

Public Interaction Fields of Parliament Chambers in the Countries of South America*

Campos de interacción pública de las cámaras del parlamento en los países de América del Sur

Anna A. Bezuglya¹
Maria P. Afanasieva²
Silva M. Arzumanova³
Maria I. Rosenko⁴
Lyudmila Yu. Svistunova⁵

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ABSTRACT

This article presents the author's analysis of the constitutional texts of South American countries regarding the consolidation of universal interaction fields between the chambers of parliaments. In the course of the study, it was found that the typical (universal) interaction fields between the chambers of parliament are represented by the legislative sphere (implemented in the course of adopting laws, holding joint meetings on various occasions); organizational and personnel sphere (provides for the consolidated participation of chambers during the formation of public authorities, as well as the appointment of officials); the control sphere, which is represented by three types: personnel and control (related to the implementation of the impeachment procedure against the head of state, resignation of senior state officials, expression of confidence lack in the government), organizational and control (concerns the formation of joint permanent and temporary commissions by the chambers of parliament) and financial control (assumes the consolidated participation of the chambers for the state budget adoption); the international sphere (concerns the joint activities of the chambers in the course of the ratification or

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2 Belgorod National Research University, 85 Pobeda Street, Belgorod, 308015, Russia

3 Pyatigorsk state University, 9 Kalinin Ave, Stavropol region, Pyatigorsk, 357532, Russia

4 Sevastopol State University, 33 Universitetskaya Street, Sevastopol, 299053, Russia

5 St. Petersburg state University of Economics, 21 Sadovaya Street, St. Petersburg, 191023, Russia
e-mail: 738330@bsu.edu.ru

denunciation of international treaties, the declaration of a state of war or the conclusion of peace). It is concluded that typical spheres of interaction between the chambers of parliaments in South American countries demonstrate the legislator's approaches to the development of interaction between the chambers of parliaments.

KEYWORDS: constitution, interaction of parliament chambers, typical spheres of parliament chamber interaction, atypical spheres of parliament chamber interaction, the countries of South America.

RESUMEN

Este artículo presenta el análisis del autor de los textos constitucionales de los países sudamericanos sobre la consolidación de campos de interacción universal entre las cámaras de los parlamentos. En el transcurso del estudio, se encontró que los campos de interacción típicos (universales) entre las cámaras del parlamento están representados por el ámbito legislativo (implementado en el transcurso de la adopción de leyes, celebrando reuniones conjuntas en diversas ocasiones); ámbito organizativo y de personal (prevé la participación consolidada de las cámaras durante la formación de los poderes públicos, así como el nombramiento de los funcionarios); la esfera de control, que está representada por tres tipos: personal y control (relacionado con la implementación del procedimiento de acusación contra el jefe de Estado, renuncia de altos funcionarios del Estado, expresión de desconfianza en el gobierno), organizacional y de control (se refiere a la formación de comisiones conjuntas permanentes y temporales por las cámaras del parlamento) y control financiero (asume la participación consolidada de las cámaras para la aprobación del presupuesto estatal); el ámbito internacional (se refiere a las actividades conjuntas de las cámaras en el curso de la ratificación o denuncia de tratados internacionales, la declaración del estado de guerra o la concertación de la paz). Se concluye que las esferas típicas de interacción entre las cámaras parlamentarias en los países sudamericanos demuestran los enfoques del legislador para el desarrollo de la interacción entre las cámaras parlamentarias.

PALABRAS CLAVE: constitución, interacción de las cámaras del parlamento, esferas típicas de la interacción de las cámaras del parlamento, esferas atípicas de la interacción de las cámaras del parlamento, los países de América del Sur.

INTRODUCTION

The authors' studies concerning the activities of the legislative bodies of states (parliaments) have not lost their relevance for a long time. This circumstance, as it seems, is associated with the indisputable and imperatively fixed role of

these bodies in the state legislative system development, in the course of control, personnel, organizational and other functions implementation “entrusted” by the state. Today parliaments are active participants in “international dialogue/communication”, capable of forming and taking part in various international organizations and integration processes, and establishing interstate relations.

