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Comparative Analysis of the Main Aspects of Parliamentarism in the Process of State Development After Declaration of Independence in Ukraine and Belarus

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The article discusses the concept of parliamentarism model, its development in Ukraine and Belarus after proclamation of their independence. These two neighboring states are similar in their historical, mental, social, economic and political properties, which led to conduct a comparative analysis of state development processes in Ukraine and Belarus. The importance of formation and development of parliamentary system is determined by the democratic course, which is selected by people of the newly independent states.

Key words: *Parliament, parliamentarism, the supreme legislative body of the country, the Verkhovna Rada of Ukraine, the National Assembly of the Republic of Belarus.*

У статті розглянуто концепцію інституту парламентаризму, його розвиток в Україні та Білорусі після проголошення незалежності. Вказані держави схожі у своїх історичних, ментальних, соціальних, економічних і політичних властивостях, що зумовило проведення порівняльного аналізу державотворчих процесів у них. Важливість формування та розвитку

парламентської системи визначається демократичним курсом, обраним народом нових незалежних держав.

Ключові слова: *парламент, парламентаризм, вищий законодавчий орган країни, Верховна Рада України, Національні Збори Республіки Білорусь.*

В статті розглядається концепція інститута парламентаризма, його розвиток в Україні і Білорусі після провозглашення незалежності. Вказані держави схожі в своїх історических, ментальних, соціальних, економічних і політичних властивостях, що обумовило проведення порівняльного аналізу процесів державного будівництва в них. Важливість формування і розвитку парламентської системи визначається демократичним курсом, обраним народом нових незалежних держав.

Ключевые слова: *парламент, парламентаризм, высший законодательный орган страны, Верховная Рада Украины, Национальное Собрание Республики Беларусь.*

Challenge problem

The parliamentary system is studied today by the scholars as a juridical and political institute. The mentioned categories are crossing in the process of examination of these aspects. Under juridical research method the parliamentarism is analyzed as a system of government. In this scholar work the main discovered subject is a legislative body, its place and role in the government, its structure. An important implication of author's research is based upon the fact that there are no manuscripts containing a comparison of parliamentarism as a juridical institute in Ukraine and in Belarus.

A review of recent studies and papers

A number of questions of establishment of parliamentary system in Ukraine are debatable and current. The specifics of a particular perspective of this article is to analyze the legal framework of Ukraine and Belarus, researches of domestic and foreign scientists, in particular E. Abramenko, V. Bozhanova, A. Gorelik, V. Zhuravsky, A. Melville, A. Skripnyuk, K. Sokolova, T. Fantsuz-Yakovets, V. Shapoval and others.

Remaining challenges

Solutions to escalated issues of parliamentarism in Ukraine today's differs. The analysis of the experience of establishment of parliamentarism in Belarus is an important example for comparing it, applying it to solve problems in the Ukrainian parliamentarism.

Draw the objectives of research

The purpose of this paper is a chronological analysis of the events related to the process of state developing after independence of Ukraine and Belarus, and the allocation of the main points that affect the formation of parliamentarism.

Discussion

The interpretations of a term *parliamentarism* are different, as according to research statistics the scholarly works interpret this institute in different ways. However, on the author's opinion, the most proper concept of a term *parliamentarism* is following. Parliamentary system is a system of government with strong representative features in which body of representation of the people by common rule actively participates only in practice of legislative authority and has powers to control the government. The opportunity to actively influence on the government by representative branch is legally secured in the parliamentary system. However, spreading of the representative principle is not achieved by formal submission by the Government to Parliament. Parliamentarism is not, in any case, the mixture mode of the authorities. Parliamentarism is the mode of comparative and moderate separation of powers, involving the fundamental independence of the legislative and executive supreme bodies. In the parliamentary state the Parliament doesn't govern directly. But it has an active influence on governance by modeling the government program of activities and has legally guaranteed means to insist on the implementation of this program. [1, c. 425-426].

This concept of a term *parliamentarism* informs our understanding of parliamentary system as a system that based on the separation-of-powers. The separation of powers is used interchangeably with the trias politica principle. Under this model the power in state is divided into tree branches: executive, legislative, and judiciary. One of the commonly attributed advantages to parliamentary system is a

strong legislative authority while the form of government does not necessarily impact on the authority of parliament.

