

## STANDARD CONSTITUTIONAL CATALOG OF PRINCIPLES OF JUDICIAL AUTHORITY IN THE CIS COUNTRIES

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**Article History: Received on 25<sup>th</sup> February 2019, Revised on 30<sup>th</sup> April 2019, Published on 25<sup>th</sup> May 2019**

### *Abstract*

**Purpose of Study:** The present paper presents the results of a comparative legal analysis of constitutions of the CIS-member states in order to identify a standard catalog of judicial power principles in them, considering their interpretation as a set of fundamental principles determining the institutional and procedural aspects of judicial power. There is a lack of unity in the institutional and procedural aspects of the considered fundamental ideas together with a unified approach to the formation of a principles catalog for the judiciary in the focus group of constitutions.

**Methodology:** The present study was based on a rational approach to the disclosure of legal phenomena and processes, using general (system, logical, analysis and synthesis) scientific and private scientific methods. Among the latter are the formal legal, linguistic legal, comparative legal, collectively used to identify the judiciary principles.

**Results:** The identified standard list of constitutional principles of the judiciary in the CIS countries is presented. It includes the justice administration only by the court, organization legality and judiciary activities, prohibition of creation of emergency courts, independence, interaction, inadmissibility of interference with judiciary implementation, openness, competitiveness and equality of the parties, the state language of legal proceedings, cooperation and unity of procedure, court decisions, and state funding of courts

**Implications/Applications:** The comparative legal analysis, with a unified approach to the formation of the list of principles of the judiciary in the focus group of Constitutions, the lack of unity in institutional and procedural aspects of the fundamental ideas can be still stated. We believe that this discrepancy mediates the integration of the considered principles in the judiciary’s framework.

**Keywords:** *Court, Judicial Authority, Principles, Independence, Interaction, Openness, State Financing*

### INTRODUCTION

Judicial authority's concept has the ability to adapt to any legal system, while at the same time enjoying the amount of flexibility and relativity that can accommodate the legal and social values of various societies. This research has been conducted to answer ambiguities and questions about the nature and functions of Hossein. To overcome the ambiguities about Judicial authority, we must first reconsider the theoretical foundations of this concept. In addition, various elements from various aspects of this type of concept. Some of these elements regulate the form and framework of Judicial authority, which in two aspects accomplish this: either, as the principle of separation of powers and judicial independence, organize its structure or, as the principle of the hierarchy of norms, regulate the normative framework. In addition, there are other elements, that is, legal security and equality, which facilitate the proper realization of Judicial authority, namely, the protection of fundamental rights and freedoms. This research focuses on identifying a standard list of judicial authority principles in constitutions of the CIS member states (except for Russian practice). Simultaneously, we attribute the principle to the standard catalog with its legalization in more than three constitutions of the declared group of countries.

Concisely, principles of the judiciary are regarded as a set of fundamental principles determining the institutional and procedural judiciary aspects. With this approach, fundamental provisions of the judicial system, legal proceedings, and justice are valued in their content [[Boudin, 1911](#), [Trámpuz, Juan Pablo, and Daniel Barredo Ibáñez. 2018., p. 238-270](#); [Hans Gribnau, 2002](#); [Selomo, and Govender, 2016, p. 25-45](#); [LauraPineschi, 2015](#); [Dmitriyeva, & Nikiforova,2016](#); [Irvani, & ShekarchiZade, 2014](#)].

## RESEARCH METHODOLOGY

The present study was based on a rational approach to the disclosure of legal phenomena and processes, using general (system, logical, analysis and synthesis) scientific and private scientific methods. Among the latter are the formal legal, linguistic legal, comparative legal, collectively used to identify the judiciary principles. The focus group consisted of CIS countries, texts of the constitutions taken from the base of the Internet-library “Constitutions of States (Countries) of the World” (<http://worldconstitutions.ru/>) [<http://worldconstitutions.ru/> (accessed January 19, 2019); Jenaabadi&Khosropour, 2014].

