

CONSTITUTIONAL (STATUTORY) JUSTICE AS AN ELEMENT OF THE STATE-LEGAL SYSTEM OF THE CONSTITUENT ENTITIES OF THE RUSSIAN FEDERATION

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Abstract. The article is devoted to the possibility of implementing the constitutional control by the judicial bodies within the framework of the principle of unity of the judicial system. The authors analyzed the federal and regional legislation regulating the activities of constitutional (statutory) justice. We identified the distinctive features of constitutional and statutory courts in the Russian Federation, and noted the dual nature of the Constitutional Court of the Russian Federation and the constitutional (statutory) courts of the constituent entities of the Russian Federation. The existence of legal links between constitutional justice bodies brings individual scholars and practitioners to the idea of the existence of a hierarchical relationship between them. At the same time, they completely ignore the fact that such a phenomenon in the form of strengthening the vertical of constitutional control bodies may lead to excessive centralization of judicial power as a whole and centralization of federal and regional legal systems. In this regard, it would be incorrect to speak of constitutional (statutory) courts of the constituent entities of the Russian Federation only as an organizational element of the government of a particular region. As a result of the study, the author concludes that these bodies form different subsystems in a single judicial system and need further reform in order to ensure constitutional values.

Key words: constitutional control, principle of unity, constitutional (statutory) courts, system, relations, judicial system.

Introduction. The main guarantee of the implementation of constitutional principles, for example, the principles of democracy, the rule of law, the protection of rights and freedoms is the existence of judicial power.

In accordance with the provisions of Part 2 of Article 118 of the Constitution of the Russian Federation, the right to judicial protection is exercised through various types of legal proceedings, including constitutional. It is noted in the Articles of the Universal Declaration of Human Rights, in particular, Part 1 of Article 8 stipulates the right of every person to appeal to the competent national courts in case of violation of his/her fundamental rights granted to him/her by the Constitution and the law. In this regard, it can be noted that not only the basic (constitutional), but also other rights and freedoms, which, for example, are established by current laws and by-laws are under the state's protection. Thus, the type of legal proceedings within which the violated right will be protected will be determined by the nature of this right - constitutional or otherwise. The Constitution of the Russian Federation proclaims the principle of unity of the judicial system. This does not at all exclude the construction of a judicial system with an organizational division into courts that carry out various types of legal proceedings, as provided for by the Basic Law of the country. The principle under consideration also does not mean the existence of a single highest judicial body. In this regard, it seems that unity should be ensured by a clear delineation of competence between the existing courts.

Methods: The method of comparative legal analysis made it possible to identify the features inherent in the judicial bodies exercising constitutional control. The use of the system-structural method of cognition made it possible to establish the relationship of judicial bodies exercising constitutional control in a federal state.

Formal legal research method was used in determining the content of such concepts as "constitutional justice", "judicial system", "principle of unity", "supranational law", etc.

Results: The principle of federalism with a decentralized nature lies at the heart of the relationship of constitutional (statutory) courts with each other. The autonomy of these judicial bodies, implying the absence of procedural relations, does not mean at all that the Constitutional Court of the Russian Federation, the constitutional and statutory courts of the constituent entities of the Russian Federation are not guided by the principle of unity of the exercise of judicial power. The homogeneous legal nature, the connectedness of the courts' decisions under consideration by a common constitutional space and common constitutional values indicate the unity of their activities. For example, balance achievement between public legal interest and private legal interests, provision and implementation of the highest constitutional values underlie any decision they make. Analysis of the provisions of the legislation of the Russian Federation allows revealing only the presence of organizational isolation of constitutional justice bodies of the constituent entities of the Russian Federation, which, in turn, does not exclude the possibility of forming a future unified system of constitutional control bodies, especially foreign practice confirms the possibility of existence of the federal and regional judicial constitutional control in organic unity.

