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# PARLIAMENTARY PROCEDURE AS A TYPE OF LEGAL PROCEDURE

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The subject. The article examines the refraction of the doctrine of legal procedure in relation to the activities of parliament.
The purpose of the article is to confirm or disprove hypothesis that parliamentary procedure is the kind of legal procedure
The methodology. The author uses formal legal interpretation of Russian legislative acts and decisions of Russian Constitutional Court and European Court of Human Rights as well as such general scientific methods as analysis, synthesis, systemic approach
The main results, scope of application. The author draws attention to the fact that at the present stage of the development of the theory of law, it can be stated that procedural social relations have developed in the parliamentary bureaucracy, which are not only regulated, but must also be regulated by procedural norms, which confirms the conclusions of the authors of a "broad" approach to the theory of legal process. However, there will be a window of opportunity for the supporters of the "narrow" approach in the parliamentary process. In accordance with the conclusions of the ECHR and the Constitutional Court of the Russian Federation, which have prerequisites even in the works of Montesquieu, the parliament, as a body with jurisdictional powers, must comply with the appropriate procedure in their implementation. Hence, the author deduces the tasks of further improving both the doctrine of parliamentary procedure and the need for clear and competent regulation of legal procedures in parliament, the ultimate goal of which is to observe and implement the rights, freedoms and constitutional guarantees of participants in the parliamentary process.
Conclusions. The procedures governing the work of the Parliament and its organs are legal procedures in the broad sense of the term. This does not negate the understanding that the legal procedures of the parliament, corresponding to its quasi-judicial powers, has the nature of the jurisdictional process. This conclusion is consistently confirmed in the jurisprudence of the European Court of Human Rights and the Constitutional Court of the Russian Federation.

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## 1. Introduction.

As it is well known, Aristotle has argued that prudence in the affairs of the state in the essence constitutes a special legislative science that focuses on the decisions about the good of the people [1, p. 180]. This prudence is realized, among other things, in the *order* of decision-making, which is traditionally referred to as the *management process* (Lat. *processus* – *moving forward*), inherent in the actions of any public agencies and officials [2, p. 486; 3, p. 74]. Being subject to the norms of law that ensure legitimacy and guarantees of the rights and freedoms of participants, the management process becomes a legal procedure [4; 5, 41; 6, p. 22]. At the same time, however, some legal procedures can be recognized as a legal process [7, p. 237].

In the doctrine, there are two approaches to the definition of legal procedures: the *broad* one and the *narrow* one. Within the *narrow* approach, legal procedures are usually understood as the actions of judicial agencies and, in part, law enforcement agencies, and officials regulated by procedural norms of law at the stage of pre-trial proceedings [8; 9, p. 78; 10, p. 7]. Proponents of such views usually refer to legal procedures only in criminal, civil, administrative, and constitutional trials.[1]

However, more popular is the *broad* approach, which stipulates that legal procedures are referred to as a multitude of procedural rules governing the actions of public agencies [11; 12, p. 39; 13, p. 82; 14, p. 97]. As a result, all the actions of public agencies and officials that focus on the implementation of substantive norms of law are related to legal procedures. The author of this publication is also inclined to use a *broad* interpretation of legal procedures, which makes this publication an additional argument that supports the corresponding point of view.

In studies devoted to the theory of legal process, scholars express different positions regarding the relationship between the concepts of *legal procedure* and *legal process*. Some scholars identify the terms *legal procedure* and *legal process* as synonymous, referring to all procedures as the procedural and legal norms of the law [15, p. 65; 16, p. 261; 17, p. 100]. Other scholars consider procedures to be a universal property of law and therefore consider the process to be a type of a legal procedure [18, p. 84]. Besides, some scholars who the author of this article shares an opinion with assume that a multitude of similar procedures, which focuses on achieving a single substantive result, constitutes a procedural form of a legal process [12, p. 13].

The research literature abounds with the studies on the role and the significance of the legal process and legal procedures. Nevertheless, despite such attention given to the legal process, it still has not received the proper level of theoretical elaboration [19, p. 49]. As a result, Russian legal practice is experiencing noticeable difficulties in ensuring its effective functioning on the theoretical legacy of only the Soviet era Theory of Law [20, p. 340]. Disputes between adherents of the *broad* and *narrow* approaches to the understanding of the legal process, the relationship between the concepts of the *legal process* and the *legal procedure* significantly complicate the transition to the construction of a contemporary concept and system of principles of legal procedure, which could help ensure an appropriate level of guarantees for the exercise of rights and legitimate interests in the field of law enforcement, not only of the judiciary but also of the legislative and executive branches of government [14, p. 98].

Analysis of the functioning of the parliament, and first of all, the process of the lawmaking, usually focuses on the substantive issues, rather than the procedural forms of the implementation of the laws [21, p. 31], which explains why scholars in the Russian constitutional studies do not attribute so much attention to the issues of parliamentary procedures, including those issues that develop in the context of the functioning of the parliamentary bureaucracy. As a result, the development of the constitutional legal order is experiencing serious complications in terms of the separation of powers and parliamentarism, which is especially visible in relation to the parliamentary procedures [22, p. 12].

