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The Constitution in foreign countries

The main source of constitutional law in foreign countries is the constitution. The article notes that the constitution establishes a certain model of the social and state system in a particular country, establishes a system of government bodies, establishes a form of government, determines the basis for the legal status of a person in the system of social relations. In turn, the constitution is at the head of the entire hierarchical system of normative legal acts. The constitution defines the forms of legal acts adopted by public authorities. It defines the subjects of legislative regulation. The ways of adopting constitutions are considered, such as: granted, contractual, parliamentary, the adoption of a constituent assembly, a referendum. The structure of constitutions in foreign countries has been studied in more detail: the preamble, which describes the historical conditions for the adoption of an act; the main text of the constitution, which is divided into sections, chapters, paragraphs, articles and final (transitional) provisions, which, as a rule, determine the order of entry into force of this constitution and the procedure for bringing the legislation in force into compliance with the new constitution. It is emphasized that the content of constitutions adopted in different countries or in one country, but at different times, is very different. Each constitution is characterized by its scope and content. The article reveals that the constitution establishes the basic principles on which all legal regulation of public relations is based.

Keywords: the constitution of foreign countries, the properties of the constitution, the ways of adopting the constitution, structure, form and content of the constitution in foreign countries.

The Constitution is the main source of constitutional law and the basic law of the state due to its special legal properties [1; 109]. It should be noted that in the literature there has not yet been a single approach to the list of legal properties of the constitution - different properties are distinguished in different scientific sources, but as a rule, the following: the constituent character, the supremacy, the supreme legal force, the property of being the legal basis of the current legislation, direct action and stability [1; 122]. Let's consider them in the most general terms, stopping in more detail only those who need additional characteristics.

The most important legal property of the constitution is its constituent character. The Constitution establishes a certain model of the social and state system in a particular country, establishes a system of government bodies, establishes a form of government, determines the basis for the legal status of a person in the system of social relations, etc. This is what Art. 1 of the Constitution of Spain (1978): «Spain is constituted as a legal democratic social state that proclaims justice, equality and political pluralism as the highest values of its legal order» [2; 50].

The supremacy is also one of the important properties of the constitution. This property is often mixed with another property - the highest legal force. These are close, but not identical concepts. The supreme legal force of the constitution is the special binding nature of its norms with respect to other acts. The supremacy means that the constitution is at the head of the entire hierarchical system of normative legal acts. There is not and can not be an act above the constitution.

A question may arise about the correlation of the norms of the constitution with international legal norms and their priority. But, firstly, the priority of international acts is fixed primarily in the Constitution itself. Secondly, the priority is given to international legal acts regarding the acts of the current legislation, but not the constitution. If the Constitution does not contain a norm on the priority of international legal acts in relation to internal laws, then there is no priority.

The problem of correlation of national constitutions and norms of international law has its own specifics within the European Union, where so-called communal law operates, the norms of which have priority over national law, including constitutional norms [1; 112]. However, after the entry into force of the Maastricht Treaty, which formalized this Union, changes were made to the constitution of the member countries of the European Union, setting the priority of only this type of norms over national legislation. Thus, even in this case, the priority of the norms of international law is established directly in the constitution [3; 305].

Next important legal property of the constitution consists of that:

1. The constitution establishes the basic beginning (principles) on which all legal regulation of public relations is based, for example, the prohibition of retroactivity of the law establishing or aggravating responsibility, the priority of federal law, etc.

2. The Constitution defines the forms of legal acts adopted by public authorities. Thus, Art. 85 of the Constitution of Spain states: «Acts issued by the Government on the basis of delegation of legislative powers are called legislative decrees».

3. The constitution determines the subjects of legislative regulation. According to the Constitution of Italy, for example, only the law can regulate the minimum age for employment (Article 37), the right to strike (Article 40), salaries and other appropriations to the President (Article 84), etc.

The Constitution has one more property - it is a direct action. This property is noted by many researchers. However, the direct effect of the constitution can not be absolutized. The point is that the property of direct action is, as a rule, the norms of material nature, which primarily consolidate the basic rights and freedoms of the individual. In this case, the principle of direct action allows them to be executed without regard to any other (mediating) acts, and the judicial authorities oblige this principle directly to protect these rights, referring to the relevant norm of the constitution. As for procedural norms, that is, those that determine the order of implementation of material norms, it is not always possible to ensure their direct action.