It should be noted that the author’s focus in the study of the parliaments of South American countries is focused on the consideration of the regional parliaments of Latin America (Mariano et al., 2017), on the analysis of parliament sites as the tools for interaction with civil society (Santiago et al., 2017), in connection with the use of social networks by parliaments as modern means of cooperation on the example of Latin America and European countries (Giraldo-Luque & Villegas-Simón, 2017), as well as in the context of their comparative study (Fasone, 2020). Let us clarify that we have already carried out a comparative analysis of constitutional spheres and forms of interaction between the chambers of parliaments of foreign countries (Nikonova et al., 2017) with their subsequent specification in certain regions (Dzybova et al., 2018; Minasyan et al., 2019). We emphasize that the study of the interaction between the chambers of parliament in the countries of South America within a research (scientific) format has not been carried out. Leveling the existing doctrinal gap, we believe it is productive to consider and identify the constitutional spheres of interaction between the chambers of parliaments. Let us clarify that the choice of these groups of countries was primarily due to a single territorial space (which gave grounds to put forward the assumption that there are typical spheres of interaction between the chambers of parliament), as well as insufficient research of parliamentarism in this region.

METHODOLOGY

The study was based on a dialectical approach to the study of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and specific scientific methods. Among the latter are formal legal, linguistic legal, comparative legal, which were collectively used to study the constitutional texts of seven South American states with bicameral parliaments: Argentina, Bolivia, Brazil, Colombia, Paraguay, Uruguay, Chile (the focus group of countries was formed based on information provided on the website of the United Nations (<https://unstats.un.org>)), in order to identify typical (universal) spheres of interaction between their chambers.

DISCUSSION AND RESULTS

The analysis of the constitutional acts of South America countries with a bicameral structure of parliaments revealed the presence of conjugate interaction

fields between the chambers of parliaments. In all constitutional acts of the studied group of countries, the legislative sphere is fixed as a universal sphere of interaction between the chambers of parliaments. To confirm the constitutional unity of the bicameral parliament during the implementation of the legislative function, we believe it is expedient to cite the provisions of the Art. 83 of the Constitution of Uruguay “Legislative power belongs to the General Assembly”, which consists of two chambers (Art. 84). Similar formulations are reflected in the Art. 44 of the Constitution of Argentina, the Art. 44 of the Brazilian Constitution, the Art. 46 of the Constitution of Bolivia, the Art. 56 of the Constitution of Colombia, the Art. 183 of the Constitution of Paraguay, and the Art. 46 of the Chilean Constitution.

It should be noted that the implementation of the legislative sphere by the chambers of parliament is carried out, first of all, in the form of legislative act adoption. According to the constitutional provisions of the Art. 72 of the Chilean Constitution, the bill must be approved by both houses of Parliament. Similar interpretations are reflected in other constitutional texts of the studied group of countries, for example, in the Art. 78 of the Constitution of Argentina, the Art. 73 of the Constitution of Bolivia, the Art. 76 of the Constitution of Colombia, etc.

Let’s note that in Chile (Article 72) the powers of the chambers to overcome the veto of the head of state by two-thirds of the parliamentarians are constituted, and in Argentina (Article 82) a provision is established that excludes “tacit or presumed approval of laws.”

In the course of the analysis of the constitutions of South America countries concerning the related spheres of interaction between the chambers of parliament, it was established that joint meetings are a typical form within the legislative sphere. Let’s clarify that the reasons for their implementation may be different:

- hearing the messages of the head of state (Paragraph 5, Art. 166 of the Brazilian Constitution, Art. 24 of the Chilean Constitution);
- taking the oath by the head of state (Article 93 of the Constitution of Argentina, Article 90 of the Constitution of Bolivia, Part III, Paragraph 3, Article 57 of the Brazilian Constitution, Article 74 of the Constitution of Colombia, Article 183 of the Constitution of Paraguay, Article 158 of the Constitution of Uruguay) and other officials persons: Vice-President (part III, Paragraph 3, Art. 57 of the Brazilian Constitution, Art. 183 of the Constitution of Paraguay), the members of the Supreme Court (Art. 183 of the Constitution of Paraguay);
- declaration of war (part 7, article 60 of the Constitution of Bolivia, article 40 of the Constitution of Chile);
- the exercise of pardon (paragraph 14, article 85 of the Constitution of Uruguay);

