

ХАЛЫҚАРАЛЫҚ ТӘЖІРИБЕ INTERNATIONAL PRACTICE МЕЖДУНАРОДНЫЙ ОПЫТ

THE EXPANSION OF PARLIAMENTARY OVERSIGHT TO THE CONSTITUTION OF MONGOLIA AND THE INTRODUCTION OF A PARLIAMENTARY INVESTIGATION AND SCRUTINY INTO THE PARLIAMENT

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Abstract. In this article, the author is attempting to illustrate legislation and its effectiveness on parliamentary scrutiny and oversight of the parliament of Mongolia and make its findings and proposals to improve and sophisticate parliamentary scrutiny. In particular, the adoption of the Parliament's investigative powers to the State Great Hural (The Parliament of Mongolia) is a legal mean to ensure the existence of checks and balances between legislative and executive powers in accordance with the theory of the separation of powers based on the experiences of countries such as the United States, Germany and Japan.

Keywords: State Great Hural, parliamentary investigation and scrutiny, parliamentary oversight, government, minority or opposition.

Аңдатпа. Мақалада автор парламенттің парламенттік бақылауына және парламент мандатына қатысты заңға тәуелділік пен оның тиімділігін бағалайды, парламенттік бақылауды күшейту және жетілдіру жөнінде ұсыныс жасайды. Атап айтқанда, Парламенттің тергеу өкілеттіктерін Мемлекеттік Ұлы Хуралға (Монғолия Парламенті) беру заңнамалық және атқарушы билік арасында тексерістер мен теңдеулердің болуын қамтамасыз етудің заңды негізі болып табылады. Сондай-ақ, АҚШ, Германия және Жапония секілді елдердің тәжірибелері қарастырылады.

Тірек сөздер: парламент, парламенттік қадағалау, парламенттік бақылау, Ұлы Хурал, тексеру және теңгерім, заң шығарушы және атқарушы билік, өкілеттіктерді бөлу, азшылық немесе оппозиция.

Аннотация. В статье автор рассматривает законодательство и его эффективность в отношении парламентского контроля и надзора за парламентом Монголии, делает выводы и вносит предложения по улучшению и совершенствованию парламентского контроля. В частности, наделение Государственного Великого Хурала (Парламента Монголии) парламентскими следственными полномочиями является правовым средством обеспечения системы сдержек и противовесов между законодательной и исполнительной властью в соответствии с теорией разделения властей, основанной на опыте таких стран, как США, Германия и Япония.

Ключевые слова: парламент, парламентский надзор, Великий Хурал, система сдержек и противовесов, законодательные и исполнительные органы власти, распределение полномочий, меньшинство и оппозиция. **JEL code:** C71, D72, K19, K41.

Introduction

About parliamentary oversight

Nowadays, the parliament, which exercises legislative power, makes public and political policies. The government ensures the day-to-day implementation of policies and laws in countries with democracies. Monitoring of legislation, other decisions, policies, and budget implementation adopted by parliament is essential, but the lack of the

control mechanism of the State power will result in the loss of a fair society due to the lack of enforcement of laws and regulations.

Thus, the parliament approves the budget of the country, but it is in the process of how the government will use and spend it, so it is essential to monitor how the spending is fulfilled.

In the parliamentary system, a leading political force, a party wins an overall majority and more seats in the parliament, is

entitled to establish the government. However, the control mechanism is a little more complicated when the government is established within the parliament. This means that parliaments should not be involved in the formation of a government cabinet.

Depending on the parliamentary powers and authority, in many countries, a parliament has legal rights to control and monitor over the government by its standing committees. "For example, the Honourable the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled has 17 special committees, such as finance, civil service and the state financial committees, and they are regularly discussing reports on financial and performance oversight within the respective ministries and specialized departments[1, p.85].

«For the United States» the important part of Congress's legislative process is to oversee the government's action. The Risk Review Committee is set up by Congress, and it is right to call the witnesses and order them to take appropriate action. As of today, the House of Representatives has 22 Standing Committees, and the U.S. Senate has 16 Standing Committees, United 4 Standing Committees, and about 300 Sub-Committees[2]. While Standing Committees of The United States House of Representatives are established by the number of Ministries and monitor the government. In Mongolia, the State Great Hural has 8 Standing Committees, but the Government has a large structure with 16 ministries and 19 ministers.