There is no doubt that all the actions of the

[1] Taking into account the amendment of Article 118 (Part 2) of the Constitution of the Russian Federation in 2020, it is now hardly justified not to include among other things the arbitration process to this list.

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parliament are subject to the norms of law and focus on a legal result, and therefore constitute legal procedures. The purpose of parliamentary procedures is to eliminate chaotic functioning of the parliament in the conditions of collective decision-making and to find optimal solutions for social issues in compliance with the legal regulations and the guarantees of the rights of participants in parliamentary procedures, especially since they are consistently aimed at achieving a single legally significant result and thus constitute a parliamentary process (i.e. lawmaking process, budget process, impeachment process, parliamentary investigation, etc.) as a necessary condition for constitutional legitimacy.

**2. Functioning of the parliament as legal procedure**

The study of parliamentary procedures through the prism of the theory of legal process is important not only for a unified procedural and legal theory but also for the purpose of adequate identification of guarantees of participants of the parliamentary procedures. After all, the observance of rights and legitimate interests of citizens has a fundamental importance both in the jurisdictional process and in the functioning of the public agencies. It is clear that these guarantees cannot be provided without proper regulation of the legal procedures.

Summing up the accumulated achievements in the study of certain aspects of legal procedures and the legal process as a whole, one can distinguish five features of legal procedures: (1) they regulate the actions of the law enforcement agencies; (2) they focus at the implementation of the main (substantive) norms of law; (3) they establish the procedure for performing legally significant actions that aim to achieve a legal result; (4) they are regulated by the law; where (5) the result of a legal procedure is a legal act. Based on these features, the legislative proposal as a starting point of the legislative process can be described as follows.

*First*, legal procedures regulate the actions of the law enforcement agencies and officials, and as such exist as a form of exercising of power [14, p. 96; 23, p. 112; 5, p. 41]. Among the forms of exercising of the power of the parliament, its structural units and officials one can list legislative proposals, stripping of the immunity of the parliament members, and the procedure of the parliamentary hearings.

According to Article 104 of the Constitution of the Russian Federation, legislative proposals can be introduced to the State Duma of the Federal Assembly of the Russian Federation by the designated officials (i.e. the President of the Russian Federation, the Federation Council, members of the Federation Council, deputies of the State Duma, the Government of the Russian Federation, legislative assemblies of the provinces of the Russian Federation, as well as the Constitutional and the Supreme Courts of the Russian Federation on issues of their jurisdiction). The State Duma cannot accept for consideration legislative proposals from other persons (who are not listed in Article 104 of the Constitution), which naturally limits the legislative scope of functioning of the State Duma.

Similarly, the norms on legislative proposals work internationally. For example, in accordance with Article 118 of the Constitution of the Republic of Poland and Article 29 of the Rules of the Procedure of the Sejm, legislative proposals are submitted to the Sejm of Poland by designated persons (a group of at least 15 Sejm deputies, the Sejm commission, the Senate, the President of the Republic, the Council of Ministers of the Republic, as well as a group of voters of at least 100,000 citizens who have the right to vote in the Sejm). In accordance with Article 119 of the Constitution of Poland, the Sejm is obliged to consider the submitted legislative proposals, except for the cases, which are directly restricted. In accordance with Article 31 of the Rules of Procedure of the Sejm, legislative proposals are submitted to the Marshal (Chairman) of the Sejm who has the right to request the justifications to the proposals, to send the proposals, which he or she considers questionable to the Legislative Commission, and is obliged, in accordance with Article 32, to hand copies of the legislative proposals to the deputies as well as to send the submitted legislative proposals to the President of the Republic, the Marshal of the Senate and the Chairman of the Council of Ministers. According to Part 6 of Article 31 of the Rules of

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Procedure of the Sejm, the Legislative Commission of the Sejm may, by 3/5 votes, declare the bill inadmissible and return it to the initiator. Thus, the rules of legislative proposal regulate the actions of the Sejm, its units and officials.

The issue of stripping a deputy of immunity also belongs to the exclusive competence of the parliament since it implements one of the most important privileges of the parliament and guarantees the independence of the parliament member as a body exercising legislative power independent of other branches of government, which is confirmed by the practices of the Constitutional Court of the Russian Federation[2]. The international judicial practice adheres mainly to a similar point of view regarding the independence of the parliament members[3]. However, the High Court of the Commonwealth of Australia, in its decision in the case of Victoria v. Commonwealth, stated that the privileges and immunities of Parliament do not apply if there is a question of considering a case involving the compliance of the Parliament itself with the rules of parliamentary procedure[4].

