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FOREWORD

Today more than a hundred specialized legal journals and collections are annually issued in Ukraine, publishing thousands of scientific articles from various branches of legal science.

In 2008 by the decision of the Presidium of the Academy the nationwide scientific periodical – the Yearbook of Ukrainian law was founded, in which the most important legal articles of academicians and corresponding members of the National Academy of Legal Sciences of Ukraine, as well as research associates, who work in the Academy's research institutions and other leading research and higher education institutions of Kyiv, Kharkiv, Donetsk, Lviv, Odesa, are published.

Yearbook aims to become a guide in the field of various scientific information that has already been printed in domestic and foreign journals during the previous year. "Yearbook of Ukrainian law" is a unique legal periodical dedicated to the widest range of legal science's problems striving to become a concentrated source of modern scientific and legal thought on current issues in the theory and history of state and law, constitutional, criminal, civil, economic, international and other branches of law, that has no analogues in Ukraine. The journal's pages contain modern legal concepts and theories of the further development of Ukraine as a democratic, social, law-governed state, full of the most provoking contemporary ideas, fundamental and substantial issues of jurisprudence.

The selection process of articles is carried out by the branches of the Academy (theory and history of state and law, state-legal sciences and international law, civil-legal sciences, environmental, economic and agricultural law, criminal-legal sciences), which combine leading scientists and legal scholars from all over Ukraine.

From 2014, the Yearbook of Ukrainian Law is published in English. Each issue of the English version is sent to more than 70 law libraries of the world, including USA, Canada, Australia, Great Britain, Germany, Portugal, Switzerland, Norway, Denmark, Latvia, and Lithuania. This enables scientists from other countries to get acquainted with the problems relevant to Ukrainian legal science, both the general theoretical, as well as different branches of law, modern Ukrainian legislation and practice, to provide opportunities for international scientific cooperation.

Honorary President of the National
Academy of Legal Sciences
of Ukraine
V. Ia. Tatsii

HEORY AND HISTORY OF STATE AND LAW

UDC 342

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TWO-CHAMBER PARLIAMENT: COMPARATIVE ANALYSIS AND EXPERIENCE OF CONSTITUTIONAL REFORMING IN UKRAINE

Abstract. *In the process of formation and development of the institute of parliament, there is a need for timely improvement of the organisational and functional basis, constitutional and other legislation, which contributes to the effective functioning of this institution. The existing legal non-regulation, both at the level of the Constitution and at the level of current legislation, do not allow the parliament to fully exercise its functions. According to many experts, bicameralism is a serious factor in reducing political tensions in the country, as there is usually less conflict between parties in a bicameral parliament, which leads to stabilisation of parliamentary activity based on a system of checks and balances. Taking into account the actualisation of the chosen topic of the article, its purpose is to comparatively study the experience of constitutional reforming of the countries in the field of bicameral parliament introduction, generalisation of positive practice and finding opportunities for its testing in Ukraine. The peculiarity of the article has been the combination of scientific-theoretical and empirical levels of studying the issues of constitutional-legal fixing of the institute of parliament, its structure and activity, interaction with other branches of a single state power within the framework of the constitutional principle of separation of powers. The author, in view of the stated purpose, has solved the following issues: the multivariate scientific and practical approaches to the studied problems have been considered; a comparative legal analysis of the experience of forming chambers in the parliaments of the states has been conducted; conclusions and proposals on the possibility of establishing a bicameral parliament in Ukraine have been substantiated. An analysis of the role of parliaments has made it possible to come to a more thorough picture of the system of separation of powers in a particular country, about the existing restraints and counterbalances in order to further adapt the positive experience in the territory of*

our country and justify the relevant reforms. In addition, the analysis made it possible to state that such a reform is urgent and necessary, but it must be carried out, provided that the proposed copyright concepts are fully correlated with the vector of European integration chosen by our country.

***Key words**: bicameralism, European integration, reform of Ukrainian legislation, Chamber of Deputies.*

Introduction

One of the most pressing issues of constitutional reform is the change in the institutional structure of state power, in particular through the possibility of establishing a bicameral parliament [1]. According to many experts, bicameralism is a serious factor in reducing political tensions in the country, as there is usually less conflict between parties in a bicameral parliament, which leads to stabilisation of parliamentary activity based on a system of checks and balances. This is especially true for the current realities of Ukrainian politicum, when the confrontational style of behaviour of political parties leads to the destabilisation of many state institutions, first of all, the Verkhovna Rada of Ukraine.

