

5. Tyutyumov, I.M. Zakony grazhdanskije s raz"yasneniyami Pravitel'stvuyushchego Senata i kommentariyami russkikh yuristov, izvlechennymi iz nauchnyh i prakticheskikh trudov po grazhdanskomu pravu i sudoproizvodstvu. T. I. // <http://civil.consultant.ru/elib/books/33/page> (accessed 27 March 2018). (In Russian)
6. Voronova, O.N. 2010. Nasledovanie zhilyh pomeshchenij (istoricheskij ocherk). Nasledstvennoe pravo. # 4. S. 9. (In Russian)
7. Nefedov, L.V. 2015. Ponyatie «sosedskoe pravo» v sovetskom zemel'nom zakonodatel'stve. Istoriya gosudarstva i prava. # 5. S. 47-52. (In Russian)
8. Grazhdanskij kodeks Azerbajdzhanskoj respubliki  
[http://vn.taxes.gov.az/2009/uploads/qanun/2011/mecelleler/mulki\\_mecelle\\_rus.pdf](http://vn.taxes.gov.az/2009/uploads/qanun/2011/mecelleler/mulki_mecelle_rus.pdf) (accessed 27 March 2018).
9. Grazhdanskij kodeks Gruzii // [http://minjust.ru/common/img/uploaded/docs/Grazhdanskiy\\_kodeks\\_Gruzii\\_RUS.doc](http://minjust.ru/common/img/uploaded/docs/Grazhdanskiy_kodeks_Gruzii_RUS.doc) (accessed 27 March 2018).
10. Grazhdanskij kodeks Turkmenistana // [http://www.law-tax.biz/download/post\\_ussr/gk\\_turkmenistan.pdf](http://www.law-tax.biz/download/post_ussr/gk_turkmenistan.pdf) (accessed 27 March 2018).
11. Grazhdanskij kodeks Latvijskoj Respubliki // <https://ipravo.info/latvia1/laws4/025-1.htm> (accessed 27 March 2018).
12. Grazhdanskij kodeks Respubliki Moldova // [http://base.spinform.ru/show\\_doc.fwx?rgn=3244](http://base.spinform.ru/show_doc.fwx?rgn=3244) (accessed 27 March 2018).
13. Pasport proekta Federal'nogo zakona № 47538-6 «O vnesenii izmenenij v chasti pervuyu, vtoruyu, tret'yu i chetvertuyu Grazhdanskogo kodeksa Rossijskoj Federacii, a takzhe v otdel'nye zakonodatel'nye akty Rossijskoj Federacii» // SPS «Konsul'tantPlyus», 2018. (In Russian)

## REGULATIONS OF THE CONSTITUTIONAL PROCEEDINGS IN FOREIGN COUNTRIES

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**Abstract.** The authors, subject to the importance of constitutional control in the system of separation of powers in most countries, proposed in this paper a comparative legal analysis of the regulatory legal acts governing constitutional proceedings in European and CIS countries. They concluded on the basis of the study of the legal consolidation of constitutional legal proceedings, the nature of the organizational autonomy of constitutional courts, and the possibility of establishing rules for own constitutional proceedings as one of the guarantees of the independence of the body of constitutional justice that, regardless of how the issue of legal regulation of constitutional proceedings is resolved, this type of process plays an important role in ensuring and protecting fundamental human and civil rights and freedoms and constitutions considered in this paper.

