

## HUMANITARIAN CONTEXT OF THE PRINCIPLES OF THE JUDICIARY IN THE CONSTITUTIONS OF THE COUNTRIES OF EASTERN EUROPE

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### Abstract

**Purpose:** The article is devoted to the comparative analysis of norms of the constitutions of the countries of Eastern Europe in connection with the identification in them of the principles of the judiciary, enshrined in the special sections on the rights and freedoms of man and citizen.

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

**Result:** As a result, the author substantiates the framework constitutional approach of conjugation in the formalization of subjective rights with their guarantees of implementation by the judiciary on the basis of the principles established for them. Among the latest principles are the following: independent and unbiased court, universal and procedural equality in judicial; presumption of innocence; publicity of court proceeding and pronouncement of a verdict. The studied constitutional provisions also reveal other principles of the judiciary, which were solitary instances of the claimed combination with subjective rights, but did not receive a consistent mass distribution.

**Applications:** This research can be used for universities, teachers, and students.

**Novelty/Originality:** In this research, the model of the Humanitarian Context of the Principles of the Judiciary in the Constitutions of the Countries of Eastern Europe is presented in a comprehensive and complete manner.

**Keywords:** Human Rights, Principles, Presumption of Innocence, Equality, Judiciary, Court.

### INTRODUCTION

The principles, being the basis of the organization and activity of the judicial power, represent the objective fundamental principles reflecting the authentic nature of judicial power in the system of the functional division of state power (Treskov, 2018, pp. 112-116; Treskov, 2019, pp. 54-57). In modern countries, such principles are enshrined at the constitutional level or stem from the content and legal nature of the judiciary itself (Boudin, 1911, pp. 238-270; Gribnau, 2002, pp. 25-45; Pineschi, 2015; Peter, et al. 2000). Within the framework of this work, the research attention is devoted to the comparative analysis of the norms of the constitutions of Eastern Europe in order to identify the principles of judicial power enshrined in special sections on human and civil rights and freedoms (the texts of the constitutions are taken from the database of the Internet library "constitutions of States (countries) of the world"). <http://worldconstitutions.ru/>.

Let us make a remark that the constitutional structuring of the formalization of the principles of the judiciary corresponds to their reflection in the sections devoted to the foundations of the state (constitutional system); human and civil rights and freedoms; courts / judiciary / justice; senior judicial authorities, and as a rule, the constitutional court.

### METHODS

The study was based on the dialectical approach to the disclosure of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and private scientific methods. Among the latter are formal legal, legal linguistics, comparative-legal, which were collectively used to identify the principles of the judiciary.

### RESULTS AND ITS DISCUSSION

The final provisions of the analysis on the declared subject can be presented in the following key theses.

Equality before the court has traditionally been a principle of the legal status of the individual, as well as a basic principle in the activities of the judiciary. In this regard, it is interesting to draw attention to the provisions of the Constitution of Latvia. Chapter 6 structurally devoted to the court is located before Chapter 8 "Basic human rights", which included the principle of equality of all people in Latvia before the law and the court (article 91).

Article 29 of the Constitution of Lithuania is formulated in a somewhat expanded interpretation: before the law, the court and other state institutions or officials, all persons are equal (Chapter 2 "Man and the state").

In Section III "Fundamental freedoms, human and civil rights" of the Constitution of Croatia, article 26 formalized the

principle of equality of all citizens and foreigners before the court, other state and other bodies with public authority. As you can see, without binding equality to the law.

The establishment of article 22 of Section II "Human rights and fundamental freedoms" of the constituent act of Slovenia, which guaranteed equal rights in judicial proceedings, is distinguished from the provisions of the above constitutional series. Thus, the General humanitarian Chapter enshrines the principle of equality of rights of subjects of judicial proceedings (procedural equality). It is substantially limited in comparison with the universal principle of equality before the court (the law and other public authorities) ([Losilkina, et al. 2018](#), pp. 3682-3685; [Kuksin, et al. 2017](#), pp. 303-308).

The sections of the constituent acts defining the legal status of the individual logically reflect the principle of presumption of innocence, which is both the basic legal status of the individual and the basic position in the operation of courts. Let us pay attention to the variability of the formulations of this fundamental establishment.

Thus, in Chapter II "Freedoms and rights of the individual" of the Albanian Constitution, article 30 contains the following interpretation: "Everyone is considered innocent so long as his guilt is not proven by a final judicial decision". The establishment of the article is addressed to everyone and guilt is linked to the final decision of the court. According to the content of the above norm is close to part 2 of article XXVI of the Hungarian Constitution, also operating as a condition of the "final judicial decision." Besides, one more condition is called – the establishment of criminal liability.

Part 3 of article 31 of the Bulgarian Constitution specifies both the addressee of the norm and the condition of innocence – A defendant shall be considered innocent until proven otherwise by a final verdict (Chapter 2 "Fundamental rights and duties of citizens"). Article 42 of the Polish Constitution (section "Personal freedoms and rights") is a single-order article. Chapter 2 "Fundamental rights, freedoms and duties" of article 22 of the Czech Constitution, as well as 50 Section 7 "Right to judicial and other legal protection" of the Constitution of Slovakia the condition of guilt is specified entered into force sentence of the court, but with the characteristic "guilty".

