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FOREIGN EXPERIENCE OF CONSTITUTIONAL REGULATION OF THE RIGHT TO INFORMATION

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ABSTRACT
Norms, legalizing the right to information, are described in this article. This investigation is based on the texts analysis of the constitutions of federative and unitary states. The authors proceeded from the fact, that the right to information includes searching, receiving, transmission, production, dissemination of information by any legal means, including appealing to public structures and their officials, for familiarization with documents and materials. In this article the conclusions were made on the types of constitutional formulations, associated with the right to information, as well as their advantages and disadvantages.

Keywords: constitution, information, right to information, federal states, unitary states, sources, freedom, dissemination, request.

INTRODUCTION
The legal systems of states function and develop not only under the influence of internal factors, expressed in certain traditional methods and means of regulation, policies, continuity, etc. It should also be noted the serious influence of external factors, such as geopolitical proximity, involvement in active international public relations and other. In this regard, a comparative legal study of foreign constitutional experience has both theoretical and practical importance, for the improvement of national law on the right to information in various states.

It should be noted, that in this study, the subjective right to information is constitutionally specified and legislatively defined right of a person, for searching, receiving, transmission, production, dissemination of information, by any legal means, including appealing to public structures and their officials for familiarization with documents and materials, directly affecting his rights and freedoms [1, p. 348-351].

In view of this, given scientific work is connected with the texts analysis of the constituent acts of the federal states (Austria, Belgium, Germany, India, Canada, the United States) and the unitary states (Albania, Greece, Denmark, Spain, Malta, Norway, Portugal, France) for defining the laws of the right to information [2].

METHODOLOGY
The use of general scientific methods - dialectical, system, analysis and synthesis - has contributed to the achievement of the stated goal. The use of the method of comparative legal research allowed to describe the foreign constitutional experience of consolidation the right to information, as well as to show the peculiarities of development of the legal regulation of this right.

DISCUSSION AND RESULTS
Carried out analysis of the constitutions and constitutional acts of federal states can be represented by the following conclusions. The Constitutions of the Republic of Austria, India, the United States, as well as the Constitutional Acts of Canada do not mention the right to searching, receiving, transmission, production, dissemination of information or obtaining the information through appeals to the state bodies and local self-government bodies for certain reasons. The right to information was not found in the specified constituent documents, even in indirect formulations.

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Such situation can be explained by the fact, that in these federative states, constitutions and constitutional acts were adopted at the time, preceding the emergence of the so-called "information society", that is, until the 1960s of the XX century [3; 4, p. 707-746].

However, it should be noted, that the absence of right to information in the constituent instruments of these states does not mean a low level of democracy of human and citizen rights and freedoms. The history of these countries gives grounds to talk about a fairly high degree of their development in all spheres. We should explain, that the absence of this right in the Constitution of India is due to the relatively short history of its sovereign existence (outside colonial dependence), and by the adoption of the constituent act in the "pre-information" society.

Through the analysis of the federal states constitutions of the Kingdom of Belgium and the Federal Republic of Germany, it has been shown, that the right to information is consolidated in them implicitly.

Thus, Article 23 of the Constitution of the Kingdom of Belgium from February 17, 1994 states, that "Everyone has the right to lead a life in conformity with human dignity.

To this end, the laws, decrees and rulings … guarantee, taking into account corresponding obligations, economic, social and cultural rights, and determine the conditions for exercising them.

These rights include notably: … the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation ...".

Thus, in the Constitution of Belgium, the content of the right to information is not general, but is nevertheless implicated by the socio-economic right to work.

In the Constitution of the Federal Republic of Germany, the right to information also is not formulated directly. Its existence can be judged on the basis of Article 5, which says, that

"Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed…". From the above formulation, we can conclude not only about freedom of speech and opinion. If we imagine, that information is always a certain set of knowledge, in this case, there is the right to freely draw information from public sources.

In view of the fact, that the Constitution of the Federal Republic of Germany was adopted in 1949, even contextual presence of formulation of the right to information in it, was progressive for that time.

The Constitution of the Kingdom of Belgium and the Constitution of the Federal Republic of Germany represent the right to information for everyone, i.e. for the citizens, and for the persons, who are on the territory of states, but who do not have the corresponding citizenship. In the main constitutive acts of these states, the right to information is reflected in a fragmentary manner.

