

THE LEGISLATIVE BODIES IN THE LAW - MAKING PROCESS

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The legislative bodies and the law-making process: introduction

General characteristic of the law-making process. Law-making process is a form of the state activity intended on the creation (or revision) of the legal norms. The term 'law' has two meanings. It may mean positive law (legislation, or acts adopted by the governmental bodies) or natural law (Recht, Droit). For the aim of this paper the law will be used in the first meaning. Moreover, the term 'law' will be used in a narrow sense as acts of legislative bodies, statutes. At the same time the research of the law-making process will not be full without examination of the influence of the natural law on the law-making process.

The law-making is a process during which an idea of a law is transformed into a law. Law has different forms (sources) – acts of the legislative bodies (statutes), acts of the executive bodies (they have different names – orders, instructions, or other), at last judicial precedents, legal customs. Law-making of each source of law has distinct features. For example, law-making of the legal custom differs from the law-making of the legislative acts. A legal custom is formed by the recurrence of a norm during long period of time. The state does not play the leading role in this process as it only approves the created norm.

The law-making of the acts of governmental bodies is more organized, not so spontaneous as the law-making of the legal customs. The law-making process consists of several stages. As a rule, an act is prepared, scrutinized, adopted and published. The first stage includes preparing of the first version of a project (bill) in which an idea on law is realized. Individual, group of individuals, associations but usual a governmental body, may do this work. A governmental body may take official decision concerning elaboration of a project, give the task to its internal structures (committees, departments) to write a bill, make previous analysis of the public interests, of necessity in a law, the correspondence of a possible act to the current legislation and to the constitution. The project is discussed by experts, associations, interesting groups. The working commission analyzes the results of the discussion and changes the text. The next stage consists of scrutiny of a project in a governmental body. The process of examination differs in the state bodies. In the executive bodies the process is not strictly regulated (more flexible), while in the legislative bodies the process is regulated partly by the

Constitutions, partly by the bodies itself. Acts may be adopted by collective body (a legislative body, Government) or by individual official - the head of the state, or a minister. The last stage of the law-making process – the publication of an act in official editions, information about it in the mass media - on radio, in the newspapers or on TV. In many countries unpublicized act does not have a legal force.

This law-making process is a complex process. A state plays the leading role in it. It gives to the norms the force of law and supports their enforcement by force of its bodies. An adopted act is considered as an act of the state. A state may regulate law-making process, plan it and thus influence on the development of the law. But its activity must be legal and is not arbitrary. The law-making process as experiments in the adoption of laws does not satisfy a society. In the law-making process the interest of the society and the interest of the state meets. Society needs stable legal system, reflected changing demands and interests of the society. Fulfilling this task the law-making process must be based on democracy and science in order to reflect and determine the development of the society. And the society is interested in the influence on the governmental bodies in law-making and in its control. The mistakes of the state in the law-making process have negative results for the development of the society; otherwise the correct direction of the law-making process has positive result for the development of the state. It is very important in the period of social crisis. To some extent the indicator of the effectiveness of the law-making process is the law enforcement. The law-making establishes the model of the behavior – the legal norm but the changing society often fills it with new content. Law enforcement demonstrates whether a new norm corresponds to the relations.

The greater part of the law-making process is a political process and in principal cannot be regulated by law. The legal scholars may formulate the main principles of this process¹ but it is important if such principle may be enforced in practice. The matter is that these principles are constitutional principles of the modern state. These principles are binding for the state and ensure the rights of the society, its groups and individual. The modern constitutions recognize and determine the state as the social, rule-of-law state; democratic based on the principle of the separation of powers. In fact this

principles determine the place of the legislative bodies in the law-making process and the character of the law-making process.

Laws as the main source of the national legal systems. In present time laws (acts of legislative bodies, statutes) are considered as the main source of almost all national legal systems. The practice of countries with different legal traditions shows the increase in the number of acts of the legislative bodies.² Laws form the basis of the modern legal system that is why the elaboration of these acts is important for the state, the society, and the social and political groups. Laws have superior (after Constitution) legal force.

The reason of the strengthening of the position of the acts of the legislative bodies is in democratic character of the procedure of adoption. In acts of the legislative bodies the people's will is transferred into the will of the state. They are the result of a certain political compromise of different social and political interests. For the reaching of a compromise the special legislative process is established. It is open for public, mass media, so it is under social control.

Though the laws are adopted by the legislative body other governmental bodies also take part in this process. The executive and legislative powers take part in the making of a law. The Government introduces the greater part of bills and controls the legislative process to a greater or less degree. The head of the state may sign an act or use the right of veto. The adopted law may be checked for constitutionality by the judicial power. So if a law is in force it means that all state powers agree with its content. The law-making of the legislative acts is controlled by the state to a higher degree than the law-making of other sources.

The legislative bodies – general definition. Legislative bodies have become an integral part of constitutional government. It is a representative governmental body in which the people's will³ is transferred into the will of a state in the form of a law, which has superior (after Constitution) legal force.

As is written in the Constitution of Ireland, “the National Parliament shall be called and known” (art.15). But “there are many interchangeable nouns for parliaments and legislatures. In the English language at least there is no single term that encompasses

both these words. The word “parliament” comes from the British Parliament... Other words are sometimes used: assembly, congress..., Riksdagen and Stortinget in the Scandinavian languages..., Seim in Polish.’⁴ In this book the term “parliament” and “legislature” are used “interchangeably as generic terms for the elected representative body”⁵. In the present research the general term ‘legislative body’ is used. This is conditional term for definition of legislative representative bodies as a rule they have different names in different countries.

The legislative bodies are representative bodies as they express will of people as subject of the sovereignty. As a rule they are elected but also other forms of representation are used. For example, members of some parliaments may be nominated (the President of Italy may nominate as Senators for life citizens, who have brought honor to the Nation through their exceptional merits in social, scientific, artistic and literary fields; Canadian senators are nominated by the governor-general on the recommendation of the Prime-minister). Alternatively they may become members of parliament ex officio (in Russia the heads of the executive and the legislative bodies of the members of Russian Federation are ex officio members of the Council of Federation); or by inheritance some members of the House of Lords of the British Parliament).

The legislative power may be limited (French Parliament, the Congress of the USA) or not (British Parliament). In Great Britain the principle of sovereignty of parliament is recognized as the main principle of the constitutional law. According to it the parliament has law-making powers without limitation. The limit is the practical enforcement of laws. As it was written the English parliament was able to adopt laws which forbided to fume on the streets of Paris – but the question was in the enforcement of the law. Really British parliament has adopted laws for Commonwealth and it acts have had extraterritorial effect. But with years this power was limited – from Westminster Act 1931 till the modern European laws have priority over acts of British powers and division of powers between British parliament and the new parliaments of Scotland and Yales. But still the Parliament may adopt as acts of general character (as Bill of Rights) and of more concrete character (as Private acts).

