Article

CONSTITUTIONAL AND LEGAL STATUS OF THE PRESIDENT OF THE REPUBLIC OF ARMENIA

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Introduction. *The article is devoted to the institution of the President of the Republic of Armenia and changes in its constitutional status over the past 30 years. To form the regulatory framework of the rule-of-law state, the adoption of the Constitution of the Republic of Armenia by referendum of 1995, amended by referenda of 2005 and 2015, was of key importance.*

At first, the institution of the President of the Republic of Armenia was strong enough: he was the head of the executive branch, he single-handedly appointed the Prime Minister, ministers, could unconditionally dissolve the legislative branch - the National Assembly, and make appointments in the judiciary system. That is, the principle of separation of powers was formal. The constitutional amendments of 2005 limited the powers of the President of the Republic of Armenia. He had the right to appoint the Prime Minister only after agreement with the Parliament, he could dissolve the National Assembly in the cases and manner provided for in Art. 74.1. of the Constitution of the Republic of Armenia. For ten years, there was a form of semi-presidentalism in the Republic of Armenia, as in the Russian Federation. As a result of the constitutional amendments of 2015, in the context of the transition to parliamentary rule, the powers and functions of the President of the Republic of Armenia became strictly limited. He is elected by the Parliament, he cannot influence the decisions of the Parliament and the Government, he does not participate in the formation of the Government, which is not accountable to him. As a result, the office of the President of the Republic of Armenia is currently of ceremonial and representative nature.

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Materials and methods. *The theoretical framework of this article consists of scientific works devoted to the institutions of the President of the Republic of Armenia and the Russian Federation. The authors also used the results of the analysis of law enforcement practice of the Republic of Armenia.*

The legal and regulatory framework of study was formed by the Constitutions and legislative acts of the Republic of Armenia, the Russian Federation and other states. Using both general research methods (historical, analytical) and special legal methods (system-structural, comparative-legal), the constitutional law of the Republic of Armenia and 30 years of experience in constitutional building were analyzed, as a result of which the existing theoretical and practical problems were identified, certain conclusions and proposals were made.

Study results. *The President, being the head of state, monitors compliance with the Constitution of the Republic of Armenia /Art. 123/, therefore, he should have separate functions and certain instruments. To exclude the dependence of the President on the parliamentary majority, the article proposes to change the mechanism of his election: to amend Article 125 of the Constitution of the Republic of Armenia and grant the right to elect the President of the Republic of Armenia to all those extra-parliamentary paries that took part in the parliamentary elections, but were not elected to the Parliament, receiving between three and five percent of the total votes. It is considered optimal to assign them 30% of the total number of mandates of deputies of the National Assembly of the Republic of Armenia. The governing body of each party elects delegates to participate in presidential elections. In the event of such elections, considering also that, according to the Electoral Code of the Republic of Armenia, 30% of seats in the Parliament belong to the opposition, the President's dependence on the parliamentary majority will be excluded, and, in conditions of limited authority, he, at least, can easily put forward the topics of social and political discourse and influence public opinion, express his opinion on the appointment of the Prime Minister, and at least once a year, without fail, address the Parliament and the people.*

Discussion and conclusions. *Strengthening the institution of the President in the parliamentary form of government can contribute to enhancing the role of the head of state as an arbitrator, effective activity of the Parliament and the Government of the Republic of Armenia and understanding the whole institution supported by the state budget.*

Introduction

Building new social relations after the collapse of the totalitarian system in the post-Soviet countries was difficult and full of contradictions.

The collapse of the highly centralized system of government, the collapse of the Soviet economy, record growth in unemployment, social upheaval drove a wedge between the government and the public interest, and the resulting contradictions led to a crisis situation. In this regard, V.E. Chirkin notes: "Dictatorial socialism" disbanded the society of disenchanted people and led the development to democratic values" [7. P. 5]. New independent countries, including the Republic of Armenia, faced the most difficult task – building a new, sovereign, democratic, legal and social state. During the transitional period, there were no necessary conditions for the establishment of constitutional democracy, the level of public legal awareness was low, and people did not develop the qualities inherent in a citizen of an independent state. Nevertheless, the adoption of the Constitution of the independent Republic of Armenia through referendum of 1995 was of key importance on the way of developing the legislation of legal and democratic state in accordance with international standards, with civil society building. Gradually, "The principle of the rule of law is becoming dominant. The main criterion for the formation of civil society is the limitation of power by law, not the limitation of law by power" [10. P. 11].

