THE CONCEPT AND SIGNIFICANCE OF CONSTITUTIONAL AND ORGANIC LAWS IN LEGAL SCIENCE AND LEGISLATION OF DIFFERENT COUNTRIES

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Abstract. The article is devoted to the analysis of the concepts of "constitutional law" and "organic law", to identify the features of these types of laws in modern legal systems. It is determined that in different countries the terms "constitutional law" and "organic law" are widely used in legal science at both the doctrinal and legislative levels. Due to the elaboration of scientific works, a number of textbooks and manuals, a theoretical analysis of this issue was carried out, an analysis of scholars' opinions on the understanding of the terms "constitutional law" and "organic law" was carried out. The constitutions and other legal acts of different countries in which these concepts are reflected are analyzed. The content and main features of this type of law are described. The place of the mentioned laws in the system of legislation of different countries is determined. The differences of their acceptance and application in world practice are revealed. Recommendations are made to distinguish between the concepts of "constitutional law" and "organic law".

Key words: constitution, law, system of legislation, constitutional law, organic law.

INTRODUCTION

One of the conditions for the sustainable development of any state is the creation and effective functioning of the legal system. A special place in the system of legislation belongs to the constitutional and organic laws. But the problem of their definition is debatable in modern legal science.

The problems of theoretical study of constitutional and organic laws need additional attention from legal science, as there is still no generally accepted definition of the concept of constitutional laws as well as organic, their place in the legal system is not fully defined.

Issues that are important in the theoretical and practical aspects of the study of the terms "constitutional law" and "organic law" have been considered in the works of many legal scholars. Despite the different views on the definition and essence of constitutional laws, the general opinion is to separate them from the legal system into a separate group, given their special nature and place in this system. The practical significance of the separation of constitutional laws is important for constitutional jurisdiction and the constitutional process. The purpose of this article is to study and comprehensive analysis of the legislation of different countries on the role and place of constitutional and organic laws in the legal system of a state, the practice of their application. Analysis of theoretical approaches to the definition of terms.

METHODS AND MATERIALS

The purpose and task of the article is to clarify the meaning of the terms "constitutional law" and "organic law", their features, place in the legal system, the content of constitutional and organic laws, their meaning in world practice. To consider the relationship between constitutional and organic laws, to determine their features, to make comparisons in the application of this type of law in world practice.

The methodological basis of the study was a set of subject principles, approaches and methods of cognition. The study used a set of general and special methods that meet the objectives of the article. The theoretical basis for the study were the scientific works of scientists on this topic. Information and empirical basis of the study are reference books, textbooks, publications in periodicals. The main materials of this study are the constitutions of different countries.

The methodological basis of this work is a dialectical method of scientific knowledge of socio-legal phenomena and processes, which allowed to objectively assess the state and effectiveness of the application of constitutional and organic laws in world practice. The comparative legal method was used to determine the general features and peculiarities of constitutional and organic laws, based on the analysis of the provisions of the constitutions and laws of different countries.

Direct observation was used to establish the opinion of modern scholars and researchers in the field of constitutional law on these concepts and clarified the experience of implementation and application of constitutional and organic laws in different countries. The combination of these and other methods and techniques allowed to ensure the complexity of the study of the problem, as well as the reliability of the conclusions of the study.

RESULTS AND DISCUSSION

The theoretical basis for the allocation of constitutional laws in a special category is the doctrine of constituent and legislative power. In the order of implementation of the first constitution and amendments to it are accepted, in the order of implementation of the second – all other laws.

Since the last century, science has expressed the idea of allocating constitutional laws to a

separate type. The literature cited a typology of laws that are constitutional in nature, argued the need to distinguish them into an independent group of acts called "constitutional laws". It was noted that the subject of regulation of such laws is "the constitutional relationship itself", that these constitutional laws would be a direct link between them and other regulations (Ovsepjan, 2003).

In the reference and encyclopedic literature, the term "constitutional law" has not received a clear understanding. Thus, "constitutional law" is used as a term to denote: 1) laws on the enactment of the constitution; 2) laws amending the constitution; 3) laws on the enactment of laws amending the constitution; 4) laws on temporary suspension (suspension) of certain constitutional provisions; 5) laws on the termination of the constitution (Shemshuchenko, 2007).

