



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

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### 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

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