The Separation of Powers – Why Is It Necessary?

History has time and again shown that unlimited power in the hands of one person or group in most cases means that others are suppressed or their powers curtailed. The separation of powers in a democracy is to prevent abuse of power and to safeguard freedom for all.

Sharing Power and Checking One Another

The system of separation of powers divides the tasks of the state into three branches: legislative, executive and judicial. These tasks are assigned to different institutions in such a way that each of them can check the others. As a result, no one institution can become so powerful in a democracy as to destroy this system.

The Three Powers: Legislature, Executive, Judiciary

Checks and balances (rights of mutual control and influence) make sure that the three powers interact in an equitable and balanced way. The separation of powers is an essential element of the Rule of Law, and is enshrined in the Constitution.

Clear Distinctions

The separation of powers is also reflected in the fact that certain functions must not be exercised by one and the same person. Thus, the Federal President cannot at the same time be a Member of the National Council, or a judge who is appointed Minister or elected to be a Member of the National Council must be temporarily suspended from his/her judicial duties.

The Legislative Power

The first of the three powers has the task of passing laws and supervising their implementation. It is exercised by Parliament – i.e. the National and Federal Councils – and the Provincial Diets.

The implementation of laws is the task of the executive and judicial branches

The Executive Power

The executive branch has the task of implementing laws. It comprises the Federal Government, the Federal President and all federal authorities including the police and the armed forces.

The Judicial Power (Judiciary)

Judges administer justice, viz. they decide disputes independently and impartially. It is their task to ensure that laws are complied with. Judges cannot be deposed and cannot be assigned other positions against their will.

And the Parties?

As in other democratic countries the separation of powers is also in Austria affected by the realities of the Party State. The Members of government are, as a rule, members of those parties which have a majority in Parliament.

New Face of Separation of Powers: The Opposition exercising Control

As a result, one important democratic task is more and more often taken over by the opposition parties: controlling the Government. The classical separation of powers is given a new dimension – the confrontation of the governing majority and the opposition. While this aspect is not enshrined in the written Constitution, it is a fact of political reality.

The Legislature checks the Executive

Parliament exercises control over the executive, it checks the work of the Federal Government and the administrative institutions. The Government has to justify itself to Parliament in respect of everything it does or causes the administration to do.

The Legislature is also Subject to Control

On the other hand, the Executive – in the person of the Federal President acting on a proposal made by the Federal Government – has the right to dissolve the National Council. Laws passed by the National Council can be checked by the Constitutional Court and declared null and void if they are found to be unconstitutional.

The Legislature and the Judiciary

The only influence legislature has on the judiciary is that it passes the laws that the courts have to comply with.

The Executive

The two components of the Executive – the Administration and the Judiciary – are organised upon strictly separate lines, with one exception: the Administration is checked by the courts of public law (the Administrative Court, the Constitutional Court and the Asylum Court).

The Constitution contains strict rules on how tasks are assigned to the Administration or the Judiciary. To give one example: Fines exceeding a certain amount can only be imposed by courts.

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