The term "constitutional law" is interpreted differently in modern legal science. Laws that amend the constitution, are adopted in a special, complicated manner, and have the same legal force as the basic law are recognized as constitutional. The subject of regulation of such laws is the actual constitutional relations. The frequency of adoption of such laws and the scale of changes they make are different.

Laws, the adoption of which is provided for in the constitution, or some laws that are subjectively characterized as the most important, are also recognized as constitutional. The constitutional law is sometimes called the constitution itself (Kutafin, 2002).

In the scientific literature, constitutional law defines a legislative act that follows from the Constitution, and which aims to specify the constitutional provisions by regulating the most important social relations or to make changes to it (the Constitution); an act adopted in accordance with a special, complicated procedure and having higher legal force in relation to other normative acts than the Constitution (Skakun, 2007).

Belgian scholar Francis Delperee prefers to put it simply and precisely – "constitution"; and tends to put an end to the title of analysis and discourses, such as the "constitutional law", which conceals contradictions in terminis. In addition, the author notes that the constitutional law is used by doctrine that is common in all legal systems and serves mainly to denote the document containing the draft, and then the result of an operation that involves a revision of the constitution, that is to say, that modifies, repeals or supplements certain provisions of the basic text. It is the most obvious manifestation of the derived constituent power. Because of its author, its purpose and the conditions of its elaboration, it obviously escapes any control of constitutionality (Deelperee, 2020).

Also, constitutional laws are defined as those that are adopted by the constitutional parliamentary procedure in a complicated manner, amend the Basic Law of the state and from the moment of their entry into force become an organic component of the constitution (Savenko, 2011).

It is considered that constitutional laws are only those that amend or supplement constitutions and constitutional laws cannot be defined as specifying the provisions of the Basic Law, as this is a function of other laws (organic) (Kirichenko, 2009).

The term "constitutional law" is used in some countries as the official name of certain regulations. In others, particularly in Ukraine, the term is purely doctrinal. Thus, in different countries, constitutional laws officially define different acts. But all relevant acts on the

subject and purpose of the regulation are in one way or another related to the constitution.

Only in a small number of states is a constitutional law understood not as a law amending the constitution, but as a law supplementing the constitution, but it remains an independent act (Azerbaijan, Sweden, the Netherlands, Slovakia) (Shapoval, 2021).

Constitutional laws are all or most of the components of unsystematic constitutions of the Republic of Austria and Canada. Constitutional laws are endowed with the legal qualities of the constitution as the Basic Law and have the highest force (Shemshuchenko et al., 2021).

A classic example of laws that amend or substantially supplement the text of a constitution are "amendments" to the Constitution of the United States of America, each of which either supplements the text of the current Constitution or enshrines amendments to it.

In some countries, constitutional laws are officially called constituent parts of the constitution, which do not exist as a single normative act of higher legal force, but constitute a set of such acts: Austria – the Constitutional Law of 1920; The Swedish Constitution includes four constitutional laws – the Freedom of the Press Act (Tryckfrihetsförordningen) of 1974, the Regeringsformen Act of 1974, the Successionsordningen Act of 1810; and the Freedom of Speech Act (Yttrandefrihetsgrundlagen) of 1991; Until March 1, 2000, the Constitution of Finland consisted of four acts of the appropriate nature, introduced in different years: the "Act on the Form of Government of Finland" of 1919, the "Act of Eduskunt" (Parliament) of 1928, "Act on the Right of Parliament to Control the Legality of the Activities of the State Council and the Chancellor of Justice" of 1922, "Act on the State Court" of 1922 (Heorhitsa, 2003).

In Italy, laws that change the Constitution itself (adopt the statutes of the provinces of special autonomy or change the territory of the regions, regulate the activities of the constitutional court and those that expand the range of subjects of legislative initiative) are recognized as constitutional. These laws have a higher legal force than ordinary laws, but lower than the Basic Law (Shapoval, 2010).

In Macedonia, Slovenia, Serbia, and Montenegro, constitutional laws are the laws that enact the Constitution. In Slovenia, the law enacting the Basic Law (Article 174) is also recognized as constitutional. The adoption of this act is part of the process of adopting the Constitution, most of the provisions are transitional in nature to the Constitution, in the text of which there are no transitional provisions. In such circumstances, the transitional provisions are not actually constitutional provisions, and thus indicate the absence of a supreme force in the constitutional law (The Constitution of the Republic of Slovenia, 1991).

