CONSTITUTIONAL EXPERIENCE IN FORMALIZING THE SPHERES OF INTERACTION BETWEEN THE CHAMBERS OF PARLIAMENTS OF THE COUNTRIES OF THE SOUTH AFRICAN REGION

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ABSTRACT
This article presents the results of a comparative legal analysis of the constitutions of the countries of South Africa regarding the consolidation of the constitutional spheres of interaction of the chambers of parliaments in them. The study showed that the typical (universal) areas of interaction between the chambers of parliament include: the legislative sphere, the security sphere and the control sphere. The international sphere, which involves the interaction of the chamber of parliament on the ratification of international treaties (Eswatini, South Africa), is atypical for the states of the studied group of countries. We concluded during the study that the typical and atypical areas of interaction between the chambers of parliament in the South Africa reflect both the established practice and the independent approaches of states to the constitutional formalization of the joint powers of the chambers of parliament.

Keywords: Constitution. Interaction of the chambers of parliament. Typical areas of interaction of the chambers of parliament. The South African Region.

EXPERIÊNCIA CONSTITUCIONAL NA FORMALIZAÇÃO DAS ESFERAS DE INTERAÇÃO ENTRE AS CÂMARAS DE PARLAMENTO DOS PAÍSES DA REGIÃO SUL-AFRICANA

RESUMO
Este artigo apresenta os resultados de uma análise jurídica comparada das constituições dos países da África do Sul no que se refere à consolidação das esferas constitucionais de interação das câmaras parlamentares neles. O estudo mostrou que as áreas típicas (universais) de interação entre as câmaras do parlamento incluem: a esfera legislativa; a esfera de segurança; a esfera de controle representada por uma combinação de três segmentos: controle de pessoal; controle organizacional e controle financeiro. A esfera internacional, que envolve a interação da câmara parlamentar na ratificação de tratados internacionais (Eswatini, África do Sul), é atípica para os estados do grupo de países estudado. Chegamos à conclusão durante o estudo que as áreas típicas e atípicas de interação entre as câmaras do parlamento na África do Sul refletem tanto a prática estabelecida quanto as abordagens independentes dos estados para a formalização constitucional dos poderes conjuntos das câmaras do parlamento.


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RESUMEN
Este artículo presenta los resultados de un análisis jurídico comparado de las constituciones de los países de Sudáfrica en cuanto a la consolidación de las esferas constitucionales de interacción de las cámaras parlamentarias en ellas. El estudio mostró que las áreas típicas (universales) de interacción entre las cámaras del parlamento incluyen: la esfera legislativa; la esfera de la seguridad; la esfera de control representada por una combinación de tres segmentos: control de personal; control organizacional y control financiero. El ámbito internacional, que implica la interacción de la cámara parlamentaria en la ratificación de tratados internacionales (Eswatini, Sudáfrica), es atípico para los estados del grupo de países estudiados. Llegamos a la conclusión durante el estudio de que las áreas típicas y atípicas de interacción entre las cámaras del parlamento en Sudáfrica reflejan tanto la práctica establecida como los enfoques estatales independientes para la formalización constitucional de los poderes conjuntos de las cámaras del parlamento.

Palabras-clave: Constitución. Interacción de las cámaras del parlamento. Áreas típicas de interacción de las cámaras del parlamento. Áreas atípicas de interacción de las cámaras del parlamento. La región de Sudáfrica.
INTRODUCTION

Scientific interest in the study of the interaction of the chambers of parliament is determined, among other things, by its constitutional formalization as a body that implements a single legislative power in the state. An example of such constitutional unity is the provisions of Article 70 of the Constitution of Lesotho, according to which "Lesotho's legislative power belongs to the parliament". Similar wording is contained in Article 106(a) of the Constitution of Eswatini (Swaziland) - "Swaziland's highest legislative power belongs to the King-in-parliament"), in Article 43 of the Constitution of South Africa - the parliament has legislative power at the national level. Very original (in the context of the constitutional interpretation of the legislature) are the provisions of Article 44 of the Constitution of Namibia: "Namibia's legislative power belongs to the National Assembly". It should be noted that along with the National Assembly, the parliament also includes the second chamber - the National Council (Part 2(a) of Article 146 of the Constitution of Namibia). It should be noted that this approach is an exception rather than a rule in comparison with other bicameral parliaments of the states, for example, in Europe and Asia (NIKONOVA et al., 2017; DZYBOVA et al., 2018; MNASYAN et al., 2019).