The legislative bodies fulfil other functions except the legislative one (for example, the function of control over the executive power). Among other functions of a legislative body the legislative function may be strong or weak. It depends from the form of the government and at least the relation of the legislative and executive powers based on the principle of the separation of powers. Some authors divide the legislative bodies on active, reactive, marginal, minimal depending on active or passive (in fact decorative) role of the legislative body.⁶

The law-making process begins out of the legislative bodies. A bill passes a long way and is changed several times before introducing into the legislative body. The question is what part is more important for the future of bill – pre-legislative or that is take part in the legislative body.

In present important role plays the bodies of the constitutional control (ordinary courts or specialized courts). They are called ‘negative legislator’. The increasing role of the constitutional review means the superiority of the Constitution over acts of the legislative bodies.

Literature on the subject of the research. In the legal literature the problem of the law-making is one of the less examined. It is possible to distinguish to books published in the USA.⁷ The most fundamental book on this subject written by of professor M.Zander “Law-making process”⁸ is devoted to the analysis of the law-making process in Great Britain. The process of making of statutes is analyzed in the works of professor Bennion – former draftsmen⁹.

The subject of the present research is the analysis of the influence of the constitutional principles on the law-making process and on the role of the legislative bodies in it.

The problem of the legislative process is more examined. There are publications of the legislative process in national parliaments.¹⁰ In this work the comparative analysis of the legislative process and its stages is made.

As for the constitutional review – in present legal systems this is the most important element. It is one of the discussible subjects in the literature.¹¹ As a rule it is examined as a specialized court. In this work the Constitutional courts are examined as the bodies

which put a point in the law-making process as a balance to the legislative body, as ‘negative legislatures’.

1. Law-making in a constitutional state

Law-making and the principle of the separation of powers

The principle of the separation of powers recognized by modern constitutional states determines the mechanism of the law-making and the place of the legislative bodies in it. The principle divides the state powers into three branches - the legislative, executive and judicial powers. The legislative power is vested in the legislative bodies. This principle singles out the representative bodies and empowers them to adopt laws.

The place of a legislative body in the law-making process depends from the character of the principle of separation of powers recognized in a country. The principle of the separation of power has specific features in countries. It may have firm form or flexible form.

The firm form is typical for the USA. Analyzing the practice of that time the ‘fathers – founders’ of the American constitution found that a legislative body had dominated position in the republics and it was necessary to limit its powers and balanced its activity as a governmental body on behalf of people could establish a tyranny.¹² The Congress was examined as a possible threat of a democracy, as a possible tyranny.

According to this model the main task of the representative body is to adopt laws. The system of the governmental bodies is organized so that the main task of the Congress is to make laws. At the same time each governmental branch has powers to balance other one. The President may recommend to the Congress to adopt legislative measures and control the law-enforcement, has the right of veto. For balancing the legislative body should be divided in two chambers. The division of the legislative body was a mean against possible tyranny. The legislative body has balanced structure, was able to reflect social changes (as the House of Representatives is elected every two year, while senate – 6 years (1/3 are reelected every 2 years), secured stability and continuity.

This position has been realized in the Constitution of the USA. In the result the Congress has been able to keep strong positions in the law-making process. It is separated from the executive power and the last has to find different (as a rule political) channels for contacts with the Congress in the law-making process.

In the countries in which the principle of the separation of powers was recognized in more flexible forms (in countries of parliamentary Europe) the legislative body has been not able to keep the leading position in the law-making process. The executive body is not separated from the legislative one as the members of the Government may be the members as a rule of the lower chamber of the legislative body. In the result the legislative activity of the parliaments has become under control of the Government. The last one has a chance to coordinate the law-making through the members of the political fraction in the legislative body.

Law-making of the executive bodies. If the powers are divided between the governmental bodies and the legislative power is vested in the legislative bodies the question is whether the executive bodies may adopt laws. In principle many scholars from different countries agree that the law-making of the executive bodies contradicts to the principle of the separation of powers. But with the increasing of the law-making of the executive bodies in practice the scholars more and more began to justify this process. The acts of the executive bodies are adopted in a quick and informal manner and that pragmatic reason becomes important for modern complex and constantly changing society.

Many Constitutions permit parliaments to delegate the legislative powers to the executive bodies (first of all to the Government). The Constitutions demand that the authorization laws shall be definite, define the duration of the authorization (the Constitutions of Portugal, Spain).

The conception of delegation powers is recognized in many countries. In Great Britain according to the principle of the parliamentary sovereignty all legislative powers are concentrated in the parliament. The executive bodies may adopt laws only on the basis of the powers delegated by the parliament. The problem is that it is very difficult to find a board between the legislation and delegated acts. Parliament may delegate powers on any question as well as adopt act on any question. In the result the acts of

Parliament may be full of details while principal questions may be regulated by the executive bodies.

Such practice is known for the USA where the Congress also delegates the powers to the executive bodies. In contrast to the British Parliament the powers of the Congress are limited by the Constitution.

The delegated legislation is considered as subordinate legislation as it must correspond to the laws of parliament; the terms are interpreted the same as the terms of the act according to which the powers were delegated; the abolishment of the act of parliament leads to the abolishment of all delegated acts adopted according to its provisions.

The legislative bodies control the delegated legislation. There are different forms of control. The British Parliament may exercise the previous and posterior control. For that purpose it organized the Committee for Control over Delegated Legislation which previously examined these acts from the point of view of correspondence to parliamentary legislation. The committee decides to present or not an act to the chamber. The delegated act may be adopted by the method of the negative or positive resolution. A chamber may examine a statutory act during 40 days. If there is no question it comes into force. In Great Britain in 1986 the number of pages of statute book – 2.847 while pages of statutory instruments – 7.219.¹³

The courts realize the posterior control. Examining concrete cases the court may check the correspondence of a delegated act to the act according to which it was made. In the result the court may announce an act *ultra vires* – adopted over the powers delegated by the parliament to the executive body.

The conception of delegated legislation of the executive bodies has been adopted in other common law countries.

It is recognized in the USA. The control over delegated legislation in the USA was called the legislative veto. It was born in 1932. According to it every chamber was able during 60 days to find invalid any act of the president adopted according to the delegated powers. The resolution of a chamber needs not a confirmation by the president. The legislative veto had been very popular during almost a half of the century but at the beginning of the 80-s the Supreme Court found unconstitutional laws included

the legislative veto. Legislative veto was found as contrary to the principle of the division of powers.

