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José María Pino Suárez 400-2 esq a Lerdo de Tejada. Toluca, Estado de México. 7223898473*

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**TÍTULO:** Independencia de la justicia: experiencias constitucionales extranjeras.

**AUTORES:**

1. Dr. Sergey Zakharov.
2. Dr. Alexander Chemshit.
3. Dra. Alevtina Novikova.
4. Dra. Nina Stus.
5. Dra. Tatiana Zajceva.

**RESUMEN:** Este artículo presenta los resultados de un estudio legal comparativo que investiga las normas de constitución en los países de la CEI, Europa y América sobre la formalización del principio de independencia de la justicia. Con respecto a este principio, se ha establecido la ausencia de certeza sustantiva. La consolidación constitucional fragmentaria en tales aspectos semánticos se observa como la independencia del poder judicial o los tribunales estatales, así como los tribunales de una entidad territorial autónoma en el estado, y se establece la formación del presupuesto del sistema judicial (Kirguistán) o el presupuesto del poder judicial.

**PALABRAS CLAVES:** Principios jurídicos, principios de justicia, independencia, poder judicial, tribunal.

**TITLE:** Justice independence: foreign constitutional experiences.

**AUTHORS:**

1. Dr. Sergey Zakharov.
2. Dr. Alexander Chemshit.
3. Dra. Alevtina Novikova.
4. Dra. Nina Stus.
5. Dra. Tatiana Zajceva.

**ABSTRACT:** This article presents the results of a comparative legal study investigating the norms of constitution in CIS countries, Europe and America about formalizing the principle of justice independence. With respect to this principle, the absence of substantive certainty has been established; fragmentary constitutional consolidation in such semantic aspects is observed as independence of the judiciary or state courts, as well as courts of an autonomous territorial entity in the state, and budget formation of the judicial system (Kyrgyzstan) or the budget of the judiciary is set up.

**KEY WORDS:** legal principles, principles of justice, independence, judicial power, court.

**INTRODUCTION.**

Principles of justice are naturally and objectively included among the initial provisions defining the most significant aspects of the state activity; the main purpose of which is to ensure fair and lawful resolution of court cases in connection with the protection of a person and citizen, population, and other legal relations that need legal protection for their interests (Anishina, 2006).

Justice is a form of state activity implemented by a special subject, i.e. a court in connection with the consideration and resolution of cases falling within its competence (Buzun, et al. 2017; p. 323-326).

As any other state activity, principles are immanent for justice, among which independence can be considered as the basic one (Colin, 2007; p. 844-864). A comparative research in a legal way, on the examples of constitution in the CIS countries, Europe and America is the subject of this work (Lucas, 1972).

We emphasize once again that we use the formulation of the principle of justice independence. At the same time, justice administered by the courts is regarded as a meaningfully broader constitutional category corresponding to the authentic type of state activity (Charles, 1975; p. 360-389). In this regard, it is justified in constitutional formulations to identify the immediate constructions for the principle of the justice independence, as well as the independence of the subjects implementing justice (the court, and judges).

## **DEVELOPMENT.**

### **Methodology.**

The present study was based on a dialectical approach to disclose the legal phenomena and processes, using general scientific (system, logical, analysis and synthesis) and private scientific methods. Among the latter are formal legal, linguistic legal, and comparative legal, which were collectively used to identify the institutions governing the principle of justice independence.

We focused on a group of countries in the CIS, Europe and America, and texts of the constitutions, which were taken from the base of the Internet-library “Constitutions of States (Countries) of the World”.

### **Results and Discussion.**

Note, that at the present time, in constitutional practice, there is no consistent approach to content and naming the phenomena of justice and judiciary (Alan and Angus, 2001; p. 229-248). We confirm this thesis by the fact that in almost all texts of the analyzed constitutions the term “justice” is used. In

this case, when it is repeatedly applied, the name of the basic chapter is devoted to the court or the judiciary. This is exactly the situation in the constitutions of the countries; for example, in Constitution of Azerbaijan, the term “justice” is used 8 times, and the basic chapter VII is called “Judicial Power”; in Armenia there is ten times mention with basic chapter 7 of “Courts and the Supreme Judicial Council”.

In constitutions of Turkmenistan and Uzbekistan, the justice is used only once, but chapters in them are devoted to the judiciary. The Constitution of Tajikistan is different in the way that its text does not use the term “justice” at all.

As a positive case, we can note the Constitution of Kazakhstan, in which not only the term “justice” is used eightfold, but also the name of the basic section VII is “Courts and justice”. In the text of the constitution itself, the sought-for principles are also found in correlation with justice: independence of judge in the administration of justice (part 1 of article 77), as well as independent administration of justice as a result of financing courts, and providing judges with housing from the national budget (article 80).

The situation is similar to the constitutions of Eastern European states, in which you can also find a multiple and single reference to justice in chapters that are devoted to the court, and judiciary.

It is appropriate to confirm this issue with the examples of Constitutions of Latvia (1 time in Chapter 6 “Court”), Lithuania (5 times in Chapter 9 “Court”), Romania (12 times in Chapter VI “Judicial Power”), Slovakia (2 times in section 2 “Courts Slovak Republic”) and others. At the same time, in the constitutions of Poland and Czech Republic, the term “justice” is not used; however, special chapters are separated as: section 8 “Courts and tribunals” and chapter 4 “Judicial power”, respectively.

In fairness, we note the Constitution of Macedonia, in which the term "justice" is reflected three times and its section 4 discusses "Justice", separately.

