

# Philosophical-legal analysis of Ukrainian parliament model systemic transformation toward bicameralism

Філософсько-правовий аналіз парламенту України  
модельне системне перетворення до бікамералізму

Myroslav Durdynets

## Key words:

*bicameralism, sovereignty, bicameral parliament, integration.*

## Ключові слова:

*бікамералізм, суверенітет, двопалатна система, інтеграція.*

**Timeliness.** Current processes and changes forming not only the local but also global social and economic context increase the interest of scholars and practitioners to development of parliamentarism concept. Systemic crisis of state governance mechanism along with the issue of Ukrainian parliamentary system reforming have been on the geopolitical agenda for a long time. Within the conditions of globalization Ukrainian reforms inevitably influence the balance of forces.

**The aim of the article.** Article presents arguments in favor of parliamentary organizational transformation into bicameral structure in the context of current political and economic reforms. Justification is provided for the connection existing between the bicameral parliament and attempts to combine representation of national and regional interests in one multistructural state body.

**Background.** One of the prominent geopoliticians *Zbigniew Brzezinski* gives a special role to Ukraine as a subject in superpowers' «world order fight» in his publication «The Grand Chessboard: American Primacy and Its Geostrategic Imperatives». He claims that all aces will be up the sleeve of state capable of controlling both the Asian and European areas – Ukraine, often described as the state which «stands at the intersection» due to its geographical position and resource base, may be defined as the linking element in the system of powers division<sup>1</sup>.

Today we all witness rapid and irretrievable retrogression of state institutions promoted by the media and therefore easily legitimized by the support of community during demonstrations and mass gatherings.

The reasons for the abovementioned imbalance are primarily in the discrepancies arising from the need to adapt certain legal norms and standards to Ukrainian mentality. Ukrainians are strongly oriented as a nation to apply the «personification» approach and relying on abstract leader but completely neglecting the ideology or concept of collectively functioning institution. Painful experience has eventually brought our nation to understanding that traditional system is full of flaws and requires substantial transformation – it is also reflected in redirecting the power from president to parliament. It is obvious that Ukrainian legislative system has brought itself in disrepute and requires to be changed in the shortest period of time.

We expect that within the upcoming decade Ukrainian political establishment will consider the idea of bicameral parliament establishment which received the approval from Ukrainian citizens on April 16<sup>th</sup>, 2000 – a clear message that parliamentary structure reforming is envisaged to bring the positive results.

It must be mentioned that in 2017 Ukraine has celebrated 100<sup>th</sup> anniversary of parliamentarism establishment which is a proof that our state had chosen the democratic way of development to ensure its prosperity and stability in future with parliamentary system as one of its essential elements. The process was launched in 1917 with the adoption of Constitution of Ukrainian People's Republic, highly praised by modern experts and scholars. Citizens of Ukrainian People's Republic were entitled with full scope of civil and political rights. After

<sup>1</sup> Zbigniew Brzezinski «The Grand Chessboard: American Primacy and Its Geostrategic Imperatives». – Ivano-Frankivsk: Lileya-NV, 2000. – 236 p.

analyzing the retrospective review of bicameral parliament format we must state that the first steps in this area were taken in 1918 – the Constitution of Ukrainian Hetman State was aimed to legitimize the bicameral parliamentary system : Lower Chamber (600 members elected by the citizens) and Upper Chamber (150 members (30% appointed by the head of state and 70% delegated from regional authorities)<sup>2</sup>.

Further discussions of bicameral parliamentary system advantages and adoption continued also in independent Ukraine after 1991 – some attempts were made to establish this format of legislative body in a few drafts of Constitution, presented for considerations of MPs. In July 1992 one of these drafts was prepared by the Constitutional Commission and presented for public discussion containing reference to bicameral format: Council of Representatives and Council of Delegates (body of «territorial representation»)<sup>3</sup>.

A few key stages of discussions on bicameral parliamentary system establishment can be distinguished, with separate projects developed that cannot be characterized as complex but analyzed as attempts to identify the most appropriate format of bicameral parliamentary system to be established in Ukraine.