Parliament inevitably needs to take information from the government to carry out its parliamentary oversight functions. In parliament, there are three legal opportunities available to obtain information from the government. These include:

- 1) Parliamentary debate
- 2) Parliamentary questions and inquiry
- 3) Parliamentary reference.

According to the law on the State Great Hural (Parliament of Mongolia), the parliament exercises its powers of oversight by putting questions and inquiries before governments, hearing government reports. The inquiry is referred to how the decisions

and information of the Mongolian law and other decisions adopted by the Parliament and are addressed to the authorized officials specified in the law and the question is to write on a particular issue affecting the interests of the state and society. In addition, according to the law on the State Great Hural, the Parliaments holds a hearing on a weekly basis particularly on every Friday in the Parliament's plenary session, which regulates the duration of the questions and the time period of inquiry are to be addressed and answered in accordance with the law.

The scrutiny of the opposition in the parliament

In countries having a parliamentary system, a political party that is not in the government has a role in questioning and scrutinising the work of the Government established by the majority party or a coalition of political parties. The opposition should also scrutinize the ruling party's activities. It is impossible to imagine democracy, especially parliamentary rule without the legitimate opposition and its scrutiny. In order to improve the scrutiny of the opposition, it has become a challenge for many countries to refine their legal basis.

For example: "On February 18, 1971, The Constitution of the Free and Hanseatic city of Hamburg included the following two provisions in Article 23a:

1. An integral part of parliamentary procedure is opposition.

2. The opposition has an ongoing commitment to criticize and scrutinise the government actions on key issues and, in some respects, representing the platform of the public" (Lundeejantsan; Ulziisaikhan 2015).

Therefore, the system should be worked by the role of the parliamentary opposition that fails to implement their policies on the basis of the results of parliamentary elections to ensure that the ruling party's policies are right or wrong, and how to implement the policies and plans.

The power of Parliamentary oversight and investigation

According to the Article 33 of the law on the Parliament of Mongolia, the State Great Hural (Parliament) exercises its powers of oversight by means of putting and asking the questions, reports, inquiries,

organizing forums and hearings. In addition, Standing Committees have the right to establish and operate a specialized and mixed working group for the oversight of the State Great Hural, and the subcommittees have the right to exercise the oversight function within the scope of the dispute.

However, in 2008-2011, in the special working group reviews, 83 cases had not been examined, and 35 were not examined completely, and 21 cases were reported to the relevant authorities. As a result of the performance of the Parliament Working Group on Supervision, its effect is not good. Also, the researchers concluded that almost 1 or 30.3 percent of the working group has a weak "outcome"[3, p.235].

Researcher B.Chimid said: "The State Great Hural does not use legal means of" investigations "used in parliaments of other countries (for inquiry and investigation under the Criminal Procedural Code). Only the appointment of working group works on that issue. This is because the legal capacity is weak and the final outcome is less"[4, p.204].

Kh.Temuujin (former Minister of Justice) said: "The government always deceives the parliament. Data is inadequate ... under such circumstances, particular persons live under the pleasant legal environment without adequate control in the name of the government. Therefore, the Parliament should have the power to oversee and scrutinize the government. Then Parliament can control and supervise every step of the government"[5].

The parliamentary investigation and scrutiny (hereinafter referred to as "PIS") referred by many researchers as the most powerful tool in obtaining information and that investigative powers are intended for more in-depth analysis of particular issues, so the parties concerned may hear the dispute with social significance, information is directed at decision-making. To emphasise, the adoption of the PIS in the Parliament may be of paramount importance to improve parliamentary oversight and supervision. The rights in the experiences of foreign countries are recognized in the Constitution, special law, or in the judicial decisions and precedents.

Regulations and comparison of foreign countries

Powers and investigative features of Parliamentary Investigation and Scrutiny (PIS) in the United States of America

In the United States, the Constitution does not mention the right of parliamentary scrutiny, but the judicial precedents permit those rights to the United States Congress. For example, in 1927, "McGrain v. In Daugherty 273 U. 135 and 1927, the parliament recognized the right to investigate the subject matter of a law-making activity as a privileged part of collecting the necessary information to enforce its legislative power.

