

Parliamentary potential for ensuring the security of the state: Constitutional experience of the countries of the post-soviet space

Potencial parlamentario para garantizar la seguridad del Estado: experiencia constitucional de los países de la era postsoviética

Galina S. Belyaeva *
Belgorod State University - Russia
belyaeva_g@bsu.edu.ru

Anna A. Minasyan*
Belgorod State University - Russia

Evgeniy E. Tonkov*
Belgorod State University - Russia

Lyudmila V. Butko*
Belgorod State University - Russia

Oksana S. Stepanyuk*
Belgorod State University - Russia

ABSTRACT

The article presents the author's analysis of the constitutional acts of the countries of the post-Soviet space in order to consolidate in them the catalog of powers of parliaments in the field of state security. The study revealed two constitutional approaches reflecting the catalog of powers of parliaments in ensuring the security of the state: the parliament acts as a body with the prerogative of introducing exclusive regimes in the state, declaring war and concluding peace; the parliament acts as a body that legalizes decrees of the head of state or government on security issues.

Keywords: constitution, security, emergency, martial law, troops into the territor, foreign state, war.

RESUMEN

El artículo presenta el análisis del autor de los actos constitucionales de los países del espacio postsoviético para consolidar en ellos el catálogo de poderes de los parlamentos en el campo de la seguridad del estado. El estudio reveló dos enfoques constitucionales que reflejan el catálogo de poderes de los parlamentos para garantizar la seguridad del estado: el parlamento actúa como un órgano con la prerrogativa de introducir regímenes exclusivos en el estado, declarar la guerra y concluir la paz; el parlamento actúa como un organismo que legaliza los decretos del jefe de estado o gobierno sobre cuestiones de seguridad.

Palabras clave: constitución, seguridad, emergencia, ley marcial, tropas en el territorio, estado extranjero, guerra.

* Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia

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1. Introduction

Security is the exclusive responsibility of any state. It is recognized that it is the main subject of ensuring the security of an individual, the society and the state, primarily through the constitutional and legislative regulation of relevant public relations. Taking into account the supremacy of constitutional norms and the initial role of parliament in this process, we consider it expedient to analyze the texts of constitutions in order to reflect in them the catalog of powers of parliaments in the field of ensuring national security.

It should be noted that this area is constitutionally accentuated in connection with the priorities of domestic and foreign policy of the modern state, which implies the adoption of relevant laws. This is a priori general authority for all parliaments. We are going to consider their other powers to identify the particular.

As a rule, in the constitutional and legal science, the issues relating to the field of national security are considered in the context of cooperation of different bodies in the field of private and public security [Dorn and Levi, 2007], from the standpoint of personal security in the international politics [Abrahamsen and Williams, 2010], in the course of analysis of European [Webber, Croft, Howorth and Terriff, 2004] and Asian [Buzan, 1994] countries, as well as based on the conditions of a particular country [Shabtai, 2010]. The role of parliaments was developed in connection with their powers in the lawmaking process [Nikonova, Markhgeim, Novikova, Minasyan and Kurova, 2017], parliamentary investigations [Minasyan, 2017], including interaction of the chambers [Anna, Minasyan, Saida, Dzybova, Marina, Markhgeym, Aleksandr, Plohih, Nina and Stus. Typical, 2018]. It should be noted that there are no works devoted to identifying the catalog of powers of parliaments in the field of ensuring national security in the state legal science. Compensating for this, we will analyze the texts of constitutions of the post-Soviet countries in order to reflect the parliament's powers in the declared area.

2. Materials and methods

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. The latter include formal and legal, linguistic and legal, comparative and legal, which have been collectively used to study the constitutional texts of 15 countries - the former republics of the Soviet Union - in order to identify the general and particular in the catalogs of powers of parliaments in the field of national security. The choice of this focus group is determined by the unity of previous state-building within the USSR, which suggests, on the one hand, the existence of a common approach of the post-Soviet countries to formalization in the constitutional texts of parliament's powers to ensure security, and, on the other hand, sovereign diversity in its formulation. In connection with the latter, it is also assumed to assess the specificity of approach of Latvia, Lithuania and Estonia, which left the Soviet Union in the order of secession, which was stipulated in Art. 72 of the USSR Constitution.

