

THE SYSTEM OF CHECKS AND BALANCES IN THE STATES OF CENTRAL AMERICA

СИСТЕМА СТРИМУВАНЬ І ПРОТИВАГ В ДЕРЖАВАХ ЦЕНТРАЛЬНОЇ АМЕРИКИ

Voichuk A.Yu.,
PhD,

*Assistant at the Department of Political Science
Taras Shevchenko National University of Kyiv*

The article analyzes the system of checks and balances in the countries of Central America – Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama. These states are presidential republics in terms of their form of government. Their constitutions enshrine a strict separation of powers. The system of supreme state bodies is divided into the executive, legislative, and judicial branches. The head of state is endowed with broad powers and exerts a decisive influence within the system of checks and balances. However, these countries have certain elements of checks and balances in place: the right of veto, impeachment procedures, the appointment of judges by the parliament or the president, among others. At the same time, there are significant differences among Central American countries. Costa Rica is characterized by stability, judicial independence, and the effectiveness of constitutional judicial review bodies. Panama possesses formal elements of checks and balances, though their effectiveness depends on the political context. In Guatemala, Honduras, and El Salvador, the system of checks and balances functions poorly, hampered by an underdeveloped party system, corruption, and politicization of the judiciary. Nicaragua is marked by the concentration of power in the executive branch, to which both the parliament and the judiciary are subordinated. Based on the analysis of constitutional provisions and judicial practice, the article proposes recommendations for improving the system of checks and balances in Central American countries. These include the creation of independent judicial councils, guaranteed funding of the judicial apparatus, improvement of appointment procedures, and strengthening of parliamentary and civil oversight. These measures aim to ensure the independence of the judiciary from other branches, the rule of law, and the limitation of presidential powers – prerequisites for sustainable political development in Central American countries (Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama).

Key words: system of checks and balances, separation of powers, Central America, president, parliament, judiciary.

У статті проаналізовано систему стримувань і противаг у державах Центральної Америки – Гватемалі, Гондурасі, Сальвадорі, Нікарагуа, Коста-Риці та Панамі. За формою державного правління вони є президентськими республіками. У конституціях цих держав закріплений жорсткий поділ влади. Система вищих органів держави поділяється на виконавчу, законодавчу та судову гілки влади. Глава держави наділяється широкими повноваженнями і здійснює вирішальний вплив у системі стримувань і противаг. Однак у цих державах існують певні елементи системи стримувань і противаг: право вето, імпічмент, призначення суддів парламентом або президентом тощо. Водночас у країнах Центральної Америки існують суттєві відмінності: Коста-Рика характеризується стабільністю, незалежністю суду та ефективністю органів судового конституційного контролю; Панама має формальні елементи системи стримувань і противаг, відповідно їх ефективність залежить від політичної кон'юнктури; Гватемала, Гондурас, Сальвадор – у цих державах система стримувань та противаг погано працює, на неї впливає нерозвинена партійна система, корупція та політизація суддів; Нікарагуа характеризується зосередженням влади у виконавчій гілці, парламент та суд підпорядковані їй. На основі аналізу положень конституцій, судової практики для країн Центральної Америки можна виокремити рекомендації щодо удосконалення системи стримувань та противаг: створення незалежних Рад суддів, гарантоване фінансування апарату правосуддя, удосконалення процедур призначення, зміцнення парламентського і громадського контролю тощо. Ці заходи спрямовані на відокремлення судової влади від інших гілок, верховенства права та обмеження повноважень глави держави, що є передумовами сталого політичного розвитку в країнах Центральної Америки (Гватемалі, Гондурасі, Сальвадорі, Нікарагуа, Коста-Риці, Панамі).

Ключові слова: система стримувань і противаг, поділ влади, Центральна Америка, президент, парламент, суд.

Introduction. The system of checks and balances is a key element of modern democratic regimes, designed to ensure a balance among branches of power, prevent the usurpation of authority, and guarantee adherence to the rule of law. In the countries of Central America, despite a shared historical legacy, regional proximity, and similar constitutional frameworks, the mechanisms of mutual oversight between the executive, legislative, and judicial branches are implemented in different ways and with varying degrees of effectiveness.

