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MAIN ACTIVITIES

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF AZERBAIJAN ON THE LEGAL PROTECTION OF THE CONSTITUTION

PRINCIPALES ACTIVIDADES DEL TRIBUNAL CONSTITUCIONAL DE LA REPÚBLICA DE AZERBAIYÁN SOBRE LA PROTECCIÓN JURÍDICA DE LA CONSTITUCIÓN

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ABSTRACT

Constitutions are legal documents that establish the fundamental principles and laws of a country or state. Its study and protection is of great importance since, in general, state constitutions provide the legal framework in which the state functions, protect the rights of citizens, define the separation of powers, establish different procedures for decision-making, and on many occasions, they are also a guide for the creation of laws. Considering this, the aim of this paper is to analyze the main activities carried out by the Constitutional Court of Azerbaijan for the legal protection of the national constitution. It was determined that in modern times the main directions of activity of the Constitutional Court of the Republic of Azerbaijan are oriented to the legal protection of the Constitution include different functions such as resolving conflicts and disputes between participants of social relations on the basis of the constitution, other legislative acts, and in the jurisprudence of the European Court of Human Rights. In the same way, it verifies compliance with the laws and other acts regarding actions (inaction) of various state bodies as well as officials with the principles and norms of the constitution, reveals existing gaps between the current normative legal acts, making proposals to eliminate them, ensures the balanced operation of the various powers of the State, as well as protects and restores the violated rights and freedoms of citizens and other subjects of public relations. Therefore, this institution unquestionably plays a fundamental role in the preservation of the democratic principles under which the country functions.

Keywords: Azerbaijan, Constitutional Court, legislation, state

RESUMEN

Las constituciones son documentos legales que establecen los principios y leyes fundamentales de un país o estado. Su estudio y protección es de gran importancia dado que de manera general las constituciones de los estados proporcionan el marco legal en el que funciona el estado, protegen los derechos de los ciudadanos, define la separación de poderes, establecen diferentes procedimientos para la toma de decisiones y en muchas ocasiones además son una guía para la creación de leyes. Considerando esto, el objetivo de este trabajo es analizar las principales actividades realizadas por el Tribunal Constitucional de Azerbaiyán para la protección jurídica de la constitución nacional. Se determinó que en los tiempos modernos las direcciones principales de la actividad del Tribunal Constitucional de la República de Azerbaiyán están orientadas a la protección legal de la Constitución incluyen diferentes funciones como resolver los conflictos y disputas entre los participantes de las relaciones sociales con base en la constitución, otros actos legislativos, y en la jurisprudencia del Tribunal Europeo de Derechos Humanos. De igual manera verifica el cumplimiento de las leyes y otros actos respecto a acciones (inacción) de varios órganos estatales así como funcionarios con los principios y normas de la constitución, revela lagunas existentes entre los actos jurídicos normativos vigentes realizando propuestas para eliminarlos, asegura el funcionamiento equilibrado de los diversos poderes del Estado, así como protege y restaura los derechos y libertades violados de los ciudadanos y otros sujetos de relaciones públicas. Por lo anterior, indiscutiblemente esta institución juega un papel fundamental en la preservación de los principios democráticos bajo los que funciona el país.

Palabras clave: Azerbaiyán, Tribunal Constitucional, legislación, estado

INTRODUCTION

A constitution is the body of doctrines and practices that form the fundamental organizing principle of a political state. In some cases, such as the United States, the constitution is a specific written document while in others, such as the United Kingdom, it is a collection of documents, statutes, and traditional practices that are generally accepted as governing political matters. States that have a written constitution may also have a body of traditional or customary practices that may or may not be considered to be of constitutional standing. Virtually every state claims to have a constitution, but not every government conducts itself in a consistently constitutional manner (Spiro, 2022).

