

*T.A. Frantsuz-Yakovets
Candidate of Law
doctoral candidate
of the Institute of State and Law
of Academy of Sciences of Ukraine
named after V.M. Koretsky*

PARLIAMENTARY PROCEDURES OF BICAMERAL PARLIAMENTS AND SOURCES OF THEIR LEGAL REGULATION

The organization of parliaments is a key issue today, taking into account problems of improving the work of the Parliament of Ukraine and borrowing in this regard positive world experience. That is parliamentary procedure that often affects the qualitative component of the Parliament's work, and the clear organizational activities allow the parliament to function effectively.

Considering parliamentary procedures, we can see how democratic organs of popular representation of foreign countries fulfill their social purpose in society and how their work corresponds to legal and social needs of the population. Parliament can run its destination and meet people's hopes assigned to it when its organization and activities will be determined by democratic and rational rules. Taking into account that in most democratic European countries exactly bicameral parliaments operate, we will try to consider the characteristics of main organizational rules of houses of a parliament.

The independence of a parliament and enactment of qualitative laws is possible due to several factors, and one of the main of them has the order of realization of certain powers of the legislature. It is with this in mind, the problem of determination parliamentary procedures remains one of the most actual in contemporary parliamentarism.

In the article there are used texts of constitutions of modern European states, where bicameral parliaments function, regulations and other legal acts regulating the parliamentary procedures, as well as researches of leading Ukrainian and foreign scientists (Grankin I.V., Klenkina O.V., Strashun B.A., Tumanov V.A., Krutogolov M.A., Okulych I.P.), whose works touched the issues of parliamentary procedures and sources of their provision.

International experience shows that parliamentary procedure and the order of the parliament's work are defined by normative acts that significantly differ in their legal power. Basically, organizational issues of the parliament are fixed in the Constitution and Regulations [1, p.36]. In practice of modern parliaments there are such sources of parliamentary procedures, as a custom and a parliamentary precedent. In parliamentary procedure it is necessary to distinguish a form and content. The form of the procedure is its statutory provision in constitutions and regulations of houses of parliament.

Constitution usually provides general rules relating to the convocation and dissolution of the highest representative body, conditions to extend the powers of the Parliament, issues on the approval of decisions of Chambers of a bicameral parliament, determines a quorum for the parliament and for the adoption of its decisions.

The content of parliamentary procedures provided at the constitutional level is determined by the number of factors: the form of government, the political regime in the country, the role of parliament in the country's state mechanism, a form of political and territorial structure of the state.

The Constitution is the most important source of Italian parliamentary law. Chapter "Parliament" consists of two parts: "House" (Articles 55-69) and "Drafting of Laws" (Articles 70-82). It should be pointed out that those parliamentary procedures, which are enshrined at the constitutional level, are common to both Houses of Parliament Italy. After all, the Constitution of this country, the Chamber of Deputies and the Senate, have almost equal status.

The Italian Constitution in Art. 36 establishes the procedures for delegating certain chambers of legislative powers of government. The delegation may be made if: the principles and criteria governing such delegation, it is available only for a time, clearly defined range of issues [2, p.58].

Section 2 of the Constitution of the Republic of Austria "Legislature Federation" is divided into four parts that reinforce basic questions regarding the activities of the National Council, Federal Council of the Federal Assembly, the federal government the basics of the legislative process. The Basic Law of Austria in more detail than other states constitution, regulate the procedure for convening a session of parliament (Article 28.2 of the Constitution of Austria) [3, p.35].

Constitution of France 1958. contains only basic information on the organization and functioning of the parliament. At the level of the Constitution enshrined parliamentary procedure regarding: the sessions (Art. .28 French Constitution), meetings, procedures dissolution of the National Assembly (Article 12 of the Constitution), passing resolutions condemned the government (Article 49) [4, p.31-41].