**Keywords:** constitution, constitutional proceedings, constitutional justice, constitutional trial.

**Introduction.** Constitutional proceedings are understood as a formalized order of proceeding referred to the competence of the relevant body (in Russia - the Constitutional Court of the Russian Federation). The formal nature of constitutional proceedings lies in that it is carried out in accordance with the procedure established by procedural laws. Thus, the procedure for the constitutional proceedings in the Constitutional Court of Russia is established by the Federal Constitutional Law No. 1-FKZ of July 21, 1994 and the Regulations of the Constitutional Court of the Russian Federation [1, 3]. Constitutional proceedings is one of the types of legal proceedings, which is provided for by Part 2 of Art. 118 of the Constitution of the Russian Federation along with civil, administrative and criminal proceedings [2]. Art. 1 of the Federal Constitutional Law of July 21, 1994 "On the Constitutional Court of the Russian Federation" states that the Constitutional Court is a judicial body for constitutional control, which independently exercises judicial power through constitutional proceedings [3]. The regulation of constitutional proceedings and the legal nature of the bodies for constitutional control in the countries of Europe and the CIS is in turn of scientific interest and allows for a better understanding of the content of the constitutions of these countries.

**Methodology.** The study used various methods: systematic method, analysis and synthesis, logical and other general scientific methods, as well as a number of private scientific methods. Thus, the use of comparative legal research made it possible to reflect the foreign experience of the legal regulation of constitutional proceedings.

**Discussion and results.** In foreign practice, the regulation of the order of constitutional proceedings, as well as of classical proceedings, is referred to the competence of the legislator, in most cases organic. For example, Part 2 of Art. 94 of the Basic Law of Germany reads that "the Federal Law determines the structure of the Federal Constitutional Court and the order of proceedings ..." [4]. Similarly, Art. 165 of the Constitution of Spain stipulates that "the Organic Law establishes the functioning of the Constitutional Tribunal, the status of its members, the procedure and conditions

for the execution of claims" [5]. Art. 63 of the Constitution of France also provides for that the regulation of constitutional proceedings and the regulation of various aspects of the functioning of courts of general jurisdiction falls within the competence of the organic legislator (Part 3, Article 64). Thus, despite the statement in the literature about the existence of the organizational autonomy of the courts, it should be noted that the constituent power itself has established the legislative regulation of constitutional legal proceedings as a matter of priority. In contrast to civil, criminal, administrative and other classical proceedings, which are regulated by elaborated codified acts, the constitutional proceedings of European states are governed by concise and sometimes incomplete rules of the constitutional (organic) legislation. European constitutions pay more attention to the organization and functioning of constitutional courts, rather than courts of general jurisdiction. The constitutions define quite indifferently only certain principles of the proceedings, whereas in terms of constitutional proceedings the provisions of the constitutions are more definite.

More detailed regulation of some aspects of constitutional litigation in the constitution is due to a number of factors: First, the status of the constitutional court, which in the German science of constitutional law is characterized as the status of a "constitutional body" (Verfassungsorgan). In accordance with this status, the constitutional courts, as well as other state authorities, are guaranteed independence from other state bodies with the same status (for example, the legislator) through the constitutional regulation of certain aspects of their activities and functioning. Thus, the determination of certain aspects of constitutional proceedings in the constitution serves as a guarantee of the independence of constitutional courts from the legislator. Secondly, the need to limit the competence of the constitutional courts [6]. At the same time, explaining the constitutional regulation of certain aspects of constitutional legal proceedings only by the need to limit the competence of constitutional courts is not entirely correct. Restriction of the competence of European constitutional courts and judicial activity is achieved not so much by constitutional regulation of certain aspects of European constitutional proceedings, but rather by constitutional establishment of the competence (organic) legislator to regulate the order of constitutional legal proceedings. The organic legislation of any European state, dedicated to the organization and functioning of constitutional courts, contains provisions that set forth their organizational autonomy. For example, Part 3, § 1 of the Law on the Federal Constitutional Court of Germany reads: "The Federal Constitutional Court adopts the internal regulations approved by the plenum". Part 2 of Art. 2 of the Law on the Constitutional Tribunal of Spain assigns to it the competence of "issuing regulations for its own functioning and organization ...". The similar situation is in French [7] and in Italian [8] constitutional proceedings, where the organic (constitutional) legislator has also empowered constitutional courts to determine certain rules governing their own proceedings. They exercise this competence, like other European constitutional courts, through the adoption of internal regulations. We should note, in our opinion, a not exact correctness of the approach of the constituent power, which, having set forth the competence to regulate the procedure of constitutional legal proceedings for the organic legislator, did not mention the organizational autonomy of the constitutional courts. It seems that in order to ensure the independence of the bodies of constitutional justice from other bodies of state power, the power of the constitutional courts as per the rules of their own organization and functioning, should be set forth in the constitution, similar to the competence of the organic legislator to regulate constitutional proceedings [9].