The countries of roman-german traditions consider that the executive bodies have law-making powers as the legislative body. But these acts must correspond to the acts of parliament. Sometimes the division of powers between the legislative and executive bodies is not established and the acts have the same force as acts of parliament.

The Government may also ask the Parliament to authorize it for a limited period regulate through ordinances measures that normally fall within the domain of law. In Latvia the Government may adopt acts between the sessions of the Seim but they must be approved in three days from the beginning of the session; otherwise these acts are nullified (art.81 of the Constitution). The Constitution of the Portugal (art.168) enumerates the legislative powers, which may be delegated to the government.

In Italy the Government may not issue decree having the force of the ordinary laws without delegated powers. When in cases necessity and urgency the Government issues on its own responsibility provisional measures having the force of law, it must on the same day submit them for conversion onto law to the Chambers which even if they have been dissolved are expressly summoned for that purpose and must meet within five days. The decrees lose effect as of the date of issue if they are not converted into law within sixty days of their publication.

In Germany the federal President may at the request of the federal Government and with the consent of the Bundesrat declare a state of legislative emergency with respect to a bill if the Bundestag rejects the bill although the federal Government has declared it to be urgent. If the Bundestag rejects the bill it shall be deemed to have become a law to the extent that the Bundesrat consents to it. The state of the legislative emergency continues during six months.

The French Constitution defines the domain of laws and separates it from executive regulation (art.34). The French Constitution 1958 divides powers between the legislative and executive bodies. It is the result of the strengthening of the executive power, which is character feature of this Constitution. The Constitution establishes the subject regulated by the parliamentary acts and subjects about which the legislative body adopts only frameworks. The subjects of legislation which are not in the sphere of

the law-making has 'reglamentary' character. The Government has the right to stop the examination of a bill because according to its opinion such a bill has a character of a 'reglamentary' and is within the powers of the executive power (in practice the Council of Ministers did not use this right). The Government may change an act adopted by the parliament but which according to the Government is within his powers by a decree but with consent of the Constitutional Council. So the Constitutional council checks the division between the powers of the legislative body and the executive body in the sphere of law-making which according to the constitution has double character – legislative and 'reglamentary'.

The delegated acts are adopted on the basis of the acts of the parliament; i.e. parliament by means of a law takes decision to delegate concrete powers for some time. The acts are called ordinances. They are adopted by the Council of Ministers with the conclusion of the Council of the State and signed by the President. The ordinances are confirmed by the parliament. The term during which the Council of Ministers must present an ordinance to the parliament is established by the parliament. If the Council of Ministers does not present an ordinance in time it is nullified. If the parliament confirms the ordinance it becomes a law and the Council of the State cannot control it while it is possible to appeal to the Constitutional council.

The specialists from different countries consider that the strengthening of the law-making by the executive bodies is an attempt to escape long parliamentary procedures during which the content of the law may be changed. But the legislative bodies may influence on the legislative process and to make it quicker. At the same time the parliamentary procedures are open for public and under control of the public opinion.

In present it is possible to conclude the increase of the law-making of the executive bodies. Such practice as a rule has legal character as the modern Constitutions adopted in the second half of the century permit as a rule the delegation of legislation. The law-making of the executive bodies changes traditional role of the legislative bodies. But still they have a chance to control the process of delegation and the delegated acts. But effectiveness of the control depends from the form of the government. In the parliamentary countries the Government may influence on the legislative body for delegating of the legislative powers and in fact determines the result of the control. In

the presidential republics delegation more depends from the decision of the legislative body.

Law-making and democracy

The constitutional states are considered as democratic. The democracy is based on the principle of the people's sovereignty. It means that the source of the state authority is people. People as social entity form the governmental authority and determine the content of the activity of the governmental bodies, consequently the content of law-making and the activity of the legislative bodies. State decision must be legitimate, supported by people. The legislative body as representative body to a greater degree corresponds to the demands of the democracy. The representative bodies fulfil this task as step by step through different procedures different political forces come to an agreement as the state must functioning in the interest of all people. It creates conditions for expressing of opinion. Individuals may unit in associations, political parties for collective expression of opinions.

Expressing the will of people democratic government first of all express the opinions of citizens of a state - individuals who have political and legal links with the state. Citizens have political rights which are necessary for participation in the government. Though this rule is changing as a step by step foreigners receive rights to take part in the government but as a rule on the local level.

The democratic government secures the correlation of individual and collective interests, interest of the majority and minority. This democratic position is especially important for the beginning of the law-making, when an idea of law is expressed in the conception and previous version of a project.

Individual (group of individuals) projects. The law-making process may be initiated by an individual. The democracy means that an individual consciously takes decision concerning the state power. For that purpose an individual must have enough information, be able to analyze it and express opinion. Individuals (or group of individuals) need to pass a long way for defense of their bills. As a rule they have to appeal to the governmental body with suggestion to adopt an act. In democratic society

people may use mass media, hold meetings, and use other forms of the expression and explaining their idea. In practice this is a long way and results may be not achieved. Such actions may have effect on the level of the local government. On the level of the state people initiative may have results if a group of people have the right of the legislative initiative and thus a prepared act may be introduced into the parliament. Another example if a group of people may require to hold a referendum as a referendum is a form of the direct democracy and an act may be adopted on referendum.

Political parties and lobbies. As a rule the political parties initiate the bills. Political parties play the most important role in the law-making process. They elaborate laws while they are not in power, thus the law-making process begins out of the state. The legislative plans are necessary for transformation of political tasks into regulative system of law. The political party working in the state mechanism (for example in the Government, in the Parliament) influences on the state law-making process.

Another groups which are not so numerous in membership but numerous in numbers and may be very influence – lobby or interesting groups or pressure groups. They reflect more particular interests but nevertheless they influence on the law-making process. They may be private corporations (for example, cigarette lobby is considered one of the strong), small groups struggle for their interests. Many aspects of the activity of lobby are hidden for public but nevertheless several states adopted acts for regulation of the activity of lobby and control over its activity (Canada and the USA). In fact it depends from the social structure of the society, of the social groups, how they recognize their interests, able to express them in law.

Governmental bodies as initiators of law-making. The governmental bodies (Government, head of a state, committees, ministries, courts and legislative bodies) may initiate a bill. In such a case the result depends from the relations of the governmental bodies, i.e. from the form of the government.

Referendum v. Legislative body. The principle of people sovereignty permits people to take part in the government through the government or directly. So the law-making may be realized by the legislative representative bodies or by people directly by referendum. It is necessary to note that referendum may be held by the decision of the

governmental body and its procedure is regulated by the legislative body. The countries demonstrate different practice.