- election of state officials (paragraph 18, article 85 of the Constitution of Uruguay);
- disapproval of the bill (part IV, Paragraph 3, Art. 57 of the Brazilian Constitution; Art. 138 of the Constitution of Uruguay; part 6, Art. 60 of the Bolivian Constitution);
- opening of the parliamentary session (part 8, article 99 of the Constitution of Argentina; part 1, article 60 of the Constitution of Bolivia; part I, paragraph 3, article 57 of the Brazilian Constitution);
- verification of the correctness concerning the counting of votes during the election of the head of state (part 2, article 60 of the Constitution of Bolivia);
- consideration of accusations of crimes by the head of state and the Vice-President (part 12, article 60 of the Constitution of Bolivia);
- resolution of the issues regarding the crossing of the state territory by the head of state and the Vice-President (Allow the President and the Vice-President of the Republic to leave the country when it comes to their absence for more than fifteen days - Part III, Art. 49 of the Brazilian Constitution);
- adoption of joint meeting rules (Part II, Paragraph 3, Art. 57 of the Brazilian Constitution).

A typical sphere of conjugation of chamber powers for modern states is organizational and personnel, providing for the joint formation of government bodies or the appointment of officials. In accordance with the Part 20, Art. 75 of the Argentine Constitution, the chambers of Congress have the power to create judicial bodies subordinate to the "Supreme Court". At the same time, the order and procedure for the formation of the named authorities is not specified. We believe that procedural issues are enshrined in the regulations of the current chambers of parliament.

Chile's Constitution (Art. 92) grants the chambers the right to appoint four members of the Constitutional Court. Paragraph 18, Art. 85 of the Constitution of Uruguay regulates the powers of parliamentarians to elect "the members of the Supreme Court, the Electoral Court, the Administrative Dispute Tribunal and the Court of Accounts", as well as the members of the Electoral Court (Article 324). It is noted that the appointment of these persons is possible only at a joint meeting of the General Assembly. The powers of the chambers to form government bodies are regulated by the Art. 208 of the Constitution. Thus, the chambers of parliament are competent to create autonomous entities, as well as reorganize existing ones.

The appointment of an ombudsman is a rather atypical form of interaction between the chambers of parliament for many states from the studied group of countries. The Art. 277 of the Constitution of Paraguay states that an Ombudsman is appointed by the deputies from the list of persons propo-

sed by the Senate. A similar constitutional wording is reflected in the Art. 86 of the Argentine Constitution: "The Defender of the People ... is appointed and dismissed by Congress via two-thirds of the members of each House present."

The National Congress of Bolivia is constitutionally empowered to appoint the members of the Supreme Court (the Article 148 of the Constitution). At the same time, it should be clarified that judges are elected exclusively by the deputies from the list of persons provided by the Senate. Colombia's Legislative Chambers also have the power to appoint Supreme Court judges, who are nominated by the head of state.

In Brazil, the chambers of parliament participate in the appointment of judges of the Accounts Tribunal of the Union (Part II, Paragraph 2 of the Art. 73), the Council of the Republics (Art. 89), and form the Council for Social Communication (Art. 224).

The analysis of the constitutional acts of the studied group of countries showed that the control sphere is a universal sphere of interaction between the chambers of parliaments, which is represented by three types - personnel control, organizational control and financial control.

The first is implemented in connection with the dismissal of the head of state or the resignation of senior officials of the state. In the constitutional format, this option is enshrined in Paraguay. According to the Art. 225, charges may be brought against the Vice President, Ministers of the Executive, Ministers of the Supreme Court, Attorney General, Ombudsman, Comptroller General of the Republic, Sub-Comptroller and the members of the Electoral Court at a meeting of the Chamber of Deputies "for improper performance of their duties". The chambers of the Argentine Congress are empowered to "accept or reject the resignation of the president and vice president" (part 21, article 75 of the Constitution). A similar wording is reflected in Part I, Art. 52 of the Brazilian Constitution, while the list of "addressees" has been slightly changed - ministers of state are added to the previously designated President and Vice-President.

