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## CONSTITUTIONAL NEWS

### DECEMBER • 2011 – JANUARY • 2012

(Austria, Belgium, Croatia, Egypt, Germany, Israel, Kazakhstan, Kyrgyzstan, Russia, Slovenia, Switzerland, U.S.A.)

Sergey Zaikin, Olga Gulina, Natalya Alyonkina, Pavel Blokhin, Alim Ulbashev

## SPECIAL REPORTS

**Svetlana Vasilyeva**

### POLITICAL COMPETITION IN THEORY AND ACTION: ISSUES OF THE DIFFICULTY OF ITS LEGAL ASSESSMENT

The article analyses the different aspects of political competition. The difficulties of its legal assessment with regard to the mechanisms of electoral engineering are examined thoroughly. The author critically conceptualizes the provisions of law concerning political competition and concludes that priority should be given to the constitutional regulation of this institution, highlighting the fields where the emphasis of the legal regulation of political competition should be placed.

**Svetlana Vasilyeva** – Associate Professor of the Chair of Constitutional and Municipal Law at the National Research University “Higher School of Economics”, Candidate of Law.

**Peter Leyland**

### THE MULTIFACETED CONSTITUTIONAL DYNAMICS OF U.K. DEVOLUTION

The article argues that devolution has been a dynamic process which has triggered further important constitutional changes. It provides a conceptual discussion of devolution by comparing it with federalism as a system of territorial government. Attention is also concentrated on the evolving characteristics of the respective systems in Scotland, Wales, and Northern Ireland. Particular attention is devoted to crucial issues of constitutional design. The so called West Lothian question is then examined, which draws attention to the most pronounced asymmetry caused by devolution, namely, the implications of not having an equivalent level of devolved government for England. Finally, the discussion examines the impact of devolution on legislative procedures and the use of legislative consent motions. The article concludes by considering the trajectory of the changes to each devolved system and related constitutional implications.

**Peter Leyland** – Professor of Public Law, London Metropolitan University.

## FEATURE:

### ISSUES OF METHODOLOGY IN CONSTITUTIONAL LAW

**Alexandra Troitskaya**

### EDUCATION FOR A COMPETENT LAWYER: THE COMPARATIVE METHOD AND CASE-LAW IN CONSTITUTIONAL LAW

In 2010 the federal state educational standards of higher professional legal education (“bachelor” and “magister” qualifications) were approved. They fixed the requirements for the results of mastering basic educational programs of cultural and professional competences that graduates should have. The professional cycle is aimed at the acquisition of many competences, including (at the basic level) different legal disciplines, such as constitutional law for bachelors and comparative legal study at the masters level. Considering these standards, this article attempts to highlight the main approaches to the use of the comparative method and the role of the case method in teaching constitutional law and forming students’ required competences. The author begins by looking at the course of general

constitutional law in the academic curriculum (separate or included into the course of constitutional law of foreign countries and/or different special constitutional courses).

**Alexandra Troitskaya** – Assistant of the Chair of Constitutional and Municipal Law of the Law Faculty of the Lomonosov Moscow State University, Candidate of Law.

## STANDARDS OF THE UNITED EUROPE

**Olga Gulina**

### THE EUROPEAN SYSTEM OF HUMAN RIGHTS’ PROTECTION: A REVIEW OF THE LEGAL GUARANTEES OF THE COUNCIL OF EUROPE, THE EUROPEAN UNION AND THE NATIONAL LEGISLATION OF GERMANY

The current paper offers a review of the relationship between the European Court of Human Rights (Strasbourg), European Court of Justice (Luxembourg) and the Federal Constitutional Court of Germany. The European mechanism of human rights’ protection rests on three legal orders: one concerns the protection of human rights enshrined in the European Convention on Human Rights (ECHR); the second is the European Union, which is preformed by European Court of Justice; and the third is the national order, which is supervised by each member-state of the EU and interpreted by the highest national court. The paper analyses the conflicts between different legal orders, starting from the complicated “architecture of fundamental rights” in Europe, with the phenomenon of confrontation and cooperation of the highest courts in each member-state of the EU. In addition, this paper gives an overview of the future perspectives of enacting the Fundamental Rights Charter in the framework of a European “human rights” order.

**Olga Gulina** – Associate Professor of the Chair of Public Law, Legal History and Philosophy of Law at the Department of Law of Potsdam University, Candidate of Law, Ph.D.