According to Carroll (2021) the constitution identify and explain: (a) the institutions of government; (b) the nature, extent and distribution of powers within those institutions;

(c) the forms and procedures through which such powers should be exercised; (d) the relationship between the institutions of government and the individual citizen, often expressed in terms of a 'Bill of Rights'. Then within the nation-state to which it applies, the constitution will usually be regarded as both the ultimate source of legitimacy and authority for the practice of government and as a framework for the application of that society's political beliefs concerning how the process of government should be conducted and by whom. Thus, except in those circumstances where a particular form of government has been imposed by force, perhaps by some external authority, a society's constitutional arrangements will, to a considerable extent, be a product of its political culture.

In the case of a written document, it has a special form of information contained in it. Important aspects are the structuring of the text according to legal technical rules; the formation of long-term or different behavioral rules; the use of normative language, and specific legal concepts and terms. The Constitution acts as a strong law-making factor due to the direct force of its norms and its normative-directive influence on the law-making process. Constitutional concepts serve as the main normative legal criteria for the interpretation and application of all legal acts, and the performance of legal actions. Tikhomirov (1982) believes that, during such an approach, all levels of the influence of the Constitution in the legal system, all relationships and the means, it gives rise to, are more clearly revealed.

Some researchers interpret the Constitution as a legal act with supreme legal force, which is a sign of statehood and society as a whole, the legal foundation of state and social life and the main source of the national legal system. Thus, the Constitution defines the goals, organizational and life

activity principles of the society in a legally significant form (Brezhnev, 2006).

Tiunova (1992) gives a broader understanding of the Constitution: "Constitution is the basic law regulating the relations arising from the organization of state power and its activities on a democratic and humane basis, determining the consensus of interests, their limitation, combination and reconciliation, uniting the entire population of the country to which the state itself is subject, in a single society". Considering the above, we believe that the Constitution can be briefly characterized as follows: The Constitution is a normative legal act consisting of a system of legal norms - having a supreme legal force, on one side regulates the relations between man and society, man and the state, on the other side between the basis of the organization of the state itself.

Even though the constitutions of most of the states were drawn up a considerable time ago, being such an important document given that, as has been said, they establish the bases for the organization of the government, the protection of the rights of the people, the distribution of power, conflict resolution, etc., the study of constitutions is a contemporary topic of and in continuous evolution. Topics of great interest are the comparison between constitutions of various states (Landau & Lerner, 2019; Masterman & Schütze, 2019), how the process of establishing a constitution develops (Sandro, 2022), its dynamic relationship with power (Colón-Ríos, 2020), and the rights of citizens, such as whether it is constitutionally legal. surveillance of individuals (Slobogin & Brayne, 2023). Due to the above, undoubtedly the constitution of any state plays a fundamental role in its functioning, as well as in the dynamics of society. Therefore, the objective of this work is to analyze the main activities carried out by the Constitutional Court of Azerbaijan for the legal protection of the national constitution.

DEVELOPMENT

Legal protection of the Constitution and thereby ensuring the protection of the foundations of a legal and democratic state is incumbent on all state bodies; in this field, the role of the bodies exercising constitutional control is greater. The constitutional court occupies a special place in the system of bodies exercising constitutional control. Borodin and Kudryavtsev (2002) state that in the modern era, the constitutional judicial authorities perform qualitatively new functions and that these organs have become a necessary component of the "balancing and deterrence" system, which realizes the principle of separation of powers, which is considered the foundation of the democratic structure.

Each branch of government is implemented with the same organizational and legal forms (norm creation, interpretation, and law enforcement). The mechanism of interaction, competition and “mutual deterrence” of the branches of power is conditioned by this. For example, the mechanism of “deterrence” of the legislative power by the constitutional judicial control is primarily related to the norm-creating activity carried out by both authorities, especially in the process of checking the compliance of acts with the Constitution by the Constitutional Court, as well as the norm-creating that takes place in connection with the consideration of other categories of cases. At this time, the functions corresponding to the forms of activity such as law creation, interpretation and law enforcement are realized by each branch of government, including the Constitutional Court, but only within the framework and context of the strategic purpose of that branch of government. The organizational-legal forms of the implementation of state functions, which are characteristic for these different branches of government, give the effect of independence to each branch of government together with the set of organizational-legal forms. Thus, Steinberger (1998) states the control of the constitutional functioning of the supreme bodies of the state and the settlement of disputes between the central and regional state bodies as independent types of constitutional jurisdiction.