Indeed, if to look at the constitutionally mandated powers of the upper chambers of parliament and the practice of their activity in the countries of Europe and North America, it can be concluded that this chamber is intended to block the questionable enough in terms of the benefits for the state and public development decisions of the lower chamber that is by its nature more prone to politicisation of approved decisions [2–4]. That is, the upper chamber is an institutional element that is able to subdue political passions and add stability to public policy processes.

The introduction of a bicameral parliament in Ukraine would reduce the level of conflict in the mechanism of exercising state power, strengthen the representative function of the parliament, increase the authority of local self-government, promote the better development of regions, and ensure the stability of Ukraine's political course. In general, bicameral parliaments provide a more sophisticated system of national representation than unicameral parliaments. They are better at overcoming law-making mistakes and making more balanced decisions.

In addition, the point of view is very spread that the upper chambers are carriers of a particular type of knowledge, depth of political thought and sound conservatism [5]. Thus, joining the upper chamber in Italy is associated with outstanding services in the social, scientific or artistic fields. Thus, during the construction of the building of the Brazilian Parliament, architect O. Niemeyer chose a quiet dome for the meeting room of the upper chamber, the Senate, while the dynamic "bowl" crowns the hall of the lower chamber, the Chamber of Deputies [6].

In the context of public debate, it should be emphasised that a bicameral parliament is not a mandatory affiliation of a federal state. Given the number of

unitary countries with bicameralism on the European continent, a bicameral parliament can function harmoniously in states with a simple administrative and territorial structure. Thus, at least 10 such countries can be found on the map of Europe, namely: Belarus, Ireland, Spain, Italy, Netherlands, Poland, Romania, France, Croatia and the Czech Republic (although in some cases the ambiguity of the "simplicity" of the territorial structure of these countries should be taken into account, such as Italy and its autonomous regions).

At the same time, it should be noted that not all representatives of science, practice and experts support the idea of establishing a bicameral parliament in the territory of our country. In particular, constitutional law expert B. Bondarenko argues that the implementation of the bicameral parliament concept can take ten years, and such a reform will not lead to a projected positive impact on the effectiveness of the Verkhovna Rada of Ukraine. In addition, the presence of paramilitary conflict and partial occupation on the territory of Ukraine will facilitate, in the context of delineated reform, the creation of regional parties that will produce a negative impact on the constitutional reform of the state as a whole [7].

The alternative outlined approaches substantiate the chosen purpose of the article, which consists in a comparative study of the experience of constitutional reform of countries in the field of bicameral parliament introduction, generalisation of positive practice and finding opportunities for its testing in Ukraine. With this purpose in mind, the following tasks were set: 1) to consider the multivariate scientific and practical approaches to the studied issues and to substantiate the feasibility of establishing a bicameral parliament in Ukraine; 2) to conduct a comparative legal analysis of the experience of forming chambers in the parliaments of the states; 3) to summarise the positive foreign experience of the existence of a bicameral parliament, to formulate sound conclusions and proposals regarding the possibility of establishing a bicameral parliament in Ukraine.

1. Materials and methods

The article uses general scientific and special scientific methods of research, in particular. General methods that define philosophical and worldview approaches that express the most universal principles of thinking. Among them are dialectical and phenomenological methods that have made it possible to analyse the nature, concepts and meanings of constitutional reform and the introduction of a bicameral parliament.

General scientific methods have also come in handy, where empirical research has played an important role: observation, comparison, description. Widely used theoretical and logical methods: deduction, induction, systematic approach, methods of analysis, synthesis, statistical method, the use of which allowed to obtain reliable knowledge about the processes and features of the formation of the parliamentary institution in Ukraine and its reforming.

Special scientific methods have been used in the study of the evolution of the

Institute of Parliament in Ukraine and in other countries of the world. Chronological and comparative methods were also used. The latter, divided into synchronous and diachronic methods, contributed to the development of a number of proposals based on foreign experience in optimising the functioning of the Parliament of Ukraine and the introduction of the bicameral Parliament. The article also used the historical method of enquiry, which allowed analysing the institute of parliament from the position of the past, present and future.

The peculiarity of the article was the combination of scientific-theoretical and empirical levels of studying the problems of constitutional legal fixing of the institute of parliament, its structure and activity, interaction with other branches of a single state power within the framework of the constitutional principle of separation of powers.