In accordance with Article 98 of the Constitution of the Russian Federation, Article 19 of the Federal Law On the Status of a Senator of the Russian Federation and the Status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation, a senator of the Russian Federation, a deputy of the State Duma during their entire term in the office, *without the consent of the Federation Council and the State Duma*, may not be brought to criminal or administrative justice imposed in court, subject to arrest, detention, search (except in cases of arrest at the scene of a crime), interrogation, and personal search. In accordance with Article 449 of the Criminal Procedure Code of the Russian Federation[5], a senator of the Russian Federation, a member of the State Duma, detained on suspicion of committing a crime, must be released immediately after their identity is established. The decision to open criminal proceedings against these persons in accordance with paragraph 1 of Part one of Article 448 of the Criminal Procedure Code of the Russian Federation is possible only with the consent of the Federation Council or the State Duma, respectively. The procedure for obtaining consent to the stripping of immunity is established, respectively, by Chapter 24[1] of the Rules of Procedure of the State Duma[6], and by Article 8 of the Rules of Procedure of the Federation Council[7].

*Second*, legal procedures focus on the implementation of the main substantive legal norm, which by its means mediates the content of specific social interactions [12 p. 39; 24, p. 32; 15, p. 65; 25].

In terms of a legislative proposal, the norms of substantive law are directly the norms that grant the right of a legislative proposal, and the procedure for implementing the right of a legislative proposal is set, respectively, by a multitude of procedural norms.

The norms of substantive law include the provisions of Part one of Article 104 of the Constitution of the Russian Federation, which establish a list of persons entitled to a legislative proposal. Among the forms of implementation of a legislative proposal are draft laws, budget drafts, and amendments to draft laws. The procedural norms regulating the form and procedure for exercising the right of the legislative proposal are established by the Constitution of the Russian Federation (Parts two and three of Article 104) and by the Rules of Procedure of the State Duma of the Federal Assembly of the Russian Federation. The provisions of Article 8 of Federal Law No. 64-FZ of June 13, 1996, On the Entry into Force of the Criminal Code of

[2] Resolution of the Constitutional Court of February 20, 1996, No. 5-P in the case of checking the constitutionality of the provisions of Parts One and Two of Article 18, Article 19 and Part Two of Article 20 of the Federal Law of May 8, 1994, On the Status of a Deputy of the Federation Council and a Deputy of the State Duma of the Federal Assembly of the Russian Federation.

[3] United States v Johnson 383 US 169 (1966); Hamilton v Al Fayed [1999] 3 All ER 317

[4] Victoria v Commonwealth (1975) 134 CLR 81.

[5] Criminal Procedure Code of the Russian Federation

[6] Resolution of the State Duma of the Federal Assembly of the Russian Federation of 22.01.1998 No. 2134-II GD (ed. of 23.06.2020) On the Rules of Procedure of the State Duma of the Federal Assembly of the Russian Federation

[7] Resolution of the Federal Assembly of the Russian Federation of 30.01.2002 No. 33-SF (ed. of 20.05.2020) On the Rules of Procedure of the Federation Council of the Federal Assembly of the Russian Federation

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the Russian Federation, which establish that "drafted federal laws on the amendments and the additions to the Criminal Code of the Russian Federation may be submitted to the State Duma of the Federal Assembly of the Russian Federation only if official reviews on these drafted laws are presented by the Government of the Russian Federation and the Supreme Court of the Russian Federation."

*Third*, legal procedures establish the order for performing legally significant actions that focus on achieving a legal result [26, p. 5; 6, p. 23; 27, p. 17]. The semantic meaning of the word *order,* in this case, implies the rule by which something is done [28].

Legally significant action is recognized as such when its commission entails the consequences provided for by the law. Thus, a condition for the beginning of the procedure for consideration by the State Duma of a draft law is the legal fact that a person authorized by Article 104 of the Constitution of the Russian Federation submits a draft law issued as a legislative proposal to the State Duma, as well as accompanying documents provided for in Article 105 of the Rules of Procedure of the State Duma. The Chairman of the State Duma sends the submitted draft law to the relevant committee of the State Duma, which, in accordance with Part3[1] of Article 107 of the Rules of Procedure of the State Duma, checks compliance with Articles 104 and 105 of the Rules of Procedure of the State Duma, and in case of non-compliance, recognizes the draft law as not submitted to the State Duma in accordance with Article 104 of the Constitution of the Russian Federation.

Legislation of some countries contains similar rules for performing legally significant actions in the parliament. In particular, in accordance with paragraph 7 (a) of Rule XII of the Rules of Procedure of the United States House of Representatives, the legal fact of introducing a bill is to submit its text with the signature of a member of the House of Representatives to the Speaker of the House. The legal fact of the introduction of the bill is confirmed by an entry in the Journal of Congress and is subject to printing in the Congressional Reports. In accordance with Rule XII, clause 5, of the Rules of the U.S. House of Representatives, members of the House are prohibited from initiating bills aimed at establishing "commemorations" (a period of time denoting remembrance, celebration, or recognition). Failure to comply with this and other rules under Rule XII, clause 6, of the Rules of the U.S. House of Representatives, entails consequences of returning the bill to the initiator.

However, not all actions of the parliament are legally significant. For example, the institution of lobbying in the actions of the parliament does not apply to parliamentary procedures because it is not legally significant action, although it has the institutional nature of a proposal to adopt, to amend, or to repeal a law, just like a legislative proposal.