Since 1990, Ukraine and Belarus are appeared on the world map as two independent states. State-building process of newly independent countries has begun with choosing of the form of government and with formation of system of administration. Since 2014 Ukraine is having a semi-presidential system (parliamentary-presidential republic), and Belarus is having a presidential system. The formation of these states of former Soviet Union is continuing, and the state-development processes are quite difficult. The problems that accrued on this path are similar for both countries but the ways of solving them differ significantly. These states are similar in their mental, politic, economic and social features. By studying and analyzing the experience from the neighboring state Ukraine may avoid gaining negative tendencies by means of learning from mistakes of its neighbor and use positive state-building features.

On June 28, 1996 the Verkhovna Rada (the Parliament) of Ukraine on behalf of the Ukrainian people – Ukrainian citizens of all nationalities, guided by the Act of Declaration of the Independence of Ukraine dated August 24, 1991, approved by the national vote on December 1, 1991, has adopted the Constitution as the Fundamental Law of Ukraine. The Constitution codified that *the sole body of legislative power in Ukraine shall be the parliament – the Verkhovna Rada of Ukraine* (Constitution of Ukraine 1996). It has one chamber. Members of Parliament are called People's Deputies. [2]

On December 8, 2004 was held a constitutional reform through the adoption of the Law of Ukraine “On Introducing Amendments to the Constitution of Ukraine”. The articles 76, 78, 81-83, 85, 87, 89, 90, 93, 98, 112-115 of the Constitution were amended. The main reform took place in the political system, namely: *the transition from a presidential-parliamentary to parliamentary-presidential republic*. But over the time and under certain "political colour" it became clear that Ukraine had not been ready for such changes. According to the Decision of the Constitutional Court of Ukraine No. 20-rp/2010 dated September 30, 2010 the Law of Ukraine "On Introducing Amendments to the Constitution of Ukraine" was recognized as

non-constitutional because of violation of the constitutional procedures, its consideration and adoption. [3]

On February 1, 2011 was enacted the Law of Ukraine "On Amendments to the Constitution of Ukraine" regarding regulation of regular elections of the President of Ukraine, deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of councils and elections of heads of cities, towns and villages. The Verkhovna Rada of Ukraine of sixth convocation, extended the Parliament term to 5 years. [4]

On November 17, 2011 a new Law of Ukraine "On Elections of People's Deputies of Ukraine" was adopted. The Ukrainian parliament is elected for 5 years and consists of 450 members. Under the re-introduced mixed electoral system, half of the Verkhovna Rada shall be elected proportionally from political party lists and half in single mandate constituencies with a simple majority vote. The Law also specified the prohibition of participation in the election by blocs of political parties. For parties, the electoral threshold will increase to 5% under the previous 3% [5].

Recent political events in Ukraine resulted the following changes to the Constitution of Ukraine. Verkhovna Rada of Ukraine adopted the Law "On recovery of certain provisions of the Constitution of Ukraine" dated 21 February 2014. That created the changes and the reapportionment of supreme bodies powers. The highest legislative body of Ukraine actually turned amendments to the Constitution, which were introduced in 2004.

According to these amendments Ukraine becomes a presidential-parliamentary republic once more.

The historical development of Ukrainian parliamentarism leads to the conclusion that the transition to parliamentary-presidential form of government is necessary result for our country. Further dynamic of parliamentarism in Ukraine depends on the formation of capable civil society structures, large numbers of middle class and, consequently, the corresponding multi-party system (the smaller the better) with strong centrist parties and a gross number of voters.

By examining the historical development of Belarusian parliamentarism, it worth to be stressed out that the Constitution of the Belarusian Soviet Socialist

Republic (1978) fixed the Supreme Council as the *highest standing body of state power* [6].

V. Bozhanov has noted in his monograph (written together with other authors) that since the collapse of the USSR the deputies were '*swimming*' in power, but did not know how to use it as intended, and especially – how to solve the problems of the country. All hopes were associated with the Government, which could give a directive to require a report on their performance; could administer a rebuke of departmental ministers; and could threaten them by resignations; and so on [7, c.89].

During 1991-1994 there was an ambiguous and controversial issue regarding the form of government in Belarus. Well-known Russian political scientist A. Melville noted that it was clear that in a parliamentary republic governing body of state power should be the Parliament. The Government should be formed on the basis of the parliament and be responsible to him [8, c.254]. In the said period, the Government of Belarus was fully controlled and directed by the Supreme Council of the Republic of Belarus, but in a specific form similar to the Soviet parliamentary system, where Councils centered both legislative and executive branches. Under these circumstances, the government didn't embody the highest executive branch of government, but was the executive authority within the parliamentary structure. The Prime Minister was not independent in his own activities and did not claim to have a major role in public life.