German Basic Law regulates such activities Bundestag parliamentary procedure: calling chambers (Article 39 of the Basic Law of Germany; meeting (Art. 42 para 1); most establishment (Article 42 para. 2) changes in federal law (Art. 79, para 2), the formation of committees of the Chamber (Article 53. para 1) calling the Federal Assembly (Art. 54 para. 4) impeachment (Art.61 para 1); procedure for electing the head of government (Art. 63) the procedure for expressing no confidence in the Federal Chancellor (pg. 67 para 1) dissolution of the Chamber (Article 68 para 1) [5, p.34-56].

Parliamentary procedures Bundesrat devoted Articles 52-53 of the Basic Law of Germany that reinforce procedures appointment of the Bundesrat, the convening of the session and the decision making process [5, p.46]. Highlights determined Regulation.

Spain is more terms of strengthening parliamentary procedures at the level of the Constitution. Art.72 paragraph 2 of the Spanish Constitution establishes the existence of procedures for joint sessions of parliament led by the President of Congress. Detailed procedures for the conduct of such meetings by both Houses of the Rules and Regulations of each chamber [6, p.44]. Spanish Constitution also clearly establishes the controlling parliamentary procedures (separate Constitution defines the relationship between the government and parliament). Concrete is also constitutional provisions that establish the procedure requests. Analysis of the texts of constitutions of European countries shows that procedural rules are fixed in the

Constitution in varying degrees. However, the Constitution brings together all of the recognition at the constitutional level the very existence of parliamentary procedure and the recognition of higher legal force of the Constitution.

The organic law in the hierarchy of legal texts is directly under the Constitution and is superior to ordinary law, which leads to a specific policy adopted, which is different from the procedure for adoption of ordinary laws. For the procedure for the adoption of organic laws are characterized by: limiting the number of subjects of legislative initiative, demand draft voting by absolute majority, mandatory referral to the Organic law of approval by the head of state checked by a body of constitutional control [7, p.22].

Organic law also defines parliamentary procedure. According to B.O.Strashun, the organic law - a legal act that defines the status of the state based on blanket Articles of the Constitution [8, p.15].

Article. 25 and Art. 27 French Constitution stipulate that the organic laws are established: the duration of office of each chamber, the number of its members, provided election, the regime of incompatibility if the vacant seats of deputies and senators, full or partial renewal of each chamber, the process of delegation of members of their right to vote [4, pp. .33-34].

Organic law in France regulates the amount and manner of election of senators, installation procedure of the National Assembly of France, determining procedures incompatibility regime mandates Senators and Deputies, regulation procedures for replacing members, the establishment of parliamentary procedural safeguards, Organic Law "On the activities of the Houses of Parliament» № 58 - 1100 of 17.10.58 p. also establishes certain rules of parliamentary procedure, including the procedure for filing petitions, the procedure of forming a commission of inquiry and control, etc.. [9, p. 94-95]. Thus, parliamentary procedure, the organic laws of France regulated sufficiently. Of course, other states in organic (constitutional) law established separate parliamentary procedure.

In Germany, the Bundestag specific details applicable procedures are defined, such as the Organic Law "On deputies" in a process of formation of factions in the House, the procedure representation in committees and committees, voting procedures, etc.. Law "On elections to the Bundestag" governs the procedure for electing leaders chamber for reasoned deputy mandate in case of refusal of membership in Parliament, etc. [10, p.185].

In the parliamentary practice of foreign countries, there are many detailed regulations, internal regulations adopted by each chamber. Therefore, if the Constitution defines the range of subjects that are endowed with certain rights, the regulations indicate the specific conditions under which these rights can be realized. Typically, the difference between the regulations of the law is that the rules adopted, each chamber separately without obligation to the approval of the other chamber and in strict conformity with constitutional norms.

According to Art. 113 of the Polish Constitution, the legislative initiative belongs to the Senate President, the Council of Ministers and a group of at least 100 thousand people who have the right to choose the Sejm. Terms of Polish Sejm in 1992 as amended in 1996., Details the procedure for making objects of the Bill of legislative initiative. MP's bill may be introduced Sejm Commission and signed by not less than 15 members.