*Fourth*, legal procedures are regulated by the rules of law [29, p. 97; 30]. Normativity distinguishes legal procedures from any other activity performed by the public agencies. The multitude of procedural norms of constitutional law regulating the proceedings, the forms, and the methods of organizing the functioning of the parliament can be called the parliamentary procedure [31, p. 12].

The norms that regulate parliamentary procedures may be legally binding, authorizing, or prohibiting. Thus, the requirements of the rules of procedure for the procedure for registration of a legislative proposal are binding. The provisions of the Constitution, which provide for the right to revoke a legislative proposal, are legally binding. The norms that provide for restrictions on the introduction of amendments to the draft law in the framework of the first or third reading procedures are considered to be prohibitive.

The sanctions of the procedural norms are separate prescriptions that ensure the execution of legal procedures by restoring the violated right (cancellation of a legal act, invalidation of legal actions, leaving of the proposal without movement, return to the initiator, etc.) [32, p. 90; 33, p. 300].

*Fifth*, the final result of any legal procedure is a legal act [34, p. 3; 35, p. 41].

If one considers the procedure for exercising the right of a legislative proposal, the result of the legislative proposal is a decision of the Council of the State Duma of the Federal Assembly of the Russian Federation in accordance with paragraph B of Article

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14 of the Rules of Procedure of the State Duma on the inclusion of the bill in the approximate program of legislative work of the State Duma for the current session, indicating the date of consideration of the bill at the meeting of the State Duma, the rapporteur on the bill and the co-rapporteur from the designated committee, or in accordance with paragraph D of Article 14 of the Rules of Procedure on the inclusion of the bill in the draft procedure for the next meeting of the State Duma and the draft procedure for the additional meeting of the State Duma, or in accordance with paragraph Z of Article 14 of The Rules of Procedure on the return of the bill to its initiator (the subject of the right of legislative proposal, who introduced the bill) in the cases established by Part three[1] of Article 107, Parts five — eight of Article 108 and Part four of Article 114 of the Rules of Procedure, or in accordance with paragraph K[12] of Article 14 on the withdrawal of the bill from consideration by the State Duma in the case provided for by Part nine of Article 112 of the Rules of Procedure. Also, the result of the legislative proposal in accordance with Part one of Article 121 of the Rules of Procedure is the decision of the designated committee to include an amendment in one of the two tables of amendments to the draft law (the first column includes amendments recommended for adoption while the second one includes amendments recommended for rejection), which are subject to consideration at the plenary session of the State Duma. In case of non-compliance by the subject of the right of the legislative proposal with the requirements of Article 120 of the Rules of Procedure amendments are returned to the author without being included in the tables of amendments.

International practice, in general, follows the same logic. In the United States, for example, the result of a legislative proposal is a decision by the Speaker of the House of Representatives to include a bill in the Journal of the House of Representatives in accordance with paragraph 1 of Rule I of the Rules of the US House of Representatives, or in accordance with paragraph 2 of Rule XII of the Rules of Procedure to send the bill for preliminary consideration to the Standing Committee in accordance with the competence of the Standing Committees defined in paragraph 1 of Rule X, or to return the bill to the subject of the right of the legislative proposal of a bill that the Speaker considers obscene, offensive, or unacceptable in accordance with the paragraphs 3, 4 of Rule XII of the House Rules. The decision of the Speaker is signed in accordance with rule I, paragraph 4 of the Rules of the House, and may be appealed by a member of the House at a meeting of the House in accordance with rule I, paragraph 5, of the Rules of the House.

### 3. Legal procedures in parliament as parliamentary procedures

Legal literature suggests several approaches to defining parliamentary procedures. Thus, Olga V. Klenkina and Oleg N. Bulakov understand parliamentary procedures as groups of legal norms that regulate the procedure for convocation and dissolution of parliament, the composition, method of formation and functioning of its units, the quorum, the rights and obligations of the subjects participating in its functioning, and the basis which it uses to exercise its rights and to perform its duties as a government institution" [36, p. 6; 37, p. 220]. However, this approach is not without certain flaws. Thus, the rules governing the composition of the parliament are legal procedures regulated by electoral law, and, accordingly, relate to the issues of direct democracy. The issues of convocation and dissolution of the parliament, although they fall under the signs of legal procedures, are rather issues of a general constitutional and legal nature, relate most often relate to the powers of the executive branch, and therefore cannot fully gravitate towards the parliamentary procedures. Exceptions are cases involving the assignment of issues of convocation and dissolution of parliament to parliamentary procedures in cases where they are covered by the competence of the parliament itself (for example, the powers of the parliaments of Israel, Poland, Croatia include self-dissolution), units and officials of the Parliament (for example, the powers of the permanent deputation of the Cortes Generales of Spain, the bureau of the National Assembly of France, the President of the Bundestag and the President of the Bundesrat of the Federal Republic of Germany, the President of the Chamber of Deputies

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of Italy include the convocation of parliament or the corresponding chamber for a session).