First stage. Despite the lack of experience in the area of democratic institutions development, Ukrainian authority had fully recognized the bicameral parliamentary system to be the best solution in the existing political, economic, cultural and social environment – that is why this concept was reflected in one of the drafts prepared by the Constitutional Commission.

According to the provisions of this draft, the National Assembly included the Council of Representatives (350 members elected in single-member constituencies) and Council of Delegates (5 members from each region, Autonomous Republic of Crimea and Kyiv). Chambers were granted with equal authorities: legislative procedures were authorized to be initiated by any of them, both were responsible for appointment of judges to the Constitutional Court and take part in impeachment procedure at different stages<sup>4</sup>.

Second stage. Draft of Constitution of Ukraine, prepared by the Constitutional Commission and submitted to Verkhovna Rada for further consideration on March 11, 1996 also contained provisions on bicameral parliamentary system establishment.

But, in opposition to the recommendation of Venice Commission, the majority of MPs voted against the bicameral parliamentary system establishment in Ukraine referring to possible political destabilization and disintegration processes.

Still, restructuring of new legislative body would stipulate considerable limitations of presidential powers along with strengthening of territorial communities representation on the national level, balancing the branches of power, ensuring the legal succession and political stability. That is why bicameralism was not established in Ukraine.

Some experts and politicians provide grounds for bicameralism to be rejected: inevitable change of political system; bicameralism is essential in federal states; the abovementioned changes will increase the level of bureaucracy by extending the procedures of legislative acts consideration and adoption; artificial obstacles will appear in the process of solution search, culminating in authoritarian regime; political segregation within the parliament and escalation of conflicts between the chambers and power branches; need for additional funding; also the concerns were expressed that Ukrainian citizens will criticize the concept of bicameralism and vote against it.

None of the abovementioned statements itself can be taken as a serious argument – the first one is the most disturbing but can be easily contested if familiarizing with the history of bicameralism; no single state has «suffered» from threats of political destabilization after establishing the bicameral parliamentary system.

Second statement is contested with the following: among 28 EU member states 14 parliaments have the bicameral structure. 10 of them are unitary states (Spain, United Kingdom, Netherlands, Poland, Romania, Slovenia, France, Czech Republic, Italy, Ireland) and only four of these are federal (Austria, Belgium, Germany, Switzerland).

<sup>2</sup> D. Yarosh. Constitution of Ukrainian People's Republic (1918) on State Bodies and Governance: historical experience and current state / D. Yarosh // University scientific notes, 2005. – №1-2. – P. 49-56.

<sup>3</sup> Decree of Verkhovna Rada of Ukraine «On Draft of Revised Constitution of Ukraine» № 2525-XII dd. July 1, 1992 // Bulletin of Verkhovna Rada of Ukraine. – 1992.

<sup>4</sup> D. Yarosh. Constitution of Ukrainian People's Republic (1918) on State Bodies and Governance: historical experience and current state / D. Yarosh // University scientific notes, 2005. – №1-2. – P. 49-56.

Third, fourth and fifth statements are not supported by any reasonable arguments. Legislative process is expected to become more productive and efficient instead of excessive bureaucratization – legislative acts will correlate intensively to the interests of communities.

Sixth statement should be taken into account but interpreted in a different manner – *a priori*, any reform requires additional expenses (state or local budget) which, if justified, should be considered as investment.

In order to prove or contest the seventh statement we have carried out a sociological survey involving 186 representatives of different Ukrainian regions and social groups. To ensure the maximum objectivity of the survey all questionnaires were anonymous. We were interested to receive the respondents answers for one question – «Do you approve the necessity to establish the bicameral parliamentary system in Ukraine with one chamber representing and lobbying the regional interests along with adoption of relevant amendments to Constitution and applicable legislation? Lower Chamber would comprise 300 members elected under the proportional representation system. Upper Chamber would comprise three or four representatives from each region and city under the majority representation system». The majority of respondents supported the proposal – 75,4%(140), 9,1% (17) rejected it and 15,5% (29) could not decide.

