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Democratic Legislative Process in the European Bicameral Parliamentary Systems

Abstract

The article examines bicameralism as a tendency of parliamentary development. It focuses on the quality of legislation and the stability of the legislative power, giving the importance of these issues for the state and society. Within this article the main factors of impacts of an upper chamber on the legislative process and the stability of government have been substantiated, on the examples of bicameral parliamentary democracies.

Key words: *bicameralism, legislative power, legislative process, bicameral parliamentary system, democratic development, upper chamber, lower chamber, parliament of Ukraine.*

Demokratyczny proces ustawodawczy w europejskich bikameralnych systemach parlamentarnych

Streszczenie

Artykuł dokonuje analizy bikameralizmu jako tendencji rozwoju parlamentaryzmu. Opracowanie skupia się na jakości ustawodawstwa i stabilności władzy ustawodawczej, uznając wagę tych zagadnień dla państwa i społeczeństwa. W ramach tego artykułu uzasadniono główne czynniki wpływania wyższej izby na proces legislacyjny i stabilność rządu na przykładzie dwuizbowych parlamentów państw demokratycznych.

Słowa kluczowe*: bikameralizm, władza ustawodawcza, dwuizbowy system parlamentarny, demokratyczny rozwój, wyższa izba, niższa izba, parlament Ukrainy.*

Bicameralism is one of the main tendencies in the development of a parliamentary government today. Currently Ukraine is also in the process of transformation, since the matters of restructuring the parliament, reforming the political system, as well as the efforts to determine the appropriate forms of state-building and quality functioning of the parliament are qualified as the most essential questions of the Constitutional Law. A great

number of followers of the bicameralism idea believe that only a bicameral structure may guarantee a *de facto* democracy of the legislative power, as it considers both political component, as well as the interests of constitutional process bearers.

The main views regarding the perspectives of implementation of a bicameral type of parliamentarism in Ukraine are described in the works of the following well-known Ukrainian scientists: M. Aznar, B. Andresyuk, V. Gorbach, A. Georgitsa, V. Juravskiy, O. Kovalchuk, L. Kravchuk, M. Orzikh, I. Ryabov, O. Skripnyuk, V. Tatsiy, V. Shapoval, Y. Shemshuchenko and others. The matter of implementation of the upper chamber of parliament in Ukraine is quite debatable, since the views of public, as well as the political environment itself have various positions, firstly resulting from the lack of a profound research of the bicameralism phenomenon. And the described situation is not an exception, but a consistent pattern, as there is no unified concept of bicameralism and fierce debates have been following the idea of development of a parliamentarism on the authority of bicameralism nearly in all states that made this political move, namely – Poland, the Czech Republic, Russian Federation etc.

In this view the present research is concentrated on the principal aspects of such important and interrelated matters for the whole state and society as quality of legislation and stability of state authority. The main impact factors of the parliament's upper chambers activity on the said processes are substantiated within the confines of the present article based on the example of activity of bicameral parliaments of the democratic states.

The purpose of this paper is to investigate whether the existence of a bicameral system of parliament influences the adoption of better legislation and ensures the stability of government. Based on the analysis of the main aspects of functioning of the bicameral parliaments in European democracies, the conclusions on the main issues of reforming Ukraine's parliament are drawn.

The methodological basis of the research is the method of comprehensive analysis. Using this method managed to analyze the practices of European bicameral parliaments in terms of their legislative powers. Widely used methods of analysis and synthesis, systematic and comparative legal methods allowed to investigate the impact of the bicameral system of parliament on a better legislative process. System-structural and logical-legal methods are also used. On the basis of these methods there were made some conclusions and generalizations about the possible establishment of a bicameral parliament in Ukraine.

According to the separation of powers principle, the main purpose of the parliament is the accomplishment of legislation. The powers of the parliaments in the legislation

sphere would be preparation and enactment of laws which directly emanate from the constitution of the state and secure the development exigencies of a society and state in all their living environments. Legislation *per se* is an instrument for formation a strategy and tactics for the development of the state and society, therefore the quality of legislation work together with the methods of its improvement are considered as quite critical and important matters.

It seems problematic to improve the quality of legislation work solely by means of activity of a bicameral system of parliament. As there is a direct dependence of the legislation process from the status of parity or imparity of chambers, approaches of their formation and composition.

Unity of the bicameral parliament is usually achieved by both chambers executing legislative functions, and the law passed by the parliament becomes the result of their general consensus. Furthermore, each chamber has immanent legislative preferences.