It should also be noted that the study of African parliaments is associated in the constitutional and legal science, among other things: with the consideration of issues about the activities of parliaments in the context of strengthening democracy (NIJZINK et al., 2006) and the value system (MAPITSA et al., 2020); with the study of the activities of regional parliaments (JANCIC, 2019); with the analysis of the interaction of the chambers of parliaments in Europe (DZYBOVA et al., 2018) and Asia (MNASYAN et al., 2019); with the study of gender representation in parliament (GEISLER, 2000); with consideration of the parliament's role in the formation of foreign policy (Ahmed, 2009), as well as with the analysis of the activities of individual parliaments (FASHAGBA & NWANKWOR, 2021). It should be clarified that the authors did not pay attention to the interaction of the chambers of parliaments of the countries of the South African Region. To compensate for this theoretical gap, we will analyze the texts of the constitutions of the countries of South Africa in order to fix in them the typical and atypical spheres of interaction between the chambers of parliaments.

METHODOLOGY

The study was based on a dialectic approach to the study of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and particular scientific methods. Among the latter are formal-legal, linguistic-legal, comparative-legal, which were collectively used to study the constitutional texts of 4 South African countries with bicameral parliaments: Lesotho, Namibia, South Africa and Eswatini (the texts of their constitutions are taken from the collection "Constitutions of the States of Africa and Oceania" (KHABRIYEVA, 2019)), in order to identify typical and atypical areas of interaction between the chambers of parliaments. It should be noted that the focus group of countries was formed using the information provided on the website of the United Nations (https://unstats.un.org).

The choice of this focus group is primarily due to the unity of its territorial space. This circumstance allows, on the one hand, suggesting the existence of conjugate approaches to the constitutional formalization of typical spheres of interaction between bicameral parliaments, and, on the other hand, identifying atypical spheres of this interaction.

DISCUSSION AND RESULTS

The analysis of the constitutional texts of the South African Asian states with the bicameral structure of the parliament allowed formulating a conclusion about the presence of typical and atypical spheres of interaction between the chambers of parliaments. We believe that it is productive for the purposes of the study to start with the typical areas. Typical areas of interaction in South African countries include the legislative sphere. According to the constitutional provisions of Article 78 of the Constitution of Lesotho, a bill is adopted "by both chambers of parliament". Let us clarify that the above-mentioned constitutional act stipulates the introduction of a draft law only in the lower chamber of parliament – the National Assembly.

Part (2) of Article 56 of the Constitution of Namibia stipulates that a bill passed and approved by a two-thirds majority of the total number of parliamentarians in both chambers of parliament is sent to the President for approval. At the same time, it is noted that the head of state shall approve such a bill. It should be noted that if the bill is adopted by a majority vote of the National Assembly and approved by the National Council, the head of state shall have the right of a deferred veto. This President's right does not apply to the case when the National Assembly has re-considered the adopted law and voted by a majority of votes (two-thirds). In this case, the re-
approval of the law by the National Council is not required.

Article 107 of the Constitution of Eswatini stipulates that bills shall be adopted by both chambers of parliament. At the same time, there are cases when the draft law should be adopted exclusively at a joint meeting (Articles 115 (3), 116 (1), 117). It should be clarified that the right to send a draft law to both chambers of parliament is constitutional, except for the financial and other draft laws affecting the status, powers, appointment of the highest state bodies, national lands, customs, etc. (Articles 110 and 115 (6) of the Constitution of Eswatini). It should be noted that the chambers of parliament have the right to adopt amendments to the Constitution. Such bills should only be submitted to a joint session of the chambers, where the issue of their adoption or rejection will be decided. Based on the provisions of Article 245, it can be concluded that changes to the Basic Law of the Country can be made either by a joint expression of the will of the parliamentarians of both chambers of parliament, or by submitting a draft law to a referendum.

The Constitution of South Africa, in contrast to the previously studied constitutional texts, formalized a large list of legislative powers of both chambers of parliament. It is noted that "Any bill may be submitted to the National Assembly for consideration" (Article 73 (1)). At the same time, it is clarified that draft laws can be sent to another chamber of parliament — the National Council of Provinces [Article 73 (3)]. The subject of the adoption of constitutional amendments is associated with the specific chapters of the Constitution. Thus, the provisions of the Constitution, except for Chapters 1 and 2, are adopted jointly by the chambers of parliament on issues stipulated in Article 74 (3).