We can assume that our scaling was not representative enough and this sociological survey cannot be a fully convincing argument to contest the seventh statement. We would have agreed but the results of national referendum on state governance reforming held on April 16<sup>th</sup>, 2000 caused the additional concerns. One of four questions brought to public discussion was formulated in the following way: «Do you support the idea to establish the bicameral parliamentary system in Ukraine with one chamber representing and lobbying the regional interests along with adoption of relevant amendments to Constitution and applicable legislation?». 81,68% voted for the changes (24 284 220), while 16,79% voted against (4 994 336). As we see the results of national referendum and our sociological survey prove the intention and readiness of Ukrainian citizens to establish the bicameralism and understanding of its role in state prosperity and stability.

We are absolutely sure that Ukrainian parliament will eventually be transformed into a bicameral body – unfortunately, taking into consideration current political, economic and social conditions, we are not able to provide any realistic and feasible perspective for the terms of bicameralism establishment. This process is obstructed by annexation of Crimea by Russian Federation, escalation of military aggression in Lugansk and Donetsk regions, internal political turbulence and low level of institutional capacity in terms of reforming; absence of efficient electoral legislation.

After analyzing the arguments for and against establishment of bicameralism with relevant evaluation, we consider it necessary to focus on positive aspects of bicameral parliamentary system establishment in Ukraine: sustained balance between executive and legislative branches of power; representation of each region (community, territory) in parliament with due attention to different interests and needs; increased quality of decision-making and drafting process; intensification of publicity and transparency of discussions and decision-making process with media and society's awareness ensured; the opportunity for chambers to control each other's activities resulting in avoidance of power and authority abuse and minimized risk of illegal or corruptive practices; balanced opposition of political parties and harmonization of the process in general.

Ukraine's totalitarian past has always been the key obstacle on the way to «reloading» the citizens' mentality – democracy and independence were not immediately taken as opportunities for deep internal transformations<sup>5</sup>. The system of state governance has for decades been «solidified» in authoritarian principles and mechanisms leaving the idea of democratic development as a bait for getting the voters. Absence of deep understanding of state and community connection led to objectivization of Ukraine and uprising of a whole set of fake friends and partners.

**Conclusions.** Within the context of Ukrainian parliamentary system reforming and its meaning in the scope of global transformation we should note that modern world shifts towards the intellectual management and control concept. If previously powerful states were struggling to conquer the territories, it meant that successful conquest was the indicator of power. Since the beginning of 21<sup>st</sup> century «intellectual» weapon has been taken as advantage by modern conquerors who want simply not to capture the land but interfere actively in political processes. Current Ukrainian situation is characterized with intensified influence of foreign actors on decision-making process which itself is a destabilizing factor – it can be potentially neutralized only after truly

<sup>5</sup> Philosophical and Psychological Issues of Jurisprudence: [Monograph] / M. Kostytskyi – Chernivtsi, 2008.

independent and efficient state institutions will be established, supported by the community and compliant with national interests.

### **Summary**

Author endeavors to analyze the feasibility of bicameralism as expected parliamentary system transformation through the prism of historical experience and day-to-day realities.

### **Анотація**

У статті автор робить спробу проаналізувати доцільність запровадження двопалатної системи парламенту через призму історичного досвіду та реалій сучасності.

### **Literature:**

1. Zbigniew Brzezinski «The Grand Chessboard: American Primacy and Its Geostrategic Imperatives». – Ivano-Frankivsk: Lileya-NV, 2000. – 236 p.
2. Yarosh D. Constitution of Ukrainian People's Republic (1918) on State Bodies and Governance: historical experience and current state / D. Yarosh // University scientific notes, 2005. – №1-2. – P. 49-56.
3. Decree of Verkhovna Rada of Ukraine «On Draft of Revised Constitution of Ukraine» № 2525-XII dd. July 1, 1992 // Bulletin of Verkhovna Rada of Ukraine. – 1992.
4. Philosophical and Psychological Issues of Jurisprudence: [Monograph] / M. Kostytskyi – Chernivtsi, 2008.
5. Shapoval V. Constitutional Law of Foreign States : textbook / V. Shapoval. – 4th edition. – Kyiv АртЕк, 2001. – 264 p.
6. Russell M. Why are Second Chambers so Difficult to Reform? / Russell Meg, Mark Sandford // The Journal of Legislative Studies. – 2002.