3. Results

The analysis of constitutional texts of the post-Soviet states showed the presence of two constitutional approaches, reflecting the catalog of powers of parliaments in the field of national security. Let us consider each of them in more detail.

The first approach reflects the powers of parliaments to impose special regimes (state of emergency and martial law) in the country, to use the armed forces of a state outside of it, as well as to issue decisions on declaring war and/or concluding peace.

It should be noted that the Kyrgyz parliament has the prerogative to implement the above powers in full [Belyaeva, Makogon, Bezugly, Prokhorova & Szpopper, 2017]. According to clauses 1,2,3 of P. 5 of Art. 74 of its Constitution, the parliament introduces a state of emergency and martial law in the country, resolves issues relating to war and peace, as well as the issues of using the country's armed forces beyond its borders. An analysis of the constitutional texts of this group of countries showed that none of 14 parliaments have such a catalog of powers.

According to the provisions of clauses 14, 15 of Art. 65, Art. 128-129 of the Constitution of Estonia [Makogon, Markhgeym, Minasyan, Novikova, & Yarychev, 2019], the parliament has the exclusive authority to decide on using the armed forces outside the country, declare martial law and emergency in case of "danger" to the basics of constitutional order of the state.

Further research showed that a similar set of constitutional powers, with the exception of the right to impose emergency and martial law in the country, has the parliament of Kazakhstan. Thus, in accordance with the provisions of Art. 55 of the Constitution of Kazakhstan [Ol'ga, Kuksin, Makogon, Spektor & Vladimirova, 2018], the chambers of parliament make decisions on the previously designated issues (declaration of war, conclusion of

peace and possibility of using armed forces outside the territory of the state) at a joint meeting.

We also note that the issues related to the imposition of martial law in the state, the use of armed forces outside the country fall within the exclusive competence of the parliament of Lithuania (clause 20 of Art. 67 of the Constitution of Lithuania [Kuksin, Markhgeym, Novikova & Tonkov, 2016]).

According to Art. 118 of the Constitution of Armenia [Makogon, Markhgeym, Novikova, Nikonova & Stus, 2018], the issues of war and peace fall within the exclusive jurisdiction of the parliament. Thus, the National Assembly adopts resolutions concerning the declaration of war or the conclusion of peace at the suggestion of the Government. The authority to declare a state of war also falls within the competence of the parliaments of Latvia (Art. 43 of the Constitution of Latvia [Butko, Markhgeym, Novikova, Pozharova & Tonkov, 2017]) and Ukraine (Section 9 of Art. 85 of the Constitution of Ukraine).

Clause “m” of Art. 66 of the Constitution of Moldova [Belyaeva, Makogon, Bezugly, Prokhorova & Szpoper, 2017] establishes the parliament’s powers to declare emergency and martial law in the country. At the same time, the authority (Article 87) of the President to introduce special regimes in the country “in case of armed aggression against” the state without the active participation of parliament was constituted. The role of parliament is reduced to its notification by the head of state.

The second approach, reflecting the appropriate catalog of parliamentary powers - the approval of decrees, regulations and prescriptions of the head of state or government in the field of security - is more common.

An analysis of the constitutional provisions of the studied group of countries showed that the parliament of Azerbaijan authorizes the presidential decrees on security issues. Thus, the latter, according to the constitutional provisions of Art. 111 and Art. 112 of the Constitution, approves the decrees of the head of state on the introduction of martial law and emergency in the country. In this case, from the analysis of clause 16 of P. I of Art. 95 and clause 28 of Art. 109 of the Constitution, it follows that the parliament’s powers include the issues of coordinating the head of state’s views on the use of armed forces and the President’s appeals to declare war and conclude peace (clause 17 of P. I of Art. 95 and clause 30 of Art. 109).

