

Komunikat

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Former USSR States' Parliaments: Comparative Analysis

After the collapse of the Soviet Union a number of independent states have appeared in Eastern Europe. Each state develops its own model of parliamentary mechanism. Some of them are part of integration unions – European Union (Latvia, Lithuania, Estonia), CIS (Russia, Belarus etc.), others are relatively independent (Ukraine, Georgia). However, all of these states are characterized by common features, but as a fact, have some differences. This tendency especially clearly manifests itself in a legislature.

The significant role in the governmental system is played by the legislative branch. The legislative power shall be entitled to issue the obligatory statutory acts of state value having the most general character, i.e. to establish the rules determining the bases of socially significant behaviour and the activities of physical and legal persons, bodies and establishments of the state, public associations. The legislative power is considered to be the expression of the will of all people, their interests, and people's sovereignty. Therefore the laws shall have, alongside with the constitution (a fundamental law), the supreme legal validity and the priority under the acts of the executive power: acts of presidents, governments, ministries, departments cannot contradict the law. Solely the bodies of the constitutional control can deprive the law of the action, in case they recognize, that the law contradicts the constitution. Alongside with the laws the parliament adopts other acts (resolutions, statements, petitions to the parliaments of foreign states), and realize other major powers on behalf of the people and the states.

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The status of parliaments is determined by the acts of the constitutional and current national legislation. The legislative process is regulated by constitutions, regulations, laws, resolutions of the chambers by parliamentary customs. The organization of activities of the parliament is regulated by their regulations or the regulations of chambers of parliament. The regulations can determine the order of creation of internal divisions of the parliament or the chambers (committees, commissions, fractions, staff, etc.) and regulate other relations connected with order of activities.

In different states the parliament is understood differently, it has unequal structure, but always, the parliament shall be the uniform nation-wide legislative body. And in Ukraine the Parliament – the Verkhovna Rada – is the representative and the unique body of legislative power.

While carrying out the comparatively legal analysis of the European states' legislatures, it is possible to make a conclusion that the circle of the powers given to the bodies of the government, at some degree depends on the form of government. These states represent all forms of republic government – presidential (Russian Federation), half-presidential (Ukraine, Kazakhstan) and parliamentary republic (Estonia, Moldova).

The parliaments of the states of former USSR have one- or two-chamber structure. Constitutions of federative states stipulate the two-chamber parliament (Russian Federation). The lower chamber of such parliament is formed, as a rule, by means of election of the deputies on the basis of general, equal and direct suffrage by secret and free voting on territorial constituencies according to the system of proportional or mixed representation. And the lower chambers realize the legislative function of the parliament. The upper chambers are formed in special ways. So in the Russian Federation the Council of Federation is presented by two representatives from each subject of Federation one from the representative and executive body of the power (Art. 95, Constitution of Russian Federation).

In unitary states the parliament, as a rule, consists of one chamber (Azerbaijan, Armenia, Georgia, Latvia, Lithuania, Ukraine, Estonia) and its deputies are elected on the basis of general, equal and direct suffrage by secret and free voting on territorial constituencies on the system of proportional or mixed representation.

So nowadays in Ukraine operates mixed system of elections to the parliament – the Verkhovna Rada of Ukraine. Half the deputies of the Parliament

(225 members) are elected in a single multi-mandate constituency by proportional lists, and the other half – in a single-seat constituencies.

However, in some states with the unitary form of the state system, there exist the two-chamber parliaments (Belarus, Kazakhstan). The lower chambers of the parliaments of the given states are created in the order and on the principles according to which one-chamber parliaments are created, and, as a rule, the lower chambers realize the legislative function of the state. The upper chambers called, basically, the Senate, are created in different ways. For a number of states common is the choice of each territorial unit of the certain number of members to the upper chamber (in Belarus – 8 members from the area and the city of Minsk (Art. 91, Constitution of Belarus); in Kazakhstan – 2 members from a region (Art. 50, Constitution of Kazakhstan), etc.). A number of senators can be appointed or are appointed by the President of the state (in Belarus – 8 (Art. 91, Constitution of Belarus), in Kazakhstan – 7 (Art. 50, Constitution of Kazakhstan)).