## RESULTS AND DISCUSSION

The judicial power principles in constitutions of the CIS countries are placed in special chapters (Chapter VII “Judicial Power” in Constitution of Azerbaijan, Chapter 7 “Courts and the Supreme Judicial Council” in Constitution of Armenia, Chapter 6 “Court” in Constitution of Belarus, Chapter VII “Courts and Justice: in Constitution of Kazakhstan, Chapter VI “Judicial Power” in Constitution of Kyrgyzstan, Chapter IX “Judicial Power” in Constitution of Moldova, Chapter 8 “Court” in Constitution of Tajikistan, Chapter VI “Judicial Power” in Constitution of Turkmenistan, Chapter XXII “Judicial Power of the Republic Uzbekistan” in Constitution of Uzbekistan), as well as in any other part of the constituent instrument. The considered constitutional principles may be formalized in one norm, or consist of several different legal provisions.

We believe that justice administration only by the court is the fundamental constitutional principle of the judiciary. In Constitution of Azerbaijan [1], this concept is first fixed in the aspect of the principle of state power separation, indicating the exercise of judicial power by the court (Chapter 3, Article 7), and received an independent role in Article 125 entitled “Implementation of the judiciary”. It states that only courts (Chapter I) exercise judicial authority in the Republic of Azerbaijan (Chapter I), and later Chapters II and III refer to the types of courts exercising judicial power, as well as types of legal proceedings (constitutional, civil and criminal proceedings stipulated by law). It is believed that the above experience of Azerbaijan can be considered “exemplary” in terms of the content and structure of the principle.

Although in a somewhat different variation series - civil criminal and other forms established by law (part 2 of article 75 of Constitution of Kazakhstan) in addition to the civil, criminal, administrative and other forms of legal proceedings (Chapter 2, Article 93 of the Constitution of Kyrgyzstan), the situation is similar to constitutions of Kazakhstan [4] and Kyrgyzstan [5] in reflection of the stated principle (part 1 of article 75 and part 1 of article 93 respectively), as well as establishment of types of legal proceedings. Chapter 3 of Article 75 of the Constitution of Kazakhstan and Chapter 3 of Article 93 of the Kyrgyz Constitution list the types of functioning courts.

Further research revealed that either in the original formulation or in meaningful truncation compared to the presented structure, the other constitutions establish the justice administration principle only by the court. The latter concerns the Constitution of Armenia. In Chapter 1 of Article 162, it is fixed that in the Republic of Armenia, justice is administered only by courts and in accordance with the Constitution and laws, and further in Article 163, there is a list of vessels. In Armenia, there is no constitutional provision on the diversity of legal proceedings species.

With a shortened content structure but original formulation, the principle is presented in Constitutions of Belarus and Turkmenistan. In the first one, there is only a concise wording “the judicial power in the Republic of Belarus belongs to the courts” (Article 109). There is no other detail concerning types of proceedings and courts.

Article 99 of the Constitution of Turkmenistan contains an identical formulation of the principle. However, later in its Article 100, it posted a consolidated decree on the implementation of the judiciary by relevant type of courts and within certain forms of legal proceedings. The Supreme, Higher Economic, Military and other courts provided by the law are among courts. The legal proceedings are in civil, economic, administrative and criminal forms.

Article 114 of Constitution of Moldova “Administration of Justice” contains a wording different from all submitted wordings of justice administration principles under the title of performing law only by the courts [[Treskov, 2018](#)]. The following Article of Constitution defines such varieties of judicial instances as the Supreme Court of Justice, Appeals Chamber, tribunals, courts (Chapter 1, Article 115), as well as the specialized courts (Chapter 2, Article 115).

Note that in the Constitutions of Tajikistan and Uzbekistan, there is no formulation of the justice administration principles only by a court in any variation; however, they contain the principle of state power separation, indicating its judicial type (Article 9 of Constitution of Tajikistan and Article 11 of Constitution Uzbekistan). Along with it in Article 84 of Constitution of Tajikistan, a provision is found on judiciary implementation by specific types of courts

(Constitutional Court, Supreme Court, High Economic Court, Military Court, Gorno-Badakhshan Autonomous Oblast Court, Regional Courts, Dushanbe city, city and district Courts).