According to the provisions of clauses “b”, “c”, “d” of the Russian Constitution, the powers associated with the introduction of special regimes in the state and the use of armed forces are the powers of one of the chambers of the federal parliament - the Federation Council. It should be clarified that, despite the approval of these decrees by one of the parliament’s chambers, the head of state informs both parliament’s chambers about the adoption of such acts. Similar parliament’s powers are formalized in clauses 21-23 of Art. 69 of the Constitution of Tajikistan with the clarification that the parliament of Tajikistan decides on the harmonization of the decrees of the head of state at a joint meeting of the chambers. According to clause 9, 31 of Art. 85 of the Constitution of Ukraine, its parliament has similar powers.

The parliament’s powers on the harmonization of presidential decrees on the introduction of martial law and emergency are constituted in Belarus (clauses 22, 29 of Art. 84 and clause 8 of Art. 98) of Georgia (clauses “h”, “i” of Article 73) [21], Kyrgyzstan (clauses 2, 4 of P. 9 of Art. 64), and Lithuania (clauses 16, 14 of Art. 84; Art. 142). It should be noted that the mentioned powers of the parliament of Belarus are addressed only to one of the chambers - the Federation Council. The constitutions of Georgia, Kyrgyzstan, and Lithuania secured the powers of parliaments to approve the presidential decrees on the imposition of martial law in case of protection against armed aggression. Under similar circumstances, the emergency is subject to approval by the parliaments of Georgia and Kyrgyzstan. It should also be noted that the parliament of Georgia has constitutional powers to approve the decrees of the head of state to conclude peace (clause “h” of Art. 73).

In clause 18 and clause 19 of Art. 85, the Constitution of Uzbekistan establishes the parliament’s powers to approve decrees of the head of state to declare war (in case of armed attack on the country) and to impose emergency, respectively. It should be emphasized that these decrees are adopted by both houses of parliament at a joint meeting.

It worth noting that the Constitution of Turkmenistan does not contain provisions regarding the parliament’s powers in the field of security.

Taking into account the above, it is necessary to point out the particular importance of the development of institutions of legal restrictions and minimizing human rights risks within the framework of the stated problem.

It should be noted that the constitutions of the states - the former republics of the Soviet Union - clearly trace the priority position of parliaments in the exercise of powers in the field of security. This group of countries adheres to two constitutional approaches, reflecting the catalog of powers of parliaments in this area - the parliaments have the exclusive prerogative of making decisions on ensuring state security; the parliaments authorize the presidential decrees on these issues. It should be emphasized that some constitutions (Georgia, Kyrgyzstan, Lithuania) secure the powers of their parliaments in case of armed aggression against the respective state.

4. Conclusions

The analysis of the texts of the constitutions of the countries - the former republics of the Soviet Union - made it possible to identify two approaches reflecting the catalog of parliament's powers in the field of state security.

The first approach includes the exclusive parliament's powers in the field of security, which are expressed in the form of:

- issuing a war decree (Armenia, Latvia, Kazakhstan, Kyrgyzstan);
- making decisions on the conclusion of peace (Armenia, Kazakhstan, Kyrgyzstan);
- introducing the emergency and martial law (Kyrgyzstan, Lithuania (martial law), Moldova, Estonia);
- using the armed forces outside the state (Kazakhstan, Kyrgyzstan, Lithuania, Estonia).

The second approach is represented by the parliament's powers expressed in the form of approval of the presidential decrees on:

- introducing emergency (Azerbaijan, Belarus, Lithuania, Russia, Tajikistan, Uzbekistan, Ukraine), as well as Georgia and Kyrgyzstan (in case of protection against armed aggression);
- introducing martial law (Azerbaijan; Belarus, Georgia, Kyrgyzstan and Lithuania (in case of protection against armed aggression); Russia; Tajikistan; Ukraine);
- using armed forces outside the country (Azerbaijan; Russia; Tajikistan; Ukraine);
- declaring war (Azerbaijan; Uzbekistan (only in case of an attack on a republic));
- concluding peace (Azerbaijan; Georgia).

Note that two post-Soviet countries - Kyrgyzstan and Lithuania - have included in their constitutions the parliament's powers, covering both the first and second approaches. At the same time, the Constitution of Turkmenistan did not link the field of state security with the parliament's powers.

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