



Artículo de investigación

Typical constitutional forms of interaction between the foreign parliament chambers

Formas constitucionales típicas de interacción entre las cámaras del parlamento extranjero

Formas constitucionais típicas de interação entre as câmaras parlamentares estrangeiras

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Escrito por:

Saida G. Dzybova⁵⁰
Marina V. Markhgeym²
Anna A. Minasyan³
Aleksandr N. Plohih⁴
Nina V. Stus⁵**Abstract**

The article presents the author's analysis of the constitutional acts of European states with a bicameral parliament with a view to fixing some typical forms of interaction between the parliament chambers in them. The study has showed that the joint sessions (on taking the oath by the head of state, presidential elections, deciding to declare war, granting pardon); formation of permanent and temporary committees and commissions; formation of the higher bodies of state power or appointment of officials serve as typical forms of interaction between the parliament chambers. Within the legislative sphere, it is disclosed such typical forms of interaction between the parliament chambers as the bill approval in both chambers in an identical version and "tacit consent". It is concluded that the typical forms of interaction between the parliament chambers of European states reflect their sovereign but established approaches, elaborated by the doctrine and tested by practice.

Key words: constitution, interaction between the parliament chambers, typical forms of interaction between the parliament chambers.

Resumen

El artículo presenta el análisis del autor de los actos constitucionales de los estados europeos con un parlamento bicameral con el fin de fijar algunas formas típicas de interacción entre las cámaras del parlamento en ellos. El estudio ha demostrado que las sesiones conjuntas (sobre el juramento del jefe de estado, las elecciones presidenciales, la decisión de declarar la guerra, la concesión del indulto); formación de comités y comisiones permanentes y temporales; la formación de los cuerpos superiores del poder estatal o el nombramiento de funcionarios sirven como formas típicas de interacción entre las cámaras del parlamento. En el ámbito legislativo, se divulgan formas típicas de interacción entre las cámaras del parlamento como la aprobación de la ley en ambas cámaras en una versión idéntica y el "consentimiento tácito". Se concluye que las formas típicas de interacción entre las cámaras parlamentarias de los estados europeos reflejan sus enfoques soberanos pero establecidos, elaborados por la doctrina y probados por la práctica.

Palabras clave: constitución, interacción entre las cámaras del parlamento, formas típicas de interacción entre las cámaras del parlamento.

Resumo

O artigo apresenta a análise da autora dos atos constitucionais dos estados europeus com um parlamento bicameral com vistas a fixar algumas formas típicas de interação entre as câmaras parlamentares nelas. O estudo mostrou que as sessões conjuntas (em tomar o juramento pelo chefe de estado, eleições

⁵⁰ Adyghe state University, 208, Pervomayskaya str., Maikop, 385000, Russia
^{2,3,4,5} Belgorod State University, 85, Pobedy Street, Belgorod, 308015, Russia

presidenciais, decidindo declarar guerra, concedendo perdão); formação de comissões permanentes e temporárias e comissões; a formação dos altos corpos do poder estatal ou a nomeação de funcionários servem como formas típicas de interação entre as câmaras parlamentares. Dentro da esfera legislativa, são divulgadas formas típicas de interação entre as câmaras parlamentares como a aprovação da lei em ambas as câmaras, numa versão idêntica e "consentimento tácito". Conclui-se que as formas típicas de interação entre as câmaras parlamentares dos estados europeus refletem suas abordagens soberanas, mas estabelecidas, elaboradas pela doutrina e testadas pela prática.

Palavras-chave: constituição, interação entre as câmaras parlamentares, formas típicas de interação entre as câmaras parlamentares.

Introduction

The importance and significance of determining the forms of interaction between the parliament chambers are determined, first of all, by the constitutional design of the legislature - the parliament - as a complex but unified body, which implements a unified state (legislative, control, personnel, etc.) policy (Keshtkar, M.M 2013, p. 82).

The provisions of Art. 24 of the Constitution of France are an example of organic unity of the parliament chambers, because they consolidate its structural and status characteristics: "The parliament passes laws. It controls the government's activities. The parliament assesses the state policy. The parliament consists of the National Assembly and the Senate".