This region – comprising Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama – presents a particularly compelling case for comparative analysis of how the system of checks and balances functions, given the diversity in political stability, levels of democratic development, and challenges such as authoritarian tendencies, corruption, and institutional weakness. In most countries of the region, the separation of powers is constitutionally enshrined, yet in practice, there is often a dominance

of the executive branch over the others, which calls into question the effectiveness of the system of checks and balances in its classical sense.

Recent literature review. Among the numerous studies and publications exploring the system of checks and balances in Central American countries, the works of scholars such as N. Zhuk, L. Sylenko, N. Haidaienko, and H. Zabavska are particularly noteworthy.

The aim of this article is to examine the characteristics of the system of checks and balances in Central American countries, analyze the factors that influence their effectiveness, and identify common features and differences among the states in the region.

The main part of the article. The countries of Central America include Belize, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama. This article does not examine Belize, as it is a monarchy. All the other countries are presidential republics.

The 1985 Constitution of Guatemala laid the foundations for the division of state power into three branches. The President of Guatemala serves as both head of state and head of government (Art. 182). The president is elected by general and direct elections for a four-year term without the right to re-election (Art. 184). The president holds broad powers, including: the right of legislative initiative (Art. 183(c)), the appointment and dismissal of ministers (Art. 183(b)), submission of the annual state budget (Art. 183(j)), and the power to veto laws adopted by the parliament (Art. 178). In the event of a veto, Congress may override it by a qualified majority vote (two-thirds of the deputies), which indicates a check on executive power by the legislature [3]. Additionally, the president plays a role in shaping the judiciary, including appointing one of the five judges of the Constitutional Court upon the proposal of the Council of Ministers (Art. 269), as well as participating in the appointment procedure of the Attorney General [3].

The Government of Guatemala – the Council of Ministers – is entirely formed by the president, who appoints and dismisses the ministers (Art. 193) [3]. The government exercises executive functions, implements the political agenda of the head of state, and is accountable to the parliament in terms of reporting and budget execution. Although the government does not possess legislative initiative, ministers may present bills on behalf of the president. The government does not directly influence the judiciary but is obliged to comply with judicial decisions, including those of the Constitutional Court and the Supreme Court of Justice.

The Congress of the Republic of Guatemala (the parliament) consists of 160 deputies (Art. 157). It passes laws (Art. 171) and ratifies the state budget and international treaties [3]. Parliament has the authority to dismiss ministers or demand their reports, which indicates control over the executive branch. The leg-

islative power also participates in the formation of the judiciary: Congress appoints one member of the Constitutional Court and approves the judges of the Supreme Court of Justice. Through these powers, the parliament is able to influence judicial appointments, which constitutes an element of mutual checks and balances.

The judicial branch in Guatemala is represented by courts of general jurisdiction (headed by the Supreme Court of Justice) and the Constitutional Court, a specialized body responsible for constitutional oversight. The judiciary is independent (Art. 203), and the judges of the Constitutional Court are appointed by different entities: one each by the president, parliament, Supreme Court, Bar Association Council, and the University of San Carlos (Art. 269). This structure is designed to ensure pluralism and reduce the risk of political dominance. The Constitutional Court has the authority to annul laws and acts that contradict the Constitution, including those issued by the president or adopted by parliament (Art. 272) [3]. Furthermore, the court handles cases concerning violations of citizens' rights and freedoms through the amparo remedy (Art. 265), thus serving as a key mechanism of institutional checks and balances.

Overall, the system of checks and balances in Guatemala is formally well-regulated at the constitutional level. It provides for a range of mutual oversight mechanisms between branches of government, including limitations on presidential power by the parliament, the involvement of various entities in the appointment of judges, and tools for judicial review. However, in practice, the effectiveness of this system is often undermined by political instability, the weakness of the party system, corruption risks, and attempts by the executive branch to influence the judiciary. The most well-known example is the 1993 crisis, when President Jorge Serrano attempted a "self-coup" to usurp power but was stopped by the Constitutional Court, affirming the judiciary's role as a restraining force.