Study

The Constitution of the Republic of Armenia not only formulated the fundamental rights and freedoms of man and citizen, the relationship between the citizen and the state, but also consolidated the structure of state power, the procedure for formation, powers, terms and

relations of public authorities. The legislative, executive and judicial authorities of the country, having the appropriate state legal powers, developed, changed as a result of the dynamic development of society, and their status and relationships were mainly determined by the form of government. The foundations of a semi-presidential form of government were laid in the Republic of Armenia. In this case, despite the fact the people took part in two political elections of the President and the Parliament, nevertheless, the power was highly centralized and was in the hands of the President. The President of the Republic of Armenia had real levers of executive power, he was the head of the executive branch. The President singlehandedly appointed and dismissed the Prime Minister, formed the Government. He chaired Government meetings, and the Prime Minister could hold a meeting only on behalf of the President /Art. 86/, the President signed and published decisions of the Government, was the Commander-in-Chief of the Armed Forces (Paragraph 12 of Art. 55). The President was also authorized to unconditionally dissolve the Parliament. Despite the fact that the Constitution of the Republic of Armenia stipulated that the President could take this step after a meeting with the Prime Minister and the National Assembly (Paragraph 3 of Art. 55), the meetings did not lead to any legal consequences, since at the end of the meeting, even if they did not agree, it still did not legally prevent the President from dissolving the National Assembly elected by the people and having the primary mandate. The President was even given the right to convene an extraordinary session of the National Assembly, which meant direct interference in the functions of the legislative branch (Art. 70). He also had the right to veto, etc. That is, the Parliament elected by the people was indirectly subordinate to the President of the country. The President headed the Council of Justice (Art. 94), also formed the judiciary bodies, at his own discretion made appointments in the judicial system out of candidates proposed by the Council of Justice (Paragraph 11 of Art. 55). The President of the Republic nominated key officials, such as Chairman of the Central Bank, Chairman of the Control Chamber, Human Rights Defender and other high-ranking officials, for approval by the National Assembly of the Republic of Armenia. With such broad powers of the President, it is inadequate, to put it mildly, to talk about any balance, containment and counterbalances of power branches. A democratic state system is characterized by ensuring a certain balance among the branches of power, as well as mutual control. However, as life has shown, when exercising powers in practice, the balance (both legislatively and in practice) was violated in favor of the President of the Republic of Armenia.

The office of the leader of the country, as the head of state, also exists in countries with a presidential, parliamentary and mixed model of government. The activities of the head of state, the scope of his constitutionally enshrined functions are determined by the form of government. As Professor R.V. Yengibaryan notes, "the scope of authorities and the real role of the President largely depend on what kind of republican form of government - presidential, semi-presidential, parliamentary - we are talking about. The role of the President in real government of the country in parliamentary republics is largely nominal, while in presidential and semi-presidential republics it is great and real" [4. P. 338-339]. In countries that have a form of parliamentary government, the functions of the President are limited, such as in the Federal Republic of Germany, Italy and Latvia. The situation is different in presidential republics. The President is elected by people and has a strong power, is the head of the executive branch, forms the government that is accountable only to him. In a mixed form of government (France, the Russian Federation, Croatia, until 2018 the Republic of Armenia) with a strong President, the power is divided and balanced, an attempt is made to establish the strong parliamentary institution, to form the traditions of parliamentarism.

The practice of ten years of application of the Constitution led to the need to carry out constitutional reforms in the Republic of Armenia in 2005, which further clarified the mechanisms of balance and counterbalances between the branches of power. It can be stated that by restricting certain rights of the President and attributing them to the National Assembly, certain changes took place in the ruling system: the role of the parliament increased, its control functions grew[1. P. 360], there was a transition from a semi-presidential form to a semi-parliamentary model of government. As a result of constitutional reforms, the position of the President of the country was determined, and under Article 49 he was proclaimed the head of state. As a symbol of state, as an important state institution, he was called to ensure normal and stable activity of the authorities, the constitutional order, and also represent state in international relations.