The results of the analysis of the constitutions and constitutional acts of unitary states, for the existence of the formulated right to information in them, are given below.

So, the constitutions of the Kingdom of Denmark and Norway, the Republic of France, do not have in their laws the right to information. The reasons for the absence, we believe, are similar to those, which were indicated in the analysis of constituent acts of federal states. We consider, that the time of adoption of these documents, predetermined the absence of information right in them.

It should be noted, that in other unitary states of the focus research group, directly or contextually, the basic laws formalize the right to information. Depending on the type of its statement, the constitutions of these countries can be divided into two groups.

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1. The texts of constitutions, containing fragmentary norms of the right to information, regarding the consolidation of the right to information through various actions. The examples are given below.

Article 23 of the Constitution of Albania guarantees the right to disseminate information. It indicates, that everyone has the right, in accordance with the law, to receive information on the activities of state bodies, as well as on civil servants. And everyone has the opportunity to attend meetings of collectively elected bodies.

Thus, in this constituent act, the right to information is more connected with the activities of state and collectively elected bodies, than with the right of the person himself to searching, receiving, transmission, production of information in any legitimate way. It should be noted once again, that the constitution uses only one verb "to disseminate". In this regard, of course, the following question arises: are all other actions with information (searching, receiving, transmission, production, etc.) not guaranteed in the state? We think, that the formulation of the right to information in the Albanian constitution is not entirely successful, because such actions as transmission and reception are closely related to the dissemination of information. And sometimes the dissemination is impossible without the latter. Therefore, we believe, that with the aim of certainty and clarity of constitutional provisions, it is better to avoid such monovariant constructions and, if possible, to give a fuller and more capacious formulation. Also, it should be noted, that the Constitution of Albania consolidates the right of everyone (a person and a citizen) to have access to information on the activities of state bodies. Such formulation is a rarity, because this right is usually given only to citizens of the state.

The study of the Constitution of Malta from 1964 for the right to information showed, that article 41 stated: "Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence". So, the presented norm gives grounds to assert partial consolidation of the right to information in the constituent act of Malta. Such verbs as "to receive", "to hold" indicate about free using of information "without interference", despite the fact, that other verbs, connected with the disposal of information resources, are not included. At the same time, the Constitution of Malta lacks a norm, regulating human and citizen rights, related to obtaining information from public bodies, local authorities and officials.

More progressive and successful are the formulations of the right to information, found in the Constitution of the Kingdom of Spain of 1978.

Thus, in accordance with paragraph (d) of Article 20, free dissemination and receiving of information by any means, is recognized and protected. The law regulates the use of this right, taking into account the restrictions, imposed by the requirements of morality and the preservation of professional secrecy, while execution of these rights. It is also stated, that the execution of these rights can not be limited by any kind of prior censorship. Thus, the right to information is consolidated with the help of the words "dissemination" and "receiving", with the use of various means. The Constitution lacks any reference to the right of citizens to receive information from state bodies and local self-government bodies about their activities. Thus, it is clear, that in this constituent instrument, the right to information is also consolidated in fragmentary form.

At the same time, in the basic law under consideration, the norm, related to the right to information, was found, but it had a special addressee. Part 2 of the Article establishes, that public authorities promote the dissemination of information and necessary knowledge to the consumers and persons, having right to use, support their organizations and consider issues, which may affect the interests of consumers, in accordance with the conditions, established by law. Thus, it can be said, that the right of consumers to

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information is reflected here. It should be noted, that such formulation was not found in any investigated constituent act of the state. As a rule, such norms are contained in specially adopted national laws.

2. The texts of constitutions, containing fragmentary norms of the right to information, regarding the consolidation of the right to information of public structures, bodies of local self-government and their officials.

Article 10 of the Constitution of Greece from June 11, 1975 says, that "Each person, acting on his own or together with others, shall have the right, observing the laws of the State, to petition in writing public authorities, who shall be obliged to take prompt action in accordance with provisions in force, and to give a written and reasoned reply to the petitioner as provided by law. … The competent service or authority is obliged to reply to requests for the provision of information and for the supply of documents, especially certificates, supporting documents and attestations, within a set deadline not exceeding 60 days, as specified by law".

The above formulation allowed us to talk about the granting of the right to everyone (a person and a citizen) on information about the activities of public structures. However, the Constitution does not consolidate the right to information in the aspect of its searching, receiving, transmission, production and dissemination. Thus, in Greece, the right to information is not fully represented at the constitutional level.