Croatia also provides for such types of laws as constitutional ones. In particular, the Constitution of the Republic of Croatia stipulates that the constitutional law regulates the equality and protection of the rights of national minorities. It is noted that this law is adopted in the same manner as provided for organic laws (Article 15). The Constitution also provides for the adoption of a constitutional law regulating the procedure for electing judges of the Constitutional Court of the Republic of Croatia and terminating their powers, procedure and conditions for initiating proceedings to review constitutionality and legality, protect constitutional freedoms and human and civil rights and other issues exercise of powers and activities of the Constitutional Court of the Republic of Croatia. It is noted that this constitutional law is adopted in the manner prescribed for amendments to the Basic Law

(Article 127) (The consolidated text of the Constitution of the Republic of Croatia, 2014).

In countries such as Georgia, Kazakhstan, the Czech Republic, and Kyrgyzstan, constitutional laws are those whose adoption is provided for in the constitution itself. Thus, according to Article 10 of the Law of Georgia "On Normative Acts", the constitutional law of Georgia is adopted in the case of determining the state and territorial organization of Georgia, in the case provided for in Article 2 of the Constitution of Georgia, in determining the status of an autonomous republic and in the case of revision of the Constitution of Georgia (On normative acts, 2009). Article 9 of the 1992 Constitution of the Czech Republic states that "the Constitution may be supplemented or amended only by constitutional laws" (The Constitution of the Czech Republic, 1992).

The Constitutions of Moldova and Romania stipulate that constitutional laws are laws on the revision of the Constitution. In the Republic of Azerbaijan, constitutional laws are acts that supplement the Constitution. Unlike amendments to the Constitution, which are made solely by referendum and are not called constitutional laws, amendments to it are approved by parliament. Constitutional laws are an integral part of the Constitution of the Republic of Azerbaijan and should not contradict its main text (The Constitution of the Republic of Azerbaijan, 1995). The Constitution of the Russian Federation enshrines two categories of federal constitutional laws: federal constitutional laws amending the Constitution and other federal constitutional laws. The text of the Constitution clearly defines a block of federal constitutional laws. These include laws governing the state of emergency (Article 56), changing the status of the subject of the Federation (Article 66), description and procedure for using the State Flag, Emblem and Anthem of Russia (Article 70), referendum (Article 87), introduction on the territory Of the Russian Federation or in some of its local states of emergency (Article 88), the procedure for the activities of the Government of the Russian Federation (Article 114), the establishment of the judicial system of Russia (Article 118), etc (The Constitution of the Russian Federation, 1993).

In the Republic of Macedonia, the Republic of Serbia, the Republic of Slovenia, and the Republic of Montenegro, a constitutional law is an act that enacts the Constitution. Most of its provisions are transitional in relation to the Constitution, and the Basic Law itself does not contain transitional provisions. In this way, it is actually indicated that the relevant constitutional law does not have a supreme power (Shemshuchenko et al., 2010).

Constitutional laws are characterized by a special procedure for their adoption. The general rule in the practice of their adoption is the requirement of a qualified majority. However, only when this requirement is related to the actual constitutional regulation, it certifies the highest force of constitutional laws.

In addition, the procedure for their adoption by parliament is different from ordinary laws. Also in some countries there is a requirement to approve constitutional laws in a referendum. As a rule, the head of state does not have the right to veto constitutional laws. Thus, according to the Constitution of the Czech Republic, the constitutional law is adopted by three-fifths of the total number of deputies and three-fifths of all senators present; the chambers of the Czech Parliament have the power to take decisions if at least one third of their members are present. The constitutional law is not vetoed by the president. The Constitutional Court of the Czech Republic does not exercise constitutional control over

constitutional laws (The Constitution of the Czech Republic, 1992).

The Constitution of the Republic of Lithuania stipulates that the constitutional laws of the Republic of Lithuania are adopted if more than half of all members of the Seimas have voted for them and are amended by a majority of at least three-fifths of the members of the Seimas. The list of constitutional laws is established by the Seimas by a three-fifths majority vote of the members of the Seimas (The Constitution of the Republic of Lithuania, 1992).