The constitutional amendments deprived the President of super powers, and they were

significantly limited: from a highly centralized system a transition was made to a more balanced model. According to the amendments of 2005, the constitutional and legal status of the President was characterized by the fact that he did not represent any of the branches of power, but was the guarantor of the normal functioning of all branches of power, state security, defense and territorial integrity. "The President acts as a kind of symbol of state and national unity, ensures the continuity of state institutions, is the guarantor of the constitutional order, the integrity and independence of state, and is called to ensure the overcoming of political crises and cooperation of all public authorities" [3. P. 93]. In countries with a semi-parliamentary form of government, in the process of forming the Government and appointing the Prime Minister, not only the participation of the legislative body increases, but also importance is attached to the extent to which the President succeeds in observing the Constitution and laws, what traditions are laid in the sphere of parliamentary democracy, on what mutual concessions are made by the authorities, maintaining stability in the country, deepening and developing democracy, civil institutions and parliamentarism [8].

The key issue in the relationship between the head of state and the executive branch is the process of appointing the Prime Minister and forming the Government. While in accordance with the Constitution of 1995 the President of the Republic of Armenia appointed the Prime Minister single-handedly, as a result of constitutional amendments of 2005 the President of the Republic appointed to the post of the Prime Minister a person who, as a result of the distribution of deputy mandates in the National Assembly and on the basis of meetings with deputy groups, enjoyed the confidence of the majority of the deputies or the approval of the relative majority. The President of the Republic of Armenia appoints ministers on the proposal of the Prime Minister. The Prime Minister and the Government, exercising their powers, bear constitutional responsibility to the President and the Parliament of the Republic [9. P. 384-401].

According to J. Isensee and P. Kirchhoff, the President's lack of real political power in a sense is the basis of his authority, manifested in the form of a spiritual impact on the political life of society. But thanks to his authorities, he unites what unites everyone. Therefore, he seems to embody the spirit of the Constitution [5. P. 238]. There are countries where the President of the Republic also participates in the process of organizing the executive branch, convening and leading meetings of the Government or ratifying its decisions. For example, in the French Republic, the President chairs the Council of Ministers [6. P. 58]. As a result of the constitutional amendments of 2005 in Armenia, the President exercised certain functions of the executive branch - in issues related to foreign policy, security and defense of the country, and only during the discussion of such issues he could convene and hold meetings. For constitutional amendments, there were also conceptual approaches, under which: "At the constitutional level, the structural system of the executive branch and the range of its systemic relationships with the President of the Republic and the National Assembly should be clarified. The situation should be overcome when the activity of many executive branches is outside the control of the legislative body" [12. P. 46]. As a result of constitutional reforms, the relationship between the President and the National Assembly seriously changed. A very important rule was fixed, according to which the President could no longer dissolve the National Assembly without any conditions and convene an extraordinary meeting of the National Assembly. His rights to declare martial law or a state of emergency and to conduct events were significantly limited. The powers of the President were reduced in connection with appointments in the judicial system, etc. The redistribution of powers between the Present of the Republic of Armenia, the National Assembly and the Government excluded the centralization of power, and the mechanisms of checks and balances were clarified. It is no coincidence that the chairman of the Constitutional Court of the Republic of Armenia, before constitutional amendments, writes that the place of the presidential insitution in the system of state power is not sufficiently specified, the legislative, executive and judicial authorities do not have the necessary functional independence and a dynamically balanced situation, the mechanisms for identifying, assessing and restoring the disturbed balance are imperfect [11. P. 48]. In the context of a semi-parliamentary form of government, despite the reforms carried out, many important issues still remained unresolved. Thus, the President, elected directly by the people, was not accountable to anyone. He was not politically responsible during his term of office and could not be removed from his duties for political reasons. The presidential institution remained uncontrolled, which is unacceptable in a democracy. Only the National Assembly had the right to remove the President /Art. 57/ in

the event of high treason or serious crime, and not for non-performance of his powers and failure [2. P. 4-9].