Ivan N. Riazantsev in his work comes to the conclusion that the multitude of procedural norms of parliamentary law, which regulate the proceeding, the forms, and the methods of organization of the functioning of the parliament can be called a parliamentary procedure. The parliamentary procedure is understood as a multitude of norms regulating legislative procedures along with procedures for structuring and regulating the functioning of the parliament, its units and officials in the exercise of the constitutional powers of the parliament, and the procedures for the functioning of the units and officials that facilitate the exercise of the parliament's constitutional powers [31, p. 13]. Eveniy A. Ignatov also adheres to a similar understanding of the nature of parliamentary procedures as he suggests that parliamentary procedures should be understood as a special form of implementation of the functions of the legislative body, which is a normatively established procedure for the functioning of the parliament, expressed in a set of sequential actions that are established by regulations for the implementation of the parliament's constitutional powers and functions. At the same time, he believes that within the scope of parliamentary procedures, the powers of both the parliament itself and other government agencies are implemented [38, p. 7]. Comparable assessments are expressed in the work of Talia Y. Khabrieva and I. M. Stepanov on the Parliamentary Law of Russia [39].

In this regard, one can note that the doctrine has two points of view on the parliamentary procedures. A number of scholars (Oleg N. Bulakov and Olga V. Klenkina) believe that parliamentary procedures include the norms of a constituent nature (convocation and dissolution of parliament) and the norms regulating the actual work of the parliament (legislative process, control powers, etc.). Other scholars (Taliya Y. Habrieva., I. M. Stepanov, Evgeniy A. Ignatov, Ivan N. Riazantsev, etc.) understand parliamentary procedures exclusively as norms regulating the internal work of the parliament, its interaction with other branches of government, civil society, the non-parliamentary opposition, and inter-parliamentary dialogue, which focus on implementing the constitutional powers of the parliament. It seems that this approach is the most justified since it is more consistent with the specific character of parliamentary procedures.

**4. Jurisdictional parliamentary procedures**

In fact, the doctrine of legal procedure also applies to parliamentary procedures in a *narrow* interpretation of the nature of legal procedures, linking them mainly to the jurisdictional procedures that correspond to the judicial or, more precisely, quasi-judicial powers of the parliament. Here, of course, it is important to highlight that one of the founders of the theory of separation of powers Charles Louis Montesquieu pointed out that the parliament should not assume judicial functions but can act as a "judicial chamber" in exceptional cases when it represents the interest of the people [40, p. 145]. Thus, reflecting the doctrine of the parliamentary procedure through the lens of the doctrine of the jurisdictional process, one can assume that the parliamentary procedures that make up the impeachment process, the procedure for early termination of the powers of judges and members of the parliament (excluding, of course, the issues of early termination of powers due to death or termination of their powers at their own request) solely in connection with the presence in the actions of the person holding public office[8] of signs of a certain delicta publica, constitute jurisdictional parliamentary procedures.

From this perspective, in relation to the functioning of the parliament, the distinctive features of the jurisdictional procedure are primarily the process of impeachment of the president and the procedure for early termination of powers of the justices of the higher courts, courts of cassation and appeal of the Russian Federation, the procedure for stripping of immunity of the President of the Russian Federation who has terminated the exercise of his/her powers, since in resolving these issues, the parliament must, in accordance with the Constitution of the Russian Federation, be based

[8] Decree of the President of the Russian Federation No. 32 of January 11, 1995 On Public Offices in the Russian Federation.

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solely on the legal assessment, which excludes such types of constitutional liability as recall of deputies, a vote of no confidence in the government, etc., since the latter can be based on purely political (non-legal) reasons. Thus, in accordance with Part one of the Article 93 of the Constitution of the Russian Federation, the President of the Russian Federation may be dismissed from office, and the President of the Russian Federation, who has terminated the exercise of his/her powers, may be stripped of immunity on the basis of charges ... of high treason or the commission of another serious crime. Similarly, the Constitution of the Russian Federation (paragraph L of Part one of Article 102) sets out the grounds for termination of powers of the Chairman, Deputy Chairman, and justices of the Constitutional and Supreme courts, and the courts of cassation and appeal. This is also typical of the situation when the State Duma considers and resolves the case of early termination of the powers of deputies of the State Duma due to their absence at the sessions of both the State Duma and the State Duma committees of which they are members over a period of a month; or when the Federation Council and the State Duma in relation to senators or deputies of the State Duma consider and resolve issues of early termination of powers in the event of violations of the prohibitions established in the Constitution of the Russian Federation and Article 4 of the Federal Law On the Status of a Member of the Federation Council and a Deputy of the State Duma of the Federal Assembly of the Russian Federation[9].

In this case, there is every reason to perceive specified actions of the chambers of the parliament as a legitimate form of implementation of substantive norms of the constitutional law, which presuppose constitutional and legal responsibility executed by means of the parliamentary jurisdictional procedure. From this perspective, there naturally arises a number of theoretical legal issues, including the observance of the right of citizens to a fair trial, the qualified legal assistance, the procedure for collecting and evaluating evidence, the establishing the guilt of a person, the right to appeal, which in their entirety are neither fully reflected in the norms of the Constitution of the Russian Federation, nor in the federal constitutional laws, federal laws, and in the acts of the Constitutional Court of the Russian Federation.