Such wordings were reflected in Art. 15 of the Czech Constitution, Part 4 of Art. 51 of the Constitution of the Netherlands, Art. 94 of the Constitution of Poland, Art. 148 of the Constitution of Switzerland, Art. IV of the Constitution of Bosnia and Herzegovina and others.

The constitutions of European states with a bicameral structure of the legislative body stipulate various organizational, functional, procedural and other measures to ensure the chambers' cooperation.

Traditionally, the issues of interaction between the parliament chambers are considered from the point of view of gender representation in the constitutional and legal science (Shvedova N. 2005, p. 33-34; Ballington J. 2005, p. 24-30; Waikung T. 2017, p. 44-70; Norris P., Inglehart R. 2001, p. 126-140), in connection with the course of the budgetary process (Bressanelli E., Chelotti N. 2018), as a bicameralism phenomenon (Keshtkar, M.M and Ghazanfari M. 2017, p. 760-771), from the position of modern development of the parliamentarism institution (Halligan J., Miller R.,

Keshtkar, M.M 2017), based on the situation of a specific country (Ilie C. 2010, p. 885-911; Russell M., Sciara M. 2006, p. 122-136; Thomas P. G. 2009), as well as from the position of correlation with technology in European countries (Keshtkar, M.M and Ghazanfari M. 2017). At the same time, the doctrine does not contain any developments concerning both the interaction of the parliament chambers in general, and the forms of such interaction, in particular. To fill in this gap, we will analyze the texts of the constitutions of European countries to find the forms of interaction between the parliament chambers.

Methodology.

The study was based on a dialectical approach to the study of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and specific scientific methods. The formal-legal, linguistic-legal, comparative-legal methods were also collectively used to study the constitutional texts of 14 European countries with bicameral parliaments: Austria, Belgium, Bosnia and Herzegovina, Great Britain, Spain, Italy, Netherlands, Poland Romania, Romania, France, Germany, Czech Republic, Switzerland (the texts of constitutions were taken from the Internet library "Constitution of the States (Countries) of the World" (<http://worldconstitutions.ru/>)), in order to identify the typical forms of interaction between their chambers. The choice of this focus group is determined by the unity of their geographical space and the generality of their integration goals, which gives grounds for believing that there are typical forms of interaction between their parliament chambers.

Discussion and results.

The analysis of the constitutional texts of European states with a bicameral parliament did indeed show the existence of typical forms of





interaction between the foreign parliament chambers.

All 14 constitutions of the above-mentioned group of countries included such a constitutional form of interaction between the foreign parliament chambers as joint sessions of the chambers, which made it possible to classify this form as typical. Thus, the Constitution of Spain contains an indication of the existence of joint sessions held by both parliament chambers. According to the provisions of Art. 74 joint sessions of the chambers are held "to implement the non-legislative powers" and the list of reasons for holding such sessions is directly enshrined in the Constitution of Spain. They include the authorization of the General Cortes to "accept the obligations by the State arising from the treaties or agreements", to decide on the fund distribution between the autonomous communities and provinces, and to approve the Autonomy Charter for the territories that are not among the provinces. In the first case, the initiative to hold the joint sessions belongs to the Congress of Deputies, and in the other two cases - to the Senate.

Art. 37 of the Constitution of the Czech Republic assigns to the parliament chambers the right to hold joint session, the convocation of which is implemented by the Chairman of the Chamber of Deputies. The Constitution does not establish a list of reasons for holding such sessions, but at the same time it mentions two circumstances: election of the President of the Republic (Part 2 of Art. 54) and giving an oath by him/her (Part 1 of Art. 59). In this regard, we should note that the identification of issues for holding a joint session of the Chamber of Deputies and the Senate is purely "a discretionary authority of the President of the lower chamber" (Lazareva M.N., 2008, p. 111).