The structure of a parliament forms a certain type of legislative process. The legislative process of a bicameral parliament is unfolded horizontally and does not have the ascendant vector, its initiation is possible in any chamber inasmuch as having an equal competence in the legislative sphere both chambers have authorities in consideration of the draft law and enactment of law. Consequently, according to part 2 of article 146 and part 2 of article 156 of Constitution of Switzerland, the National Board and Boards of Cantons have equal status and in order to make a decision an agreement of both Boards is required. A legislative process of the vertical type is a sequent, progressive movement of the draft law: in the FRG – from the Bundestag to the Bundesrat (Federal Council), in Austria – from the National Council to the Federal Council, i.e. to the bodies predominantly taking part in the legislative process and executing other special pertinent powers.

Taking into account the structural peculiarities of the parliament in Belgium, the legislative processes may be of both vertical and horizontal types. Considering that the draft laws may be introduced to any chamber, the Constitution of Belgium (art. 75) determines that as per the general rule, the draft laws introduced to the houses on behalf of the King, should be introduced to the House of Representatives and afterwards transferred to the Senate, but the draft laws relating to approval of agreements introduced to the houses at the initiative of the King, should be firstly introduced to the Senate and afterwards transferred to the House of Representatives.

Starting from the first stage of the legislative process, namely the stage of legislative initiative, there are crucial differences in its implementation by bicameral

parliaments in different states. Hence, in Switzerland, Italy and Belgium each chamber has a right to a legislative initiative as regards to both financial draft laws and non-financial draft laws. The drafts laws may only be introduced to the lower chamber in the parliaments of Austria, Australia and Spain.

The distinctions in authorities of chambers are easily noticed drawing on the example of financial draft laws which are generally introduced to the lower chamber. The preference of the lower chamber is grounded on the mere fact that this chamber represents the opinion of the people of the whole country, and only people may agree to any financial burden which they will bear.

For instance, in Italy the draft laws can be introduced to any chamber, though the budget law shall be introduced alternately to each chamber together with an explanatory letter. The said draft law is studied by a competent commission and proposed for consideration of each chamber.

In Italy the members of parliament, parliament groups, as well as National Economic and Labour Council, regional and municipal boards (on the special matters) have legislative initiative. The people also have a right to a legislative initiative, in particular, each fifty thousand voters. Any law is enacted by two chambers.

The experience of the USA in the sphere of legislative process shows that both chambers are technically equal. But the House of Representatives has priority in consideration of the financial draft laws. Moreover, the said House has a right to fill accusations against the President, while the Senate has additional powers in relation to consideration of international treaties and has a right to impeach the head of state.

At the first view, the general procedure relating to the stages of consideration of the draft law in FRG seems to be standard. But the draft laws proposed by the government must emerge from the upper house and be firstly approved by the Cabinet of ministers, and only then – by the lower chamber. The above mentioned example shall be considered as an exception in the parliament practice, as it is primarily stipulated by the federal system. But the lower chamber has a fairly developed system of committees, where the draft laws are transferred after the first reading. This is the very place, where the draft laws are considered with the assistance of government officials' expertise, holding of research hearings. The detailed development of legislative propositions results into willingness to apply a constructive approach. This is also enhanced by means of holding closed meetings of the committees. The Bundesrat also has a system of committees which accurately study the draft laws. The committees of the Bundestag are open for the members of the

Bundesrat. Generally, German system of committees functions quite effectively and may be used as an example of a high political culture.

The main function of the Senate of the parliament of the Republic of Poland is a legislative one. Moreover, an extremely important criteria of the legislative process balance in Poland is the fact that the Sejm and the Senate have almost equal mutual (towards each other) rights and obligations. The Senate concurrently realizes not only its own legislative initiatives but executes the supervisory function as regards to draft laws produced by the lower chamber.

Mutual but a sequential legislative activity of the Sejm and the Senate remains in the majority of legislative works, but it takes the most important form in the event of approval of the state budget. In this case the procedure of passing the law slightly differs, in particular, by diminution of the terms of project evaluation. The budget law passed by the Sejm shall be transferred to the Senate, whereby the latter is obliged to consider the said law within 20 days, while 30 days is a standard period for consideration in other circumstances.

Based on the above mentioned examples, it is possible to assert that the bicameral system enhances the improvement of the legislative work owing to one of the obligations of the second chamber, in particular, to accurately verify the premature decisions frequently made by the first chamber[1].

From this point of view, bicameralism is acting as a guarantor of legislation of a higher quality by virtue of a double control over the legislative process. Nevertheless, the availability of potential conflicts and disputes between the chambers in terms of development and enactment of law remains an urgent question, since such conflicts and disputes delay the process of law enactment.

One has to agree, that the upper chambers of the parliaments are usually acting as a "filter" of the legislative process, especially when the federative states are in question. The separation of parliament into two chambers facilitates the balance of the legislative authority, while the numerous readings in the process of passing the laws may enhance their profound deliberateness[2].

[1] V. Maliarenko, *Truth about the Bicameral Parliament,* „Den'" („День"), 31 of August 2007, № 145, http://www.day.kiev.ua/187054/, [25.11.2012].