The art. 52 and the art. 53 of the Chilean Constitution stipulate the joint participation of the parliament boards in the removal of the President, Ministers of State, magistrates of the highest courts and the General, generals or admirals, regional presidential delegates, provincial presidential delegates from the office and the power exercised by the government in special territories. The initiative to bring charges belongs to the lower house of parliament - the Chamber of Deputies. It should be noted that "the Senate makes a decision as a jury and confines itself to declaring whether an accused is guilty of an alleged crime, offense or abuse of power." The impeachment procedure for the head of state, implemented by the chambers of parliament, is enshrined in the Art. 93 of the Constitution of Uruguay, the Art. 225 of the Constitution of Paraguay, in Part 12, the Art. 60 of the Constitution of Bolivia, the Art. 86

of the Brazilian Constitution, and in Part 5, the Art. 102 of the Constitution of Colombia.

The Article 71 of the Bolivian Constitution establishes the powers of the chambers of parliament to bring charges and subsequent decisions in relation to the Supreme Court members.

In accordance with the Art. 96 of the Colombian Constitution, the Senate adjudicates the charges “brought against government officials by the House of Representatives”. Based on the provisions of the Art. 5 and the Art. 102 of the Constitution, these persons include the head of state, Cabinet Ministers, the Attorney General and the Supreme Court judges.

A kind of personnel and control interaction of the chambers of parliament is the expression of distrust to ministers. Bolivia’s Constitution (Art. 62) consolidates the powers of parliamentarians to vote on acts of the executive branch of government if there is a decision of one of the chambers of parliament. The Art. 93 of the Uruguayan Constitution reflects the powers of the chambers of parliament regarding the expression of a vote of confidence in the Council of Ministers, initiated by the head of state.

The following provisions of the Art. 193-194 of the Constitution of Paraguay are of interest: the provisions granting to the chambers of parliament the right to express a vote of no confidence not only in ministers, but “in other senior officials of the public administration, as well as the directors and administrators of autonomous, and decentralized entities, the entities that manage public funds.” Such authority arises for the chambers if the above-named persons were not present at the meeting of the “summoned” chamber without a valid reason.

The second - organizational and control - a kind of control sphere of interaction between the chambers of foreign parliaments is implemented in connection with the right of chambers to create joint permanent and temporary commissions. This right is enshrined in the Art. 58 of the Brazilian Constitution. It was noted that the chambers of parliament form “permanent and temporary commissions”. The Joint Standing Commission of Senators and Deputies, formed by the chambers in order to consider budgetary issues (the Article 166 of the Brazilian Constitution) is among the permanent commissions.

The Art. 218 of the Paraguay Constitution establishes the powers of the chambers of parliament to form the Standing Commission. This commission is formed from the parliamentarians of both chambers for the entire vacation period of the Congress until its next session. Similar commissions are established by the chambers of the National Congress in Brazil (Paragraph 4, Art. 58) and the Congress in Colombia (Art. 72).

It seems possible to include mixed (conciliation) commissions to the temporary commissions formed by the chambers if there are disagreements between the chambers regarding the adopted legal act. Such commissions are

reflected in the Art. 71 of the Chilean Constitution. It should be noted that the procedure for overcoming differences between the chambers of parliament is reduced to a joint discussion of a bill (the Art. 75 of the Bolivian Constitution). Let us emphasize that the formation of a separate body, for example, a mixed commission, is not envisaged.

Interim joint commissions can be “investigative”. In accordance with the paragraph 3, art. 58 of the Brazilian Constitution, the chambers of parliament can form parliamentary commissions of investigation. At the same time, it was clarified that these bodies have the power to conduct their own investigations as judicial bodies. They are formed by the chambers of parliament “at the request of a third of their members for a certain period of time.” It should also be noted that parliamentary commissions have the right to send the conclusions they received during their work to the prosecutor’s office in order to “bring accused ones to civil or criminal liability.” The right to form commissions of inquiry by the chambers of parliament is also regulated by paragraph “c”, Part 1, Art. 52 of the Chilean Constitution: “Commissions of inquiry at the request of a third of their members can issue summons and request reference information. Ministers of state, other civil servants of the Administration and personnel of companies of the state or the companies in which this company has a majority, which are called by these commissions, will be required to appear and provide the antecedents and information that is requested. Similar commissions are created in Paraguay (Article 195 of the Constitution) and Uruguay (Article 120 of the Constitution).