The analysis of the constitutional texts has showed that the joint sessions as a typical form of interaction between the European parliament chambers are connected with various occasions, the implementation of the legislative function, the formation of committees and commissions, the organizational issues and personnel appointments. Let us consider them (Brunner and Ganga-Contreras, 2017). The joint session as a typical form of interaction between the European parliament chambers are held on various occasions, which characterizes the sovereign will of the state. In particular, we revealed the following reasons:

- Ceremonial (giving the oath by the head of state - Art. 91 of the Constitution of Italy, Art. 61 of the Constitution of Spain, Part 2 of Art. 82 of the Constitution of Romania, Art. 32 of the Constitution of the Netherlands, Art. 38 of the Constitution of Austria);
- Presidential elections (Art. 54 of the Constitution of the Czech Republic, Art. 54 of the Constitution of Germany);
- Hearing the throne speech of the monarch, containing the government's program for the coming year (Constitution of Great Britain);
- Deciding to declare war (Art. 78 of the Constitution of Italy, Part 3 of Art. 63 of the Constitution of Spain, clause "f" of Part 2 of Art. 62 of the Constitution of Romania, Part 1 of Art. 43 of the Constitution of the Czech Republic, Art. 38 of the Constitution of Austria);
- Granting pardon (clause "c" of Part 1 of Art. 148 of the Constitution of Switzerland);
- Participation in the impeachment procedure of the head of state (Part 1 of Art. 88 of the Constitution of Romania, Art. 68 of the Constitution of France, Art. 90 of the Constitution of Italy, Art. 63 of the Constitution of Austria);
- Deciding on the crown succession at absence of the hereditary persons (Part 3 of Art. 57 of the Constitution of Spain, Part 2 of Art. 37 of the Constitution of the Netherlands), etc.

The joint sessions as a typical form of interaction between the European parliament chambers are related to the implementation of their legislative function. Based on this functional certainty, bicamerality determines the interaction between the chambers as "the law passed by the parliament is the result of its agreed will" (Abramova A. I. 2008, p. 31). In some foreign countries, for example, Austria (Art. 24 of the Constitution of Austria), the legislative powers (when passing the laws) can be fully implemented when two parliament chambers reach mutual agreement. Part 3 of Art. 20 of the Constitution of Ireland fixes the provision that "a bill passed by one of the chambers and approved by another chamber should be considered as adopted by both chambers". Similar wordings are reflected in Art. 156 of the Constitution of Switzerland and Art. 20 of the Constitution of Ireland.

The fixation of "equal status" of both parliament chambers (the National Council and the Canton Council) in Part 2 of Art. 148 of the Constitution of Switzerland is of particular interest. The constitutional imperative regarding the equality of the parliament chambers was reflected only in this act. None of the constitutions studied did not include an indication of the equal position of the parliament chambers. We believe that this circumstance is, in a way, a "positive deviation" in the traditional consideration of the parliament chambers in the "upper-lower" coordinates (Antón Chávez, 2017). Let us note that the European constitutional acts include three typical forms of interaction between the parliament chambers in the legislative sphere. They include, for example, the bill approval in both chambers in an identical version (Part 2 of Art. 156 of the Constitution of Switzerland, clause "c" of Part 3 of Art. IV of the Constitution of Bosnia and Herzegovina); "tacit consent" (Part 2 of Art. 121 of the Constitution of Poland "... if the Senate does not adopt the relevant resolution within 30 days from the date of law transfer, then the law is considered adopted in the version adopted by the Seima"); approval of the country's budget (Part 2 of Art. 62 of the Constitution of Romania, Part 1 of Art. 42 of the Constitution of the Czech Republic, Part 1 of Art. VIII of the Constitution of Bosnia and Herzegovina); resolution of bill disagreements.

We think it necessary to comment on the latter. For example, a similar procedure is stipulated in Part 1 of Art. 47 of the Constitution of the Czech Republic, according to which a second vote should be held in the Chamber of Deputies, if the Senate rejects the draft law. The draft law should be considered adopted if more than half of the total number of deputies voted for it. In this case, the possibilities of influence of the upper chamber on the content of the adopted law are very limited and in fact its role is reduced to the approval or disapproval of a ready-made legislative decision.

In the Great Britain, such a procedure is implemented only at another parliament session. Since the session is convened once a year in this country, it theoretically means that the Chamber of Lords can delay the law adoption for a year (Chirkin V. Y. 2011, p. 96).