In the Constitutions of other European states, there is a more frequent reference to the term "justice" when naming special sections. As examples, we can name titles of chapter 7 named "Justice" in the Constitution of Andorra, chapter of "Administration of Justice" in the Constitution of Liechtenstein, chapter of "On Justice" in the Constitution of Luxembourg, chapter 10 entitled "Justice" in the Constitution of Monaco, Chapter 6 of "Administration of Justice" in the Constitution of Netherlands, chapter 9 of "Justice" in the Constitution of Finland, and chapter 9 of "Justice" in the Constitution of the Federal Republic of Germany.

In the reviewed European constitutions, those that did not include the term "justice" were also identified; For example, Iceland and Norway.

The Constitutions of American states have few examples of using the term "justice" in the names of special chapters. For example, Chapter III titled "The Judiciary and the Justice System" in the Constitution of Venezuela, Chapter VII "Administration of Justice" in the Constitutional Acts of Canada and Part 15 entitled "Administration of Justice" in the Constitution of Colombia.

At the same time, this group of constitutions often use the term justice without correlation in their texts with the identical name of an independent part of constituent act. This is typical, for example, for Argentina (4 times, but section 3 is named "On Judicial Power"), Bolivia (6 times, but section 16 is named "Judicial Power"), Guatemala (11 times, but Part VII is named "Judicial Power"), Peru (6 times, but section VIII is named "Judicial Power") and so on.

Despite the fact that texts of the studied constitutions contain the term justice, its principle of independence in direct formalization or through the courts and judges has not been found. Among such states, we indicate Bosnia and Herzegovina, Colombia, Luxembourg, Mexico, the Netherlands, Norway and Sweden.

What that is mentioned about the principle of justice independence in the declared group of constitutions in CIS countries, Europe and America, is only found in some of the CIS countries such as (Azerbaijan, Kyrgyzstan and Turkmenistan), Eastern Europe (Bulgaria, Macedonia and Croatia), and Latin America (Costa Rica).

In this case, the classical formulation of this principle can only be considered Art. 4 of the Constitution of Turkmenistan. In accordance with it, the state is based on principle of powers separation into legislative, executive and judicial versions, which act independently, restraining and balancing each other. Thus, here the principle of organizational independence is combined with formalization of the principle of separation of state power.

In the constitutional norms of Eastern European countries, autonomy is addressed to courts or the judiciary: “The courts are independent ...” (Article 98 of the Constitution of Macedonia), “The judiciary is independent ...” (Article 115 of the Constitution of Croatia).

In the Constitution of Costa Rica, independence is consistent with one of the courts. So, according to Art. 99 organization, management and control of the elections are assigned solely to the Supreme Court for Electoral Affairs, which is independent in the performance of its functions.

In Art. 98 of the Constitution of Kyrgyzstan, independence is not correlated with the multidimensional phenomenon of justice, but only with formation of budget of the judicial system and by judiciary in coordination with the executive and legislative branches of government. The situation is similar to Part 3 of Art. 117 of the Constitution of Bulgaria. It is not about independence of the desired subjects of state activity, but is correlated to the budget of judiciary.

The Azerbaijan’s Constitution establishes independence of the courts of Nakhichevan Autonomous Republic in resolving issues related to their powers according to the Constitution and laws of the Azerbaijan Republic. The principle of independence with respect to justice, implemented by courts of the Republic of Azerbaijan, has not been formalized at the constitutional level.

For comparison, we clarify that, for example, in China, the principle of independence is formalized in our understanding of the "classic" version. So, according to Art. 126 of the PRC's Constitution: "Individual courts, within the limits established by law, administer justice independently ...". In this case, as can be seen, this independence is associated with justice. We believe that such a model of securing principle of justice independence is the most successful one.

## **CONCLUSIONS.**

Summing up the research carried out about formalization of the principle of justice independence, we note the following key points:

✚ The Principle of Autonomy of justice in the immediate terminological construction is not found in any of the analyzed constitutions texts of the CIS countries, Europe and America.

✚ The indicated principle is formalized in isolated cases (rather, as an exception), as the following semantic aspects:

a. Independence of the judiciary (Croatia) or state courts (Costa Rica and Macedonia), as well as courts of an autonomous territorial entity in the state (Azerbaijan).

b. Formation of budget for the judicial system (Kyrgyzstan) or budget for the judiciary (Bulgaria).

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#### **DATA OF THE AUTHORS.**

**1. Sergey Zakharov.** Belgorod State University, 85, Pobedy Street, Belgorod, the Belgorod region, 308015, Russia. Email: [info@bel-usd.ru](mailto:info@bel-usd.ru)

**2. Alexander Chemshit.** Doctor in Political Science. Sevastopol state University, 33, Universitetskaya street, Sevastopol, city of special importance Sevastopol, 299053, Russia. Email: [histphilsoc@sevsu.ru](mailto:histphilsoc@sevsu.ru)

**3. Alevtina Novikova.** PhD in Law. Belgorod State University, 85, Pobedy Street, Belgorod, the Belgorod region, 308015, Russia. Email: [novikova\\_a@bsu.edu.ru](mailto:novikova_a@bsu.edu.ru)

**4. Nina Stus.** Doctor in Law. Belgorod State University, 85, Pobedy Street, Belgorod, the Belgorod region, 308015, Russia. Email: [stus@bsu.edu.ru](mailto:stus@bsu.edu.ru)

**5. Tatiana Zajceva.** Doctor in Law. Russian Presidential Academy of National Economy and Public Administration, 82, Vernadskogo Ave., Moscow, 119571, Russia. Email: [tatianazajceva888@mail.ru](mailto:tatianazajceva888@mail.ru)

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