It was not clear which political program of the two bodies with a primary mandate (the National Assembly and the President of the Republic) should be implemented, especially if the political majority of the National Assembly is from the opposition party to the President. In that case, the President does not actually have any political support in the Parliament. In such a situation, the appointment of the Prime Minister, the foreign policy of the country, the defense of state, the security of the country, joint development and solution of internal issues are challenged. These and other similar issues and conflictogenic situations lead step by step to the suppression of the development of democracy and the failure of the promised programs. On the other hand, if the President has the political majority in the Parliament, then he again begins to rule the country single-handedly, and all his proposals and decisions are approved by the Parliament without fail. In order to avoid the above situations, eliminate the danger of political confrontations, replace the sole ruling with the collegial one, make the Parliament the number one political platform in the country, accountable and controlled by all elements of the system of public authorities, taking into account the experience of previous years of government, it was decided to shift to a parliamentary model. In 2015, following the popular referendum, the basic law of state changed significantly, and in 2018 the final transition to a parliamentary form of government was made, and the system of government of the Republic of Armenia radically changed.

The Constitution completely redefined powers, functions and relationships of all public authorities. According to the Constitution, the National Assembly was given a key role, its functions were expanded in matters of control, the formation of state institutions, the appointment of officials, the role of the parliamentary minority in government of state increased. Hereafter, the Government and the Prime Minister bear exclusive responsibility to the Parliament, and the executive branch functions under the control of the Parliament.

At the same time, the powers of the President of the Republic were severely limited. The institution of the President underwent significant changes, and the President was assigned a representative and ceremonial role, thus excluding his participation in the executive branch. The President of the Republic is, under the Constitution, the head of state, but he is elected by the Parliament for a seven-year term. The President does not have a primary mandate and can only be elected once. It is noteworthy that the Constitution prohibits the President from being a member of any party during the exercise of his powers, thereby giving him the role of an independent arbitrator.

If you try to characterize the new role of the President of the Republic in the system of public authorities, then his powers can be divided into two groups:

– the powers that the President of the Republic exercises autonomously, in accordance with the Constitution;

– the powers that are exercised only if the Government or the Prime Minister makes a respective proposal.

The President can address a message to the National Assembly[1]. It seems that this is an important power, but such a wording, in our opinion, further weakens the President. The wording "can" is not mandatory, but dispositive, and perhaps this is the reason why more than two years have passed since the presidential election, but no messages were submitted to the Parliament yet. This means that neither the Parliament, nor the population of the country are aware of the opinion of the head of state regarding regional, international and domestic events. We think that this is unacceptable. Therefore, we propose to make this rule mandatory so that once a year the President's message becomes a subject of discourse in public and political circles.

According to the Constitution of the Russian Federation, the President of the Russian Federation shall address the Federal Assembly with annual messages on the situation in the country, on the guidelines of the internal and foreign policy of state (Art. 84, Paragraph "f")[2].

Article 123 of the Constitution of the Republic of Armenia stipulates that the President of the Republic monitors compliance with the Constitution. However, what does "the protection of the Constitution" mean in a legal sense? If the Constitution is violated (it is not clear by whom), it is not enshrined in law what actions should follow this, what mechanism of actions should the President apply? It is necessary to amend this article and provide for mechanisms

[1] See article 128 of the Constitution of the Republic of Armenia, www.arlis.am/documentview.
[2] See Article 84 (f) of the Constitution of the Russian Federation. http:www.constitution.ru.

through which the President can monitor compliance with the Constitution. The powers of the second group include such issues as: according to Part 1 of Article 149 of the Constitution, the President of the Republic, after the beginning of the term of office of the newly elected National Assembly, immediately appoints as the Prime Minister a candidate represented by the parliamentary majority formed in accordance with the procedure established by Article 89 of the Constitution. In fact, in the issue of appointing the Prime Minister, the President is unable to exercise any powers arising from his status as the head of state and guardian of the Constitution. Moreover, an analysis of Article 149 of the Constitution shows that the President only approves the candidate for the Prime Minister elected by the National Assembly. There are parliamentary republics where the President plays a role in the appointment of the Prime Minister. For example, in Germany, Italy, Latvia, Hungary, the Czech Republic and other countries, the President either submits a candidate for the Prime Minister, or has the right to approve or reject a candidate submitted by the Parliament within a reasonable time, or the elements of initiative of the President and the Parliament are comparable: if a candidate for the Prime Minister submitted by the President is not approved by the Parliament, a candidate for the Prime Minister is submitted by the Parliament[3].