The division of powers and the system of checks and balances in Honduras is established by the 1982 Constitution. The President of Honduras is both the head of state and head of government, elected by universal suffrage for a four-year term (Art. 236), and, according to the original text of the Constitution, was not eligible for re-election (Art. 239) [4]. However, in 2015, the Supreme Court declared this provision unconstitutional, creating a precedent and sparking serious debates about the rule of law and the limits of judicial activism.

The President exercises general leadership over the executive branch, appoints and dismisses ministers, has the right of legislative initiative, can convene extraordinary sessions of the National Congress, and may veto laws (Art. 245) [4]. Additionally, the president is responsible for foreign policy, commands the armed forces, and has the authority to appoint certain

high-ranking officials with the approval of parliament. Due to his influence over the composition of the executive and active participation in the legislative process, the president plays a central role in the country's political life. However, from the perspective of the system of checks and balances, this creates risks of power concentration, especially in contexts where parliamentary opposition is weak or the judiciary is dependent.

The Council of Ministers is subordinate to the president. Ministers are appointed and dismissed exclusively by the head of state (Art. 248) [4]. Although the Constitution refers to the institution of counter-signature, in practice, it plays no meaningful role. Ministers may participate in the legislative process by initiating bills on behalf of the executive branch, as well as by presenting the budget. However, parliament does not have instruments to remove individual ministers, which reduces the level of accountability of the executive branch to the legislative one.

The parliament of Honduras is the National Congress, consisting of 128 deputies elected for four-year terms (Art. 194) [4]. The legislative branch has the authority to adopt, amend, and repeal laws, approve the national budget, ratify international treaties, and participate in the formation of the judiciary. One of the key mechanisms of checks and balances is the power of Congress to elect the members of the Supreme Court (Art. 311) [4]. Judges are elected for a term of seven years from a list proposed by a special Nominating Council, which includes representatives from various branches of government and civil society. Thus, the legislature has significant influence over the judiciary, which can either strengthen the balance of power or create risks of political interference.

The judicial branch in Honduras is represented by the Supreme Court of Justice, appellate and lower courts, and includes a constitutional chamber, which functions as the constitutional jurisdiction body. The Supreme Court consists of 15 judges, appointed by the National Congress with the involvement of the Nominating Council (Arts. 311–317) [4]. This body holds the authority to review the constitutionality of laws, executive acts, and actions of other institutions.

Since the 2009 constitutional coup against President Manuel Zelaya, the role of the judiciary has come under increased scrutiny. The Supreme Court's involvement in justifying the actions of the military, who removed the president, has cast doubt on the political impartiality of the judicial system. Despite its formal independence, the judiciary in Honduras is subject to significant political influence, especially due to the appointment process. This limits its effectiveness as a mechanism of constitutional oversight and check on the executive power. Other shortcomings of the system of checks and balances include: excessive concentration of powers in the hands of the president; a low level of government autonomy; and

the lack of effective mechanisms within the checks and balances system to prevent power usurpation.

According to Article 86 of the 1983 Constitution of El Salvador, the country adheres to the principle of separation of powers among three branches [2]. The system of checks and balances is implemented as follows. The President of the Republic of El Salvador is elected by popular vote for a five-year term and serves as both head of state and government (Arts. 154, 155) [2]. The president has exclusive authority to appoint and dismiss ministers (Art. 162), conclude international treaties (Art. 168), command the armed forces (Art. 167), and submit the draft national budget to the Legislative Assembly (Art. 168(6)) [2]. The president has the power of veto over legislative acts passed by parliament. However, this veto may be overridden by a two-thirds majority vote of the Legislative Assembly (Art. 137) [2]. Thus, while the president does not hold absolute control over the legislative process, in the case of political dominance by the president's party, this system becomes less effective.

In practice, especially since the election of Nayib Bukele in 2019, there has been a growing trend of strengthening the executive branch and expanding presidential powers, raising concerns about the effectiveness of institutional checks.

The government is formed by the president without the involvement of parliament. Ministers implement state policy within the scope of the powers delegated to them. The Legislative Assembly (parliament) may require ministers to appear and provide explanations regarding certain decisions or policies (Art. 131(34)) [2], but it does not possess mechanisms for direct influence over the composition of the cabinet. As such, the government is fully subordinated to the president and does not serve as an independent element of the system of checks and balances. This structure promotes the centralization of executive power, reducing its institutional flexibility.