[2] A. Shaio, *Self-Containment of Authority (the Short course of Constitutionalism)*, Moscow 2001, pp. 153-156.

"Separation of the legislative body into two chambers raises the «bar» required for the proposed law to become an enacted law. In a certain way this may guarantee the justification of the legal regulation, as well as a detailed presentation of solution to an occurred problem"[3].

If we tend towards this opinion, then bicameralism guarantees legislation of a higher quality in the state specifically owing to duplication of the legislative process and control. In this case, of course, there may be possible some conceptual contradictions between the chambers in the process of law development and this may slow down the period of its enactment. For the matter, this feature is relegated by the majority to a negative side of the bicameralism. On the other hand, such slowdown of the legislative process may be qualified as a positive feature if it is considered through the prism of quality improvement of legislation and increase of representation, as well as minimization of entering of significant alterations to the draft laws.

There are following mechanisms of prevention from making the imperfective legislative decisions *inter alia*: requirement as regards to an extraordinary majority (3/4 votes), proportional multiparty representation, when no party can have a legislative majority in the parliament, as well as a possibility to veto the laws by the court. Nevertheless, the mentioned mechanisms may also be applied for a unicameral form of parliament.

One of the leading researchers of the bicameralism I. Bentam states that separation of the legislative authority into two chambers significantly reduces the realization of reforms. Such separation „is more effective in conserving the existing, than creating something new". However, the quality of reformation of the society improves due to the fact that the self-control of the reformers is strengthened, the rest of decisions are grinded owing to an intellectual-oppositional struggle, whereby „the inter-chamber opposition" brightly illustrates the spirit and determination of each parliamentary decision – as it is illustrated firstly from the perspective of its social benefit. Subject to the existence of an upper chamber, a lower one becomes more reasonable in executing its duties (as it positively affects the activity of the parliament as a whole) and trains to constantly conform to the self-established rules[4].

[3] P. Ordeshuk, *Development of Stabile Democratic Institutions: the Lessons of American Development*, „World Economy and International Relations" („Мировая экономика и международные отношения") 1991, № 8, p. 102.

[4] I. Bentam, *Tactics of Legislative Assemblies*, Anthology of the World Political Opinion: in 5 v., vol. 1, Moscow 1997, p. 565.

Generally, the senate acts as a stabilizer in the state, keeping all the spheres of authority away from conflicts by means of improving each regulation passed by the lower chamber. Therefore, the senate does not allow enactment of the regulations having a contradictory or questionable nature, which are not supported by the personnel or financially. As for the president there is no need to veto such a draft law. The number of applications to the constitutional court also significantly reduces. The existence of the upper chamber diminishes the extent of confrontation between the executive and legislative powers by means of decrease of inconsiderate actions of the deputies against the executive power[5]. Therefore, a regime without legislative indeterminacy and conflicts wins greater authority and trust over the people.

Thus, functioning of another chamber essentially excludes entering alterations of a radical nature to the draft laws, and consequently it keeps to a minimum any voluntary and wrongful acts of the regulatory bodies. In other words, it refers to a certain moderation of power, particularly in relation to guaranteeing the rights of minority from the potential incidents inflicted by the contextual majorities which are created in the first chamber as a result of scheduled elections. The implementation of a bicameral system is commonly the only solution if there is a persistent absence of the social consensus in the society. The abovementioned explains the reason for the states with stabile social consensus (Norway, France) to give favor to unicameralism, as well as for the states having implemented a bicameral system to transfer to unicameralism without any political convulsions (Denmark, Sweden)[6].

A transfer to the unicameralism in this group of states can be considered also through the prism of willingness of the society to have this parliamentary system. There is also a point of view having all rights to existence, according to which it makes sense to apply a unicameral system only in cultural and politically-developed countries, because only there it is possible to guarantee that *as per* the common rule a single chamber will succeed in the legislative activity and there is a guarantee that representatives of the people will not misuse or abuse the provided confidence[7].

[5] G. Golosov, *The Comparative Politics*, Novosibirsk 1995, p. 167.

[6] P. Martinenko, *Parliamentarism: the World Practice and Ukrainian Actions,* „Vitchyzna" („Вітчизна") 1996, № 9-10, p. 35.

[7] A. Rozhdestvenskiy, *Constitutional Law* (manual), p. II, *Chrestomathy – Constitution and Legal Opinion of XIX – the Beginning of XX Century,* Moscow: „Legal college of MGU" 1996, pp. 283-290.

The process of legislation quality improvement is also affected by the fact, that the upper chamber of the parliament affords an opportunity to „offload" the activity of the lower chamber deputies by means of considering a set of matters attributed to the competence of the legislative body.

Additionally, some countries believe that professional experience of the upper chamber is an instrument for quality improvement of legislation, since the period of duty of its members estimably exceeds the period of duty of the lower chamber members.