The joint sessions as a typical form of interaction between the European parliament chambers are manifested through the

conciliation procedures. They are the way to achieve a compromise between the chambers and suggest the formation of conciliation (parity) commissions.

Parity commissions are created with the arising disagreements between the parliament chambers and are of a temporary nature. The creation of such commissions is the most effective form of interaction between the conflicting parties. Parity commissions are created from among the members of the conflicting parties, but can be supplemented by relevant specialists in some cases (Ivanova K.A. 2015, p. 69).

The main purpose of their activities is to create a project to resolve a conflict situation. The creation of conciliation commissions is stipulated, for example, in Art. 76 of the Constitution of Romania and Part 2. of Art. 45 of the Constitution of France. Thus, the Presidents "will begin a conciliation procedure through a parity commission" as a result of disagreements between chambers in Romania. Such a procedure for the conciliation commission formation is stipulated in the Constitution of France.

The investigative commissions (parliamentary inquiry commissions) are a variety of parity commissions. They are stipulated for the resolution of issues, mainly concerning the deviant behavior of officials. As a work result, the investigation commissions prepare reports or conclusions. In the commonness of the organizational approach, the European countries with a bicameral parliament did not show a constitutional unity in securing the subject of parliamentary investigation. Thus, the subject of parliamentary investigations is defined as an issue "representing public interest" (Art. 82 of the Constitution of Italy), "having public interest" (Art. 44 of the Basic Law of Germany), or is not reflected in the text of the Constitution (Part 4 of Art. 64 of the Constitution of Romania, Art. 52 of the Constitution of Belgium).

Along with the interim parity commissions, the permanent forms are also stipulated as the constitutional forms of interaction between the parliament chambers. In particular, the chambers create common bodies in the form of commissions and committees to prepare for law discussion in the plenary session, as well as to resolve other issues. These bodies include, for example, the Joint Committee of Deputies of the



Bundestag and the Bundesrat (Art. 53-a of the Basic Law of Germany), the Joint Committee on Human Rights in the Parliament of the United Kingdom.

Further study of the constitutional texts of this group of countries made it possible to classify the typical forms of interaction between the chambers as the joint formation of the higher bodies of state power or the appointment of officials. In Italy (Art. 83 of the Constitution of Italy) and Germany (Art. 54 of the Basic Law of Germany), the parliament chambers are given the right to elect the President of the state; form the government and elect the prime minister of the state (Art. 63 of the Basic Law of Germany, Art. 94 of the Constitution of Italy, Part 1 of Art. 85 of the Constitution of Romania, Part 2 of Art. 54 of the Constitution of the Czech Republic). According to clause "g" of Part 2 of Art. 62 of the Constitution of Romania, the parliament chambers participate in the appointment of the Director of the Romanian Information Service.

In view of the foregoing, we should note that the forms of interaction between the chambers given in the constitutional acts of the group of countries under study allow us judging the approaches of the states to the constitution of the joint powers of their parliament chambers. The suggested author's approach to systematization of typical forms of interaction between the parliament chambers is aimed, among other things, to search for an effective system for their cooperation, for further development of scientifically based recommendations on the optimal use of the resources of modern bicameralism.

Conclusions.

The analysis of the texts of the constitutions of European countries with the bicameral parliament structure helped us to identify the typical forms of interaction between the parliament chambers.

They include the joint sessions of the parliament session held on the giving oath by the head of state (Italy, Spain, Romania, the Netherlands), presidential elections (Czech Republic), deciding to declare war (Italy, Austria), granting pardons (Switzerland), forming permanent (Great Britain, Germany) and temporary (Romania, France, Belgium) committees and commissions; formation of the higher bodies of state power or appointment of

officials (Germany, Italy, Czech Republic, Bosnia and Herzegovina).

Within the legislative sphere, the typical forms of interaction between the parliament chambers are the bill approval in both chambers in an identical version (Switzerland, Bosnia and Herzegovina) and "tacit consent" (Poland).

Thus, the typical forms of interaction between the parliament chambers specified in the constitutional texts of European states allow us judging the approaches of these countries to the constitution of joint powers of the parliament chambers.

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