Legislative power in El Salvador is exercised by the unicameral Legislative Assembly, composed of 84 deputies elected for a three-year term. The Assembly has the authority to pass laws, approve the budget, summon ministers for questioning, and participate in the formation of other branches of government (Arts. 131–135) [2]. Particularly important is the Assembly's right to appoint five judges of the Constitutional Chamber of the Supreme Court of Justice, the Attorney General, the Human Rights Ombudsman, and other officials – a mechanism that, according to the intent of the Constitution, is designed to ensure balance and mutual oversight.

However, in May 2021, immediately after the "New Ideas" party gained a parliamentary majority, the Legislative Assembly dismissed all judges of the Constitutional Chamber and the Attorney General without following proper legal procedures. This act drew sharp criticism from both national human rights

organizations and international institutions. The precedent illustrates the practical inability of parliament to function as a check on the executive branch in the face of its political dominance.

According to the Constitution, the judicial branch is independent (Art. 172) [2], and its highest authority is the Supreme Court of Justice. It includes general, appellate, and specialized chambers, notably the Constitutional Chamber, which oversees the constitutionality of laws and adjudicates cases involving violations of fundamental rights and freedoms. Judges of the Supreme Court are appointed by the Legislative Assembly for a nine-year term, with the possibility of rotation every three years (Art. 186) [2]. The appointments are based on lists of candidates submitted by the Judicial Council, but the final decision lies entirely with the parliament. This appointment mechanism provides significant room for political influence, particularly in the case of a single-party majority.

The events of 2021 demonstrated that the judiciary in El Salvador can become subject to political manipulation. The removal of the Constitutional Chamber without due process constituted a violation of judicial independence, significantly weakening the system of checks and balances.

From a formal perspective, the checks and balances system in El Salvador appears fairly balanced and aligns with the classical model of a presidential republic. However, in practice, it suffers from multiple deficiencies, including: the dominance of the executive branch due to the concentration of powers in the presidency; the politicization of parliament, transforming it from a restraining body into a tool for executing the executive's will; the vulnerability of the judiciary to political pressure, which undermines trust in the rule of law; and the absence of independent institutions capable of effectively responding to constitutional violations.

The separation of powers and system of checks and balances in Nicaragua is enshrined in Article 129 of the 1987 Constitution [5]. However, the practice of recent decades shows a gradual subordination of all institutions to the executive branch, which has effectively nullified the system of checks and balances.

The President of the Republic of Nicaragua is the head of state, head of government, and commander-in-chief of the armed forces (Art. 144) [5]. The president is elected by popular vote for a five-year term. Until 2014, the Constitution limited presidential re-election; however, amendments to Article 147 lifted this restriction, allowing for unlimited re-election. This change was utilized by Daniel Ortega, who has been in power since 2007.

The president has the power to issue decrees, initiate legislation (Art. 150(10)), appoint the vice president, ministers, heads of the army and police, and diplomatic representatives (Art. 150(2–5)). The president also holds decisive influence over

the formation of the Electoral Council — the body responsible for overseeing elections (Arts. 173–175) [5]. In the absence of effective parliamentary or judicial oversight, this has led to an excessive concentration of power.

The National Assembly, Nicaragua's unicameral parliament, consists of 92 deputies, 90 of whom are elected by popular vote, while two (the former president and vice president) are included automatically (Art. 133). The legislature holds powers to enact laws, approve the budget, elect judges, the attorney general, members of the electoral authority, and the ombudsman (Art. 138) [5]. However, these powers are exercised under conditions of effective domination by the ruling party – the Sandinista National Liberation Front (FSLN) – which has consistently secured a parliamentary majority since 2007. As a result, the parliament has ceased to act as a check on executive power and instead functions as institutional support for presidential initiatives.

According to the Constitution, the judicial branch in Nicaragua is independent (Art. 158) [5] and is headed by the Supreme Court of Justice. Judges are appointed by the National Assembly upon nomination by the president and the Council of the Judiciary. During the 2010s, numerous cases were recorded where the judiciary issued politically motivated decisions, including legitimizing Daniel Ortega's re-election, despite previous constitutional prohibitions. The lack of real mechanisms for holding the executive accountable, the dependence of judges on political appointments, and the punitive use of the judiciary against the opposition all demonstrate a clear violation of the principle of separation of powers.