Subsequently, the 1957 "Watkins v. the United States, 354 U.S. In 178 and 1957, "the resolution did not recognize the rights of the individual in relation to the individual's beliefs, except in the case of law-making purposes in connection with law-making purposes, but in 1959 the decision / Barenblatt v. the United States, 360, U.S. 109 and 1959 / accept the scope of the right in 1927. In practice, legislative power and parliamentary investigations into law enforcement are based on the right of accountability to the parliament[6, p.159].

It should be noted that how the judicial precedents determined the scope of authority and procedure of PIS. Thus, in 1957, let us look at the "Watkins v. In New Hampshire's case: In 1957, "Watkins v. the United States, 354 U.S. 178 and 1957 "on the implementation of PIS powers:

1. The parliament may only exercise its investigative powers without violating the Constitution, and the investigation is ineligible for freedom of speech and association.

2. The question that to be called upon to witness in exercising the power of the PIS should not violate the law.

3. The decision on restricting the implementation of PIS by the Parliament in 1957, when it is possible to determine if the inquiry to be made on the witness is in compliance with the law and whether the law violates the law. Sweezy v. New Hampshire, 3554 U.S. 234.

As noted above, the practice of the US Congress does not contradict the Constitution and violate the fundamental human rights and freedoms, and the

question of the witnesses does not violate other laws.

Germany's PIS powers and investigative features

The adoption of the PIS powers and investigations in Germany may be identified by the concept of Max Weber. According to his theory, "Members of parliament are representatives of peoples who have the right to gather the information. In reality, the government does not provide them full information. The establishment of a PIS Committee entitled to hear witnesses and collecting relevant evidence is an important mechanism to exercise these rights.

It is, however, a mechanism that is more important to minority or opposition of the Parliament, rather than the ruling majority, who have the power or authority to support their government[7]. On this basis, the PIS's power in Germany is based on the rights of the parliamentary minority. In particular: the right to establish a special investigative sub-committee belongs to the opposition party.

In the case of a minority, the issue of establishing a committee is the responsibility of the parliament. It is forbidden to parliament to set up an investigation committee that coincides with the direction of the minority-initiated investigative committee. There is no right to add legislative initiatives to the direction and limitations of the minority initiative. Also, minority rights include the following:

- Do not restrict or deny the request for hearing the evidence or witness;
- While solving the problem, it is mandatory and subordinate to the majority, but there should be explanatory reasons;
- The principle of multi-stakeholding is limited to the principle that only minorities are heard and involved;
- There are principles as a process of obtaining evidence and principle of equality such as a hearing of the witnesses (Temuujin 2013a);

From the above, it is clear that the power of the PIS in Germany and the possibility of implementing it in favour of the opposition or minority, favouring the interests of minorities and the proliferation of minority oversight in parliament. This system has the power to protect the interests of opposition, and on the other

hand, it can be the power of movement for empowering the government actions.

Japan's PIS power and its restrictions

In the Constitution of the Republic of Japan, Article 62 states that "Each Chamber may carry out investigations on the government, and may file a record, call witnesses, or claim"[8, p.17]. In theory, the theoretical argument on whether the existence of a relationship with the judicial, the executive bodies, and prosecutors has the power to determine the extent of the limitations of the PIS. In particular:

The relationship within the judicial power [9, p.302]

The independence of the judiciary is that judges are subject to the law and do not comply with the governing authorities of other state authorities and that judges are free from the influence of other competent state authorities. In this respect, the power of investigation has been adjudicated by the Parliament in investigating and correcting the judicial content of the court decision in connection with the litigation process in which case the dispute has already been resolved. (Takahashi, Ashibe 2008) However, even though the court is in charge of establishing the actual situation of the case, it is deemed feasible to enable such a law to have a different purpose than to the final decision for the case[10, p.82].