It should be noted that the legislative functions of the parliament also affect the system of human rights. Atypical for the focus group of countries are the powers of the chambers of parliament in terms of additional regulation of requirements for both persons who are citizens of Lesotho and persons applying for citizenship. Thus, according to Article 42 of the Constitution of Lesotho, the parliament has the right to "establish the procedure and rules for revoking the citizenship of Lesotho of any person", with the exception of two categories: citizens of Lesotho by birth and citizens of "Lesotho by origin, provided that, being deprived of citizenship, these persons will become stateless".

As a productive, in our opinion, difference from other constitutional acts under consideration, the Constitution of South Africa, as a duty of the chambers of parliament, establishes the creation of a committee "on the general rules of procedure for the development of rules and regulations for the joint work of the Assembly and the Council" (Article 45). Among other things, the chambers create joint committees for the "annual review of the Constitution", "on issues of general regulations", etc. Let us emphasize that the formation of the committees listed above seems to be aimed at increasing the efficiency and effectiveness of the work of parliamentarians. An additional argument in favor of such a conclusion is a mandatory creation of a conciliation commission, which is formed in case of rejection of the adopted bill by the Chamber [Article 76]. The conciliation commission acts within 30 days from the moment of bill rejection by one of the chambers and consists of parliamentarians from both chambers of parliament [Article 78]. It is stipulated that "the conciliation commission approves the draft law version or makes a decision on the issue, if they are supported" by at least five representatives from each chamber of parliament. We believe that such a rule reflects not only the specifics of decision-making in the bicameral parliament, but also emphasizes the commonality of the activity of the chambers of parliament.

In the course of study, it was found that the legislative sphere of interaction between the chambers of parliament is expressed in various forms, for example, joint meetings of the chambers. Thus, according to Annex I of the Constitution of Eswatini, the King may convene a joint session of the chambers on matters relating to the declaration of a state of emergency, as well as on matters related to the amendment of constitutional provisions. A similar formulation regarding the imposition of a state of emergency during a joint session of the chambers of parliament is enshrined in Article 23 (8) of the Constitution of Lesotho.

Among the universal constitutional areas of interaction between the chamber of parliament of South African countries is the security sphere, which provides for the mandatory participation of the chambers of parliament in the approval/disapproval of the state of emergency in the country. It should also be noted that this type of spheres of interaction between the chambers of parliaments can also be referred to as legislative, since it is adopted in the form of a legal act. For example, Article 23 (4) of the Constitution of Lesotho stipulates that a "declaration of a state of emergency" shall be approved by "a resolution of each chamber". At the same time, it was clarified that in case of substantive differences in the resolutions, the act of the National Assembly will have priority. A similar wording is reflected in Article 37 (6) of the Constitution of Eswatini, with a clarification regarding the adoption of the resolution at a joint session of the chambers.
Article 26 of the Constitution of Namibia also provides for the imposition of a state of emergency under a resolution of the National Assembly. Despite the constitutional targeting in the decision-making (the President has the right to declare a state of emergency), there is the constitutional right of the National Assembly to cancel the regime imposed by the head of state. A similar wording is enshrined in Article 37 of the Constitution of South Africa. A typical area of cooperation between the chambers of parliament of the studied group of countries is the control one. The analysis of the constitutional acts of the South African states with the bicameral structure of the parliament showed that it is represented by a set of three segments—personnel-control, organizational-control and financial-control.

The first segment is implemented with regard to the removal from office of the head of state (impeachment), as well as the expression of no confidence in the ministers. Thus, according to the provisions of Article 53 of the Constitution of Lesotho, the chambers of parliament decide on the stay of a person in the King's office in separate sessions. This decision is based on a report received from the Prime Minister. Let us clarify that the constitutional priority is given to the resolution of the National Assembly. It should be emphasized that the King resigns his powers, if such a decision is made by one of the chambers. The institution of impeachment is also enshrined in the Constitution of Namibia. Article 29 states that the head of state may be removed from office only if there is a resolution adopted by both chambers of parliament by a majority vote (each chamber shall vote by more than two-thirds of the votes). It should be noted that the President's removal from office in South Africa (Article 89) is not decided jointly by the chambers. This constitutional prerogative belongs to the National Assembly.