Unlike courts of general jurisdiction that have no organizational autonomy and are completely subordinate to the law, both in respect of its substantial application to the specific cases they deal with and with regard to their functioning (i.e. the procedural law they apply), constitutional courts have extended guarantees of independence, which, as already noted, are partially expressed in the ability to establish rules of their own proceedings. Thus, if the courts of general jurisdiction are completely subordinated to the procedural law determined by the legislator, the constitutional courts are only partially subordinated to the procedural law determined by the constituent and legislative (organic) power. They are given considerable authorities to establish rules of their own proceedings, which is one of the guarantees of the independence of the body of constitutional justice. The nature of organizational autonomy is not judicial, since it does not exist in other judicial bodies [10]. In order to understand it, it is necessary to turn once again to the German theory explaining the nature of the constitutional court as a constitutional body that has been developed by the Federal Constitutional Court of Germany. Of course, in any of the constitutional proceedings under review, the organizational autonomy of constitutional courts is limited to the powers of an organic (constitutional) legislator who has the competence to determine some of the most general rules for the organization and functioning of constitutional courts, but still remains insufficiently regulated by the constituent power and the organic legislator, which explains the position of the Federal Constitutional Court of the Federal Republic of Germany, considering itself as the master of its own proceedings [11]. At the same time, other (non-judicial) bodies of state power, such as the Houses of Parliament, have similar organizational autonomy, since constitutional and organic legislation determines the rules for their organization and functioning. Thus, organizational autonomy is inherent in supreme bodies of state power whose status is determined by constitutional provisions. Bodies that have such a constitutional status cannot but have organizational autonomy, since the organization of state power and the principle of separation of powers at this level of legal system presuppose guarantees of independence of these bodies from each other. The recognition by the constitutional courts of the authority to adopt internal regulations (Geschäftsordnung, règlement intérieur, reglamentos), indicating their status as a "constitutional authority", is a feature of the regulation of constitutional proceedings in European countries. In the framework of classical legal proceedings, judicial bodies have no right to independently adopt regulatory acts regulating their activities.

In some countries, the constitutional court is not formally assigned to the judicial power. For example, the Law on the Constitutional Court of the Republic of Bulgaria contains a rule establishing that the Court is independent of the legislative, executive and judicial authorities. The status of the Constitutional Court of the Republic of Bulgaria is established in a separate chapter of the Constitution. The Constitutional Court of Bulgaria emphasized in its judgment No.18 of December 16, 1993 that it is neither part of the judicial system, nor of three branches of power, and exercises its competence independently and along with the governing bodies of these branches of government [12]. The organization and powers of the constitutional review bodies of Italy, Spain, Hungary are also regulated by separate chapters of the Constitutions. The determination of the place of a specialized body of constitutional control in the system of separation of powers is also a subject of discussion in the constitutional and branch science of the CIS countries. Thus, the scientific legal research of the CIS countries has a dominant point of view, according to which the specialized body of constitutional control is classified as the judiciary. M.A. Mitiukov noted that the constitutional court in all CIS countries is included in the judicial system [13]. A. Kazakliu believes that, since the constitutional control in countries of common law is exercised by courts of general jurisdiction, the exercise of the same function by a specialized body falls exclusively within the authority of the judicial power [14]. G.A. Shmavonian notes that the Constitutional Court of the Republic of Armenia administers justice in the exercise of its powers, since constitutional control and justice for the resolution of specific cases have a common law enforcement and the respective law imperative nature [15]. G.A. Vasilevich considers the Constitutional Court of the Republic of Belarus as a special judicial body exercising the function of constitutional justice [16].