The approach of the Constitution of Uzbekistan is identical in Article 107, differing only in the above list of courts types.

Subsequently, we draw attention to the legality principle in the judiciary organization and activities. It is found in all considered Constitutions, except Armenia. Nevertheless, its formulations differ in terms of mentioning the institutional and procedural parts.

Therefore, the legality principle is substantial in content, encompassing the judicial system and legal proceedings (Chapter V, Article 125, Constitution of Azerbaijan; Articles 109 and 112, Constitution of Belarus).

Constitutions of Kyrgyzstan, Tajikistan, and Uzbekistan are identical in the approach chosen by states to use principle in the wording “organization and order of courts’ activities are determined by constitutional law” (Article 84, Constitution of Tajikistan) and the law (Chapter 4, Article 93, Constitution of Kyrgyzstan; Article 107, Constitution of Uzbekistan).

Institutional and procedural parts of the discussed principle also include norms of constitutions of Moldova and Turkmenistan in the following formulas:

The organization and competence of courts and judicial procedure are established by organic law (Chapter 4, Article 115, Constitution of Moldova);

The competence and order of formation and courts’ activity are determined by laws (Article 109, Constitution of Turkmenistan).

We believe that the discussed principle is substantively narrowed in Chapter 4 of Article 74 of the Constitution of Kazakhstan, as it deals with the establishment of the judicial system of the Republic based on Constitution and constitutional law.

Unity of the CIS member states’ approach to the formulation and consolidation of principle of prohibition of emergency courts creation is traced (Chapter VI, Article 125, Constitution of Azerbaijan; Chapter 2, Article 163, Constitution of Armenia; Article 109, Constitution of Belarus; Chapter 4, Article 75, Constitution of Kazakhstan; Chapter 3, Article 93, Constitution of Kyrgyzstan; Chapter 3, Article 115, Constitution of Moldova; Article 84, Constitution of Tajikistan; Article 100, Constitution of Turkmenistan; and Article 107, Constitution of Uzbekistan).

The principle of judiciary independence, in the focus group of Constituent Acts, is formalized in Constitutions of Azerbaijan, Belarus, Tajikistan, and Uzbekistan. This concept is mentioned in conjunction with the principle of state power separation or independently.

Therefore, Article 7 of Constitution of Azerbaijan is allocated to the principle of state power separation and it discloses its aspects in detail, including independence of the legislative, executive and judicial powers within their powers (Chapter IV).

Although the principle of judiciary independence is located in special Chapter XXII entitled “Judicial Power of the Republic of Uzbekistan”, its wording closely resembles the cited provision of Constitution of Azerbaijan, with some addition of independence not only from the legislative and executive powers, but also from political parties and other public associations (Article 106, Constitution of Uzbekistan).

Article 84 of the Constitution of Tajikistan concisely ignores the judiciary independence.

Not only independence but also the impartiality of the court follows the provisions of Article 60 of the Constitution of Belarus.

As seen, the variability of its institutional and procedural aspects is still revealed by the unity of the Constitutional approach to formalization of this principle (court, judicial authority). This thesis also refers to the characteristic of other principles of the declared group.

The principle of independence as opposed to the rule of interaction among the judiciary, legislative and executive authorities. By considering checks and balances, we clarify that this principle follows the formulation of the principle of state power separation. Hence, Chapter IV of Article 7 of the Constitution of Azerbaijan provides the interaction of the judiciary with legislative and executive authorities within its authority.

Article 6 of the Constitution of Moldova is called “Separation and interaction of authorities”. It establishes that in the Republic of Moldova, the legislative, executive and judicial authorities are divided and they interact in the exercise of their prerogatives in accordance with provisions of the Constitution.

