimension, power, as a manifestation of human nature, primarily acts at the level of interpersonal interaction. Transformation of power into a public (public, public) focus its efforts, programs and arsenal of resources on socially significant goals - creation and maintenance of order in private and public spheres, which will ensure public security, stability and sustainable development. The search for public order creates optimal ways of its organization and forms of realization, means defining the limits of power, the powers of its institutions, the forms of permissible control over it depending on the characteristics of the type of state (political and legal). A regime is authoritarian or democratic, which implies or denies such control, leaving the problem in the realm of philosophical and legal discourse.

The axiom is the idea of power, which determines its ability, right and ability to influence the behavior and activities of people, their communities and institutions through means – law, power, will, and coercion. However, no science provides a universal definition of the multidimensional concept of power because of differences in its mental perception, understanding in different eras. Of course, the history of society accompanied by a "permanent" form of its organization, a universal way of structure and development in accordance with the changing management algorithms of power. It is therefore not appropriate to define a single concept of the power of knowledge. However, its theoretical certainty cannot be limited to a single science. In addition, there is a significant gap in political science, philosophy and jurisprudence, sometimes a contradiction between the conceptual scope of the concept of "power" and the theoretical understanding of public power. However, the generalization of philosophical and sociological research limits the range of traits that reflect its social nature and purpose. At the same time, it is important that the modern understanding of power has a public-law expression, institutional design and management capabilities precisely as a legal organization, giving it a legally measurable meaning, boundaries of use and scope of use of resources. Thus, the concept of power inevitably embodies both the general scientific (philosophical and sociological) characteristics, as well as the features of power arising from the legal discourse.



7.3. Basic features of public power.

1) Power is a type of social interaction that arises from the human nature as a normative being and is inherent in exclusively organized social communities. Power is lacking in other segments of wildlife.

2) Power is manifested (both in normative and institutional terms) in both politically asymmetric and pre-political society with features of institutionalization and normative expression of organization and functioning.

3) Power manifests itself in the form of social power relations involving subjects (individuals, communities). At the same time, only relatively stable social relations are imperative: the concept of power cannot be used in relation to relationships in which the subject affects the subject once, unexpectedly, insignificantly, without long-term social consequences and without a regulatory framework.

4) The authorities organize social groups to create and maintain, through formal State legal standards, a model of public order capable of ensuring the integrity and consolidation of society in a historically changing environment; security, stability and sustainable development.

5) Power embodied in the forms of functional normative institutions (institutions of power). Beyond which none of its legally and politically unorganized functioning is possible, depends on the development and stability of the structure of economic relations, Supports, while ensuring its preservation and development, adaptation to changing external and internal factors, using such levers (resources) as justify the measure and the manner in which they are applied (in particular in the private sector).

6) The exercise of power provides for a degree of regulatory regulation of the use of instruments, means of regulating the circulation of material goods, a system of taxation of social development opportunities. The use of which varies depending on the political and legal regimes – liberal-democratic, where the institutions of civil society create resistance to unnecessary interference in its spheres controlling power from legislation to procedures for monitoring the performance of public authority to authoritarian.

7) Power is legally justified and legitimate in terms of the grounds and procedures for its creation, organization and operation. Legalization of state power is legal proclamation and consolidation of legality of its occurrence (establishment), existence, organization and activity. That is, it must be legitimate a) its foundation (for example, power is illegal if it is usurped, seized or misappropriated). b) Organization (it shall be



established in accordance with the constitution and shall not be exercised without the participation of the people in elections, referendums), without representative bodies. c) all public institutions of power and their competence without exception. d) restrictions (measure) interference with the privacy of citizens and lawful restriction of their rights; e) forms and methods of its implementation, which should exclude arbitrariness, mass repression, persecution of citizens for their beliefs, etc.). The legalization of state authority carried out primarily by constitutions.

8) Democratic power provides for the normative, legitimate and lawful use of coercive measures against persons subordinate to them in order to carry out the necessary algorithm of behavior (legal, moral, traditional, religious). Its forced correction (punishment, preventive measures, sanctions) in the amount that supports and ensures the state power under a certain political regime – authoritarian or democratic [15, p. 54-62].