Article. 41 of the Constitution of the Republic of Austria stipulates that bills are submitted to the National Council on the proposal of its members or on a proposal from the Federal Government. Federal Constitutional Law and Regulations of the National Board in turn define the conditions and procedures of legislative initiative. The question the bill in order of popular initiatives established by the Federal Law of the people's initiative.

Rules can be defined as a law for the parliament, because the act clearly regulates its activity. Nevertheless, the rules governing regulations of foreign countries, not only the internal activities of Parliament, but also the activities associated with the interaction with other state agencies.

Regulation is an act containing rules that establish the order of the chambers in each stage. These rules establish a special procedure to discuss draft laws and decisions concerning the formation of other authorities or concerning the right of parliamentary inquiry. That is, it defines the rules of parliamentary procedure.

Analyzing the constitutional and legal literature, we can conclude that some authors agree that the rules - a legal act that establishes the internal rules of the Houses of Parliament, including how to implement the constitutional mandate. Other authors believe that the rules - a set of rules that establish the order of the legislature of its powers.

You can fully agree with the opinion of Professor. I.V. Grankin that by its nature rules - it is a subconstitutional, by-law, act, which is not taken for the development of the Constitution and relevant laws, and to determine the order of the laws contained in them to specific government: parliament, its commerce, government, etc. This approach is of practical importance because precludes preliminary decision rules (i.e., first adopted the Constitutional Act, the law required that its details, and only on this basis, the regulations state legislature). This allows you to create a constitutional framework of the parliament, its chambers and their bodies, which ensures the constitutionality of their actions and the legitimacy of acts taken by them [11, p. 39].

Legal status of the various Regulations. For example, according to Art. 64 of the Italian Constitution, each House shall adopt its Rules of absolute majority of its members, but the status of the system of parliamentary regulations Italian law is ambiguous. On the one hand, the internal documents of public authorities, which are subordinate nature. On the other, according to the manner in which they accepted, they approach the law. A view of the object of legal regulation (parliamentary, including legislative activities), they occupy positions far above the law.

In France, the House of Parliament shall adopt its own rules of their own. The intervention in making and amending Regulation other chamber is not allowed. Terms Chambers is a code that establishes the order of their activities. In addition to the regulations, acting General instruction that is issued on the basis of powers conferred by Regulation Office Chambers (Article 15 of Regulation National Convention and Art. 102 Rules of the Senate). Domestic content regulations are increasingly characterized by relatively detailed regulation of parliamentary procedures. This is due, above all, the desire to avoid conflict. As practice shows, the more regulated procedural matters the less reasons for which may arise disputes and conflicts.

Detailed regulation contains procedural regulations of the National Assembly of France, consisting of three sections governing the organization and functioning of the National Assembly, the issue of legal proceedings and the question of parliamentary control. Section "legislative procedure" is divided into three parts that define the normal parliamentary procedure, the procedure discussed the issue of financial laws and special legislative procedures. This section specifically includes the legislative procedure detailed definition of the standing committees, reports concerning bills, preparing findings and information, the right to amend the text of conclusions regarding distribution of financial bills and so on. The third section is devoted to the Rules of the National Assembly parliamentary oversight and detailed procedures governing the receipt of information and control of the Assembly, the issue of no confidence of the government and the criminal responsibility of President of the Republic and members of the government.

Practice shows that it is hard Regulation provides rapid decision-making. It is no accident democracy is often called the government procedures. Despite this, the regulations and other regulations set some ideal model of parliamentary procedures and therefore in practice the state is faced with the fact that the legislative process is not always perfect and proceeds according to fixed rules. The reasons are problems of political collision of interests, breach of parliamentary ethics and so on. Analyzing the content of regulations, we see that the regulations do not establish primary rights and duties, and fix only the order of the rights and duties provided for in the Constitution and law.