The Constitution of the Slovak Republic states that the consent of at least three-fifths of all deputies is required for the adoption of constitutional laws (The Constitution of the Slovak Republic, 1992). In the Russian Federation, constitutional laws are adopted in the same order in which most provisions of the Basic Law are amended. However, this procedure, in contrast to the procedure for adopting constitutional amendments, does not provide for the need to approve the adopted act by the legislative bodies of 2/3 of the federation. In addition, the procedure for the adoption of constitutional laws by parliament (Italy, Moldova, Kazakhstan) is different from the procedure for adopting ordinary laws. In some countries there is a requirement to approve constitutional laws in a referendum (Romania).

In the legislative practice of most countries of the world, the president cannot veto constitutional laws. Only in some countries (Netherlands, India, Pakistan) a presidential veto is possible, but not used in practice.

However, there are countries where the president has a veto over constitutional laws. The Constitution of the Republic of Azerbaijan stipulates that if the constitutional law of the Republic of Azerbaijan is not signed by the President, such a law shall not enter into force (Article 123) (The Constitution of the Republic of Azerbaijan, 1995). The Constitution of the Republic of Belarus stipulates that the President's objections to amendments to the Constitution and its interpretation must be re-discussed and voted on by at least three-fourths of the full number of chambers, while overcoming the presidential veto on ordinary laws requires a two-thirds quorum. Thus, in addition to enshrining the right of the President to veto constitutional laws, the Constitution increases the quorum needed to overcome it, complicating the legislative functions of parliament and giving the President the opportunity to directly decide the fate of the Constitution (The Constitution of the Republic of Belarus, 1994).

It should be noted that in the legislation of some countries, along with the term "constitutional law", the term "organic law" is used. The basic laws of many states have established a hierarchy of laws, topped by a constitution, below – constitutional laws, followed by organic laws, and even lower – ordinary laws. However, the attitude to organic laws, their purpose, essence, subject and procedure for adoption are ambiguous.

The term "organic law" is used in the texts of constitutions as the official name of the type of legal acts. In this case, the terms "constitutional law" and "organic law" are used to denote different formal and legal normative legal acts. At the same time, in the scientific literature, the term "organic law" is often used as a synonym for the term "constitutional law". In addition, there is an opinion that organic laws are laws that organically develop the provisions of the constitution and which are referred to in its text.

According to F. Delpere, in all European states should not be confused, in particular, the so-called constitutional law, law in general (ordinary) and organic law (to which a special

law is attached). The latter occupies an intermediate place between these laws. In other systems, this term is used, but there is no reason to give it technical meaning; it is enough to qualify the name of the laws, the purpose of which is to ensure the "organization of public authorities"; however, the development of such laws does not require special majority or procedural rules (Delperee, 2020).

Jean-Louis Pesan believes that organic law is a "law on the application of the Constitution" only in areas and on issues strictly limited by the Constitution (Pezant, 1992). Some scholars use the term "organic law" as a synonym for the term "constitutional law" to refer to laws whose adoption is provided for or conditioned by constitutional provisions. However, confusion arises under the same criteria of constitutional law. Therefore, there is a need to distinguish between these concepts.

The peculiarity of organic laws is that by supplementing the constitution, they do not merge with it, do not become part of the text of the constitution, but retain independence from the Basic Law and have less legal force than the constitution and laws amending the constitution. Organic laws are adopted according to the direct provisions of the constitution, in a manner different from the procedure for adopting constitutional laws. They are usually adopted to clarify or supplement the provisions of the constitution on the basis of the so-called blanket norms of the latter. Such norms only determine the range of issues to be regulated by organic laws.

That is, an important feature of organic laws is that their adoption and objects of regulation are provided for directly in the constitution.

Organic law as a specific (special) type of law was first introduced in France (according to the 1958 constitution), later spread to most countries – the former French colonies in Africa, and in recent decades it has been recognized in the constitutional law of several states, including European (Kozyubra, 2021).

In world practice, organic laws are characteristic of the countries of continental law (Germany, France, Spain), they determine the status of state bodies on the basis of blanket articles of the constitution. For example, the French constitution provides for the regulation of the status of such state bodies as the Constitutional Council, the High Chamber of Justice, and the High Council of Magistracy. Such provisions occupy a prominent place in the Constitution of France: twelve more of its articles provide for the adoption of organic laws relating to the organization and activities of the executive and judiciary.