Therefore, the Constitution of Belarus has evolved taking into consideration the relevant experience and perspective. During discussion of the draft of the Constitution of the Republic of Belarus it seemed that the most controversial issue was the establishing of the institute of presidency. Three positions were formed on the issue:

- 1) Institute of the President is vitally important for the Republic;
- 2) Institute of the President is required, but only if it is balanced with powers, and a system of checks and balances will be formed;
- 3) Institute of the President will not be inducted, but instead a strong parliamentary position should be created.

The Constitution of the Republic of Belarus was adopted on March 15, 1994. The institute of presidency was assigned in the Constitution of the Republic of Belarus. It was formalized that the president shall be the Head of State and the executive branch;

while the Supreme Soviet of Belarus will be a legislative body *dominating* over the executive body. By such separation of powers the Constitution created a potentially unavoidable conflict between the President and the Parliament. The Constitution of the Republic of Belarus assumed the system of checks and balances of powers by each other. [9] However, the Constitution itself didn't solve anything. It appeared that in Belarus the opportunity to use *checks* and *balances* is wider for the President but not for the Supreme Council. The President had power over the ministries and other central agencies of the country as well as over variety of resources. These formed a powerful potential for the authority of the President. While the Parliament remained a real *holder* of state power within its powers and authorities.

A struggle for power began between the President and the Supreme Council of Belarus. On July 21, 1994, the day after the President made his oath, the Supreme Council had made it clear that he was going to control the Constitutional Court, which had the right to cancel any legislative act in the country (as well as the president's one) if it did not match with the Constitution of the Republic of Belarus.

The need of constitutional reform was caused due to objective factors. The Constitution of the Republic of Belarus in 1994 has originally created the imbalance between the functions and powers of the Supreme Council and of the executive body. The consequence was the dominance of the Supreme Council of the Republic of Belarus over the other two bodies of government. The activities of Parliament were enshrined in law and had made it possible to confirm, to determine and to modify the powers of all other organs by sole discretion. The Constitution stated that the Supreme Council of the Republic of Belarus should adopt and amend the Constitution, enact laws and regulations, supervise their implementation and interpret the Constitution and laws etc.; these powers actually allowed to make decisions on any issues.

On November 24, 1996 a national referendum on amendments and additions to the Constitution of the Republic of Belarus was held. This referendum stipulated the establishment of the bicameral parliament – the National Assembly of Belarus, which should consist of two chambers - the Council of the Republic and the House of Representatives. The main result of the referendum was positive assessment on the issues by the people of Belarus. On November 26, 1996 the Supreme Soviet adopted a

law confirming the regulatory nature of the republican referendum. The new edition of Constitution has formed a balance of powers of the branches of government. The President of the Republic of Belarus should be the head of State, the guarantor of the Constitution of the Republic, the rights and liberties of man and citizen; while the Parliament is a representative and legislative body of the Republic of Belarus; the Government – the Council of Ministers of Republic of Belarus - the central body of state administration. [10]

As a result of constitutional reform the branches of power in the Republic of Belarus had reached a consensus and had subsided the controversies between them. This was due to the fact that the Supreme Council could not stand the political struggle and gradually surrendered their positions under the persistency and vigorous actions of the President. The crisis of parliamentarism was irreversible at that historic moment. Consequences of amendments to the Constitution of the Republic of Belarus codified a bicameral parliament – the National Assembly of the Republic of Belarus. It should consist of two chambers – the House of Representatives and the Council of the Republic.

The House of Representatives shall represent the interests of all Belarus citizens, it shall legislate the issues listed in Article 97 of the Constitution of the Republic of Belarus.

The Council of the Republic shall be a chamber of territorial representation and shall prepare issues that fall within the jurisdiction of the chamber (article 98 of the Constitution of the Republic of Belarus). The Council of the Republics' activities are aimed to provide high-quality, well-developed laws.

The term of the Parliament shall be four years. Belarus used the majoritarian system of elections. The lower house of Parliament the House of Representatives is composed of 110 deputies elected by the citizens of the Republic of Belarus. The upper house of Parliament - the Council of the Republic is a body of territorial representation. The Council of the Republic shall consist of eight deputies from every region (oblast) and the city of Minsk, elected at the meetings of deputies of local Councils of deputies of base level of every region (oblast) and the city of Minsk from their ranks. Eight

members of the Council of the Republic shall be appointed by the President of the Republic of Belarus. [10]

The amendments to the Constitution of Belarus in 1994 gave an opportunity to develop an independent state, but parliament had lost its supremacy in the government. These changes made possible for parliamentarism in the Republic of Belarus to develop in a new direction.