Finally, another property of the constitution is stability, manifested in the special (more complex) order of its adoption and change. It is necessary to dwell on this property in more detail. The Constitution, on the one hand, is designed to stabilize the system of public relations, laying down one or another model of the state structure, and on the other hand, it by itself should not undergo frequent changes. Therefore, the constitution provides for a special procedure for its adoption, making changes to it, which gives it the property of stability. There are following ways of adopting constitutions: granted, contractual, parliamentary, the adoption of a constituent assembly, a referendum.

The constitution of Jordan (1952), Qatar (1962), the Basic Law on the Power of Saudi Arabia (1992), and the Basic Law of the Sultanate of Oman (1996) are granted by the monarchs.

The independent ways of adopting the constitution are parliamentary (most of the constitutions in force are adopted in this way), adoption by the Constituent Assembly (with the help of this method, the US Constitution (1787), Portugal (1976), Bulgaria (1991), etc.) were adopted.

Recently, another way of adopting the constitution is gaining popularity: a popular vote (referendum). In this way, the constitutions of France (1958), Mongolia (1992), Russia (1993) and some others were adopted. The adoption of the constitution by referendum is considered in modern constitutional and legal literature as the most democratic way. This is certainly true, but we must still keep in mind that it is hardly advisable to take on such a complex and important issue as the content of constitutional norms for a referendum. With all due respect to the will of the people, it should nevertheless be noted that the constitution is an act of a special kind, containing norms expressed in the most abstract form. To understand their meaning and content requires the availability of special knowledge in the field of law. Hence the popular vote on the draft constitution and the resulting decision can not be considered competent.

Public practice has developed another way of making constitutions, which can be called combined. It consists in the fact that the constitution is first adopted by the parliament or constituent assembly, and only then it is submitted for referendum. It seems that the latter method is preferable, since it combines representative and direct democracy, allows for a thorough discussion of the text of the constitution at parliamentary sessions (or constituent assembly) with the involvement of qualified specialists aware of all the subtleties of constitutional and legal matter. In addition, in this case, the people themselves have the opportunity to express their will regarding the text of the basic law. Voting on the draft constitution, the people either approve the decision passed by the parliament, giving this decision the highest legal force, or rejecting it. With the help of this method, the constitutions of Spain (1978), Turkey (1982), Haiti (1987), Switzerland (2000) and some others were adopted.

This property of the constitution, like stability, is also manifested in a special, complicated order of its change. It is worth recalling the main ways to change the constitution: it is flexible, rigid, especially tough and mixed. Practically all the methods mentioned are used.

A flexible way means that the constitution changes within the framework of an ordinary parliamentary procedure. In a flexible way, those constitutions that are among the unwritten, or un-codified, ones change. The constitutions of most foreign countries vary according to rigid or particularly stringent methods. These methods will be discussed in detail in the Special Part. It is also worthwhile to give a description of the forms

of introducing changes in the text of the constitution. Most often in foreign countries, the incorporation of amendments into the text of the law is used, that is, the replacement of previous provisions with new ones. Another form is the application of corrections to the text. In this case, the text itself does not change, and changes are applied to the main (primary) text. This method was first used in the USA. The first 10 amendments - the Bill of Rights (1789) - were attached to the text. In this way all other corrections were introduced.

Form and content of the constitution in foreign countries. According to the form of the constitution, they are written and unwritten. Writing is understood as a single normative legal act, containing in a systemic order a set of constitutional and legal norms and differing from acts of the current legislation by a more complicated procedure of adoption and higher legal force. Most countries have a written constitution, that is, a single legal act is the main law of the country. In turn, the written constitutions are divided into codified and non-codified. The latter consist of several acts (constitutional laws), which together form the constitution of a given country. For example, the Constitution of Sweden consists of at least five constitutional laws, the Constitution of Austria includes more than 10 constitutional and ordinary laws. The Constitution of Israel consists of 12 basic laws and the Agreement on the Gaza Strip.

The British constitution has traditionally been cited as an example of an unwritten constitution. Although the constitution of this country consists of several parts and the written right is, but there is no single act called the «Constitution of Great Britain». Nor does New Zealand have a written and codified constitution.

The structure of constitutions in foreign countries has much in common. This preamble, which describes the historical conditions for the adoption of an act; the main text of the Constitution, which is divided into sections, chapters, paragraphs, articles and final (transitional) provisions, which, as a rule, determine the order of entry into force of this constitution and the procedure for bringing the legislation in force into compliance with the new constitution.