The legislative body and referendum – two forms of the adoption of laws in the result of the direct democracy and representative democracy. As a rule referendum is held only for the adoption of the most principal for the society acts (divorce in Italy, rights of women in Sweden). The states demonstrate different models of combination of these two forms.

Referendum may be held before the adoption of the act by the legislative body or after. In such a matter the referendum plays a role of ratification of an act adopted by the legislative body. For example, in Italy (art.138 of the Constitution) the referendum on the review of the Constitution, constitutional laws may be held by the demand of 1/5 of members of any chamber of the parliament or 500.000 electors or 5 district councils during three months (there are limitations on this provision if an act is adopted by 2/3 of the members of each chamber). 500000 of electors or 5 district councils may demand to hold referendum for repeal of an act (in whole or in part) except an acts of taxes, budget, amnesty, powers on ratification of international treaties. An act adopted by the parliament detailed this constitutional provision and gave it limited interpretation. Referendum on repealing of an act cannot be held during a year after dissolution of a chamber, during 6 months after elections. A suggestion for a referendum may be introduced only from January 1 till September 30. In Italy several referendum were held (for repealing of an act on divorcee, on financing of the political parties, act on the support of public order, on life imprisonment, on free keeping of arms, on abortion) and all acts were kept in force. Such referendum may be held for adoption of an act prepared by the executive power or group of electors. The Constitutional court of Italy may decline a referendum if it finds it contradicted to the Constitution. The Constitutional court stands for cooperation of the representative and direct democracy.

Referendum was very popular in France during the government of De Gaulle. In France the Constitution permits to the President to hold referendums and thus to go around of the parliament. De Gaulle connected the results of referendum with support of his person. In the result the referendum had the character of the plebistsit. The other

presidents in general did not support this practice and some of them suggest changing the corresponding article of the Constitution.

Referendum may be held in the countries with the different political regimes. Well known referendum in totalitarian Spain, Italy, and Chilly. They were held in the political conditions when the representative bodies had no powers. At the same time the referendum may be progressive. In European countries referendum of the basic law – the constitutions – helped to pass to the democratic government (referendum in Greece in 1973 and 1974).

Referendum as law-making mechanism differed from the legislative body in many aspects. Though in referendum all electors may take part in the law-making process they are able to say only “yes” or “no”. They are not able to influence on the text of a bill, to change different provisions. They have to agree with the whole text or reject it. An initiator may be a state. The legislative body has a chance to analyze a bill as from the point of view of general conception as detail provisions and in the result to change the text. Referendum may be consultative for the legislative body, may be final and the act have the same force as the act of the legislative body, act may change an act of the legislature. As a rule on referendum adopts the Basic Law- the Constitution or it is amended or revised. For example, in Italy a referendum was held for decision of the question of divorce. The act adopted on the referendum may have more legal force than acts adopted by the legislative bodies. For example in France the Constitutional Council announced that it had no powers to check constitutionality of an act adopted on referendum.

Law-making in a ‘rule-of-law’ state

The conception of ‘rule-of law’ state has different versions – ‘Rechtstaat,’ ‘Etat de droit’ and ‘rule of law’. But all versions have the same aim – to bind the governmental activity by a law. Law prevents governmental activity from arbitrary actions. At the same time it is possible to establish legal control over government actions and decisions.

This principle is important for establishing of the law-making process. It must be based on legal backgrounds. The term “law” in this aspect may be understand in general

sense as “natural law”. This general conception determines the content of the law-making process. For example, “rule-of-law” state is based on human rights and freedoms. In Russian Constitution 1993 the Human Rights are considered of superior value, determine the content of the decisions and actions of the state bodies and have direct force. All these provisions influence on the law-making.

The principle of the “rule-of-law” state determines the activity of the governmental bodies for securing of the human rights, justice. Individual must be quarantined in relations with the state. This principal position determines the content of the legislation. All social groups take part in the law-making process must take into account this position otherwise acts adopted in the results of their activity may be nullified by constitutional review bodies.

The “rule-of-law” state means also due process of the decision-making. The law determines the law-making process free from arbitrary activity of individuals and social groups. The law is quarantine of stability. Law determines continuity in the development and the law-making process is realized in these frameworks.

Law-making in a social state

The conception of the social state adopted by the modern constitutional states reflects a changing role of a state which interfere in the affairs of the society. Modern state must secure different social interest, secure the social equality, establish social insurance.

As a rule the social undefended groups (invalid, old people or children) are not able to defend themselves and need additional help of the state.

The conception of the social state adopted as constitutional principle make the law-making process to be oriented not only on the active social and political groups but on social groups which need aid as unable to defend their interests.

Law-making in federal state

The federal system makes the process of law-making more complex. The Constitutions divide powers between federal government and the members of federation. Each level of the governmental power act in the framework described by the Constitution.

At the same time the problem of uniformity of legislation as a rule in different spheres of law. This depends from the model of the federal state and the division of the powers.

One of the ways of the elaboration of the uniformity is the model and uniform laws.

The uniform law is elaborated and adopted in different members of federation.

Modal law is elaborated as a model for the similar laws of the members of federation.

2. Pre-legislative stage of the law-making

Law-making in the countries with different forms of government. The law-making depends from the form of the government, i.e. by organization of the system of the governmental bodies. The form of the government determines the place of the legislative body in the state mechanism and in the relations with the executive and judicial bodies. In present the constitutional states demonstrate several forms of the government – parliamentary, presidential and half-presidential.

a) Pre-legislative stage in the parliamentary countries

The parliamentary government has two forms – the parliamentary republic and the constitutional monarchy. In the countries with the republican form of the government the parliament de jure is in the center of the governmental mechanism. But in fact the Government plays the central role. First of all because the government controls the political groups in the parliament (political parties groups, caucasus). The deputies submit to the political discipline and support of the government.

The first stage of the law-making process is concentrated in the executive bodies – ministries. Pre-parliamentary stage of the law-making process is the most politicized one. The struggle of the political interest of different social groups takes place on this stage. At the same time this stage is close for public. (For example, in Great Britain it is forbidden to publish a bill before introducing into the parliament). This stage is not regulated by law. Law regulates it only to such extent as it determines the powers of the different governmental bodies.

In Great Britain the Cabinet office asks Departments to send in lists of the bills likely to be required for introducing in the next session, including the observation of the urgent bills. Ministers send possible bills to the Government. The Legislative Committee consults with the leaders of both houses and the chief whip. After discussion the Legislative Committee elaborates the list of the bills which may be introduced next session (and even in which house it will be introduced).