The European Court of Human Rights has repeatedly stressed in its decisions that the ECHR may classify a particular national administrative or parliamentary body as a "court" in the basic meaning of the term for the purposes of applying the provisions of Article 6, paragraph 1, of the European Convention on Human Rights, which determines the conventional meaning of the right for a fair and public hearing within a reasonable time by an independent and impartial court. These arguments are reflected in the decisions of the ECHR in the cases of Argyrou and others v. Greece[10], Savino and Others v. Italy[11], and Volkov v. Ukraine[12]. Therefore, a clear procedure for such proceedings should be developed and approved, ensuring the participation of a public official or her/his representatives (lawyers) in a meeting of the parliament, in respect of which the parliament resolves the issue of early termination of powers. A similar conclusion was reached by the US Supreme Court in the case of USA v. Nixon (1974), stating that if the House of Representatives of the US Congress requests information for an impeachment investigation, it assumes judicial functions, and therefore must apply the rules and procedures applied in federal courts and jury trials[13].

There is also the question of judicial protection of the rights of the interested persons, or rather the right to appeal against the decision of the Parliament on early termination of powers. It is no accident that the Constitutional Court of the Russian Federation in one of its decisions has noted the

[9] Federal Law No. 3-FZ of 08.05.1994 (with amendments of 24.04.2020) On the Status of a Member of the Federation Council and the Status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation

[10] Argyrou and Others v. Greece, App. no. 10468/04, Judgment of 15 January 2009, para. 27

[11] Savino and Others v. Italy, nos. 17214/05, 20329/05 and 42113/04, §§ 72 75, 28 April 2009

[12] Oleksandr Volkov v. Ukraine, no. 21722/11, § …, ECHR 2013

[13] United States v. Nixon, 418 U.S. 683 (1974) Available at: supreme.justia.com/cases/federal/us/418/683 (accessed: 20.07.2020).

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possibility of judicial appeal against decisions of the State Duma and the Federation Council[14] on the early termination of the powers of deputies (senators), which directly follows from the meaning of Articles 3 (Part three), 32 (Part two), and 97 of the Constitution of the Russian Federation.

This decision of the Constitutional Court has corrected the legal regulation of the status of members of the Federation Council (senators). Thus, in accordance with the resolution of the Federation Council of October 30, 2013 No. 421-SF, Article 8 of the Rules of Procedure of the Federation Council were supplemented by Part 1.1, which provides for the extension of guarantees of inviolability of a member of the Federation Council to a member of the Federation Council whose powers were terminated early due to the reasons listed in the paragraphs A and D of part one of Article 4 of the Federal Law On the Status of a Member of the Federation Council and the Status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation for a period during which this person may appeal to the Supreme Court of the Russian Federation against a decision on early termination of her/his powers, and in the case of an appeal to the Court – until the entry into force of the Court's decision in this case. In accordance with Part one of Article 219 of the Code of Administrative Judicial Proceedings of the Russian Federation, the limitation period is three months[15]. And although similar amendments to the Rules of Procedure of the State Duma were not made, this, due to the finality and unconditional binding legal positions of the Constitutional Court, does not block the guarantees of judicial protection and the inviolability of the State Duma deputies in specific cases.

**5. Parliamentary process as a multitude of parliamentary procedures**

In the doctrine, the legal process is defined as a multitude of successive procedures regulated by the norms of law, which focus on the achievement of a single legal result [41]. Similarly, a multitude of successive parliamentary procedures that focus on the achievement of a legal result arising from the powers of the parliament can be called a parliamentary process. Taking into account that in the doctrine such successive procedures are usually referred to as stages of the process, four groups of the parliamentary procedures can also be distinguished, as they share one purpose, and, accordingly, as they form independent parliamentary processes.

The *first* group of parliamentary procedures includes the procedure of exercising the right of a legislative proposal, the procedure for consideration of the concept of a draft law (first reading), the procedure of clause-by-clause consideration of a draft law (second reading), the procedure for adopting a law as a whole (third reading), the procedure for approving a law by the second chamber (jointly in bicameral parliaments), and the procedure for authorizing and promulgating a law. Since they are all focused on the adoption of the law, they are referred to as the legislative process.

In Russian legislative process, the following stages of the can be distinguished: (1) legislative proposal (Article 104 of the Constitution of Russia, Article 104-108 of the Rules of Procedure of the State Duma)[16]; (2) consideration of legislative proposals in the State Duma in the first reading (discussion of the concept) (Articles 118-119 of the

[14] Resolution of the Constitutional Court of the Russian Federation of December 27, 2012 N 34-P, city of Saint Petersburg on the case of checking the constitutionality of the provisions of paragraph B of Part one and Part five of Article 4 of the Federal Law on the Status of a Member of the Federation Council and the status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation in conjunction with the request of a group of deputies of the State Duma

[15] Code of Administrative Legal Proceedings of the Russian Federation No. 21-FZ of 08.03.2015

[16] A number of scholars distinguish the preliminary considerations of legislative proposals by committees and commissions of the State Duma as an independent stage of the legislative process (see, for example, 42, p. 466-467). However, in my opinion, since at this stage the draft law can be returned to the initiator due to non-compliance with the provisions of Articles 104-109 of the Rules of Procedure of the State Duma, it is necessary to consider this work as part of a procedure of implementation of the legislative proposal, since from the moment when the Council of the State Duma received the draft law for consideration in the State Duma, it must undergo the first reading procedure and can be either adopted or rejected in the first reading.