Provision of article 13 of the Constitution of Macedonia looks similar, it is calling the addressee "a person indicted for an offense", and the condition of innocence – legally valid court verdict (II. Civil and political freedoms and rights). Article 28 of the Croatian Constitution establishes the principle understudy in an identical manner.

The constitutional approach of Lithuania in the reflection of the principle under consideration is particularly noteworthy here. A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment. (Chapter 2, article 31, "The human being and the state"). Thus, not only the court decision is provided, but also the maintenance of the order established by the law.

The rule is also interesting in that it goes on to state that a person charged with the commission of a crime shall have the right to a public and fair hearing of his case by an independent and impartial court. Thus, in the context of consolidation of the legal rights, the inalienable principles of the judiciary are stated: justice, the openness of the case, independence of the court, fairness of the court.

The contextual consolidation of these principles is contained in the norm of part 2 of article 42 of the Albanian Constitution. In accordance with it, everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law. Such a qualitative and quantitative multiplicity of the contextual Declaration of judicial principles is observed in part 1 of Article XXVI of the Hungarian Constitution, as well as in part 1 of article 46 and art. 48 Of the Constitution of Slovakia.

An increasing number of principles in conjunction with the right of citizens to protection in court has found in the Constitution of Poland. On the basis of its article 45, everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.

The article further clarifies exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.

Thus, the principles of the competent court and the non-subordinate court have been added to the already mentioned principles. The humanitarian part of the Polish Constitution enshrines the principle of publicity of the court decision.

In other constitutions of the countries of Eastern Europe within the framework of the subjective right to judicial protection in quantitative and qualitative variability, the principles of judicial power are also found. For example, in addition to the principles of an independent and impartial court, the Slovenian Constitution reflects the principle of the legality of the establishment of a court (art. 23).

It is specific that in the specified norm the principle of implementation of justice by the judge is formulated. Traditionally, this kind of principle is still placed in the special chapters of the Constitution on the judiciary.

Article 24 "Public Nature of Court Proceedings" of the Slovenian Constitution, similarly to the norms already analyzed, sets out the principles of publicity of the trial and publicity of the court decision.

The wording of article 24, Chapter 2, "Fundamental rights, freedoms and duties" of the Estonian Constitution is similar.

In contrast to the numerous principles sought in conjunction with the right of everyone to defend their rights and legitimate interests in court, article 92 of the Constitution of Latvia specifies only one – a fair court.

The focal subjective right is enshrined in article 50 in an interesting way, according to which every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency ([Makogon, et al. 2017, pp. 221-224](#)). It should be noted that in the future such principles are not found either in the Constitution of Macedonia or in other analyzed constitutions of the States of Eastern Europe. However, they relate to the work of the judiciary – priority, and urgency with regard to procedure.

Another identified subjective right, in conjunction with which the principles of the judiciary are formalized, is the petition, which confirms Section 2 "Fundamental human rights and freedoms" of the Slovak Constitution. In terms of political rights, it is stated that any petition must not interfere in the independence of a court (part 3 of article 27).

Next, we will present, in our opinion, an interesting experience, confirming the thesis about the humanitarian connection of subjective rights and principles of the judiciary in special sections. This is clearly implemented in the Charter of fundamental rights and freedoms, which is an integral part of the Czech Constitution. Thus, in part 2 of article 18 of Chapter 2 "Human Rights and fundamental freedoms" mention that petitions may not be misused to intrude upon the independence of the courts.

Chapter 5 "Right to judicial and other legal protection" of the Charter of fundamental rights and freedoms in combination with subjective rights formalized the following principles:

- An independent and impartial court in which everyone can defend his right in the prescribed procedure (part 1 of article 36);
- Equality of participants in the proceedings (part 2 of article 37);
- Publicity of the case (part 2 of article 38);
- Presumption of innocence (part 3 of article 40).

## CONCLUSION

The presented list of principles can be characterized by the quantitative and substantive standards in comparison with other similar norms of the constitutions of the countries of Eastern Europe. Although, in general, there is a different number of declared rules that match the subjective rights and principles of the judiciary. Thus, in a single version in the Constitution of Bosnia and Herzegovina, the text of article II "Human Rights and fundamental freedoms" formalized the principle of respect for human rights and fundamental freedoms by the courts. No other principles have been found in this basic law.

The Constitution of Slovenia may be the opposite example. In the absence of a special Chapter on the courts and the judiciary, its basic principles are detailed and placed in Section II "Human rights and fundamental freedoms".

Of course, quantitatively and substantively in the constitutions of the countries of Eastern Europe, the required legal formulations differ, but in general allow us to summarize the framework approach of a combination of subjective rights and their guarantees – the implementation of judicial activities on the basis of established principles.

## CONFLICT OF INTERESTS

The author confirms that the data do not contain any conflict of interest.

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