The bills are included into the Cabinet plan. Government suggests the legislative program, which becomes the main legislative program of the parliament. Sometimes a bill is preceded by a Green or a White Paper setting out the government 's plans in advance. Green paper was introduced by Labor Government in 1967 while the White paper earlier. White paper announces firm governmental policy for implementation while Green papers announce tentative proposals for discussion.

The bills supported by the Government are called Governmental bills. Such bills have more real chances to become a law. The practice of Governmental bills is widely spread. In Germany the Bundesrat introduces the bills through the Government. In Spain the bills are previously discussed by the Government.

In Sweden ministers organize commissions on the elaborating of the legislation. The idea may be initiated by the Minister, by the Government, members of parliament or government bodies which improve the government the necessity in such a law. As a rule there are hundred commissions working out the possible bills. The members of the parliament may be the members of such commissions. Judges, officials or representatives of the associations also may be members. The commission prepares a bill and analytic paper in which the aim is explained and the current legislation is analyzed. The reports of the commissions are published in official edition. Before

publication the report is presented to the minister. The minister invites associations, trade-unions, specialists to take part in the discussion. A department of a court of appeal is busy only with the law-making problems. Different social and governmental opinions may be also publicated. Then the officials of the ministry elaborate new bill and prepare memorandum in the form of the speech of the Minister on the Meeting of the Government. The documents are presented to the parliament as governmental bill or presented to the Legislative Council consisted from the judges of the Supreme court and Supreme Administrative court. The Council examines it and presents the recommendation to the minister. Ministry again examines an act and send it to the parliament. Such procedure of preparation of bill is long and the Government must be stability for expressing its position. In present the minisries organize small working groups instead the commissions. This form is more easy but is criticized for lobbies.

In some countries (Germany, to some extent Canada) the leading role on the pre-parliamentary stage plays the Ministry of Justice. In Germany it performs an examining and controlling role for all Federal draft laws.

At the same time the state is interested in stability of legislation, in legal continuity. For that purpose different commissions are organized (Royal Commissions, Department and Inter-Department Committees, Law Reform Commissions). They may be ad hoc and standing. In Great Britain analysis has shown that as any as a quarter to a third of all statutes that could have been preceded by the report of an independent advisory committee or commission were the result of the report.¹⁴ They analyze the current legislation from point of view of the revision. The commissions may provide the legislative reform. For example, in Great Britain the Law Commission was organized in the middle of the 60s for revision of the current legislation. The commission for Scotland was organized as the legal system has specific. The commission was organized by the parliament but worked under the conduct of the Government. The Commission works with interesting groups and its bill is sent to the corresponding bodies and departments.

In the countries in which the model of the Council of the State is used this body plays important role in the law-making. In Belgium the Council of the State has the legislative department. The members of the department are layers, professors of law and

assessors. It checks the legality of the preparing acts by request of the Government or the parliament. The Government must ask for the conclusion of the State Council on some questions and in other cases it is not obliged to do it. But the act adopted without the conclusion of the Council of State may be later nullified. The Legislative department could seem to have strong powers and to some extent make the role of the legislative body lower. But the matter is that its decisions have the character of recommendation. The department makes the work concerning the legislative technique; it also control current legislation from the point of the necessity to review old legislation and legislation which does not work. The Legislative department coordinates the law-making of the Government and of the parliament and coordinates the acts adopted by the parliament with the acts adopted (or should be adopted) by the executive bodies. The similiar procedure is seen in other countries. For example, in the Nitherlands the bill are written in the ministeries by the draftsmen who given instructions. The prepared bills are discussed on the meeting of the Council of Ministers. Bills approved by the Council of Ministers are sent to the Council of the State

The analysis of the law-making process on the pre-parliamentary stage shows that it is controlled by the ministries and officials. The final decision and the future of the bill is decided by the Government and the governmental bodies elaborate bills. Who else will take part in the dicsussion is decided also by a minister. The countries demonstrate different forms but general mechanism is the same.

b/ pre-legislative stage in the presidential and half-presidential countries

Pre-legislative stage in the presidential republics has distinct features. These countries are based on firm principle of the separation of powers. The legislative power is divide from the executive and mainly fulfil law-making task. There is no Government in a sense of parliamentary countries. The President is the head of the state and the head of the government which is separated from the legislative body. In fact such system to a greater degree permits to keep strong position of a legislative body. For example, the Congress of the USA actively works in preparaing of legislation. This work is done in the committees. In the result there is another correlation of the pre-legislative and

legislative stage of the law-making. The fact that the Congress plays important role is confirmed by activity of lobbies. As a rule lobbies try to influence on the strong decision-making bodies. In the parliamentary countries they concentrate activity in the ministries and departments. Meanwhile the general tendency of the strengthening of the executive power also takes place. It expresses in the strengthening of the role of the President in the law-making. The President has no right of the legislative initiative. The president does not introduce a bill. On behalf of the president this work is done by congressmen with whom the president has good contacts. The Presidents use the right to send messages to the Congress. Sometimes bills are applied to the message. For the president it is important to be supported by the political parties represented in the Congress.

The President has enough powers to take part in the law-making process.

The President has enough channels for the contacts with the Congress and resolving of conflicts. He has the assistance for contacts with the Congress and two deputies for contacts with the House of Representative and the senate. The control is realized by the representative of the President in the White House. The representative contacts with the officials of the Congress, with the committees. Several assistances for contacts with the contracts are busy with the examination of the bills. Other departments of the White House also have the officials for contacts with the Congress.

The Presidents use executive privileges. The President is able to control information process and refuses to present to the committees of the Congress information for example in the interests of the state security. The Congress supported idea that it is able to ask for any information for effective law-making.

White House has enough powers to control the legislative process in the Congress.

At the same time the executive branch of the power may influence on the law-making process. The real participation of the president in the law-making is possible only by the political channels. The realtions of the President and Congress in law-making chnge. If several years ago the scholars spoke about “Imperial Presidency”¹⁵ now they speak about coalition of the executive and legislative branches.¹⁶

Another models of the pre-legislative stage of the law-making demonstrate countries of half-presidential form. In France it is possible to watch Governmental bills which are

the main subject of the examination by the parliament. They may be introduced by the Prime-Minister who has the right of the legislative initiative. At the same time the bills may be introduced by the deputies and the parliament prepares bills. The Constitution of France 1958 establishes that the bills are introduced into the parliament only after debates in the Council of Ministers and conclusion of the Council of the State (art.42).

In contrast with the presidential republic in the half-presidential republic the head of the state is not the head of the Government. The French Constitution gives the President a right to hold a referendum and thus goes round the parliament. It is obvious that acts adopted in the result of the direct democracy and in the result of the indirect democracy have different legal force and legitimacy.