The content of constitutions adopted in different countries or in one country, but at different times, is very different. Each constitution is characterized by its scope and content. It is believed that the US Constitution - one of the most concise (contains only 9 thousand words) [4; 37]. There are, however, even shorter constitutions, for example the Constitution of Libya (1969) has only about 2 thousand words [5; 409]. In contrast, it can be called the Constitution of India - a voluminous document, which includes nearly 400 articles and several applications. It details the competence of each state, each administrative-territorial unit; it contains many provisions that have no constitutional significance at all. The constitutions of India and Libya are two extremes. Between them all other constitutions are located.

Perhaps there is some optimal scope of the constitution, on the one hand, allowing to cover all areas subject to constitutional regulation, on the other - leaving no room for unnecessary «unconstitutional» norms. It seems that this can be an interesting topic for research.

The content of the constitution is constantly changing. This is predetermined primarily by changing the subject of constitutional regulation. There are several trends in this kind of change. The first is an increase in the proportion of norms regulating the status of the individual. It should be noted that the actual constitutional regulation begins from the moment when the restriction of state power in favor of the sphere of individual interests is legislatively fixed. Therefore, the British Great Charter (1215) with full right refers to acts of a constitutional nature. This act granted privileges to the upper class and thereby limited the power of the king.

In the US Constitution (1787), only a few rights were fixed: the electoral rights of citizens and some others. This gap was filled by the first 10 amendments in 1789, but they also contained a rather incomplete list of basic rights and freedoms. Constitution of the first generation, to which the US Constitution applies, regulated the status of the individual only in the most general terms, fixing mainly political rights. Gradually, the catalog of constitutional rights of the individual expanded. In the modern period, the rights enshrined in the constitution include rights in the economic, social and spiritual spheres of life. Directly in the basic laws, other elements of the constitutional status of the individual are fixed.

The second trend, manifested in the development of constitutional legislation, is the transfer of powers from the legislative to executive power. Parliamentarism, established in the XVIII-XIX centuries, was initially characterized by a number of exclusive powers of the representative body of power. First of all, it is the adoption of laws, the solution of such crucial issues as taxation, individual rights, issues of war and peace. At present, there is a process of transition of these powers from legislative to executive power through the institution of delegated legislation, through direct restriction of the sphere of activity of parliament, as, for example, in France. In the constitutional legislation of foreign countries, priority is given to bills introduced

by the government, before bills introduced by deputies. In addition, in some countries, the head of state is empowered to enact acts that have the force of law.

The third trend is the expansion of the impact of state power on economic relations. If the constitutions of the first stage fixed only the right of ownership in the sphere of the economy, at present they contain a rather wide range of norms regulating economic relations. Thus, the Constitution of Spain (1978) contains a special chapter called «On the Fundamental Principles of Socio-Economic Policy» (Chapter 3, Section 1) and sect. 7 «Economics and Finance», where many rules regulating this sphere are fixed [2; 58].

Another trend in the development of constitutional legislation is the consolidation of the institution of constitutional control. Directly the constitution establishes a specific body that monitors compliance with the basic law of all other legal acts. Such a body is, as a rule, a constitutional court or other structure with appropriate powers (the Constitutional Council in France, the Bureau of Constitutional Investigations in Ethiopia, etc.).

In more detail we will consider the constitution of Australia. Australia is a federation of former British colonies on the Australian continent, whose constitution was enacted by the British Parliament in accordance with the Constitutional Act of the Australian Union of 1900. The British Parliament itself did not participate in its elaboration, the provisions of the Basic Law were discussed by representatives of colonial legislatures on constitutional congresses in the 90s of the XIX century.

At the same time, a number of documents can be considered as a kind of supplement to the Constitution: acts of the parliaments of Australia and Great Britain (for example, the Westminster Statute, acts on the Privy Council, etc.), constitutional agreements and decisions of the High Court of Australia, Constitution and determines compliance of the legislative acts of the federation and states with it. The most important source of constitutional law in Australia are the acts of 1986, which are a package of laws, including acts of the Australian Union, the States and the United Kingdom with identical provisions. The power of the British Parliament to pass laws for the Union on the basis of the Westminster Statute was terminated by the adoption of these acts, while the existing restrictions on the legislative activities of the Union and the states were removed. As a result, a sovereign state was created, whose independence can not subsequently be limited or questioned in accordance with the legislation of another country. Any future cancellation (change) by the UK of its acts against Australia has no legal significance within Australia.

Amendments to the Constitution are adopted by two chambers of parliament by an absolute majority, after which they are put to a referendum in each state and are considered adopted if they are supported by the majority of states and, in general, by the majority of Australian voters. Then the amendments are passed to royal approval.