Discussions: Currently, the Russian Federation has a two-tier judicial system (federal courts and courts of the constituent entities of the Russian Federation), which includes the courts of general jurisdiction, arbitration courts, the Constitutional Court of the Russian Federation and similar courts in 16 regions. The latter are united by the fact that they are the institutions ensuring constitutional legality in the Russian Federation. The literature notes the features of decisions of the constitutional justice bodies and includes a point of view that their acts are both law-

making and law-enforcement in nature [1, p. 7]. While naming features of the decisions of these judicial bodies, it is worth noting its structure, consisting of the legal positions of the court itself and the final conclusion made in the case considered [2, p. 21]. The legal positions of the court of constitutional justice, in contrast to the final conclusions, serve as the basis for the adoption of relevant decisions by the courts of general jurisdiction [2, p. 23]. Legal arguments formulated by these courts include the application of the norms of international, supranational and national law, as well as in some cases the legal positions previously formulated by the court on certain issues [3, p. 14]. Let us recall, such construction as “supranational law”, used to refer to entities vested with powers specific to the goals and objectives of international organizations, and interstates associations are subjects to analysis. [4, p. 304-305]. As noted in the literature, it is not the resolving part of the Constitutional Court’s ruling that legitimates and legalizes the part of reasoning, but on the contrary – the decision established in the resolving part is a logical and, for this reason, legally inevitable continuation and ending of the constitutional argumentation [5, p. 225]. The function of the operative part of the Constitutional Court decision is to withdraw the act, contradicting the Constitution, from the legal turnover, while the reasoning part of the decision refers to the future and fulfils not only the function of justifying the adopted decision, but also a preventive function, a function of guiding the legislator to certain constitutional criteria, from which it cannot deviate [6, p. 37].

The constitutional (statutory) justice operates in the Russian Federation on the basis of constitutions (statutes) of the constituent entities of the Russian Federation, the laws of the constituent entities of the Russian Federation on constitutional (statutory) court. O.L. Kazantsev, M.N. Vorobyev notes that it is the constitutional justice bodies that are charged with maintaining the stability of the constitutional provisions and developing the ideas proclaimed in them [7, p. 113].

There are the following reasons for the need to implement the institution we are considering. First, judges of concentrated courts have more time and resources to engage in constitutional/justificatory discourses which place specific demands on their competence. Second, the process before concentrated courts can be structured so that other institutions have a proper voice and representation. Third, cases before concentrated courts can also obtain proper attention from the general public, and concentrated courts cannot easily avoid hard cases through “legalistic” tactics [8, p. 532]. However, there is a point of view of different scientists who speak out against the institutionalization of constitutional justice in the literature. They provide the following arguments: weakening of the parliamentary power; appropriation of political power by the Constitutional Court; existence of an already existing effective control system; discrepancy with the existing legal culture; contradiction of the appointment of judges to democratic principles; lack of references [9]. Regarding the appointment of judges of constitutional courts, the following ways of appointing them can be distinguished: 1) selection by the executive and the legislature; 2) selection by the legislature; 3) selection by the executive, the legislature and the judiciary; 4) selection by a special commission; 5) appointment by the executive [10, p. 4].

Consolidation of the right of regions to create constitutional (statutory) courts for the first time entailed the possibility of delimiting the judicial branch of power in vertical direction in the federal legislation. It is noteworthy that the provisions of the Constitution of the Russian Federation, proclaiming the existence of a single federal judicial system, also provide for the existence and functioning of courts operating in the constituent entities of the Russian Federation, but not as independent judicial systems of the region. Thus, the creation of constitutional (statutory) courts in the constituent entities of the Russian Federation was stipulated as an integral part of the unified judicial system of the Russian Federation. The concept of a system implies a set of constituent elements based on such principles as centralization, hierarchy and subordination. The scope of constitutional judicial control is characterized by the absence of these principles, but this does not mean at all that one cannot speak of a system of constitutional (statutory) courts of the constituent entities of the Russian Federation. A number of authors specify the implementation of their activities within the framework of a single legal field as the distinctive features of the courts under consideration. At the same time, since the Constitutional Court of the Russian Federation, the constitutional (statutory) courts together with the systems of courts of general jurisdiction and arbitration courts are included in the unified system of courts of the Russian Federation, it can be said that the systems of certain types of courts of the Russian Federation are the subsystems of single judicial system of Russia.