The relationship within the prosecutor's power

The prosecutor's activities are considered to be a part of the judicial process that is closely tied to the judiciary and therefore recognizes judicial independence and recognizes its independence. Regarding this, the following PIS activities are not legally acceptable. These include:

- Investigation in order to influence political suspects in the prosecutor's affairs relating to the suspect's suspect or transfer to the court or to refuse to accept the accused
- Investigation about the content of the proceedings directly connected with the case and the content of the prosecution
- Exposure to the PEL activity framework is that investigations (e.g. detention accused during the arrest, the prohibition of meeting with the advocate and detention of suspects

in suspect stages) are illegal (Takahashi, Ashibe 2008).

The relationship within the executive power

Article 5 of the Law on the Parliamentary House of Certificate of Appeals states that the law does not apply to the public service. However, it is limited to the confidentiality that the government is responsible for and subordinate to the Parliament, which is the principle of the Constitution. (Takahashi, Ashibe 2008)

For example, when a civil servant makes a secret assertion in the course of his or her official duties, the Parliament may not require the testimony of a civil servant without any permission of a governing body or a supervisory department. If the authorization is not granted, the Government must clearly state its grounds. If the parliament does not believe this, it may require to hear the government's position on the ground of that testimony or statements of witnesses may have a negative effect on the public interest (Shibutani, Akasaki Masakhiro 2008).

Conclusion and recommendations

According to the theory of the separation of powers, the Fundamental principle of "check and balances" should be existed in within Parliament, the legislative body, and Government, the executive body. Today, in Mongolia, the parliament only puts inquiries and questions, and appoint a working group on urgent issues within the scope of the oversight authority of its legislative power, but it appears to be ineffective. Therefore, it is imperative to introduce an incentive and legal framework for parliament, the representatives of the people, to better enable rights to know the

truth and to scrutinize the executive body. In addition, in the case of a country with a presidential system, which is not limited to countries with a parliamentary system, it also provides a clear legal framework for investigating under parliamentary scrutiny and strengthening parliamentary oversight.

Finally, the following recommendations are proposed in relevance to the legal adoption of Parliamentary Investigation. These include:

- Based on the fact that in the Federal Republic of Germany MPRP, the legal rights to initiate the power of parliamentary investigation exists in a minority of parliament or opposition, the adoption of the parliamentary investigation and its scrutiny should be exercised by a minority or an opposition of the State Great Hural.

- To make amendments to paragraph 1 of Article 33 of the law on the State Great Hural (Parliament of Mongolia): The form of exercising the powers of the Parliamentary scrutiny and supervision is "... exercising investigative powers of the parliament and taking relative actions."

- To state some provisions in the Constitution of Mongolia that "The Parliament may conduct investigations on the government and may file a record, call witnesses, or obtain testimony or statement" on the basis of own experiences and concepts of the Parliament of Mongolia by citing the Constitution of Japan.

- To appropriately define the power of the Parliamentary Investigation and Scrutiny (PIS), the authority, its nature, and the relevant scope.

REFERENCES

1. Lundeejantsan, D., Ulziisaikhan, L. (2015). *Parliamentary procedure*. Ulaanbaatar.
2. Batbaatar, M. (2017, June 3). The American parliament consists of two chambers. *Daily newspaper*.
3. Pagma, A., Gerel, G., Munkhtsetseg, B. (2012). One of the services provided by the taskforce to implement parliamentary oversight functions. *Policy research*, Volume 12.
4. Chimid, B. (2008). *The Constitutional Knowledge*. Ulaanbaatar.
5. Temuujin, Kh. (2013). *The 76 members turn out to be devils*.
6. Tsujimura. (2008). *Comparative constitutional law*. Tokyo.
7. Temuujin, Kh. (2013a). *Powers of the Parliamentary Investigation*. Retrieved from <http://temuujin.niitelch.mn/content/1787.shtml>
8. Amarjargal, P. (2011). *Translation "Constitution of Japan"*. Ulaanbaatar.
9. Takahashi, Ashibe. (2008). *Constitutional law. Fourth Edition*. Tokyo.
10. Shibutani, Akasaki Masakhiro. (2008). *Constitutional Law 2. Public Administration*. 82. Tokyo.

OFFICIAL DOCUMENTS

1. *The Constitution of Mongolia*, 1992.
2. *The Law on the State Great Hural of Mongolia*, 2006. Revised version.