Thus, the main shortcomings of the system of checks and balances in Nicaragua include: the excessive concentration of power in the hands of the president; parliament and judiciary being subordinate to the ruling party; removal of presidential re-election limits; erosion of trust in the electoral system; and the repressive use of the judiciary and police against political opponents.

According to the 1949 Constitution of Costa Rica, a clear separation of powers is established. The President of the Republic is both head of state and head of government (Art. 130 of the Constitution) and is elected for a four-year term by direct popular vote. The Constitution explicitly prohibits immediate re-election (Art. 132), which serves as an important safeguard against the personalization of power. The president chairs the Council of Ministers, has the right of legislative initiative, veto power (Art. 125), directs foreign policy, submits the national budget, and is responsible for administrative governance (Arts. 139–140). Ministers are appointed by the president without requiring parliamentary approval but must report annually to the Legislative Assembly (Arts. 139, 147) [1].

Legislative power is exercised by the unicameral Legislative Assembly, composed of 57 deputies elected for four-year terms without the right to immediate re-election (Art. 107). The Assembly holds powers including: passing laws, approving the state budget, oversight of the executive, ratifying international treaties, and participating in the appointment of Supreme Court judges (Arts. 121–125). The parliament may also form special investigative committees, summon ministers for hearings, and initiate impeachment proceedings against the president in cases of serious misconduct (Art. 121(23)) [1].

The judicial branch in Costa Rica is independent, according to Article 9 of the Constitution, which enshrines the separation of powers as a foundational principle. The highest judicial body is the Supreme Court (Corte Suprema de Justicia), which consists of several chambers, including the Constitutional Chamber (Sala Constitucional or Sala IV), established in 1989. This chamber exercises constitutional review of legislation, considers complaints regarding violations of fundamental rights, and has the authority to interpret the Constitution (Art. 10) [1]. Judges are appointed by the Legislative Assembly based on nominations from the Judicial Service Council. After the initial eight-year term, judges are automatically reappointed unless a qualified majority votes against their continuation (Arts. 158–159) [1]. This mechanism ensures judicial stability, while allowing limited parliamentary oversight. The Constitutional Chamber has established itself as a powerful check on other branches, notably through the annulment of laws that violated freedom of expression or exceeded budgetary limits.

The advantages of the checks and balances system in Costa Rica include: strict term limits on holding office; a developed system of judicial and administrative oversight; stable political culture and high level of public trust in institutions; effective operation of the Constitutional Chamber and financial control bodies; the existence of an independent electoral body with constitutional status. The disadvantages include: limited flexibility of the executive branch during crisis situations; slowness of judicial procedures due to the overload of the Constitutional Chamber; periodic fragmentation of parliament, which complicates effective lawmaking.

The fundamental principle of Panama's constitutional system is the separation of powers into executive, judicial, and legislative branches (Article 2 of the 1972 Constitution) [6]. The President of Panama is the head of state, head of government, and commander-in-chief of the armed forces (Art. 173). The president is elected by direct universal suffrage for a five-year term and cannot be immediately re-elected (Art. 177). The president holds broad powers, including: appointing and dismissing

ministers (Art. 185), signing international treaties, submitting the national budget, and implementing domestic and foreign policy. The president also has the power of veto over laws passed by the National Assembly (Art. 183(4)), but the Assembly can override the veto by an absolute majority vote [6].

Executive policy is carried out through the Council of Ministers, formed by the president without requiring parliamentary approval (Art. 186) [6]. This creates a strong presidential vertical, though it is formally limited by term restrictions, as well as budgetary and judicial oversight.

The National Assembly of Panama is a unicameral legislature composed of 71 deputies elected for five years (Art. 146) [6]. The legislative branch has the authority to: pass laws, ratify international treaties, approve the national budget, oversee the activities of the executive, and bring charges against the president, vice president, or ministers in case of legal violations (Arts. 160–163) [6]. The Assembly also participates in the appointment of high-ranking officials, including the Comptroller General, the Ombudsman (Defensor del Pueblo), and members of the Electoral Tribunal. In addition, the Assembly approves the appointment of Supreme Court judges, which formally ensures a mechanism of mutual checks.