Summary. Based on the above, it is possible to identify a number of distinctive features inherent only in the system of constitutional (statutory) courts in the Russian Federation. Thus, the Constitutional Court of the Russian Federation and the constitutional (statutory) courts of the constituent entities of the Russian Federation, regardless of the division of their competence: 1) are endowed with common goals and objectives, the main purpose of which is to ensure the constitutionality of Russian legislation; 2) their activities are carried out in the framework of a single form of constitutional legal proceedings; 3) are based on the general principles of organization and activity. Let us recall that the unity of the system of judicial constitutional control bodies in the Russian Federation implies, in accordance with the law, the separation of the competence of the Constitutional Court of the Russian Federation and the competence of the constitutional (statutory) courts of the constituent entities of the Russian Federation without the right to delegate certain powers from the federal to the lower or from the regional to the federal. In other words, the unity of the system of constitutional courts of the Russian Federation is based on the unity of the legal system of Russia, taking into account the delimitation of jurisdiction of the judicial constitutional control bodies and the separation of their powers at all levels.

It is noteworthy that, despite the fact that the Constitutional Court of the Russian Federation is not a higher court instance in relation to the constitutional (statutory) courts of the constituent entities of the Federation, and they are not bound by a chain of command, the latter take into account the legal positions of the Constitutional Court of the Russian Federation. For example, the Resolution of the Constitutional Court of the Republic of Tatarstan No. 76-P dated November 21, 2017, adopted in the case of challenging a municipal legal act, which established the amount of payment for maintaining residential premises for the property owners in the apartment buildings that have not decided on the way to manage an apartment building. In the reasoning part of the decision, the Court referred to the legal position of the Constitutional Court of the Russian Federation regarding this issue that the exercise of this authority by the local authority was due to the lack of a corresponding will of the property owners in the apartment building. Based on the above, it can be concluded that the decisions of the Constitutional Court of the Russian Federation, taken in similar cases, predetermine the point of view of the constitutional justice bodies in the constituent entities of the Russian Federation, faced with a similar task. Let us recall that Article 6 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” points out that the decisions of the Constitutional Court of the Russian Federation are binding on all the state bodies and other legal entities, including constitutional (statutory) courts of the constituent entities of the Russian Federation. It should be noted that the constitutional (statutory) courts of the constituent entities of the Russian Federation, in accordance with the provisions of the above-mentioned law, are entitled to send requests to the Constitutional Court of the Russian Federation on the constitutionality of the law to be applied or already applied in a particular case. This also manifests the system's unity.

Conclusions. The Constitutional Court of the Russian Federation and the constitutional (statutory) courts of the constituent entities of the Federation represent one type of legal proceedings, but - various subsystems within the framework of the judicial system and the system of state authorities. The constitutional (statutory) courts of the constituent entities of the Russian Federation have a dual nature: firstly, they are the courts of the constituent entities of the Russian Federation in the single judicial system of the Russian Federation; secondly, they are included in the system of state authorities of the constituent entities of the Russian Federation. The factors that determine the dual nature of constitutional (statutory) courts include: 1) the right of the constituent entity of the Russian Federation to create constitutional (statutory) courts; 2) independent determination by the constituent entities of the Russian Federation of the procedure for their organization and activity using budget funds; 3) an open list of issues for the resolution of which the constitutional (statutory) courts of the constituent subjects of the Russian Federation may be created. Today, the tendency to actively reform the state power remains in the Russian Federation. The judicial system is not an exception. The expansion of powers of the Constitutional Court of the Russian Federation with an amendment to Article 3 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” indicates that the state needs a strong and independent judicial power, capable of upholding the inviolability of constitutional values, including at the regional level. Based on the above, we come to the conclusion that the constitutional justice bodies carry out their activities within the framework of the principle of unity of the judicial system. We noted a dual nature as a distinctive feature of these bodies. The Constitutional Court of the Russian Federation and the constitutional (statutory) courts of the constituent entities of the Russian Federation form different subsystems in a single judicial system. It seems that the reviewed judicial bodies need further reform.

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