9) Power as social communication has a conscious and volitional character of interaction, as it carried out by persons with will and consciousness. The dominant subject seeks the result of influence of the power, in which the goal of its achievement embodied, directs (stimulates or restricts) the will of the persons to the established pattern of conduct, by mandatory or recommendatory means to the extent and by means justifiable and permissible in public or private law relations, depending on the interests that authorities protect or provide. Such subordination is possible only if both parties are able to consciously consolidate and adequately interpret the legal content of the orders of authority and obey them - from the prescriptions of the normative, constitutional, in the case of the implementation of the general system of constituent norms, Binding legal regulations of an individual nature, legally binding on the parties to the contract, public or private, which the authorities are obliged to provide and protect. The latter forms a system of responsibilities of power as contours that establish legally defined boundaries and spheres of power.

10) State power has a normative form of expression, since the relationship of the holder of power with the subjects regulated by social norms, in the absence of which the authority loses the function of certainty of regulation of human behavior.

11) The State is the level at which its organs function as a coherent subsystem based on the axiomatic principle of the unity of the State system. Semantic perception of the integrity of power implies three manifestations of its "unity" - social (arising from the unity of social groups); unity of the fundamental goals of the activities of state institutions due to the need for coordinated management of society); organizational and



legal unity.

12) Power organized in a system of legal restrictions that determine the scope and content of the functions of state power, legal forms, methods and means of their implementation. Only power limited by legal imperatives legitimized by society as the organizing center guaranteeing the protection of human rights. According to S. Montesquieu, the whole of history shows that every person with power abuses it. Power does not stop until it faces constraints.

The protection of a person from undue interference and abuse by public authorities stimulates the formation of a holistic concept of limitation, whose representatives appropriately emphasize their anthropological premise, "arising and becoming a force in people's lives. as a result of practice on either side of the boundary between the State and society" [16, p. 6].

Researchers study government in its geopolitical and geo-legal dimension, which acts in interrelated aspects. In axiological as understanding its essence, value, social role. In structural and functional as a system of State institutions and relations (within the system and in relations between the "individual – society – the state". In the normative as a system of legal powers constituting the content of state power. In the instrumental and technological as a system of organizational and material resources, necessary for the performance of its functions. In sociology as a political, practice capable of implementing socially oriented legal policy, managerial decisions taking into account national and cultural characteristics. In geopolitical as a sovereign political territorial organization, combining supremacy, unity and socio-political integrity.

Contemporary jurisprudence focuses, inter alia, on the legal forms, procedures, methods of organizing and exercising power under a democratic regime, its boundaries, functions, legal ownership, the status of subjects (public authorities, civil service, self-government) versus the political and legal assessment of modern undemocratic states. In the field of law, there are legal and legal constitutional grounds for the organization and functioning of State authority; manifestations of shadow illegality in its institutions, abuse and abuse of power as illegal, outside the law.

The existence and functioning of the State initially arises and realized as a form of manifestation, embodiment and logical continuation of natural law at the expense of certain factors [17, pp. 21-23; 18, p. 60-67; 19, pp. 129-135]. The denial of its legal nature, natural and legal prerequisites in modern society could potentially lead the government to disarray and dysfunction, and society to lose the decisive semantic criterion of its assessment and acceptance as legitimate authority. The rejection of this



thesis means the recognition of the primacy of the decision of the State with regard to the nature, limits, designation of state organs that have powers and perform public functions solely based on any arbitrarily proclaimed law, without legal principles and natural legal requirements for its adoption and content.

An integral part of the optimization of modern power in a democratic transit society is the legal tendency to "ethos" in the civil service, public administration, law enforcement and judicial activities. Analytical studies of the ethic problem confirm that ethical infrastructure should be organic for institutions of power [20, pp. 261-265]. As semantic multiplier, which legally defines the requirements of restrictions in the organization and functioning of state power, directs moral and legal principles and norms of conduct of subjects of authority, determines the moral aspect and the basis of responsibility of authorities [20, p. 194–199]. This is as important as the complete moral anomaly of the present does not bypass the institutions of state power.