The right to information in Portugal should be considered without referring it to the designated classification groups of unitary states. In this focus group, only the Constitution of Portugal provides a separate article with the right to information. Article 37 not only discloses the right of everyone to information using the verbs "to receive" and "to take". But also the responsibility for infringement of the submitted right is established. It is interesting, that the right to information is equally addressed to both individuals and legal entities. The inadmissibility of restricting the right to information is consolidated.

Article 35 of the Constitution of Portugal, in comparison with the norms of other states, is distinguished by its uniqueness. Such a legal construction has not been found in any of the analyzed constitutions. So, the article is called "Use of computers". It defines the following provisions:

- Every citizen shall possess the right to access to all computerised data that concern him, to require that they be corrected and updated, and to be informed of the purpose for which they are intended, all as laid down by law.

- The law shall define the concept of personal data, together with the terms and conditions applicable to its automatised treatment and its linkage, transmission and use, and shall guarantee its protection, particularly by means of an independent administrative body.

- Computers shall not be used to treat data concerning philosophical or political convictions, party or trade union affiliations, religious beliefs, private life or ethnic origins, save with the express consent of the datasubject, with authorisation provided for by law and with guarantees of nondiscrimination, or for the purpose of processing statistical data that cannot be individually identified.

- Third-party access to personal data shall be prohibited, save in exceptional cases provided for by law. The allocation of a single national number to any citizen shall be prohibited.

- Everyone shall be guaranteed free access to public-use computer networks, and the law shall define both the rules that shall apply to cross-border data flows and the appropriate means for protecting personal data and such other data as may justifiably be safeguarded in the national interest.

It seems, that these provisions are very progressive for the constitutional norms of the 70-s of the XX century. Usually, the legal regulation of personal data and information technology is executed by the

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norms of the current legislation, but not by constitutional ones. However, the existence of such a high-level legal project emphasizes the importance of the personal data of citizens of this state and the level of their protection.

It should be noted, that the right to information, within the framework of the norms of the Constitution of Portugal, reveals itself through access of citizens to information of state bodies (Part 2 of Article 48 and Article 268).

Thus, constitutional institutions in Portugal fully reflect the complex right to information: the right of everyone to "receive" and to "access" information by any means within the framework of law, and the right of citizens to information from public structures. We consider, that the experience of Portugal in the formulation of constitutional constructions of the right to information is worthy of scientific attention and interest from the position of practice [5, p. 814-833]. It also should be noted, that among the constitutional acts of the declared group of unitary states, the norms on the right to information in the Portuguese Constitution are the most successful from the point of view of both democracy and legal technique, and the demands of the times.

CONCLUSIONS

Consideration of the foreign constitutional experience of consolidating the norms on the right to information and its guarantees made it possible to draw the following conclusions:

- the right to information is not mentioned at all (this is typical, for example, for Austria, Canada, the United States, whose constituent documents were adopted before the 60-s of the XX century - the time of the appearance of so-called "information society");

- the right to information is stated in the section, consolidating the right to take various actions with information (Albania, Malta, Spain);

- the right to information is stated in the section, securing the right to access to information, which is carried by public structures and their officials (Greece);

- the right to information is stated in the integrative version (Portugal).

Simultaneously, it was defined a lack of unified approach of foreign countries to the constitutional addressing of the right to information: it is addressed to everyone (a person and a citizen) and exclusively to a citizen. At the same time, the right to access information on the activities of public structures and their officials is addressed primarily to citizens of the state (the norms of the Constitutions of Albania and Greece were the exceptions).

REFERENCES

Héritier, A. Composite democracy in Europe: the role of transparency and access to information // Journal of European Public Policy. 2003. Volume 10. Issue 5. Pp. 814-833.

Gavrishov, D.V. The concept and significance of the right to information in the system of constitutional rights and freedoms of person and citizen // Loopholes in Russian legislation. Juridical Journal, 2010. № 4. Pp. 348-351. (In Russian).

http://worldconstitutions.ru/

Simitis, S. Reviewing Privacy in an Information Society // University of Pennsylvania Law Review. 1987. Vol. 135. No3. Pp. 707-746.

Webster, F. Theories of the Information Society. London and New York, 2014. - 402p.

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