## POINT OF VIEW

**Vladimir Pastukhov**

### WHAT IS THE ILLNESS OF THE CONSTITUTIONS? RUSSIAN CONSTITUTIONALISM: POETRY OF PRINCIPLES AND PROSE OF LEGAL PRACTICE

The article provides an analysis of the situation emerging in Russian society in the sphere of the organisation of power mechanisms and their relationship with citizens and other social actors. The author believes that not only are constitutional realities far from the constitutional text, but also the latter is in need of serious changes. The basis causes of this include the insufficient level of evidence of constitutional principles, the absence of thorough mechanisms for the protection of freedom, and also too schematic a description of the organisation of state power. Sociological analysis of Russian realities leads to interesting conclusions – for example, that the late USSR was based on a political consensus to a greater extent than contemporary Russia, in which archaic, forceful methods of influence prevail. By way of a scale for the definition of the vector of change, the author offers the concept of constitutionalism, described as a particular ideological doctrine, appearing in Europe in modern times. If authority structures do not want to take part in changing the emerging order, then forces in society can be found which will take the initiative by themselves.

**Vladimir Pastukhov** – Research Master of the expert group of the Institute of Law and Public Policy project “Twenty Years on the Way to Democracy: Strengthening of Constitutional Order in Today’s Russia” (2011–2013), Professor of the St. Anthony’s College, University of Oxford, Advocate.

**CONSTITUTIONAL JUSTICE****Evgeni Tanchev****THE GENESIS AND EVOLUTION OF CONSTITUTIONAL REVIEW: PROBLEMS OF CONSTITUTIONAL CONTROL IN COMPARATIVE LEGAL PERSPECTIVE AND FROM THE POSITION OF THE BULGARIAN LEGAL SYSTEM**

The article gives a deep and comprehensive analysis of the institution of constitutional control. An excursus is given into the history of its inception and a description of its further development is provided, thereby characterizing its models and structures, and also its types, objectives and functions. Attention is also paid to the forms and legal consequences of the judicial control exercised by constitutional courts. The final part of the article is devoted to the particular problems of constitutional justice in Bulgaria.

**Evgeni Tanchev** – Professor, Chief Justice of the Constitutional Court of the Republic of Bulgaria.

**Andrey Elinsky****PROHIBITION OF THE RETROACTIVE FORCE OF STRICTER CRIMINAL LAW IN THE INTERPRETATION OF THE EUROPEAN COURT OF HUMAN RIGHTS AND BODIES OF JUDICIAL CONSTITUTIONAL CONTROL**

The article examines the legal limits of the prohibition of the retroactive application of stricter criminal law. In particular, the article summarizes and analyzes the practice of the European Court of Human Rights and judicial bodies of constitutional control. In addition, attention is given to the judicial interpretation of this rule regarding certain cases.

**Andrey Elinsky** – Chief Consultant of the Administration of Constitutional Foundations of Criminal Justice of the Constitutional Court of Russian Federation, Doctor of Law.

**IN THE RUSSIAN CONSTITUTIONAL COURT: DECISIONS AND COMMENTS****REVIEW OF THE DECISIONS OF THE RUSSIAN CONSTITUTIONAL COURT**

September – November • 2011

Valeriya Dolgoplova

**Vladimir Sivitsky****LEGAL NOVELTIES IN THE RUSSIAN CONSTITUTIONAL COURT PROCEDURE IN 2011: SOME OBSERVATIONS**

The article is the first attempt to observe, analyze and comment on the implementation of the latest amendments to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" adopted in 2011.

**Vladimir Sivitsky** – Professor of the Chair of Constitutional and Administrative Law at the Saint-Petersburg branch of the National Research University "Higher School of Economics", Candidate of Law.

**RETROSPECTIVE REVIEW****Ekaterina Tarasova****INFLUENCE OF POLITICAL CONFLICT ON THE CONSTITUTIONAL PROCESS IN RUSSIA, 1992–1993**

The article considers the problem of the influence of political conflict between the legislative and executive authorities in the constitutional and legal reforms undertaken in Russia in 1992–1993. The author analyzes the nature of the political opposition and its reflection in the constitutional process for amending the Constitution which operated in Russia from 1978 and to the drafting of a new Constitution.

**Ekaterina Tarasova** – Deputy Head of the Apparatus of the Council of the Federation Committee on the Federal Structure, Regional Policies, Local Self-Governance and Affairs of the North, Candidate of Law.

**REVIEWS****Vicki C. Jackson****PARADIGMS OF PUBLIC LAW: TRANSNATIONAL CONSTITUTIONAL VALUES AND DEMOCRATIC CHALLENGES**

Review of the book

**Ruling the World?**

Constitutionalism, International Law, and Global Governance

Ed. by J. L. Dunoff and J. P. Trachtman

(Cambridge; New York: Cambridge University Press, 2009)

The publication by Jeffrey L. Dunoff and Joel P. Trachtman of *Ruling the World? Constitutionalism, International Law, and Global Governance* brought to the fore in a sustained manner a growing literature which had appeared somewhat piecemeal in journals of international law, constitutional law, international relations and the like. Professor Vicki C. Jackson reflects and compares in her review the positions of all the authors of the publications for some main problems of constitutionalism and international law.

**Vicki C. Jackson** – Carmack Waterhouse Professor of Constitutional Law, Georgetown University Law Center.