**Summary.** Constitutional courts by their nature have a unique, special status and carry out constitutional control in all countries of Europe and the CIS. Whatever the power of the constitutional courts to determine the rules governing their functioning is set forth, the very fact of the existence of organizational autonomy shows that the constitutional courts are not the ordinary ones (i.e. courts of general jurisdiction) and are "the body of constitutional power" in nature, which is expressed in the presence of their competence to regulate the order of constitutional proceedings. At the same time, the considered countries address the issue of determining the place of this body of constitutional control in the system of separation of powers in different ways: in some countries the constitutional court is part of the judicial system (Armenia, Moldova, Belarus), while in others it is a special control body, not included in the judicial system (Germany, Italy, Bulgaria). Thus, regardless of how the issue of legal regulation of constitutional proceedings is addressed, this type of process in the considered countries is special, with specific features, and is aimed at protecting the constitution and basic constitutional rights and freedoms.

### *References*

1. Reglament Konstitutsionnogo Suda RF (red. ot 08.07.2014 g.). Vestnik Konstitutsionnogo Suda RF. 2011. # 1. (in Russian)
2. Konstitutsiya Rossiyskoy Federatsii. Prinyata vsenarodnyim golosovaniem 12 dekabrya 1993 g. (s uchedom popravok, vnesennykh Zakonami RF o popravkakh k Konstitutsii RF ot 5 fevralya 2014 g. # 2-FKZ). SZ RF. 2014. # 9. St. 851. (in Russian)
3. Federalnyiy konstitutsionnyiy zakon ot 21 iyulya 1994 g. # 1-FKZ «O Konstitutsionnom Sude Rossiyskoy Federatsii» (red. ot 04.06.2014 g.). SZ RF. 1994. # 13. St. 1447; 2014. # 23. St. 2922. (in Russian)
4. Grundgesetz für die Bundesrepublik Deutschland // <https://www.bundestag.de/grundgesetz> (accessed 27 March 2018).
5. <http://worldconstitutions.ru/?p=149> (accessed 27 March 2018).
6. Favoreu, L. 1967. Le Conseil constitutionnel regulateur de l'activite normative des pouvoirs publics. Revue de droit public.
7. Ordonnance # 58-1067 du 7 novembre 1958 // <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069199> (accessed 27 March 2018).
8. Ricci, R. 1996. Le procés constitutionnel en Italie, l'elaboration d'un droit processuel constitutionnel. Marseille.
9. Nuriev, G.S. 2012. Evropeyskaya model konstitutsionnogo sudoproizvodstva: monografiya. M. (in Russian)
10. Shinkaretskaya, G.G. 2009. Tendentsii razvitiya sudebnyih sredstv mirnogo razresheniya mezhdunarodnyih sporov. M. (in Russian)
11. Schlaich, K., Koriath, S. 2007. Das Bundesverfassungsgericht. Stellung, Verfahren, Entscheidungen. Munchen.
12. Oprya, O.V. Konstitutsionnyiy sud Respubliki Bolgarii. Zhurnal rossiyskogo prava. 2002. # 9. (in Russian)
13. Konstitutsionnoe pravosudie v stranah SNG i Baltii / sost. V.K. Bobrova, M.A. Mityukov. M., 1998. (in Russian)
14. Kazakliu, A. 2001. Aktualnyie problemy konstitutsionnoy yurisdiksii Respubliki Moldova. Konstitutsionnoe pravo: Vostochno-evropeyskoe obozrenie. # 4(37). (in Russian)
15. Shmavonyan, G.A. 2003. Konstitutsionnoe pravosudie v sisteme razdeleniya vlastey. M., (in Russian)
16. Vasilevich, G.A. 2001. Konstitutsionnyiy kontrol i praktika pravoprimereniya v Respublike Belarus. Zhurnal rossiyskogo prava. # 1. (in Russian)