Article 81.2 of the Spanish Constitution stipulates that organic laws are laws concerning fundamental rights and civil liberties, approving the statute of autonomy, establishing the procedure for general elections, and other laws specifically provided for in the constitution. Organic laws occupy an intermediate position between the constitution and ordinary laws. In practice, they address many other issues: international treaties, the transition to the royal throne, the Constitutional Court, the State Council and the police force in the regions. One example is the Organic Law on the Right to Education, upheld by the Constitutional Court in 1985, which created a coherent system of public and private schools funded by the state. It guarantees students and teachers the right to choose their worldview, including the right "within the Constitution" to "determine their official status." Among the categories of organic laws are also important seventeen statutes of the autonomous regions, which form

the basis of the legal framework of each of them.

An absolute majority of Congress is required to pass, amend, or repeal an organic law in the final vote on the bill as a whole (Spanish Constitution, 1978).

The concept of "organic law" is in the practice of Latin America (Venezuela, Ecuador, Chile). The relevant nature of a law is explicitly stated in the constitution, which is also accompanied by the requirement to adopt them on the basis of an absolute majority. In Chile, the parliament itself can classify a specific law as organic. Such a law must be submitted to the parliament before its promulgation by the head of state in order to establish its "organicity" and constitutionality. In Panama, in addition to the general range of subjects of the right of legislative initiative, other subjects have the right to initiate consideration of an organic bill. According to the Venezuelan Constitution, organic are those laws that are so called in the constitution itself and are adopted for the organization of public authority or for the development of constitutional rights of citizens and are a normative restrictor for other laws.

The constitutions of Estonia, Moldova, Romania, and Portugal also clearly state the list of issues to be regulated by organic law.

Thus, Article 72 of the Constitution of Moldova stipulates that organic laws are adopted on issues provided by the constitution, including the electoral system, organization and conduct of referendums, organization and activities of parliament, government, constitutional court, etc (The Constitution of the Republic of Moldova, 1994).

In Romania, the Constitution provides for the adoption of organic laws on issues such as the functioning of the electoral system, organization and operation of political parties, organization and conduct of referendums, organization of government, state of emergency, offenses, punishment and execution, amnesty, organization and operation High Council of Magistracy, Judicial Instances, Prosecutor's Office, general legal regime of property and inheritance, general norms concerning labor relations, trade unions and social protection, general organization of education, general regime of cults, organization of local administration, general regime of local autonomy, procedure for establishing an exclusive economic zone, etc (The Constitution of Romania, 1991).

The Constitution of Georgia also provides for such types of laws as organic laws. They are adopted in the case of the formation of local governments, they determine their powers and relations with state bodies; they determine the composition, powers and procedure for electing chambers; organic laws establish the state symbols of Georgia; this type of law regulates the procedure for acquiring and losing Georgian citizenship; they are adopted on the organization and activities of the Constitutional Court, the Prosecutor's Office, the National Bank, etc (The Constitution of Georgia, 1995).

Organic laws are usually adopted by a particularly complicated procedure, the specifics of which vary from country to country. However, it usually overrides the requirements for the adoption of such laws by a qualified majority of deputies. Sometimes, for promulgation, such a law must be referred to the constitutional review body. Organic law can be changed only in the order in which it is adopted. Such laws, as a rule, cannot be rejected by a presidential veto, as they are passed by a qualified majority.

CONCLUSION

Summing up, we can conclude that, in fact, organic laws establish the main constitutional and legal institutions in general or their foundations. Constitutional laws are laws that amend or supplement the constitution or that enact the constitution, or the adoption of which is expressly provided for in the constitution.

Taking into account world experience and practice, having analyzed scientific approaches to this issue, we believe that in order to eliminate confusion and contradictions, it is necessary to distinguish between the concepts of "constitutional laws" and "organic laws".

By constitutional laws we propose to mean laws that change the text or procedure of the constitution; under organic laws – laws that are adopted on the basis of blanket norms of the Constitution, according to its direct prescriptions and according to a more complicated procedure than provided for ordinary laws.

The results of the study can be used in research, lawmaking and educational process. For example, research provides a basis for further theoretical research in this area, which aims to improve the legal system in a country.

It is worth taking into account the results obtained in lawmaking, as the study contains proposals for legislative delimitation of this type of law, and their special importance in the legal system as a whole.

Equally important is the use of this study in the educational process, as the results of the study can be used in law lessons and other educational institutions to study subjects that involve studying the sources of constitutional law and the legal system of a country as a whole.

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