Chapter 4 of Article 3 of the Constitution of Kazakhstan refers to the interaction of the legislative, executive and judicial branches among themselves by means of the checks and balances system.

In Constitutions of Armenia (Article 4) and Turkmenistan (Article 4), the term “interaction” is not used in formulating the principle of separation of state power, but it is replaced by other terms whose meaning is modified to actions opposite to separation, but balancing and restraining these authorities.

While fixing separation of powers, not all the Constitutions in question are directly determined by interaction within the system of checks and balances. However, competent Constitutional norms still indicate the interaction between the judiciary and other authorities. Thus, in Constitutions of Belarus (Article 6), Kyrgyzstan (Article 3), Tajikistan (Article 9) and Uzbekistan (Article 11), the principle of state power separation is briefly stated without reference to checks and balances. However, the subsequent Articles indicate the stated interaction.

Hence, for most of the above cases, an example is appropriate - the procedure for removal/dismissal of the President established at the constitutional level (Article 107 of Constitution of Azerbaijan; Article 141 of Constitution of Armenia; Article 88 of Constitution of Belarus, Chapter 3 of Article 81 of Constitution Moldova; and Article 72 of Constitution of Tajikistan).

On the interaction of judiciary with other authorities, Article 55 of Constitution of Kazakhstan states the procedure for election and dismissal of the Senate on the proposal of the President of Republic of Kazakhstan, Chairman of the Supreme Court, and judges of the Supreme Court of the Republic by taking their oath. The parliament of Turkmenistan has similar powers (Article 67).

In Kyrgyzstan, according to Chapter 3, Article 64 of Constitution, the President represents the Jogorku Kenesh for dismissal of judges of the Supreme Court on the proposal of the Council of Judges.

Article 80 of the Constitution of Uzbekistan states the interaction of the three branches of government. In accordance with it, the President of Republic of Uzbekistan, the Prime Minister and members of the Cabinet of Ministers, Chairmen of the Constitutional Court, the Supreme Court, the Supreme Economic Court, the Attorney General of the Republic, and Chairman of the Board of Central Bank can participate in a meeting of the Oliy Majlis of the Republic of Uzbekistan.

Inadmissibility of interference with implementation of the judiciary is the next Constitutional principle. Diverse formulations of this principle are found in the investigated Constitutions.

Laconic were the norms of Chapter 2 of Article 162 of the Constitution of Armenia and Chapter 3 of Article 94 of the Constitution of Kyrgyzstan, prohibiting any interference with the administration of justice/activities to administer justice.

The inadmissibility of interference in activities of the court (Chapter 2, Article 77, Constitution of Kazakhstan) and judges (Article 101, Constitution of Turkmenistan; Article 112, Constitution of Uzbekistan), it is formalized in the abovementioned Constitutional acts under threat of the law liability.

The substantive formulation of the declared principle was the norm of Chapter III of Article 127 of Constitution of Azerbaijan, establishing the inadmissibility of direct or indirect restriction of legal proceedings from anyone's side and for any reason, illegal influence, threat, and interference (Chapter III, Article 127, Constitution of Azerbaijan).

The principle of open proceedings in all courts is enshrined in Article 114 of Constitution of Belarus, Article 88 of Constitution of Tajikistan, Article 105 of Constitution of Turkmenistan and Article 113 of Constitution of Uzbekistan. In this case, explanations were given on admissibility of a closed court session in cases provided by law.

According to Article 99 of the Constitution of Kyrgyzstan, the openness of hearing of cases in all courts is combined with the public announcement of the court decision.