According to the author's rightful position, the Constitutional Court, which represents the judicial power as a judicial body, has an exclusive place in the state's judicial system. The state's inclusion of constitutional adjudication in its legal system stems from its desire to entrust decision-making on constitutional-legal issues to special bodies superior to ordinary courts (Steinberger, 1998). In general, scientific literature distinguishes the following powers of constitutional courts as the main body that implements constitutional justice and legal protection of the constitution:

- powers related to ensuring the supremacy of the Constitution in the system of sources of national law, monitoring the constitutionality of normative-legal acts and international agreements, and interpreting laws and the constitution.
- functions to ensure compliance with the principle of separation of powers and to consider disputes related to the separation of powers between state bodies.
- powers related to the protection of rights and freedoms established in the constitution.
- the powers related to the prevention of violations of the constitution by high-ranking officials, and in some states also by political parties (considering or participating in an impeachment case, monitoring the activities of political parties) (Chirkin, 1998; Kharitonova, 2003).

Regarding the importance of the mediating function of the constitutional justice performed by the Constitutional Court, legal literature indicates that various branches of government as a result of its active jurisdictional control activity, in particular, disputes arising between executive and legislative authorities are effectively resolved. As a result of the activity of the Constitutional Court, abuses by authorities and administrative bodies are prevented at all levels, both at the center and at the local level. It continues the work started by the legislative body. Due to the complexity of the procedure for revoking the law after its adoption, the legislator loses the opportunity to influence the destination of the law (amend it) (Bobotov, 1994).

In this case, if the adopted law or any of its specific provisions contradicts the Constitution, only this body (Constitutional Court) shall make a decision that the law or any of its specific provisions is not considered to be in accordance with the Basic Law. For example, in Italy, the Constitutional Court often acts as a “substitute body for the legislature” or even as a legislator when making decisions. This happens when there are loopholes in the laws. The court adds “supplementary” or “substitute” provisions to those laws (Maklakov, 1996).

Effective functioning of the Constitutional Court prevents concentration of power in one hand (legislative or executive power). It is known from the general theory of state and law that the dualism of legislative or executive powers is mainly organizational in nature and only implies certain functional specialization of dual power structures for the implementation of the same types of activities. As V. M. Lebedev noted, the role of the judiciary in the state-legal mechanism increases when it gets the right to control the content of all normative acts adopted by the legislative and executive authorities. As traditional justice considered within the framework of law enforcement problems reflects the definition of the unity of state power as the interaction and complementarity of different branches of power, the content of normative legal acts includes judicial control as a manifestation of the principle of “deterrence and balance”. Since that moment the judicial power actually acquires the status of “real power”, i.e. the same importance as the other two branches of government (Lebedev, 2000).

In practice, the emergence of various disputes between the legislative and executive authorities under the influence of objective and subjective factors makes it necessary to apply adequate means for their resolution, and judicial constitutional control acts as one of these means. Of course, since judicial constitutional control is mainly carried out by the Constitutional Court (especially within the framework of the European model of constitutional control), the main mediating role here belongs to the Constitutional

Court. The objective causes of disputes are related to the legislation and its application. Legislation-related reasons arise due to incomplete determination of the powers of state authorities by the constitution and laws. This mainly manifests itself in the following forms, for example, there may be contradictions in the provisions of the norms determining authority (when conflicts arise between the constitution and laws, laws and other normative acts). Some of such contradictions are eliminated during the verification of the constitutionality of regulatory acts through judicial constitutional control. Sometimes the norms that reflecting powers manifest duplication, that is, this or that power is attributed to different norms, at the same time, to the power of different bodies of state power.