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Rules of Procedure of the State Duma); (3) consideration of legislative proposals in the State Duma in the second reading (clause-by-clause discussion, introduction of amendments) (Articles 120-123[1] of the Rules of Procedure of the State Duma); (4) adoption of the law (third reading) (Articles 124-126 of the Rules of Procedure of the State Duma); (5, optional) consideration and approval by the Federation Council (Articles 103-110 of the Rules of Procedure of the Federation Council) with special features of consideration given to the federal constitutional laws (Articles 121-128 of the Rules of Procedure of the Federation Council); (6, jointly) overcoming differences between the State Duma and the Federation Council when the draft law is rejected by the Federation Council (Articles 127-132 of the Rules of Procedure of the State Duma, Articles 111-115 of the Rules of Procedure of the Federation Council); (7) authorization and promulgation of the law (Article 107 of the Constitution of Russia); (8, jointly) consideration by the State Duma of legislative proposals rejected by the President (Articles 133-135[3] of the Rules of Procedure of the State Duma); (9, jointly) consideration by the Federation Council of legislative proposals rejected by the President (Articles 116-120[2] of the Rules of Procedure of the Federation Council); (10, optional) giving the Constitutional Court an opinion on the compliance of the law adopted, but not entered into force, with the Constitution of the Russian Federation at the request of the President after the State Duma and the Federation Council have overcome the President's veto on the adopted law (Part 3 of Article 107, Part 2 of Article 108 of the Constitution).

The *second* group of parliamentary procedures includes the procedure for sending (reviewing) the budget address of the head of the state or the government (jointly), the procedure for submitting the draft budget, the procedure for considering the concept and main areas of budget revenues and expenditures (first reading), the procedure for clause-by-clause consideration of the draft budget (second reading), the procedure for adopting the budget (third reading), the procedure for approving the budget (jointly in bicameral parliaments), the procedure for approving and promulgating the budget (jointly). All these procedures focus on the adoption of the budget whereby they can be collectively referred to as the budget process, or more precisely, the parliamentary budget process.

The procedure of pronouncing (considering) a budget address is provided for in the legislation of a number of states as the initial procedure of the parliamentary budget process. Thus, in accordance with paragraph 54 of the Constitutional Act of Canada, 1867, the House of Commons may not pass or approve an appropriations bill or a bill for the establishment of taxes and levies, unless it has been previously recommended to that House by the Governor-General in her/his address during the session.

A number of provisions of the budget process make it an autonomous and a special kind of parliamentary process, not allowing to identify its procedures with the legislative process, even though the federal budget and the report on the implementation of the federal budget in Russia are adopted in the form of federal laws, and therefore separate provisions governing the legislative process are applied to the procedure for their development. The details of consideration of the draft law of the federal budget are set out in Articles 184.1-213 of the Budget Code of the Russian Federation while the details of consideration of the draft law on the execution of the federal budget are set out in Articles 264.4-264.11 of the Budget Code of the Russian Federation.

However, one should not forget that the condition for the enactment of the federal laws in Russia is their publication. Thus, in accordance with Part 2 of Article 107 of the Constitution of Russia, the President of the Russian Federation signs and publishes federal laws, and in accordance with Article 15 of the Constitution of Russia, laws are subject to mandatory publication, which is specified in the norms of Article 1 of Federal Law No. 5-FZ of 14.06.1994 On the Procedure for the Publication and Entry into Force of Federal Constitutional Laws, Federal Laws and Acts of the Chambers of the Federal Assembly, which provides for the application in the territory of the Russian Federation of only those federal laws that have been officially published. At the same time, in accordance with

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paragraphs 107-111 of the List of Information classified as a state secret, approved by Decree of the President of the Russian Federation No. 1203 of 30.11.1995, information on the federal budget expenditures on defense, security, anti-terrorist actions, the state defense order, R&D of weapons and military equipment are not subject to disclosure, and therefore are not published. At least this allows one to conclude that the budget process is different from the legislative one, otherwise, it would mean a violation of Article 15 of the Constitution of Russia, which provides for the mandatory publication of federal laws without reservations in relation to the budget law or the budget execution law. In fact, the legal nature of the contemporary budget differs from the legal nature of the law. The legal nature of the law is a multitude of norms that establish generally binding rules of conduct; the budget is an estimate of the state's revenues and expenditures, which is mandatory for the executive agencies in terms of the procedure of collecting public revenues and spending budget allocations. The role of the parliament in this regard is to authorize such revenues and expenditures on behalf of the people; therefore, it is not surprising that in a number of countries (Australia, Great Britain, Norway, US, Finland, etc.) the budget is adopted in the form of an independent type of legal act rather than a law [43, p.188].