The President unconditionally, upon the proposal of the Prime Minister, in the manner prescribed by law:

– immediately accepts the resignation of the Government /Art. 130/,

– makes changes to the composition of the Government /Art. 131/,

– appoints and recalls the diplomatic representatives of the Republic of Armenia in foreign states and international organizations (Paragraph 2, Part 1 of Article 132), confers the highest diplomatic ranks (Paragraph 3, Part 1 of Article 132/,

– appoints and dismisses the senior officers of the armed forces and other troops (Paragraph 2, Part 1 of Article 133/,

– confers the highest military ranks /Part 2, Article 133/,

– appoints the Chief of the General Staff (Part 3, Article 155).

According to Part 1, Art. 150 of the Constitution of the Republic of Armenia, the President, upon the proposal of the Prime Minister, appoints Deputy prime ministers and Ministers. The President does not appoint a member of the Government if he considers that the member of the Government or the appointment process does not meet the requirements of the Constitution. In this case he appeals to the Constitutional Court. At the same time, if the President, for political or other reasons, fails to comply with the requirements of Article 150 and does not appoint members of the Government within the three-day deadline, they are deemed to have been appointed by law.

In addition to the proposals of the Prime Minister, the Constitution of the Republic of Armenia also stipulates those cases, according to which, upon the proposal of the Government, the President exercises his powers as follows:

– concludes international treaties /Paragraph 1, Part 1, Article 132/,

– approves international treaties that do not require ratification, suspends or denounces them (Part 2, Article 132).

It turns out that after the expiration of an extremely short period provided for by the amended Constitution, the President is deprived of any participation in the appointment of Ministers as the main responsible persons of the sectoral executive branch and, therefore, the opportunity to assist the Prime Minister and the Parliament [13. P. 121-122].

Thus, the President of the Republic of Armenia, who is considered the guarantor of the Constitution, has strictly limited powers, and, moreover, the Venice Commission also gave a similar assessment in its second preliminary opinion [14. P. 13][4]. The exclusive power is enshrined in Article 130 of the Constitution of the Republic of Armenia, according to which, in cases established by Article 158 of the Constitution, the President of the Republic shall immediately accept the resignation of the Government. This rule establishes an obligation, in case of non-fulfillment of which the President of the Republic can be removed from office for a flagrant violation of the Constitution. He can also be removed from office in the event of high treason and other serious (extremely serious) crimes (Part 1, Article 141). The President can resign from office by submitting his resignation to the Parliament. The Constitution establishes the mechanism by which the powers of the President are terminated if it is impossible to fulfill them. Until the new elections, the Chairman of

[3] See Article 63 of the Basic Law of Germany, Article 92 of the Constitution of Italy, Article 56 of the Constitution of Latvia.

[4] http:moj.am.storage.uploads.pdf

the National Assembly exercises the powers of the President.

Conclusion

The analysis of the constitutional and legal status of the President of the Republic of Armenia shows that the President as the head of state has strictly limited powers. Moreover, such procedures for the exercise of these limited powers are enshrined, which deprive the President of independently exercising the established powers.

We can agree with the conclusion of the Venice Commission that the President has very limited autonomous powers and his role in the legislative process is purely formal [15][5].

It is also possible to discuss the mutual agreement of the President and the National Assembly on the formation of the Government - in the interest of stability and development of the country.

As the head of state, the President monitors compliance with the Constitution of the Republic of Armenia, therefore, he should have certain autonomous functions.

To exclude the dependence of the President on the parliamentary majority, we propose to change the mechanism of his election: the right to elect the President of the Republic of Armenia will be granted to all those extra-parliamentary parties that took part in the parliamentary elections, but received between three and five percent of the total votes, that is, they did not overcome the minimum electoral threshold. We consider it optimal to assign them 30% of the total number of mandates of the deputies of the National Assembly of the Republic of Armenia. The governing body of each party can delegate its representatives to participate in the presidential elections. In the event of such elections, considering also that 30% of seats in the Parliament belong to the opposition, the President's dependence on the parliamentary majority will be excluded, and, in conditions of limited authority, he, at least, can easily put forward the topics of social and political discourse and influence public opinion, express his opinion on the appointment of the Prime Minister, on the foreign and domestic policy of the country, and at least once a year, without fail, address the Parliament and the people. Strengthening the institution of the President in a parliamentary form of government can contribute to improving the efficiency of the activity of the Parliament and the Government of the Republic of Armenia and understanding of the whole institution supported by the state budget.