The distinct feature of the French model is the activity of the Council of the State as a consultative body of the government on the stage of the lawmaking. The Council of the State has been organized by Napoleon in 1799 and High Qualification Commission in 1948. Both bodies control all bills introduced into the parliament and give conclusions and suggest reforms of legislation.

Russia as the half-presidential republic demonstrates another model. The pre-legislative stage to some degree is concentrated in the Federal Assembly as many bills are introduced by the deputies. The President and the Government have law-making powers and are able to adopt acts for realization of their tasks. These acts are controlled by the Constitutional court.

Legal drafting. Independently from the form of the government the law-making process in all countries has similar features. They concern the technique of the elaboration of bills. Legislative technique plays an important role in the law-making. In present in many countries specialists – legislative draftsmen, write bills. They are officials and know the art of the writing of bills. In Great Britain the office of the Parliamentary Counsel on treasury writes the bills. The members of the office (about 28) are barristers or solicitors, i.e. have legal education. They work in contact with public servants from the executive departments. They are instructed by them. In other countries draftsmen are officials without special juridical education. In Canada bills are scrutinized in the Office of the Law Clerk and Parliamentary Counsel. Draftsmen work in contact with the sponsor of bill. Their relations are not regulated by law. At the same

time a draftsman must be able to explain that for example a concrete idea cannot be realized as it contradicts to current legislation.

The draftsman must analyze consequence of the adoption of an act for the whole legal system., what changes should be done, what acts should be abolished. On this stage it is easier to choose a better form of law – the law (act of the parliament) or it is enough to adopt an act of the executive body. Some questions are so complex that could be resolved by adoption of several acts – act of parliament and acts of the executive bodies detailed the act of parliament.

The drafting is made in different manners .The question is not only in the structure of an act (title, parts, articles, and other elements). There is a difference between drafting in the common –law countries and in civil law countries. The continental lawyers think in general terms of the codes, while common law lawyers think in detailed norms of the judicial precedents. Certain differences of attitude are pervasive. They may be arranged in four groups; the civilian's preference for generality over particularity; his desire to be easily understood as opposed to the common law draftsman's anxiety not to be misunderstood; the common law draftsman's obsession with judicial hostility; the common law unquestioning assumption that legal drafting requires a legal draftsman.¹⁷

Very important element of legal drafting is professional expertise The legislative bodies meet several problems. One group is connected with the writing of the bills, legislative drafting. Another problem – is that the legislature are not specialists in particular spheres and need additional information, help of specialists at least research. Different private institute takes part in legal research and drafting. For example, American Law Institute has been involved in preparation of the Model Penal code; American Bar Foundation. American authors outlines the strengthening of the role of the universities in the field.

3. The law-making in the legislative bodies

The law-making process is the most visible part of the law-making process. It is described in mass media and the society is able to know what is going in the legislative body.

Apart from the previous stages the legislative process is regulated. The legislative body describes all stages. It is sovereign in determination of its internal motions. At the same time the modern Constitutions in contrast with the Constitutions adopted earlier in the century to a greater extent regulate the legislative process. Thus the stages of the law-making process are regulated on a higher level.

A question whether the legislative process may be checked in the constitutional court, i.e. is a bill may be announced unconstitutional because of the violation of the legislative process.

The countries demonstrate the different practice. In the Great Britain the principle of the parliamentary sovereignty is considered as one of the main constitutional principles permits the parliament to determine the legislative process and to change it to the opinion of the deputies. The deputies may establish special procedure for special bills – this is internal problem of the parliament.

In Russia the Constitutional court considers that the members of the legislative process may appeal to the Constitutional court for resolving of the conflicts concerning their competence. At the same time the members of the legislative process must not violate the legislative process regulated by the Constitution.

Another question – is it possible to cite the opinions expressed during the debates of a bill. In some countries it is considered that the parliament is fully expressed its opinion in the text of the act and the users of law must understand the intention of the parliament expressed in the text by the interpretation of it. In other countries the intention of the legislative body may be analyzed by appealing to the debates of a bill, speeches of the different subjects of the legislative process.

The legislative process consisted from several stages, which give to the participants a chance to discuss as the bill in general and in detail.

Introducing of a bill. As a rule the constitutions regulate the subjects of the legislative initiative. In some parliaments the bills may be introduced by the deputies (Great Britain USA, Canada), in other countries – by the Government, the head of the state.

Constitutional practice generally takes the form of the division of the legislative powers between two representative bodies. In the USSR during perestroika the legislative power was vested in the Congress of the people's deputies and bicameral

Supreme Soviet as the standing body. This model was an interim body as the country moved from a one-party political system to political pluralism and the real sovereignty of the people.

At present in Turkmenistan the functions are divided between the Supreme representative body – Halk Maslahati (National Council) – and Medjlis. The Halk Maslahati consists of the President of the republic, deputies of the country, representatives of the local government, the general Prosecutor, the Chairman of the Supreme court, and the Government ministers. It adopts the most important directions of the political development. Mejlis – the elected parliament adopts and amendments to the Constitution. The practice of ‘double representative bodies’ is formed also in other countries (Afganistan, Indonesia).

New tendency is the authorization of the parliamentary structure by the legislative power – committees. In Italy a bill may be sent to the committees for examination and approval. The Chamber requests the return of the bill for its own examination by the demand of the Government or one-tenth of the members of the chamber or one-fifth of the members of the committee. Electoral bills, financial bills and some others cannot be sent to the committee for final approval. In Spain the chambers may delegate to the permanent legislative commission the approval of a bill. In Greece the parliament may conduct its legislative business in sections.

Many parliaments use shortened legislative process for urgent bills. A bill may be declared urgent by the Government (Latvia), the deputies, or party groups (Netherlands). In Poland an urgent bill must be examined by the Senate in 14 days and signed by the president in seven days. The president of Latvia cannot use his veto on an urgent bill adopted by the Seim and must promulgate it in three days.

In the Check Republic the Government may ask the House of Deputies to adopt an Act in three months if it links the Act with a vote of confidence.

Nevertheless the majority of the bills are passed through the traditional stages of the legislative process. The special legislative process is established for financial bills, and for constitutional or organic bills. In Russia federal constitutional laws must be approved by a majority of not less than three-quarters of the total members of the State

Duma and the Federal Council must. The president of Russia cannot use the right of veto and must sign such Acts within fourteen days.

The legislative process is organized as to give opportunity for the deputies to discuss the general conception of a bill and the details of its provisions.