A special feature of the budget process in Russia is the procedure for the first reading of the budget draft. Specifically, after the rejection in the first reading of the draft law on the budget in accordance with Articles 203-204 of the Budget Code of the Russian Federation, the draft law of the federal budget, rejected in the first reading, is either considered by a reconciliation commission consisting on a parity basis of representatives of the State Duma, the Federation Council, and the Government of the Russian Federation, or sent to the Government of the Russian Federation for revision, or serves as a basis for raising the issue of a vote of no confidence to the Government of the Russian Federation. Repeated rejection of the budget draft is not allowed without raising the issue of a vote of no confidence to the Government. In any case, the draft must be re-submitted to the State Duma for consideration within 10 days from the date of transmission to the reconciliation commission, 20 days from the date of return to the Government for revision, and in the case of the resignation of the Government of the Russian Federation in accordance with paragraph 2 of Article 204 of the Budget Code of the Russian Federation within a period not exceeding 30 days from the date of formation of a new Government. The usual legislative process does not allow for the re-introduction of a draft on the same subject.

In addition, in the conditions of the introduction of the temporary financial administration in one of the provinces of the Federation, provided for in Article 168.1-168.6 of the Budget Code of the Russian Federation, a number of restrictions are established on the right of a legislative proposal, on the powers of the supreme executive and legislative bodies in the province of the Federation, on the right of the legislative proposal of the Head of the temporary financial administration, and on her/his exclusive powers of endorsement[17] when the subjects of the right of the legislative proposal exercise their right to amend the law of the province of the Federation on the budget of the province of the Federation, which also gives grounds to discuss the prerequisites of singling out the budget process into a separate and independent type of legal process.

The *third* group of parliamentary procedures includes procedures that focus on conducting a parliamentary investigation. These include: (1) the procedure of initiating a parliamentary investigation, (2) the procedure of commencement of a case of a parliamentary investigation, (3) the procedure of investigating the facts and circumstances that gave grounds to a parliamentary investigation, (4) the procedure of discussing (approving) the results of a parliamentary investigation.

[17] Here it is used in the sense of confirming the right of the subject of the legislative proposal to initiate an amendment to the budget law by giving the Head of the interim financial administration a positive opinion on the proposal to introduce an amendment. In the normal budget process, when considering a budget draft, the subject of the right of the legislative proposal must receive the government's opinion on the financial bill, but there is no mentioning of the restriction of the right to introduce such a bill if the government's opinion is negative.

The *fourth* group of parliamentary procedures includes: (1) the procedure for initiating impeachment; (2) the procedure for considering the grounds for initiating impeachment; (3) the procedure for bringing charges by the lower house against an official; (4, jointly) the procedure for the court to give an opinion on the presence of elements of a crime in the actions of an official; (5, jointly) the procedure for the constitutional court to give an opinion on compliance with the procedure for bringing charges against an official by impeachment; (6) a hearing on the confirmation of impeachment (removal from office) in the upper house. Therefore, a multitude of parliamentary procedures that focus on removing an official from office constitutes the impeachment process.

Thus, in our opinion, the types of the parliamentary process include the legislative process, the budget process, the parliamentary investigation, and the impeachment. Analyzing the procedures that make up the stages of the parliamentary process, one could note that there exist some necessary stages that actually do not belong to the parliamentary procedures. Thus, the parliament is not the only participant in the legislative and budgetary processes. The promulgation and authorization of laws, including the law on the budget, is the responsibility of the executive branch, except for the nations of the British Commonwealth, where the Crown, which authorizes and promulgates the laws passed, and which belongs to the executive branch, is also part of Parliament (see, for example, ch. V of the Bill of Rights of 1689, Article 4 of the Act of Parliament of 1911, Articles 17, 55, 56, 57 of the Constitution of Canada Act of 1867). The impeachment process in a number of countries includes separate procedures assigned by the constitution to the judiciary (for example, in Russia and Kazakhstan). Also, in the legislation of a number of countries, the parliamentary investigation process can cover individual procedures assigned by the investigative commission of the parliament to the law enforcement agencies. Despite this, all these procedures are ultimately aimed at implementing the constitutional functions of the parliament, which implies their compliance with the parliamentary process.

With this in mind, the parliamentary process is presented as a multitude of legal procedures that successively follow each other focusing on achieving a single legal result related to the constitutional functions of the parliament.

## 6. Conclusions

By summarizing the discussion above, it is important to emphasize that this study confirms the assumptions of the scholars of the *broad* interpretation of the doctrine of legal procedure, and, therefore, establishes the procedures governing the functioning of the parliament and its units as legal procedures in the *broad* sense of this term. This however does not negate the understanding that the legal procedures of the parliament, corresponding to its quasi-judicial powers, largely comply with the nature of the jurisdictional process, which is consistently confirmed in the legal practice of the European Court of Human Rights and the Constitutional Court of the Russian Federation.

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