The method of analysis allowed us to determine that the fatal event in the development and formation of the idea of bicameralism was the holding of an all-Ukrainian referendum on April 16, 2000, in which 26 million citizens of Ukraine (or 89.91%) who voted in favour of forming a bicameral parliament in Ukraine. At the same time, it is worth paying attention to the direct formulation of the question that was put to the referendum, "Do you support the necessity of forming a bicameral parliament in Ukraine, *one of the chambers of which would represent the interests of the regions of Ukraine and promote their implementation,* and make appropriate amendments to the Constitution of Ukraine and electoral law?" Thus, the people of Ukraine unanimously supported the establishment of a top-level regional representation body. The reasoning behind the stated people's decision as the basis for reforming the system of representative institutions during the further implementation of the planned vectors of transformation of the national parliament, while simultaneously amending the Constitution of Ukraine, is considered to be sufficiently substantiated. At the same time, it should be emphasised that the attempts to implement the results of the all-Ukrainian referendum have not been implemented. The most significant reason for this phenomenon was the presence of a multivariate viewpoint on the feasibility of such a reform. Unfortunately, these positions are still preserved. The Constitutional Court of Ukraine in the case of amending the Constitution of Ukraine on the initiative of the People's Deputies of Ukraine No. 2-in / 2000 of July 11, 2000, expressed quite negatively about this. In particular, the court found in its opinion that the draft proposal was not compliant with the requirements of Articles 157 and 158 of the Constitution of Ukraine regarding the establishment of a bicameral parliament. The following argument was put forward in the argumentation of the mentioned position, "*An analysis of the current constitutional practice of foreign states shows that the creation of a bicameral parliament in a unitary state is a matter of expediency. The content and scope of the rights and freedoms of a person and a citizen by itself is not directly influenced by the structure of*

parliament (single or double chamber). However, they may be influenced by the procedure for the formation of chambers and the distribution of powers between them" (paragraph 3.1 of the reasoning part of the Opinion). As a consequence, given the fragmentation and inconsistency of changes in the field of implementation of the bicameral parliament in Ukraine, the Constitutional Court found it impossible to pursue constitutional reform in this part. At the same time, the contents of the institution of the upper chamber, which was proposed in the draft, did not raise any objections and objections from the body of constitutional jurisdiction.

The theoretical basis of the study is the work of foreign and domestic authors on issues of statehood, institutions of state power, constitutional reform, including parliament.

2. Results and discussion

2.1 Features of creation of a bicameral parliament in Ukraine

In the modern period of development of national statehood, a bicameral parliament building system is observed by many countries with a prosperous economy, a stable political system and high standards of civil and social rights. More than 70 states have opted for bicameralism [8]. It seems quite reasonable that the parliamentary structure of any country is distinctive and unique, but most of the other chambers of the parliaments of the world have one thing in common – they are the specialised representations of the regions (entities) that make up the territorial units of the country (state). This is typical not only for all federal states, but also for many unitary states (France, Italy, Spain, Poland, Romania, Japan, etc.).

Turning to the practice of introducing bicameralism on the territory of our country, it should be noted that after independence, Ukraine faced the problem of defining the path of its further state development and the creation of new institutions of government, including the parliament. Even in the process of drafting the current Constitution of Ukraine, the creation of a bicameral parliament was repeatedly considered as a way of arranging a higher representative institution.

In particular, the draft Basic Law submitted for national discussion in 1992 envisaged the creation of a bicameral parliament (the National Assembly) in Ukraine, which was to consist of a Council of Deputies (lower chamber) and a Council of ambassadors (upper chamber). The developers of this project sought to bring to life the idea of a "strong" upper chamber, "The Council of Deputies and the Council of Ambassadors exercise the powers of the National Assembly on the basis of equality and division of functions" (Article 139 of the project). In view of the proposed principle of equality of chambers, it was assumed that they would be endowed with identical powers in the legislative process, in particular, that both chambers would have to approve it for the adoption of the law. In order to remedy the differences, it was proposed that a conciliation committee of chambers be set up, which was responsible for developing a universal bill capable of meeting the require-

ments and observations of both chambers. The procedure for further "newly developed" draft law was also regulated in detail (Part 4 of Article 161 of the draft).