Nevertheless, in practice, the parliament often operates under the influence of the ruling coalition, and the level of party discipline and voter oversight may vary, affecting the real independence of the legislative branch.

The judicial branch in Panama is headed by the Supreme Court of Justice (Corte Suprema de Justicia), composed of nine magistrates, appointed by the president with the consent of the National Assembly for a term of ten years (Art. 203) [6]. The judicial system includes civil, criminal, administrative, and constitutional chambers. Despite its formal independence, the judiciary is often subject to political pressure during the appointment process. There have been cases where political agreements between parties determined judicial candidates, raising doubts about their neutrality. Constitutional oversight functions are carried out without a separate Constitutional Court – issues of unconstitutionality are handled by the relevant chamber of the Supreme Court. The Court has the power to annul laws that contradict the Constitution and to review administrative disputes concerning actions of executive authorities.

Advantages of Panama's system of checks and balances include: temporal limitation of presidential powers (a single non-renewable term), parliamentary participation in the appointment of judges and key officials. Disadvantages include imbalance in judicial appointments, as they depend on political agreements between the president and parliament; strong executive influence on personnel decisions; absence of a separate Constitutional Court; and the formal

nature of some oversight mechanisms, particularly during periods of executive dominance.

Although the constitutions of nearly all countries in the region establish a system of checks and balances, only Costa Rica has managed to successfully implement it in practice. Other states face significant challenges such as executive branch dominance, corruption, unconstitutional actions by parliaments and courts. This underscores the importance not only of formal institutions, but also of their effective functioning, a democratic political culture, and public engagement in sustaining a functioning democracy.

Conclusion. To effectively strengthen the system of checks and balances in Central America, the countries of the region should introduce independent judicial councils with a majority of members representing the judiciary, at least one representative from civil society, and ensure a transparent, merit-based selection process for judicial appointments. This should include broad public discussion of candidates

and open access to motivation letters and decisions, which would reduce political influence over the judiciary and increase its effectiveness. At the same time, it is essential to guarantee the financial independence of the judiciary, systematically protecting its budget from arbitrary control by the executive branch, since the effectiveness of oversight mechanisms is significantly weakened without adequate funding. Additionally, civic and parliamentary oversight should be reinforced by creating specialized committees (e.g., for auditing and impeachment) with stable budgetary control, expanding the role of ombudspersons, the Comptroller General (Contraloría), and electoral tribunals. It is also important to improve parliamentary inquiry procedures and cross-party auditing mechanisms, which can substantially enhance democratic accountability and transparency in governance. Lastly, it is necessary to limit presidential powers to prevent executive overreach and ensure a more balanced distribution of authority.

REFERENCES:

1. Constitution of the Republic of Costa Rica of 1949. URL: https://www.constituteproject.org/constitution/Costa_Rica_2011?utm_source=chatgpt.com (date of application: 06.06.2025).
2. Constitution of the Republic of El Salvador of 1983. URL: <https://wipolex-resources-eu-central-1-358922420655.s3.amazonaws.com/edocs/lexdocs/laws/en/sv/sv010en.pdf> (date of application: 06.06.2025).
3. Constitution of the Republic of Guatemala of 1985. URL: https://www.constituteproject.org/constitution/Guatemala_1993?utm_source=chatgpt.com (date of application: 06.06.2025).
4. Constitution of the Republic of Honduras of 1982. URL: https://www.constituteproject.org/constitution/Honduras_2012?utm_source=chatgpt.com (date of application: 06.06.2025).
5. Constitution of the Republic of Nicaragua of 1987. URL: https://faolex.fao.org/docs/pdf/nic127516E.pdf?utm_source=chatgpt.com (date of application: 06.06.2025).
6. Constitution of the Republic of Panama of 1972. URL: https://ihl-databases.icrc.org/en/national-practice/constitution-republic-panama-1972-amended-2004?utm_source=chatgpt.com (date of application: 06.06.2025).

Date of first submission of manuscript to the publisher: 17.07.2025
Date of manuscript acceptance for publication after review: 25.08.2025
Date of publication: 30.09.2025