Among the temporary commissions, it seems possible to include a commission formed by the chambers of parliament to control “the measures taken during a state of defense and state of emergency” (Article 140 of the Brazilian Constitution).

The financial and control variety of the control sphere concerns the cooperation of the chambers of parliament in adopting, first of all, the state budget. It should be emphasized that this segment of the control sphere can be attributed to the legislative one, since it develops in the form of a legislative act. The Art. 67 of the Chilean Constitution establishes the powers of the chambers of parliament in the area under study: “The draft budget law must be submitted by the President of the Republic to the National Congress.” Similar wording is reflected in part 2, 8 of the Art. 75 of the Constitution of Argentina, the Art. 103 of the Constitution of Bolivia, the Art. 210 Constitution of Colombia, the Art. 217 of the Constitution of Uruguay, and the Art. 216 of the Constitution of Paraguay.

Let’s also note that tax authorization is also one of the forms of interaction between the chambers during the implementation of the financial and control sphere (Article 87 of the Constitution of Uruguay).

The consolidated powers of the chambers of parliaments are also implemented in the international sphere, which are expressed in the form of appro-

val/ratification of international treaties, declaration of war, proclamation of peace, etc. According to the Art. 54 of the Chilean Constitution, the power to ratify or denounce international treaties is addressed to the Congress: "To approve or reject international treaties that the President of the Republic will present before their ratification."

The right to approve international treaties also belongs to the chambers of parliament - the Congress of Argentina (part 22, article 75 of the Constitution), the National Congress of Brazil (part VIII of the article 84), the Congress of Bolivia (part 13 of the article 58), the Congress of Colombia (part 22 of the Art. 76) and the Congress of Paraguay (the Art. 141 of the Constitution).

The Constitution of Uruguay (paragraph 7, Art. 85) consolidates the joint powers of the chambers to declare war and proclaim peace, as well as to approve international agreements concluded by the executive branch with foreign states. The powers to declare war and conclude peace are also addressed to the chambers of the parliament of Paraguay (part 7, article 238 of the Constitution), Argentina (part 22, article 75 of the Constitution), Brazil (part XIX and part XX, article 84).

CONCLUSIONS

The comparative analysis of the constitutional acts of South America countries with the bicameral structure of parliament helped to identify typical spheres of interaction between the chambers of parliament.

A typical sphere of interaction between the chambers of parliaments of this group of countries is the legislative sphere, implemented in the form of adopting legislative acts and holding joint meetings on various occasions (hearing messages from the head of state (Brazil, Chile), taking the oath of office by the head of state (Argentina, Brazil, Bolivia, Colombia, Paraguay, Uruguay), declaration of war (Bolivia, Chile), opening of a parliamentary session (Argentina, Brazil, Bolivia), election of state officials (Uruguay), etc.).

The sphere of conjugation of chamber powers, universal for modern states, is the organizational and personnel sphere, which provides for the joint formation of government bodies or the appointment of officials.

A related sphere of interaction between the chambers of parliaments is the control one, which is represented by three types - personnel and control (implemented in connection with the removal of the President from the office (Argentina, Brazil, Bolivia, Colombia, Paraguay, Uruguay and Chile); resignation of senior state officials (for example, the members of The Supreme Court (Bolivia, Colombia), the Attorney General (Bolivia)); an expression of confidence lack in the ministers (Bolivia, Uruguay)); organizational and control (related to the right of chambers to create joint permanent and temporary commissions (Brazil, Bolivia, Colombia, Paraguay, Uruguay, Chile)); financial

and control (concerns the cooperation of the chambers of parliament on the adoption, first of all, of the state budget (Argentina, Bolivia, Colombia, Paraguay, Uruguay and Chile)).

The consolidated powers of the chambers of parliament are implemented in the international sphere, which are expressed in the form of approval/ratification of international treaties (Argentina, Brazil, Bolivia, Colombia, Paraguay, Chile), declaration of war and declaration of peace (Argentina, Brazil, Paraguay, Uruguay).

Summarizing the mentioned above, we note that typical spheres of interaction between the chambers of parliaments in South American countries demonstrate the legislator's approaches to the development of interaction between the chambers of parliaments.

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