Proceeding from the general beginnings of formation and structure of the parliaments, the legislative power is realized by members of parliament, elected according to the national legislation. Thus, other state bodies and officials of the former USSR states are not included into the structure of the parliament.

It is interesting to pay special attention to the legislative power of the Republic of Turkmenistan represented by the Parliament – Medzhelis. The activity of the given law-making body is connected with the will of the society through the unique democratic institutes: The National Council (Khalk Maslakhaty – comprising the President of the State, the deputies of the parliament (Medzhelis), the national representatives elected by the people one from each district (Atrap), the Chairman of the Supreme Court, the Chairman of the Supreme economic court, the heads of administrations) and the Council of Elders (Maslakhat Aksakal – annually elected by people representatives with the highest authority on the population). Their decisions and orders are embodied in laws and decisions by the parliament. At the same time the parliament has the high status of independence and is allocated with general and exclusive competence.

To candidates for members of the parliament the constitutions of the states show the number of requirements. The basic are obligatory presence of citizenship of the state to which parliament the person is elected the deputy,

and also conformity to the age qualification established by constitutions of the states. In different states the various age is established, but, as a rule, the candidate to members of the parliament should not be less than 21 (Belarus, Latvia, Russia, Ukraine, Estonia) or not less than 25 (Azerbaijan, Armenia, Georgia, Kazakhstan, Lithuania). To the upper chamber of the two-chamber parliaments can be elected the persons who have reached in the Kazakhstan (Art. 51, Constitution of Kazakhstan), Belarus – 30 (Art. 92, Constitution of Belarus). In the separate states, except for the above mentioned requirements, the residential qualification is established (in Belarus – living on the territory of the corresponding region, the city of Minsk not less than 5 years (Art. 92, Constitution of Belarus)). The candidates can be shown other requirements. Thus, in Kazakhstan the candidate for the upper chamber shall have higher education and the experience of work not less than 5 years (Art. 51, Constitution of Kazakhstan).

Practically all constitutions of these states proclaim the principle of inviolability of deputies, giving them immunity from prosecution in the judicial or administrative order. The deputy, as a rule, cannot be involved to any responsibility for voting or the opinion stated during realization of the powers. The members of parliament can be involved to the responsibility solely in cases directly stipulated by constitutions.

Thus the Constitution of Ukraine guarantees the inviolability of the deputies (Art. 80) in the form of immunity and indemnity that they can not be brought to trial without the consent of parliament, and are not legally liable for the results of voting or statements made in Parliament.

Guaranteeing the deputies the inviolability, constitutions also stipulate the principle of incompatibility. On the one hand, the given principle determines that in the two-chamber parliaments the overlapping powers of the deputies of both chambers simultaneously shall be inadmissible. On the other hand, the given principle determines, that powers of the deputy shall incompatible with the powers of other state officials. In case of his appointment to other state position of power of the deputy for the period of realization of the given position terminate. However, the members of parliament are given the opportunity of conducting scientific, creative or educative activity. As example such order typical for Ukraine.

Constitution of Ukraine (Art. 78) prohibits the deputies of Ukraine have any other representative mandate, hold other paid offices, carry out paid or entrepreneurial activity.

The term of powers of the parliament is various. Moreover, there are some differences in terms of powers of the upper and lower chambers of two-chamber parliaments of the state. Basically constitutions of the states stipulate a four-year term of powers of the one-chamber parliament (Armenia, Georgia, Lithuania, Latvia, Moldova, Russia, Ukraine, and Estonia). In the separate states the term can make 5 years like in Azerbaijan (Art. 84, Constitution of Azerbaijan).

The four-year term is also established for the lower chamber of parliament of the states with two-chamber parliament (Belarus, Russia). Sometimes the term of powers of the lower chamber is 5 years: Kazakhstan (Art. 50, Constitution of Kazakhstan). The terms of realization of the powers of the upper chambers are different, e.g. 6 years – in Kazakhstan (Art. 50, Constitution of Kazakhstan).