In general, the system of sources of law in Australia is as follows:

1. The Federal Constitution and the constitutions of the states. Paradoxically, not all even the most important constitutional principles are fixed in these written acts. Some of them are implied: for example, the principle of separation of powers follows from the structure of the Constitution of the Union, in the sense that it consists of separate chapters on the parliament, the executive and the judiciary.

2. Legislation of the Union and the states.

3. English law applicable in Australia.

4. Acts passed in the manner of delegated legislation are the result of the process of creating predominantly administrative rules under the control of the parliament. The parliament does not always have the time to pay attention to all the necessary details, therefore it is quite common that by its act the powers to create such prescriptions are delegated to the governor or the governor-general.

5. Judicial precedents - the results of trials in the courts of Australia.

In addition to those listed, there may be other sources capable of influencing the adoption of decisions by courts and the behavior of citizens, but not having the same force as the sources of law named above.

6. International treaties.

7. Constitutional agreements - are traditionally observed, even though these rules are not expressed in written acts and are not subject to judicial protection. They can be avoided when political expediency requires this. These rules play an important role in the regulation of public authority in Australia, especially the relationship between parliament and government, and between various government departments. Agreements regulate areas not covered by written rules, or determine the practical effect of written rules established by law or by court.

8. Decisions of courts not included in the Australian judicial system, including decisions of international courts and courts of other countries, to the extent that Australian courts can apply them.

9. Doctrinal works. Sometimes courts take them into account as a commentary to the provisions of the law, but in practice they do not matter much in common law countries.

10. Administrative decisions made on a particular dispute mainly between the citizen and the government. Their importance as a source of law is small, as they are not applied in subsequent decisions. Sometimes administrative acts may contain a reference to the fact that some decisions may follow in future administrative acts, but this does not mean that they will be applied in the future, like a judicial precedent.

11. The customs of business turnover are taken into account by the courts, but not in all cases.

12. The customs of aboriginal people should also be considered a source of law.

The Constitution provides for the right of the parliament to create federal courts. The main elements of the federal judicial system are the High Court (established in 1903), the Federal Court (established in 1976) and the Family Court (established in 1975).

All judges of federal courts are appointed by the Governor-General in the Council. Appointments are made taking into account the recommendations of the Cabinet, which usually supports proposals submitted by the Attorney General. As a result of a Senate or House of Representatives appeal based on «proven improper conduct or incapacity», judges may be dismissed by the Governor-General in the Council.

The High Court consists of a chairman and six judges. The High Court has two categories of cases considered by it as a court of first instance. The first category (in accordance with Article 75 of the Constitution) includes cases arising from international treaties; affecting representatives of foreign states; the cases in which the Union is represented as one of the parties. Other powers of the Court in accordance with Art. 76 is legislated. In particular, such issues include consideration of issues arising on the basis of the Constitution or requiring its interpretation.

A high court is an appellate court for state supreme courts, federal courts and in other cases when it is referred to its jurisdiction by the Constitution (Article 73) and legislation. The High Court's decision on these cases is final and can not be appealed. The permission of the High Court is required for him to review the case on appeal. It is the consideration of appeals that constitutes a large part of the work of the Court. In accordance with the Constitution, an appeal can be made from the High Court to the Privy Council of Great Britain, if the High Court grants permission to do so. However, the Court held that it would no longer resort to this.

The Australian Constitution does not contain provisions that assign to the High Court, federal and state courts the function of constitutional review. However, the High Court considers that he is an indisputable bearer of this function and that he «stands guard over the Constitution». Thus, the judiciary includes the power to declare a legislative act and the actions of state bodies unconstitutional.

The Family Court deals in the first instance cases referred to it by the Act on Family Law of 1975 and the Marriage Act of 1961 (for example, on divorce).

The federal court considers cases in the first instance in accordance with the legislative acts of the Union. Including to its jurisdiction are cases related to the activities of federal officials. As a rule, cases are heard by the judge alone. In its entirety, the Court only considers appeals on decisions taken by a single judge, as well as complaints against decisions of the Supreme Courts of the states and territories in matters affecting intellectual property and the Union's revenues.