Regulations chambers French parliament necessarily controlled by the Constitutional Council and shall conform to the Basic Law. Thus, after the bills the House immediately change those provisions which are recognized by the Constitutional Council as unconstitutional (in practice it has been modified rules of Articles 14 and 12 of the National Assembly - Rules of the Senate). Noteworthy is also the constitutional consolidation of the rules of parliamentary procedure of the Parliament of Great Britain. Enshrined in the Constitution procedural rules have wide interpretation. And in this respect, particularly important regulations - UK Parliament Standing Rules, which are developed by each chamber separately and fully reinforce basic procedures of the Chamber. One of the ancient document, which establishes the procedures of the House, there are rules of the English House of Commons. In 1844 he was drafted treatise "Erskine May" ("Erskine May's Treatise on the Law, Privileges, Procedure and customs of Parliament") and this was the first step towards systematic parliamentary practice. The treatise has considerable authority exists in the collection of customs and traditions of centuries of practice British Parliament, but does not have the force of law. Therefore treatise to be broad interpretation, particularly Speaker of the House of Commons. To date treatise reprinted more than twenty times.

Parliamentary procedure in the UK is regulated by special resolutions of Parliament, whose number exceeds 122. These regulations are constantly. But there are also "sessional position", which are valid only for one session.

Act as a source of strengthening parliamentary practices in the UK has very limited value. The Law of Parliament establishes certain provisions for the review of financial and other laws, procedure for dealing with bills and acts of delegated legislation in parliament.

Form precedent decisions are speaker to be considered in the context of his interpretation of the rules that already exist. Speaker at its sole discretion may create or not to create new rules of parliamentary procedure. This right is essential in view of the contradictory rules that govern it, and procedural issues.

Thus, the three main regulations that establish the rules of parliamentary procedure: Constitution (Fundamental Law) of the State organic laws, regulations chambers differ not only in their legal force, but also in terms of content and consolidation of procedural rules in a particular state.

SOURCES:

1. Кленкина О.В. Некоторые формы закрепления парламентской процедуры. / О.В.Кленкина. // Юрид. анализ. журн. – 2002. – № 2 (3). – С. 36–43.
2. Конституция Италии // Италия: Конституция и законодательные акты. – М.: Прогресс, 1988. – С.30-45.
3. Конституция Австрийской Республики // Австрийская Республика: Конституция и законодательные акты / Сост. Туманов В.А. – М.: Юрид лит., 1985. – С.11-100.
4. Конституция Франции // Французская Республика: Конституция и законодательные акты /Под ред. Туманова В.А. - М.: Прогресс, 1989. – С.31-43.
5. Основной Закон ФРГ // ФРГ: Конституция и законодательные акты / Под ред. Туманова В.А. – М.: Прогресс, 1986. – С.34-56.
6. Конституция Испании// Испания: Конституция и законодательные акты / Сост. Савинов В.А. – М.: Прогресс, 1988. – С.29-100.
7. Конституционное право зарубежных стран. Учебник для вузов / Под общ. ред. М.В. Баглай, А.М.Энтина. – М.: Норма-ИНФРА, 1999. – 832с.
8. Конституционное право зарубежных стран / Под ред. Страшуна Б.А. – 2-е изд. – М.: БЕК, 1996. – Т.1. – 246 с.
9. Крутоголов М.А. Парламент Франции: организационные и правовые аспекты деятельности. / М.А. Крутоголов. – М.: Наука, 1988. – С. 94-125.
10. Государственное право Германии / Под ред. Топорнина Б.Н. В 2-х т., т. 1. – М.: Институт государства и права РАН, 1994. – 312 с.
11. Гранкин И.В. Регламентное регулирование деятельности палат Федерального Собрания Российской Федерации // Журн. рос. права. – 2003. – № 1. – С. 39–47.