Based on these key events that took place in the process of Parliaments' changes and developments of the Republic of Belarus and of Ukraine, the author distinguished the main features of the legislative body that emerged after collapse of the Soviet Union.

The Verkhovna Rada of Ukraine has unicameral structure of the parliament, is the sole legislative power in Ukraine, has mixed election system of People's Deputies, the Parliament shall retain its power for a fiveyear term.

The National Assembly of the Republic of Belarus has bicameral structure of parliament, is a representative and legislative body, has a majoritarian election system of deputies of the House of Representatives, the term shall be 4 years.

In the Republic of Belarus the parliamentary system is *institutionally framed and opened for improvements* [11, c.17-18]. The author agrees with this excerpt and Ukraine should put into practice a positive Belarusian experience. By following the formation process of legislative body in Ukraine and in the Republic of Belarus, the author is willing to emphasize two distinguishing features which could help Ukraine to develop and improve the parliamentary system; and actually become democratic, social, law-based state as stated in the Article 1 Constitution of Ukraine. First important and significant feature is the structure of the Parliament. Ukrainian Parliament has one chamber while the Parliament of the Republic of Belarus has two chambers. Ukrainian scientists are divided into two groups: opponents and followers of such possible changes. The main argument of opponents is that bicameralism is common for federal states but worldwide experience shows that a lot of unitary states have bicameral parliaments (Belarus, Poland, Romania, Czech Republic, France, etc.). The Republic of Belarus is unitary state but the National Assembly has two chambers. The Belarusian Parliament is working in a proper way and the Republic of Belarus is

developing as democratic state. There are also adversaries and followers of bicameralism in the Republic of Belarus, but prestigious scientists (e.g., E. Abramenko, V. Bozhanov, L. Semenova) prove in their scholarly works that bicameral parliament is the best invented structure for democratic society and for the Republic of Belarus.

The formation of bicameral parliament in Ukraine would be useful due to such factors: *legislative process needs improvements*, because of deadlocks that occurred frequently; *second chamber may become an arbiter in political and legislative processes*; also the formation of second chamber *would contribute to strengthening of the Verkhovna Rada of Ukraine*, and would be useful for *formation of new level of Ukrainian parliamentarism culture* [12, c. 142].

It's important to choose a proper structure for legislative body, because it determines the strong role of parliament for governance. *Visa versa* the form of governance does not always secure stable and significant role of parliament. The Republic of Belarus has presidential system and, the author believes that, at the same time the role of Parliament in Belarus is more stable than in Ukraine where there is a semi-presidential system (presidential-parliamentary republic). *Concurrently, an elected assembly was created to co-exist with the president on the basis of a principle referred to as the "separation of powers"* [13]. It doesn't mean that Ukraine has to become a presidential republic; it means that Belarusian experience is useful in spite of differences in the form of government.

Another distinguishing feature is that the Constitution of the Republic of Belarus allocates that the National Assembly of the Republic of Belarus is *a representative and legislative body*. The Constitution of Ukraine formalizes that the Verkhovna Rada of Ukraine is *the sole body of legislative power*. This comparison supports our understanding of importance to codify the representative characteristic of the Parliament in the Fundamental Law of Ukraine. Parliament is the representative body because it's elected by people.

The chosen course of our independent country – is to built a democratic state, certifies that the main feature of representative democracy is Parliament – a nationwide representative authority that operates on a regular basis and has *with highest priority* a

legislative function, as examined by the famous Ukrainian scientist V. Shapoval. Its operation is appropriate only under a democratic political regime. The phenomenon of parliamentarism is associated with the existence of such a regime, which shows the organization of public dominion, which is characterized by determination of lead or specific and essential role of Parliament [14]. Referring to the opinion of the famous scientist Vladimir Shapoval, the author of this article emphasized the important role of the parliament in the process of building legal and democratic state, and with the formation of a national representative body of power. The current Verkhovna Rada of Ukraine is the representative body of the people, it follows by the parliamentary election system, by the actual name of the representatives – “*People’s Deputies*” and by the principles of activities. A logical question appears as a consequence, why the representative character of Ukrainian parliament is not fixed in the Constitution of Ukraine. Referring to the experience of neighboring countries, the author emphasized that this special role, which is common only to Parliament, is enshrined in the Constitution of the Russian Federation and Belarus. Moreover, the Basic Law of the recognized democratic countries like France, USA. AtUK (in uncodified constitution, the Act of Parliament (1911), established the principle of popular representation being a basis for formation of the second chamber). [15]

Notwithstanding the above, it is advisable to agree with the thesis of V. Zhuravsky, a known lawyer, who carefully analyzes the theoretical and legal aspects of parliamentarism in Ukraine today and writes that, referring to the representative character of Parliament, it is better to refrain from defining the parliament as the sole representative body. [16, c. 86] This statement is valid unless there is only one national government body in the state which is formed directly by the people [17, c.87]. However, under the current Constitution of Ukraine (Part 1, Article 103), except from the parliament (Verkhovna Rada of Ukraine) there is also the institute of president which is formed by means of national elections.