Therefore, in the modern understanding of the nature of the state power there is a tendency of its ethical and legal restrictions, «etization» of the professional activity of state officials. The ethical component is now central to shaping the model of the civil service, the social and legal status of the civil servant, the conditions for a positive perception of his personality and power in general. The legitimacy of the government and its political and legal capacity depend on respect by state institutions for the values of society. Especially when the level of trust in the bureaucracy is dangerously low, outdated, archaic subjective ideas of the people about the rule of the kingdom, computerization ("digitalization") of the civil service, provision of administrative services, minimization of direct contacts with the official. The professional legal culture of the civil servant is indicative of its legal and ethical (moral) nihilism, with the result that the dysfunctions of power extend to its institutions and functions.

State power in specific historical and socio-political conditions should be analysed in interrelated dimensions: sociological; value-normative (axiological), ethical, psychological, structural and functional (organizational-institutional) normative, procedural (social technology), geopolitical (macro-level). The latter is not a "fashionable" issue, since the concept of the nature of State power and its evolution is a cornerstone and an essential element of the multifaceted debate on globalization, which characterized by many disciplines at the end of the twentieth century. Economists and sociologists discuss globalization in terms of its restrictive impact on the state, considering it as a redefinition, subversion or redistribution of state power to other actors: international organizations, globalization places these disciplines above



the need to understand what distinguishes State power. Determining how public power should be controlled in the public interest is always a key task of jurisprudence, constitutionalism.

Conclusions and prospects.

The phenomenon of state power, its nature and genesis perceived primarily in the context of its goal of optimal organization of social groups. However, in the modern manifestation, power accumulates contradictory attributes, acquires the potential to increase destructive qualities. This feature retains the relevance of the understanding and directions of its research, institutionalization, organization and functioning, instruments of legal organization, limitation and control. This facilitated by the ideological justification of limiting power to the concept of the rule of law, its primacy over power. Such a methodological approach identifies legal markers of the limitation of power, which become relevant criteria for its legitimacy and the creation of obstacles to arbitrary power activities.

The modern understanding of state power perceived in public-legal terms, institutional structure and managerial abilities as legal organization. It is therefore necessary to synthesize disparate general scientific (philosophical, sociological) and state-legal approaches, to focus on the study of power in the range of ethical and legal discourses on the organization and functioning of its institutions.

The optimum organization of the system of state power designed to guarantee the social democratic choice of transition of the society from the ideal constitutional model of authority to the state legal realities and principles of modern constitutionalism.

Such algorithm actualizes philosophical, theoretical and legal discourse, methodological substantiation and definition of nature, content and purpose, forms of organization, Systemic unity, legal forms and ethical and legal criteria for the organization and functioning of State power. It is advisable to consider it as a determining factor of influence, which determines the specifics of the state-legal regime of the energy system. It is advisable to use the method of factor analysis of the whole system of factors – institutions of civil society, local self-government, moral imperatives, and public opinion as a functional socio-constitutional institution.

Protection of the individual against undue interference and abuse by public authorities stimulates the development of a holistic conception of the mechanism of



legal limitation, which becomes a key element of the legal dimension of power, its legal evaluation and recognition.

It is important for modern state bodies to restore a high-quality management trend of "ethicizing" power, public service, public administration and the creation of their ethical infrastructure. Analytical studies of the problem of the ethics of power are semantic multiplier, determining the doctrinal, value-normative content of legal restrictions in the organization and functioning of state power, directs moral and legal principles and norms of behavior of subjects of authority, determines moral dimension and basis of responsibility of authority. Therefore, the modern vision of the state power tends to its ethical and legal limitations, ethicizing the professional activity of its institutions.

The socio-political conditions of the present time contribute to the analysis of state power in interrelated dimensions – geopolitical and international, legal, sociological, value (axiological), psychological, ethical (moral), structural and functional (institutional)procedural and technological), image. This analysis involves the use of methods of comparison and factor analysis.