The personnel-control segment is also associated with the prime minister's removal from office. The Constitution of Eswatini stipulates that in case of consideration of the issue of the prime minister's dismissal, the head of state creates a commission, whose members are, among others, the chamber's speaker or the senate's chairman (Article 68 of the Constitution of Eswatini). It should also be noted that there is the Cabinet's joint responsibility to the parliament (Article 69). Similar wording is found in Article 88 of the Constitution of Lesotho and Article 92 of the Constitution of South Africa.

The organizational and control segment is a type of control sphere of interaction between the chambers of parliaments. First of all, it is implemented in connection with the chambers' right to create joint permanent commissions/committees, as well as various authorities. We discussed the creation of conciliation commissions earlier, so we think it is appropriate to turn to the analysis of other types of commissions/committees. Article 129 of the Constitution of Eswatini provides for the ability of the chambers of parliament to establish "session and other committees necessary for the effective exercise of the functions of the chamber". It should be clarified that the functional powers of the committees depend on the parliament and may also provide for the investigation and control of the activities of "ministries and departments".

Article 127 of the Constitution of Lesotho gives the parliament the right to "establish courts subordinate to the High Court, courts-martial and tribunals, as well as any such court or tribunal". A type of organizational-control segment is the formation of a system of local authorities by the chambers of parliament. Such powers are constitutionally addressed to the parliaments of Lesotho and Eswatini (Article 106 and Article 218, respectively). It should be noted that the local level of power in modern states is traditionally formed without parliament.

Financial-control sphere is the third type of control sphere of joint activity of the chambers of parliaments. It concerns, first of all, the establishment of a system of taxes and fees, state budget, tax benefits, the creation of a variety of extra-budgetary funds, etc. We emphasize that this variety can safely be attributed to the legislative sphere, since it is implemented in the form of a legislative act (for example, Articles 79-80, Article 111 of the Constitution of Lesotho, Article 77 of the Constitution of Namibia, Articles 110-111 of the Constitution of Eswatini, Articles 73-77 of the Constitution of South Africa).

The international scope of interfacing powers is atypical for bicameral parliaments of South Africa. According to the provisions of Article 238 of the Constitution of Eswatini, the ratification of international treaties is the exclusive right of the chambers of parliament. It should be emphasized that a resolution adopted by the chambers of parliament at a joint meeting by a majority of votes - at least two-thirds of the total number of parliamentarians of both chambers - stands out among the ratification options. A similar wording is enshrined in Article 231 of the Constitution of South Africa. At the same time, it should be clarified that the constitution does not provide for the need for a joint session of the chambers.
CONCLUSIONS

The comparative analysis of the constitutional acts of the South African states with the bicameral parliaments helped to identify typical and atypical areas of interaction between the chambers of parliament. The legislative sphere, implemented in the form of the adoption of laws, including financial ones (related to the adoption of the state budget), and the holding of joint meetings (Eswatini, Lesotho), is a typical sphere of interaction between the chambers of parliaments of this group of countries.

Among the universal constitutional areas of interaction between the chamber of parliament of South African countries is the security sphere, which provides for the mandatory participation of the chambers of parliament in the approval/disapproval of the state of emergency in the country. It should also be noted that this type of spheres of interaction between the chambers of parliaments can also be referred to as legislative, since it is adopted in the form of a legal act.

A typical area of cooperation between the chambers of parliaments of the studied group of countries is the control one. An analysis of the constitutional acts of the South African states with the bicameral parliaments showed that it is represented by a combination of three varieties – personnel-control (implemented with regard to the removal of the head of state and the expression of no confidence in the ministers (Namibia, South Africa), the removal of the Prime Minister (Eswatini)), organizational-control (implemented with regard to the chambers' right to create joint permanent commissions and committees, as well as to form various authorities (Eswatini, Lesotho)) and financial-control (implemented with regard to the establishment of a system of taxes and fees, state budget, tax benefits, etc. (Lesotho, Namibia, Eswatini, South Africa)).

The international sphere, which involves the interaction of the chamber of parliament on the ratification of international treaties (Eswatini, South Africa), is atypical for the states of the studied group of countries. Thus, typical and atypical areas of interaction between the chambers of parliament in the South Africa reflect both the established practice and the autonomous approaches of legislators to the constitutional formalization of the joint powers of the chambers of parliament.

REFERENCES


NIKONOVA, L.I. MARKHGEYM, M.V.; NOVIKOVA, A.E.; MINASYAN, A.A.; KUROV, N.N. Constitutional Spheres and


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