Scientists have different points of view on the absence of the position of a parliaments’ representative characteristic in the Basic Law (Article 75). In particular, regarding the need to supplement Art. 75, as V. Opryshko points out [18, c. 55; 23, c. 67]. In his opinion, the expanding of content of this article is fully consistent with the

provisions of Chapter second of Declaration of State Sovereignty of Ukraine in 1990, stating that only Verkhovna Rada of Ukraine can act on behalf of all the people. [19, c.250] This proposal to amend Art. 75 of the Constitution of Ukraine is also supported by M. Teplyuk, who directly connects the development of representational aspects with the development of the principles of parliamentary democracy and the rule of law, as well as with building of a civil society [20, c. 255].

Ukrainian recognized expert in the field of parliamentary and constitutional law L. Krivenko argues the necessity to complement the article 75 of the Constitution of Ukraine with position that the Verkhovna Rada of Ukraine is the sole representative body of the people. Her position on definition of the parliament as the sole representative body of the people is supported by the fact that the president is not a representative both of the people and state, therefore there are no grounds for assuming the possibility of two of the people's representatives (which is dangerous and harmful, since it implies the emergence of the phenomenon of so-called "*representative dualism*") [21, c. 15-17].

At the same time another respectful Ukrainian scientist V. Shapoval expresses the opposite point of view to amend the article 75 of the Constitution of Ukraine. In his view, the wording used in the Constitution of Ukraine, is optimal from both theoretical and formal legal points of view. Indeed, firstly, the contents of the Constitution doesn't give reason to believe that the parliament is the only representative body of the people, and therefore, the formula, which reflects the legislative function of the Parliament, cannot be extrapolated to the representative function (id est the definition of a "*unified representative body of state authority is the Parliament*" is incorrect from the point of view prevailing in the Ukrainian system of state power). Secondly, as this author shows, the definition of the parliament as *the highest representative body* isn't entirely successful, since in this case, a system of *higher* and *inferior* organs of popular representation is emerged, that may reproduce the former Soviet Union representative system, with its hierarchical subordination character. And, finally, as noted by V. Shapoval, elective political office is not connected with the Parliament itself, as a public authority, and with the People's Deputies. This means that Parliament is an indirect representation, and it is based on the mandate of deputies [22, c. 15]. The

debate about the additions and changes in article 75 of the Constitution of Ukraine is continuing, but by analyzing the experience of foreign countries, it is noted that the basic laws state the parliament as not only the legislative body, but also as a representative one.

However, the most important power of Parliament is a function of representation. Any other institution can't compete in its performance with Parliament. This function is *the most significant foundation* for all other areas of activities [7, c.158]. The Parliament represents the interests of all people. Its activities primarily include the development and adoption of laws, approval of a budget and control over government. The parliamentary system is the model of representation by asserting rights of all people in the legislative process, so legislative power has to be representative.

Parliamentarism predicated on the centuries-old justification that the people must decide in their entirety how to be governed... In this context, the notion of the representative of acting on behalf of the whole people and not an interest group, guarantees the freedom of speech, and publicized political discourse, that become sensible components of parliamentarism [23].

Conclusions

1. Little more than twenty years have passed since the declaration of independence in Ukraine and in the Republic of Belarus. The transformations occurring in the states are leading them to become democratic, social, law-based states.

2. Parliamentarism is developing in the Republic of Belarus and has more pronounced characteristics than in Ukraine and the main distinguishing feature is a bicameral structure of the legislative body of the Republic of Belarus.

3. Another considerable difference between Ukrainian and Belarusian Parliaments is that the Constitution of Belarus entrenches the representative characteristic of the National Assembly. It is important to recognize this feature of Parliament in the Constitution of Ukraine.

4. Ukraine is moving toward in establishment of the rule of law state. The experience of Belarus is integral example for Ukraine. Ukraine has the opportunity to borrow the positive aspects in the development and formation of the parliament.

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