Ambiguity of the text of the norms determining the authority appears as another objective factor (reason) that determines the emergence of disputes. Such uncertainty causes conflicts in the application and interpretation of those norms. It plays an important role in the further improvement of legal creative practice, as well as in the dynamic development of society. In this regard, the Constitutional Court, which is the body that implements constitutional justice in modern times, acts as one of the main factors of stability and development in society and the state. Constitutional Court enables to solve acute political problems within the framework and on the basis of the constitution in the conditions of democracy. Then Zorkin (2005) states that the Constitutional Court, as a national judicial body, protects the rights and freedoms of people and citizens through constitutional court proceedings in accordance with the generally accepted norms and principles of international law and the country's constitution.

The importance of the Constitutional Court as a judicial body includes not only the abovementioned functions since The Constitutional Court performs the function of the defense mechanism of the Constitution itself. The Constitutional Court of the Republic of Azerbaijan performs a number of functions of important legal importance. Examples of them are the following:

- Verification of compliance of regulatory legal acts, court and municipal acts with the Constitution.
- Interpretation of the Constitution and laws.
- Resolving disputes over the separation of powers between the legislative, executive and judicial branches.
- Other powers provided for in the Constitution.

In the legal literature, the performance of the negative legislative function of the Constitutional Court is emphasized, and it is accepted by all that the importance and role of the Constitutional Court in improving the practice

of applying laws and other normative legal acts is irreplaceable in the detection and elimination of existing gaps and contradictions in the legislation, in the functioning of the legislative system in accordance with the basic law of the country, in the abolition of laws that are against the interests of the individual, society and the state. However, the issue of the role of the Constitutional Court in the legislative process, being contradictory in legal science, has not been completely and unambiguously resolved. This is also caused by the lack of a unified approach to the issue of the place of the decisions of the Constitutional Court in the system of sources of law.

Some specific features of the regulation of procedural rules related to the implementation of justice by the Constitutional Court are distinguished. Thus, during the implementation of constitutional justice, all procedural forms of the activity of the Constitutional Court are based on constitutional norms. Through these norms, the types of procedures, the forms of the application such as request, application and complaint, the parties who have the right to apply, the main criteria for the possibility of applications, the list of verified acts, i.e. the subject of the process, etc. are regulated directly and quite extensively.

In the Republic of Azerbaijan, the Constitutional Court operates as part of the judicial system and exercises judicial power through constitutional court proceedings. As the Constitutional Court differs from general courts that conduct civil and criminal proceedings in a number of features, the activity of the Constitutional Court is not regulated by the Law "On Courts and Judges", but by a separate law, that is, by the Law of the Republic of Azerbaijan "On the Constitutional Court", dated December 23rd, 2003. The Article 1.1 of the mentioned Law considers the Constitutional Court of the Republic of Azerbaijan as the supreme constitutional justice body on the issues assigned to its powers by the Constitution of the Republic of Azerbaijan. This provision is one of the important provisions determining the legal status of the Constitutional Court.

According to Article 5.1 of the Law of the Republic of Azerbaijan "On the Constitutional Court", the Constitutional Court of the Republic of Azerbaijan is an independent state body (Milli Mejlis of the Republic of Azerbaijan, 2003). In other words, the Constitutional Court is independent in the performance of its duties and powers and resolves a specific case without any interference. The Constitutional Court acts independently when making a decision, and in no way, it is permissible to influence or to give specific instructions freely to express its will. The Constitutional Court do not take instructions from any authority, organization,

official or private person. The mentioned results are gained from the legal nature of the Constitutional Court.

The principle of independence is very important for the effective functioning of the Constitutional Court. The successful functioning of the Constitutional Court, as a state body that ensures the supremacy of the Constitution, the basic rights and freedoms of people and citizens, and plays an important role in creating a balance between the branches of government, largely depends on its independence. Only the Constitutional Court, functioning independently effectively ensure human and civil rights and freedoms, as well as properly realize its other goals and tasks. The fact that it is not related to other state bodies and does not obey the decisions of administrative bodies, on the one hand, allows it to perform the tasks assigned to it by the constitution and laws, and on the other hand, it acts as a condition for strengthening the trust of citizens and the society as a whole in this institution.