The legislative process begins with the introduction of a bill. It may be introduced by the members of a parliament (Great Britain, Canada, France, Bulgaria, Germany), by the chambers (Spain, Germany), by the head of the state (Lithuania, Hungary, Albania), by groups of people (in Albania – 20 000, in Poland – 100 000, in Italy – 50 000 of the electors), or by the committees (Hungary, Austria, Brazil). In some parliaments the right of legislative initiative is possessed by any Member of Parliament or the Government (Great Britain, USA, Canada).

In Russia the legislative initiative belongs to the President, both chambers, the members of the chambers, the Council of Ministers, the legislatures of the member states of the Russian Federation and also to the Constitutional Court, the Supreme court, or the High Arbitration court on issues within their jurisdiction. In the result sometimes the deputies have to make a choice between alternative bills.

The majority of the Acts adopted by parliaments are introduced by the government. This is the result of the increasing control of parliaments by governments. In Russia the structure is different as most of the bills are introduced by the deputies. In some countries private members bills may be introduced on certain days and according to special procedures.

A bill usually has to be passed by two or three readings and then through a committee stage. The importance of each stage differs in the different parliaments. Thus in Germany the first reading is the most important stage for the future of a bill. The second and the third readings may be held on after another during one day. In the USA the first reading is not important as a bill is sent to the committee which position is ruling.

The committee stage is important in many parliaments. The examination of a bill in a committee gives a chance to analyze the content of a bill to experts.

In the bicameral parliaments the legislative process depends upon the role of the second chamber. Romania is an example of the legislative process in a bicameral

parliament in which the chambers have equal rights. If a chamber declines a bill adopted by the other chamber the bill is returned to the chamber in which it was adopted for fresh consideration. If the second chamber declines it again the bill does not become a law.

In some legislatures the decisions of the upper chamber may be overruled. In Japan if the House of Representatives approves a bill for the second time after its rejection by the House of Councilors it becomes a law. In Austria and Russia the Constitution prescribe another role for the second chamber. In Austria if the Federal Council does not reach a decision within eight weeks the bill is sent to the president. If the Federal Council does not affirm the bill it is returned to the National Council. The latter may agree with the Federal Council or confirm the previous position. The Federal Council is not able to decline the budget legislation and some other legislative measures but constitutional bills, bills concerning the powers of the Lands and the status of the Federal Council need the Federal Council's approval.

In Russia the Federal Council may examine a bill adopted by the State Duma. If the Federal Council adopts the bill or fails to examine it within fourteen days the bill is sent to the President. The Federal Council must examine financial bills, the budget bill and some others. If the Federal Council reject a bill the chambers may set up a conciliatory commission.

Bills adopted by the legislative chambers are generally sent to the Head of State for signing and promulgation. The Heads of State usually have the right of veto --absolute or relative. In practice in some countries the Heads of state have not used the right of veto for a committee period of time (in Great Britain), in some it is used rarely (France), in others it is often used (USA, Russia). In some countries (France, Ireland, Poland, Hungary) the President before signing a bill may ask the Supreme Court (in France – the Constitutional Council) to give an opinion about its constitutionality. The President will not sign an act that is declared unconstitutional by the Supreme Court. Presidents have a choice – to use the veto or to appeal to the court. In Hungary, and Poland the president prefer to use the veto.

In some countries bills may be submitted to a referendum by the Head of State or by the deputies before the signing by the Head of state. In Austria by a decision of the

National Council or on the demand of the majority of the deputies a bill may be submitted to a popular referendum before its authentication by the federal president. In France the President of the Republic on the proposal of the Government during the parliamentary session or on the joint motion of the two assemblies may submit to a referendum any governmental bill dealing with the organization of the governmental authorities, entailing approval of a community agreement, or providing for authorization to ratify a treaty that without being contrary to the constitution might affect the functions of the existing institutions. If the referendum decides in favor of the bill the President promulgates it. Referenda may also be held in Denmark, Latvia.

Acts adopted by the parliament and signed by the head of the state are published and in several days may become law (for example, in Russia in ten days after publication in the official journal). The political struggle is left behind, and political interests are transferred into the will of the state in the form of a statute.

The legislative bodies and the constitutional review

The picture of the law-making process will be not full without analysis of the relations of the legislative bodies with the bodies of the constitutional review. The life of an act depends from the position of these bodies. They are called ‘negative legislature’, i.e. legislature with symbol minus, the body which may takes off the adopted act from current legislation. In the result there is a gap in the law and the legislative body has to check a mistake and adopts an act in accordance with the demands of the constitution.

The USA is one of the first countries in which the constitutional review has been introduced. The Constitution does not empower the Supreme Court to check constitutionality of the acts of the Congress. The Supreme Court empowered itself when in 1806 in the famous case of the *Murphy v. Madison* for the first time realized this function. But with time this principle has been recognized and widely used in the practice.

In Europe the constitutional review has been strengthened in the second half of the century. European countries traditionally believe in the parliament as the best form of the government. Nevertheless the Second World War and totalitarian regimes in the European countries demonstrated that parliaments were not able to defend society from totalitarianism. The constitutional review means the dominance of the constitution over the principle of the superiority of the parliament.

The constitutional review is only one of the forms of the control (head of a state as well as the legislative bodies also fulfil the control functions). All these forms of control are inoperative with each other.

The Constitutional control may be realized by ordinary courts or by specialized courts. The first model is spread in the USA, Canada, Japan, some countries of the Latin America, India, Australia, in the countries of the North of Europe, Switzerland. The first specialized court was created in Austria in 1920, but its history was short. Now specialized courts work in Austria, Germany, Italy, Spain, Portugal, France, and Belgium.

The choice of one or another form of the constitutional control is determined by legal and political tradition, by the relations of the legislative and judicial powers. The Americans made a choice between the legislatures and the courts from the point of view of the defense of human rights. The courts were found better quarantines while the legislative bodies were restricted to interfere into the sphere of human rights. European countries prefer constitutional review in the form of the specialized court. The principle of the supremacy of laws is widely recognized by the European countries and it was difficult to link it with the ordinary courts exercised constitutional review. Ordinary courts are considered as the law enforcement bodies subordinate to law. The Constitutional courts as specialized courts are formed in special manner and the legislative bodies may influence on its membership. In some countries the legislative body determine the membership. In Germany 16 members of the Constitutional court are elected for 12 years by Bundestag and Bundesrat.

In the countries of mixed form of the formation of the body of the constitutional review. In Italy the parliament elects 5 members of the court and 5 by the president and 5 by the Supreme council of magistrate. In Spain the parliament, government and

council of judges nominate the members of the constitutional courts (formally – by the King).