There are the distinctions in the subjects allocated with the right of the legislative initiative in the states, depending on the form of government in the state – presidential or parliamentary. In the states with the parliamentary form of government alongside with the deputies of parliament the right of the legislative initiative is allocated to the government of the state. In the states with presidential or half-presidential forms of government alongside with the specified bodies and officials with the legislative initiative right is allocated to the presidents of the states (Armenia, Russia, Kazakhstan, etc.). The President of the Republic of Estonia (according to Art. 103 of the Constitution) is allocated with the right to the legislative initiative solely in the question on change of the Constitution. The specified right can be given to other persons and bodies: to the representative body of autonomous units or subjects of federation (Azerbaijan, Tajikistan, Russia); to the bodies of the judicial power: to the Supreme, constitutional, Supreme economic (economic) courts (Russia, the Kirghiz Republic, Uzbekistan, Tajikistan); to the Prosecutor General (Uzbekistan); to the National Bank (Ukraine). Draft laws defined by the President of Ukraine as urgent shall be considered out of turn by the Verkhovna Rada of Ukraine (Art. 93, the Constitution of Ukraine).

In the constitutions of a number of the states is stipulated such concept as the people initiative according to which the certain number of the citizens of

the state can apply to the parliament of the country with the legislative initiative in case it has supported by the constitutionally established number of the citizens: Belarus – not less than 50 thousand voters, and on the questions of entry of changes and additions in the Constitution of Belarus not less than 150 thousand voters (Art. 97).

The legislative function is realized exclusively by the legislative body which shall be the parliament. Art. 75 of the Constitution of Ukraine proclaims Ukraine's parliament – the Verkhovna Rada of Ukraine – the only legislative body.

However, the constitutions of some other states stipulate the opportunity to delegate legislative functions to the government of the state. Sometimes the constitutions can give the President the right – in defined cases – to issue the acts valid for the law. Thus in the Republic of Kazakhstan the President, except for the right of the legislative initiative, is allocated with the powers, stipulated by the Constitution of the Republic of Kazakhstan, to issue the laws, or the decrees valid for the law (Art. 45, the Constitution of Kazakhstan). According to Part 2 Art. 85 of the Constitution of Belarus in the cases stipulated by the Constitution, the President shall issue the decrees valid for laws.

In the one-chamber parliaments the bills are transmitted, considered and adopted by the parliament. As a rule, in the states with the two-chamber structure of the parliament the bill adopted by the lower chamber, shall be also adopted by the upper chambers. In case of disapproval it shall be sent back to completion with remarks and offers of the upper chamber. At the repeated consideration the lower chamber adopts the bill in view of the offers of the upper chamber, or passes the law in the initial running. However, in this case the bill, as a rule, should be adopted by the established constitutional majority. The given complex procedure of bills passing in two chambers allows improving the legislative process and more thoroughly studying laws adopted by the parliament. As a rule, the bill is considered passed in no event after its approval signing by the President in terms specially stipulated by the constitutions. In case of its approval the law is subjected to its publication and, as a rule, comes into force. In case the bill is not approved, it goes to parliament with remarks and offers. The parliament, in its turn, can take into account the remarks and offers brought by the President, and to approve the bill in the new wording, or not to agree with it and then the parliament

can approve the bill in the initial running only in case the established by the constitution majority out of the number of the deputies of parliament has voted (or its lower chamber).

Constitutions of the states at realization by the deputies of the powers proclaim the principle of publicity of activities of the parliament. Sometimes the exceptions of this principle can be established. Sessions of the parliament or its chambers can be closed, however it should be regulated by the constitution. However, in any case the decision on carrying out of the closed session should be adopted by the majority of the deputies of the chambers or the parliament.

The powers of the parliament terminate with the expiry of the term during which in accordance with the Constitution it shall realize its functions. However the powers can be terminated ahead of schedule by means of dissolution of the parliament or its chambers. The Parliament or the chambers can be dismissed by the president (Latvia, Russia, and Ukraine). In Ukraine President prematurely terminate the authority of Parliament under Art. 90 of the Constitution of Ukraine in case within thirty days of a regular session the plenary meetings fail to commence.

The grounds for dissolution also vary. However Constitutions can also provide special cases at which the parliament or chambers cannot be dismissed. As a rule, it can act during the martial law or the state of emergency (Russia), or the last 6 months of the term of the powers of the President of Ukraine (Art. 90, Constitution of Ukraine).