The idea of a bicameral parliament also found its place in the draft Constitution of Ukraine, developed by the Constitutional Commission and submitted to the Verkhovna Rada on March 11, 1996. In particular, it was anticipated that the upper chamber, the Senate, would consist of 80 members representing regions in following proportion – 3 each from the oblasts, the Autonomous Republic of Crimea and the city of Kyiv, and 2 representatives from the city of Sevastopol. The Senate's competence in the draft was to include the appointment on the submission of the President of the Supreme Court, the members of the Central Election Commission, the Prosecutor General, as well as the issue of administrative and territorial organisation.

It is worth pointing out that the idea of bicameralism has also been supported by certain political forces that have promulgated their own constitutional projects. Thus, in particular, the draft of the Ukrainian Republican Party proposed the creation of a bicameral parliament, whose term of office would be 6 years. Nominal (personnel) powers were assigned to the upper chamber, including the appointment of diplomatic representatives and judges of the Constitutional Court. In the draft of the Christian Democratic Party of Ukraine, the Senate consisted of 150 members who were to be elected for 6 years in single-member constituencies, 3 from regions (including the capital) and 3 from the Crimean Tatar people.

Another significant event on the way to the endorsement of bicameralism in our country was the submission by the Head of State to the Parliament on March 31, 2009 of the draft Law of Ukraine "On Amendments to the Constitution of Ukraine", which provided for the creation of an upper chamber – the Senate in the structure of Parliament. The draft of this regulatory act regulated in detail the composition and powers of the newly created Senate, the election procedure and the mechanism for exercising the assigned competence. However, this bill has not been implemented and has been criticised by various representatives of theory, practice and law-making [9].

Subsequently, the idea of introducing a bicameral parliament has repeatedly emerged in the drafting activity. Thus, a particular issue was highlighted at the beginning of the Constitutional Assembly, approved by the Decree of the President of Ukraine of May 17, 2012 [10]. In its turn, the introduction of the bicameral parliament was not a priority for reform and had a rather substantial temporal framework, but was not finally rejected.

Today, after a long process of ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (dated March 21, 2014 and June 27, 2014)[1], our state

[1] A plea for an association between Ukraine, from one side, that of the European Union, the European Union from the atomic energy and

is at the stage of intensification of reformation and transformation processes. In addition, the election of the new President of Ukraine has led to a special actualisation of the introduction of a bicameral parliament in Ukraine. At present, it is possible to speak about the active preparation of the relevant bill and lively public discussion.

Thus, it can be stated that bicameralism remains a subject of close attention and a subject of debate in the theory and practice of national state formation. At the same time, the process of implementation of the proposed idea in the practical plane requires a comprehensive analysis of foreign experience, its unification and finding of good practice in order to further test it in Ukraine.

2.2. Analysis of foreign practice in the sphere of formation of parliament chambers

In the context of debating the issue of complication of the structure of the Ukrainian Parliament, it is quite reasonable to carry out a comparative analysis of foreign experience in the field of similar constitutional and legal reforms. Thus, L. T. Kryvenko stresses that the bicameral parliament is a fairly widespread structure of the highest legislative body of the state. Moreover, for a long time, most parliaments of the countries of the world had a bicameral (two-chamber) structure [11]. In particular, the basis for comparison is the formation of the upper chamber and its competence.

Let us first turn to the formation order, which envisages two main ways – direct election of senators and the formation of the upper chamber by regional (regional) structures. According to experts, direct election of members of the upper chambers is used in 27 out of 66 cases, in 21 cases the chambers are formed with the help of regional and municipal representative bodies, and in 16 countries other ways of appointing members of such chambers are used. An example of the latter is the order of formation of the upper chamber of the National Parliament of Ireland, the Senate. It is made up of 60 members, 11 of whom are appointed Prime Ministers, and 49 are elected (43 by professional groups, 6 by universities) through a proportional representation system and secret ballot by mail. In turn, the lower chamber is also elected on a proportional basis. The cadence of both wards is 5 years [12].

Among the forms of direct elections, it is advisable to note the use of a mixed system of elections to both chambers of parliament. Thus, after the constitutional reform of 1993 in Italy, instead of a purely proportional one, a mixed electoral system was launched: from then, 75% of deputies are elected by majority, 25% by proportional system. At the same time, the outlined approach is identical for both the lower chamber and the upper chamber of parliament.

Another approach to direct elections is demonstrated by Czech and Polish parliamentarians. For example, the Chamber of Deputies of the Czech Parliament is elected on the principle of proportional representation, whereas the upper cham-

member states, from the other side: the Law of Ukraine. (2014, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1678–18