The principle of competition and equality of parties is included in the discussed Constitutions in the following variations of institutional and procedural aspect:

Justice is carried out based on the competition and equality of parties in the process (Article 115, Constitution of Belarus; Article 107, Constitution of Turkmenistan);

Legal proceedings are carried out based on competition and equality of parties (part 3 of article 99 of the Constitution of Kyrgyzstan). A similar formulation reflects the adversarial principle in Chapter VII of Article 127 of the Constitution of Azerbaijan, albeit without the inclusion of equality;

The judicial process is carried out based on the principle of competition and equality of parties (Article 88, Constitution of Tajikistan);

Next, we draw attention to the principle of the state language of legal proceedings. Chapter X of Article 127 of Constitution of Azerbaijan fixed the provision on implementation of legal proceedings in the state language or in the language of the population making up the majority in the relevant locality (Chapter X, Article 127, Constitution of Azerbaijan). The norms of Article 88 of the Constitution of Tajikistan and Article 106 of the Constitution of Turkmenistan are identical.

Article 118 of the Constitution of Moldova refers to “Language of Judicial Proceedings and Right to an Interpreter”. Judicial proceedings are conducted in Moldovan language. Nevertheless, in accordance with the law, legal proceedings can be conducted in a language acceptable to the majority of persons involved in a legal process.

Article 115 of Constitution of Uzbekistan provides for the establishment of proceedings in the Republic of Uzbekistan in the Uzbek, Karakalpak languages or in the language of the majority of the population of the area.

Simultaneously, all the mentioned norms also include provision for the supply of an interpreter for persons participating in the case who do not know the language.

Cooperation and uniqueness of cases are forecasted in Article 113 of the Constitution of Belarus, Article 88 of Constitution of Tajikistan, and Article 104 of the Constitution of Turkmenistan.

The principle of mandatory court decisions is reflected in the wording of Chapter 3 of Article 76 of Constitution of Kazakhstan as “Decisions, sentences and other decisions of the courts are binding throughout the territory of the Republic”.

A more detailed difference is set in Chapter 1 of Article 100 of the Constitution of Kyrgyzstan, based on which, acts of courts of the Kyrgyz Republic entered into legal force are binding on all state bodies, local governments, legal entities, public associations, officials and individuals, and are subject to execution throughout the country.

Article 114 of the Constitution of Uzbekistan refers to the binding nature of acts of judicial power for all state bodies, public associations, enterprises, institutions, organizations, officials and citizens.

Particularly, Article 120 of the Constitution of Moldova should be allocated to the corresponding name of “Obligation of sentences entered into the validity and other judgments”. Its content consists in the observance of sentences, other court decisions entered into legal force, as well as assistance to courts in the judicial process, in the execution of sentences and other court decisions entered the legal force.

State financing of courts is another principle of the judiciary.

Laconic Article 121 titled “The financial means of judicial instances, remuneration and other rights” of the Constitution of Moldova state that the financial means of judicial instances are approved by the Parliament and included in the state budget.

Article 80 of the Constitution of Kazakhstan provides funding for the courts, providing judges with housing at the expense of the Republican budget. It must ensure the possibility of full and independent justice administration. By the way, this rule underlines the principle of judiciary independence once again. This kind of norm-obligation is contained in Chapter 1 of Article 98 of the Constitution of Kyrgyzstan. Moreover, it stipulates that the funding and proper conditions for courts’ functioning and judges’ activities are provided by the state. At the same time, the budget of the judicial system is independently formed by the judicial authority; and in agreement with the executive and legislative branches of power, it is included in the Republican budget (Chapter 2 of Article 98).

## CONCLUSIONS

In the conclusion of the performed study, the identified standard list of constitutional principles of the judiciary in the CIS countries is presented. It includes the justice administration only by the court, organization legality and judiciary activities, prohibition of creation of emergency courts, independence, interaction, inadmissibility of interference with judiciary implementation, openness, competitiveness and equality of the parties, the state language of legal proceedings, cooperation and unity of procedure, court decisions, and state funding of courts [[Treskov, 2018, p. 112-116](#)].



As shown by the comparative legal analysis, with a unified approach to the formation of the list of principles of the judiciary in the focus group of Constitutions, the lack of unity in institutional and procedural aspects of the fundamental ideas can be still stated. We believe that this discrepancy mediates the integration of the considered principles in the judiciary's framework.

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