Thus, according to the what have been said, although the legal protection of the Constitution and thereby ensuring the protection of the foundations of a legal and democratic state falls on all state bodies, the role of the bodies that exercise constitutional control in this field is greater. The Constitutional Court occupies a special place in the system of organizations exercising constitutional control.

CONCLUSIONS

Constitutional justice is one of the effective and necessary institutions of the social, political and legal life of the modern era. It plays an important role in democratic, legal state-building, in ensuring the rights and freedoms of people and citizens, in further improving the activity of state bodies, law enforcement and law-making practice, as well as in the dynamic development of society by ensuring the compliance of laws and other normative legal acts with the norms of the Constitution. In this regard, the Constitutional Court of Azerbaijan, which is the body that implements constitutional justice in modern times, acts as one of the important factors of stability and development in society and the state. Thus, the implementation of justice in the Constitutional Court has become the main and important element of the mechanism of legal protection of the Basic Law. The Constitutional Court performs a number of functions of important legal importance, including the function of its own defense mechanism. Along with the protection of rights and freedoms declared through constitutional justice, the legal protection of the constitution is carried out, the general tasks of ensuring compliance with the principle of its supremacy and the separation of powers are solved. Finally, the decisions of the mentioned Court help to guide other courts correctly, as well as

to prevent violations of substantive and procedural legal norms.

REFERENCES

- Bobotov, S. V. (1994). *Constitutional justice. Comparative analysis*. Publishing House of the Russian Law Academy of the Ministry of Justice of the Russian Federation.
- Borodin, S. V., & Kudryavtsev, V. N. (2002). On separation and interaction of authorities in Russia. *Government and Law*, 5, 12–15.
- Brezhnev, O. V. (2006). *Judicial constitutional control in Russia: Methodological problems, theories and practices* [Dissertation to obtain the degree of Doctoral of Law]. Moscow State University.
- Carroll, A. (2021). *Constitutional and Administrative Law* (10th ed.). Pearson Education.
- Chirkin, V. E. (1998). *Constitutional law: Russia and foreign experience*. Zerkalo.
- Colón-Ríos, J. (2020). *Constituent Power and the Law*. Oxford University Press.
- Kharitonova, N. N. (2003). Functions of bodies of constitutional control. *Constitutional and Municipal Law*, 5, 43–48.
- Landau, D. E., & Lerner, H. (2019). *Comparative Constitution Making*. Edward Elgar Publishing.
- Lebedev, V. M. (2000). From the idea of judicial normative control to administrative legal proceedings. *Russian Justice*, 9, 2–4.
- Maklakov, V. V. (Ed.). (1996). *Foreign constitutional law*. Jurist.
- Masterman, R., & Schütze, R. (2019). *The Cambridge Companion to Comparative Constitutional Law*. Columbia University Press.
- Milli Mejlis of the Republic of Azerbaijan. (2003). *Law on the Constitutional Court of Azerbaijan*. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2004\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2004)005-e)
- Sandro, P. (2022). *The Making of Constitutional Democracy: From Creation to Application of Law*. Hart Publishing.
- Slobogin, C., & Brayne, S. (2023). Surveillance Technologies and Constitutional Law. *Annual Review of Criminology*, 6(1), 219–240. <https://doi.org/10.1146/annurev-criminol-030421-035102>

- Spiro, J. H. (2022). Constitution. In *Encyclopedia Britannica*. <https://www.britannica.com/topic/constitution-politics-and-law>
- Steinberger, H. (1998). *Models of Constitutional Jurisdiction*. Council of Europe.
- Tikhomirov, Y. A. (1982). *Theory of law*. Nauka.
- Tiunova, L. B. (1992). *Pravo. Constitution. Legal state (to the concept of democratic constitutionalism of legal state)* [Dissertation to obtain the degree of Doctoral of Law]. Saint Petersburg University.
- Zorkin, V. D. (2005). The Constitutional Court of Russia in the European Legal Field. *Journal of Russian Law*, 3, 3–9.