Thus, when implementing further constitutional amendments in the Republic of Armenia, in our opinion, it is necessary to give the President of the Republic certain independent powers, to strengthen the institution of the President in a parliamentary form of government.

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КОНСТИТУЦИОННО-ПРАВОВОЙ СТАТУС ПРЕЗИДЕНТА РЕСПУБЛИКИ АРМЕНИЯ

Введение. *Статья посвящена институту Президента Республики Армения и изменениям его конституционного статуса в течение последних 30 лет. Для формирования нормативных основ правового государства, ключевое значение имело принятие Конституции РА референдумом 1995 года, изменения в которую были внесены референдумами 2005 и 2015 годов.*

Поначалу институт Президента РА был достаточно силен: он был главой исполнительной власти, он единолично назначал Премьер-министра, министров, мог без каких-либо условий распустить законодательный орган - Национальное Собрание и производить назначения в системе судебной власти. То есть, принцип разделения властей было формальным. Конституционные изменения 2005 года ограничили полномочия Президента РА. Он имел право назначать Премьер-министра только после согласования с парламентом, мог распускать Национальное Собрание в случаях и в порядке, предусмотренных ст. 74.1. Конституции РА. В РА десять лет существовала форма полупрезидентского правления, как и в РФ. В результате конституционных изменений 2015 года, в условиях перехода к парламентскому правлению, полномочия и функции Президента РА стали строго ограниченными. Его избирает парламент, он не может влиять на решения парламента и Правительства, не участвует в формировании Правительства, которое не подотчётно ему. В итоге должность Президента РА носит церемониальный и представительный характер.

Материалы и методы. *Теоретическую основу настоящей статьи составили научные труды, посвященные институтам Президента РА и РФ. Авторами были также использованы результаты анализа правоприменительной практики Республики Армения.*

Нормативно-правовую основу исследования составили Конституции и законодательные акты РА, РФ и других государств. Применяя как общие исследовательские методы изучения темы (исторический, аналитический), так и специальные юридические методы (системно-структурный, сравнительно-правовой), было проанализировано конституционное законодательство Республики Армения и 30-летний опыт конституционного строительства, в результате которого выявлены существующие теоретические и практические проблемы, сделаны определенные выводы и предложения.

Результаты исследования. *Президент, будучи главой государства, следит за соблюдением Конституции РА /ст. 123/, следовательно, у него должны быть самостоятельные функции и определенные инструменты. Чтобы исключить зависимость Президента от парламентского большинства, в статье предлагается изменить механизм его выбора: изменить статью 125 Конституции РА и предоставить право выбрать Президента РА всем тем внепарламентским партиям, которые участвовали в парламентских выборах, но не были избраны в парламент, получив от трех до пяти процентов от общего числа голосов. Считается оптимальным отвести им 30% от общего числа мандатов депутатов Национального Собрания РА. Руководящий орган каждой партии избирает делегатов для участия в выборах Президента. В случае подобных выборов, учитывая также, что согласно Избирательному кодексу РА 30% мест в парламенте принадлежит оппозиции, зависимость Президента от парламентского большинства будет исключена. В условиях ограниченных полномочий,*

он, по крайней мере, может непринужденно выдвигать темы общественно-политического дискурса и влиять на общественное мнение, высказать свое мнение о назначении Премьер-министра, хотя бы раз в год в обязательном порядке обращаться к парламенту и народу.

Обсуждение и заключение. *Усиление института Президента в условиях парламентской формы правления может способствовать повышению роли главы государства как арбитра, эффективной деятельности парламента и Правительства РА и осмыслению целого института, содержащегося за счет средств государственного бюджета.*

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Ключевые слова:
Конституция, конституционные реформы, конституционная демократия, президент, парламент, парламентаризм, правительство, премьер-министр, полномочия, форма правления

Keywords:
Constitution, constitutional reforms, constitutional democracy, President, Parliament, parliamentarism, Government, Prime Minister, powers, form of government

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