The Tribunal of Administrative Appeals, founded in 1975, examines complaints against decisions of allied ministers and officials, in the case of questions of law. About two hundred laws determine the jurisdiction of the Tribunal. The main areas covered by it are: social security, taxation, collection of customs duties, migration, television and radio broadcasting, freedom of information. The Tribunal may determine what should be considered an appropriate administrative decision. The Tribunal consists of the President, who must be a judge of the Federal Court, vice-presidents and other members of the court. The Tribunal consists of the Chief Administrative Division, the Veterans Affairs Department and the Tax Appeals Division.

In order to overcome the problems caused by the dual system of courts, in 1978 a delegation of authority was introduced. The Law on the Jurisdiction of the Courts was adopted in equal form by the parliaments of the states, the Union Parliament and the legislative body of the Northern Territory. Currently, delegation of authority is allowed only to the supreme courts of states and territories, as well as to federal courts and only in the sphere of civil law. For example, the Federal Court, the Family Court, and the Supreme Courts of the Northern and Australian Capital Territories are entitled to exercise the jurisdiction conferred upon them by state laws. The legislation of the Union grants the supreme courts of states and territories the powers of the Federal Court and the Family Court.

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Д.К. Рүстембекова, К. Цомплак

Шет елдердегі конституция

Шет елдерде конституциялық құқықтың негізгі қайнар көзі болып конституция табылады. Мақалада конституция сол немесе басқа елде қоғамдық және мемлекеттік құрылыстың белгілі бір үлгісін бекітеді, билік органдарының жүйесін құрады, билік ету нысанын белгілейді, қоғамдық қатынастар жүйесіндегі адамның құқықтық жағдайының негіздерін анықтайды. Өз кезегінде, конституция нормативтік құқықтық актілердің барлық иерархиялық жүйесінің бастауында болады. Конституцияда мемлекеттік билік органдарымен қабылданатын құқықтық актілердің нысандары анықталады. Ол заңнамалық реттеудің пәнін белгілейді. Авторлар конституцияны қабылдаудың тәсілдерін қарастырылған, олар: октроирленген, шарттық, парламенттік, құрылтай жиналысында қабылдануы, референдуммен. Шет елдердегі конституциялық құрылымы егжей-тегжейлі зерттелінді: ол сол немесе басқа актіні қабылдаудың тарихи жағдайларына сипаттама беретін преамбула; бөлімдерге, тарауларға, параграфтарға, баптарға және қорытынды (өтпелі) ережелерге бөлінетін конституцияның негізгі мәтіні, онда, әдетте, осы конституцияның күшіне ену тәртібі анықталады және қолданыстағы заңнамалардың жаңа конституцияға сәйкестендіру тәртібі келтіріледі. Әр елде немесе бір елде, бірақ әртүрлі уақытта қабылданған конституцияның мазмұны алуан түрлі екені анықталды. Әрбір конституция өзінің көлемімен және мазмұнымен сипатталады. Мақалада конституция қоғамдық қатынастарды барлық құқықтық реттеу негізделетін негізгі қағидаларды бекітетіні көрсетілді.

Кілт сөздер: шет елдердің конституциясы, конституцияның қасиеттері, конституцияны қабылдау тәсілдері, шет елдердегі конституцияның құрылымы, нысаны және мазмұны.

Д.К. Рустембекова, К. Цомплак

Конституция в зарубежных странах

Основным источником конституционного права в зарубежных странах является конституция. В статье отмечено, что конституция закрепляет определенную модель общественного и государственного строя в той или иной стране, учреждает систему органов власти, устанавливает форму правления, определяет основы правового положения человека в системе общественных отношений. В свою очередь, конституция стоит во главе всей иерархической системы нормативных правовых актов. В конституции определены формы правовых актов, принимаемых органами государственной власти. Она определяет предметы законодательного регулирования. Рассмотрены способы принятия конституций, такие как: октроирование, договорный, парламентский, принятие учредительным собранием, референдумом. Более подробно изучена структура конституций в зарубежных странах: преамбула, дающая характеристику исторических условий принятия того или иного акта; основной текст конституции, который делится на разделы, главы, параграфы, статьи и заключительные (переходные) положения, где, как правило, определяется порядок вступления в силу данной конституции и порядок приведения действовавшего прежде законодательства в соответствие с новой конституцией. Определено, что содержание конституций, принятых в разных странах или в одной стране, но в разное время, весьма различно. Каждая конституция характеризуется своими объемом и содержанием. В статье раскрыто, что конституция закрепляет основные принципы, на которых базируется все правовое регулирование общественных отношений.

Ключевые слова: конституция зарубежных стран, свойства конституции, способы принятия конституции, структура, форма и содержание конституции в зарубежных странах.

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