Moreover, the main purpose of any parliament is to pass the laws which aim to resolve the principal management tasks. The laws are required to cover the interests of the population in whole, because the needs of the entire country, its people and the state as a whole are essential for the work of the people's representatives. The mission of each deputy is not to protect the interests of a single class or social group, but of the whole nation he represents. Interests of the separate categories of people should matter insofar as they reflect interests of the entire people and the country as a whole.

Therefore, the parliament is not only a legislative body, but the official body of the people's representation. The parliament is the only place, where such a defining attribute of a representative nature is evident. Accordingly, it is quite important to represent a comprehensive group of interests in the parliament. The researches believe that the bicameral parliament is the most equal to the task. And this should be considered as an essential advanced feature. And this is due to the fact that the society has a quite non-homogeneous composition and includes a great number of groups with diverse interests. This is surely not an easy task to determine which of the numerous interests must be presented and in which form. The bicameral parliament is an effort of the current democracies to secure the interests of a non-homogeneous society.

And this is quite natural that the interests of different groups of people should be harmonized, as well as political positions and opinions should be tied up. Only by means of disputes the state will may be created, as this will is developed in the form of law or parliament chamber regulations. The constructive contradiction appearing in the course of making a mutual decision and development of a consolidated will is better than the contradiction emerging after the law enactment, non-acceptance of the enacted law by the society or the impossibility to realize the provisions of law as a matter of practice.

The advantage of a bicameral parliament organization is the structure of a double representation which is extremely important for the legislative process forasmuch as the entire state may be represented in conjunction with its separate regions.

The opponents of bicameralism are frequently referring to the following words of S. Krips: „If we are willing to achieve the effective democracy, then it is absolutely impossible to have two chambers sharing the state sovereignty. The second chamber is either representative – and in this case it is simply a duplicate of the first chamber, or is not representing the people in whole – thus it should not be placed in an actual democratic parliament". But there is a different level of representation. The upper chamber of the unitary state should be considered not only as an institution for representation of regions, but also as an institution for representation of the nationwide interests, as opposed to the interests of separate groups and party-corporate positions, that may be represented by the deputies and fractions of the lower chamber[8].

Considering the matter of democracy, Liypgart supposes that bicameral structure is an attribute of pluralistic societies, i.e. the societies which are distinctly divided as per religious, ideological, language or race features, and formed by the separated communities whereby the model of consensus democracy is the most applicable[9].

The bicameral parliament may eventually unite the society divided into classes. The similar position exists also as regards to the parliament of Ukraine. "Reflection of the regional interests together with the interests of communities in the legislative activity may become a stabilizing factor in respect of Ukrainian statehood, the factual development of regions, increase of economic stability of both regions and state itself. In virtue of that, a higher level of stability of the state political system may be achieved"[10].

In principle, the bicameralism is justified only in terms of a developed parliamentarism. The creation of a bicameral structure of parliament would be reasonable at the statehood stage of development, when by virtue of evolution of the party system it is possible to set up a close majority based on the party affiliation in both lower and upper chambers. In other circumstances it may lead to certain difficulties in the legislative process.

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[8] Y. Sokirka, *Bicameral Parliament: Advantages and Deficiencies of Implementation*, „Postup" („Поступ"), http://postup.brama.com/usual.php?what=57814, [25.11.2012].

[9] A. Leipkhart, *The Constitutional Alternatives for the New Democracies*, "Polis" („Полис") 1995, № 5, p. 35.

[10] N. V. Kiselyova, *Transfer from Unicameralism to Bicameralism: Geographic Background of the Political Choice*, „Gileya (naukoviy visnyk)" ("Гілея (науковий вісник)" 2009, issue 23, http://www.nbuv.gov.ua/portal/Soc_Gum/Gileya/2009_23/Gileya23/P5.pdf, [25.11.2012].

Over the entire history of statehood there had never been a bicameral parliament in Ukraine, therefore, as some scholars state, there is no background for creation of such parliament. In any event, there are other factors that affect the development of state building and positive experience of activity of the upper chambers of the parliaments of another democratic and unitary states.

Generally, a bicameral parliamentary system is perceived by the democratic development theorists as a guarantee of publicity, transparency and protection of interests and rights of any type of minorities. And this is owing to the fact that the upper chambers are more likely to have a debate form of work in comparison to a mostly secretive form of work of the lower chambers. And given that the process of approval of any decisions is accomplished in several stages, it becomes more accessible for the public and press.

Notwithstanding the abovementioned facts, it is worth to be stressed out that experience of the European bicameralism proves that the transfer of state from a unicameral system to a bicameral one – is not a theoretical problem but a problem of a pragmatic choice of the state and its people. Resolution of the said matter in the territory of Ukraine faces several problems, which are closely connected to the territorial interests and incompleteness of the administrative-territorial reform in Ukraine.