The control may be previous and post-fasctum. The example of the first model is the Constitutional council of France. It may check the law-making process on different stages. The president, Prime Minister, chairman of the house, 60 deputies or 60 senators before promulgation of the law may initiate the control. Unconstitutional act cannot be publicized and come into force. The previous control is established in Ireland and Portugal.

Such form of the control has positive sides as an unconstitutional law will not come into force, be enforced. At the same time if a bill passed control and came into force its constitutionality cannot be checked and it cannot be announced unconstitutional. All subjects of the law-making process must be very careful and appeal to the Constitutional council before an act will be promulgated.

The second form of the control may be realized independent to concrete cases. The control is realized by appeal of those who have a right to appeal for the constitutional control. This right may have a group of deputies in Austria – 1/3 of the deputies of each chamber, in Germany – 1/3 of the deputies of Bundestag, in Spain – 50 deputies of congress and 50 senators), head of the state, government (or its chairman), in federation – to the supreme governmental bodies, in some countries to the citizens. In Austria the court may decide to check the constitutionality of an act by its own initiative.

The constitutional review may be realized in connection with examination of the concrete case. If a court comes to the conclusion that an act, which is going to be used, is contradicted to the Constitution may check the constitutionality.

At the same time in some countries both models are used. In Spain the Constitutional court may exercises previous control and control post factum.

The bodies of the constitutional review have become important element influences on the law-making. Sometimes the position of these bodies is opposite to the position of

the parliament and government and often position of the constitutional review is dominant. . The constitutional courts play important role in the modern legal systems.

The constitutional courts may be more passive (n Sweden, Norway, Japan).

The constitutional court may nullify an act adopted by the representative body. To some aspect it balances the parliamentary activity. s a rule the legislative bodies have no power to overrule the decisions of the constitutional courts. There are some exclusions. For example, in Namibia the decisions of the Supreme court are binding for inferior courts unless they are not repealed by the Supreme court or act of parliament. In Portugal the decision of the Constitutional court about unconstitutionality of an international treaty may be declined by the decision of the National Assembly by the majority of two thirds.

An act may be announced unconstitutional from the day of the decision, from the day of adoption or from a day indicated by the body of constitutional review. This is important for law enforcement practice and revision of the individual decisions taken in accordance with a law announced unconstitutional.

The rise of the role of the law, increase in number of the legislative acts in the result of the legal regulation of new social relations make the constitutional control more active. It secures the unity of the development of the legal system in correspondence to the Constitution as the Basic law.

Conclusion

The legislative bodies are important element of the modern constitutional state. In present almost all countries have the legislative bodies though their role in the governmental mechanism may be different – from formal one to very active and important.

The place of the legislative bodies in the law-making process is determined by two factors. From one side the acts of the legislative bodies are important source of all

national legal systems and they increase in number and influence on the development of the national legal system and society in general. From the other side, the real role of the law-making process depends from political traditions, form of the government. The position of the executive bodies is strengthening in almost all countries. The executive bodies adopt acts on the basis of the delegated powers, may adopt acts in the case of the 'legislative emergence', etc. The executive bodies control the pre-legislative stage of the law-making as the Government is the main initiator of the bills which have a chance to become a law. The legislative process itself is also controlled by the Government especially in the parliamentary countries. In some countries they are called as 'machine for improvement of the decisions of the Government'. In the presidential and even in some half-presidential countries the legislative bodies are more independent from the executive.

In present the law-making process in the legislative bodies are only visible part of iceberg the greater part of it is hidden for public. In great degree it is regulated by the executive bodies, political parties and lobbies. Legislatures expect executive agencies to prepare bills and to lobby; agencies are thought of, rightly or wrongly, as representatives of the public interest against the private interests served by lobbyist from commerce and industry.¹⁸ In fact, this position may characterized the countries with the different form of the government though there are differences in relations of the legislative and executive bodies in the sphere of law-making in the countries with parliamentary form of government, in presidential republic and half-presidential republics.

The role of the legislative bodies in the law-making process is connected with the role of the statutes as the source of law. In present the executive bodies adopt many acts. The legislative bodies have powers to control the law-making of the executive bodies. The level of control depends from the form of the government and from the specific features of the legal families – roman-German and common law. In some countries the legislative bodies exercise more strict control (through parliamentary committees) in other less. But the coordination of the legislative and executive bodies is important for formation uniformity in legal system and support of legal order and legitimacy, realize in practice the conception of "rule-of-law" state.

The law-making process and the role of the legislative bodies in it are based on the constitutional principles of democracy, separation of powers, social state. These principles in present are filled with concrete content in the countries with different legal and political traditions.

Nevertheless it will be wrong to make conclusion about small role of the legislative bodies in the law-making process. The acts of these bodies are adopted according to the most democratic manner and different political and social group may more or less influence on it. This process is open for public and is under control of the public opinion. All these arguments let to keep formally leading position of the legislative bodies in the law-making process.

¹ Bennion outlines the principle of legal effectiveness, procedural legitimacy, timeless, certainty, comprehensibility, acceptability, brevity, debatability, legal compatibility. (Statute law Obscurity and the Drafting Parameters. 5 British Journal of Law and Society, 1978.). These principal concern the drafting process.

² See, for example, Calabresi G. Common Law for the age of statutes. Cambridge (Mass.), 1981; Hurst J. Dealing with statutes. N.Y., 1982; Bennion F. Statute Law. L. 1980.

³ In Spain “The Cortes Generales represent the Spanish people” (art.66 of the Constitution); the General States represent the people of Netherlands (art.50 of the Constitution); the State Assembly of Hungary realizes the right arised from the people’s sovereignty, secures the constitutional background of the society, determines the development of the government (art.19 of the Constitution).

⁴ D.M.Olson. Democratic Legislative Institutions. A comparative view. 1994. P.3-4.

⁵ Ibid. P.3.

⁶ Hague R., Harrop M. Comparative Government and Politics. L. 1987.

⁷ Legislative law and process. Cases and materials. J.Hetzel. 1980

⁸ Zander. M. The Law-making process, 1989

⁹ Bennion F. Statute Law. 1980.

¹⁰ Olson D. The Legislative Process. N.Y. 1980.

¹¹ Cappelletti M. Judicial Review in Contemporary World. Oxford. 1971.

¹² Federalist, N 47-49

¹³ Zander. M. The Law-making process, 1989, p.1.

¹⁴ Ibid.

¹⁵ Schlezinger A. The Imperial Presidency. N.Y. 1974

¹⁶ Peterson M. Legislating Together. Cambridge. 1990.

¹⁷ J.A. Clarence Smith. Legislative Drafting; English and Continental. Statute Law Review. 1980, p.14-2

¹⁸ Legislative law and process. Cases and materials. J.Hetzel. 1980. P,189.

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