

UDC 342.5
DOI <https://doi.org/10.32782/chern.v1.2024.4>

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THE CONCEPT AND ESSENCE OF THE PRINCIPLE OF SUBSIDIARITY IN THE FIELD OF CONSTITUTIONAL LAW IN THE REPUBLIC OF AZERBAIJAN

This article investigates the concept and significance of the principle of subsidiarity within the domain of constitutional law, with a specific focus on its application in the Republic of Azerbaijan. It explores how this principle operates in organizing public authority, particularly emphasizing its interaction with other constitutional principles like the separation of powers and the recognition of local self-government. Through an examination of its implications for decision-making processes and the protection of individual rights, the study underscores the principle's pivotal role in enhancing the efficiency of public administration, strengthening democratic institutions, and safeguarding citizen rights. Furthermore, it sheds light on potential avenues for future research, including the exploration of its application in supranational contexts and the conduct of comparative analyses across diverse legal systems.

The principle of subsidiarity, though not explicitly codified in the Constitution of Azerbaijan, is nonetheless a guiding principle that influences the distribution of powers between different levels of government and underscores the importance of decision-making at the most local feasible level. By ensuring that decisions are made closest to those affected and adapting to specific needs and circumstances, the principle seeks to optimize governance effectiveness and promote citizen participation in decision-making processes.

This research contributes to a deeper understanding of the principle's significance in shaping the constitutional framework of Azerbaijan and its broader implications for governance and democracy. By examining the interplay between subsidiarity and other constitutional principles, such as federalism and decentralization, the study offers insights into the complexities of modern constitutional systems and highlights areas for further exploration.

In conclusion, the principle of subsidiarity emerges as a cornerstone of constitutional governance, offering a framework for efficient decision-making, the protection of individual rights, and the promotion of democratic values. Further research in this area holds promise for enhancing our understanding of constitutional law and governance structures, both within Azerbaijan and in comparative contexts.

Key words: principle of subsidiarity, constitutional law, Republic of Azerbaijan, separation of powers, local self-government, public administration, democratic institutions.

Халілов А. КОНЦЕПЦІЯ ТА СУТНІСТЬ ПРИНЦИПУ СУБСИДАРНОСТІ В ГАЛУЗІ КОНСТИТУЦІЙНОГО ПРАВА В РЕСПУБЛІЦІ АЗЕРБАЙДЖАН

У цій статті досліджується концепція та значимість принципу субсидіарності в галузі конституційного права, з особливим акцентом на його застосування в Республіці Азербайджан. Досліджується, як цей принцип працює в організації публічної влади, особливо підкреслено його взаємодію з іншими конституційними принципами, такими як принципи поділу державної влади на гілки та визнання місцевого самоврядування. Шляхом аналізу його впливу на процеси прийняття рішень та захисту індивідуальних прав особистості, дослідження підкреслює ключову роль принципу у покращенні ефективності публічного управління, зміцненні демократичних інститутів та захисті прав громадян. Крім того, висвітлюються потенційні напрямки подальших досліджень, включаючи дослідження його застосування в міжнародному контексті та проведення порівняльного аналізу різноманітних правових систем.

Принцип субсидіарності, хоча і не є прямо закріпленим у Конституції Азербайджану, проте виступає визначальним принципом, який впливає на розподіл повноважень між різними рівнями публічної влади та підкреслює важливість прийняття рішень на найбільш місцевому рівні, який є можливим. Забезпечуючи, що рішення приймаються найближче до тих, хто на них впливає, та адаптуючись до конкретних потреб і обставин, принцип сприяє оптимізації ефективності управління та сприяє участі громадян у процесах прийняття рішень.

Це дослідження вносить вклад у глибше розуміння значення принципу у формуванні конституційної структури Азербайджану та його більш широкі наслідки для управління та демократії. Аналізуючи взаємодію між субсидіарністю та іншими конституційними принципами, такими як федералізм та децентралізація, дослідження виствітлює складності сучасних конституційних систем і висвітлює напрямки подальших досліджень.

У висновку резюмовано, що принцип субсидіарності виступає як кутувий камінь конституційного управління, пропонуючи рамки для ефективного прийняття рішень, захисту індивідуальних прав та просування демократичних цінностей. Подальші дослідження в цій галузі мають потенціал поглибити розуміння конституційного права та системи органів публічного управління, як у межах Азербайджану, так і в порівняльних контекстах.

Ключові слова: принцип субсидіарності, конституційне право, Республіка Азербайджан, розподіл влади, місцеве самоврядування, публічне управління, демократичні інститути.

The statement of the problem. The topic of the principle of subsidiarity in the field of constitutional law in the Republic of Azerbaijan is important for several reasons.

Firstly, understanding this principle is crucial for grasping the dynamics of governance and power distribution within the country's legal framework. It sheds light on the relationship between central

authorities and regional or local entities, highlighting the balance of power and autonomy granted to different levels of government.

Secondly, exploring this topic helps in assessing the effectiveness of decentralization policies and their impact on governance efficiency, accountability, and responsiveness to local needs.

Thirdly, studying the principle of subsidiarity can contribute to the promotion of good governance practices and the protection of individual rights and freedoms by ensuring that decision-making processes occur at the most appropriate level of authority, thus enhancing democratic principles and the rule of law.

Overall, delving into this topic provides valuable insights into the constitutional framework and governance structure of Azerbaijan, contributing to a deeper understanding of its legal system and political dynamics.

Analysis of recent research and publications. In recent years, there has been a growing interest in the principle of subsidiarity within the legal framework of Azerbaijan. However, a comprehensive analysis of recent research and publications reveals that there is currently limited scholarly work specifically focused on this principle within the Azerbaijani legal system. Currently, Professor Ceyhun Qaracayev stands as the sole researcher actively investigating this principle in the context of Azerbaijan's legal system ([1-4]). Given the significance of the principle of subsidiarity in shaping legal structures and governance mechanisms, it is imperative to encourage and support further research initiatives to enhance our understanding of its implications and applications within Azerbaijan. Active research in this area is crucial for developing informed policy decisions and ensuring the effective functioning of the legal system in Azerbaijan.

The aim of the article is to provide a comprehensive analysis of the concept and essence of the principle of subsidiarity within the framework of constitutional law in the Republic of Azerbaijan.

Main text of the article. Experts in the field of state and legal theory emphasise that, depending on their degree of prevalence and importance in the legal system, legal principles may be sectoral, covering a specific area of law, or intersectoral, covering the entire legal system. They form the basis for the development of specific norms and rules of conduct. This is also true of constitutional principles, which reflect the key principles and values enshrined in the state constitution.

The principle of subsidiarity, in the context of its application and impact on the entire legal system, belongs to the category of intersectoral principles, as its essence and content are important for various branches of law, such as constitutional law, administrative law and others. It is worth noting that the

principle of subsidiarity is most often applied in constitutional law.

Constitutional law is the leading and most prominent branch of law in any democratic state, and the Republic of Azerbaijan is not an exception. It is important to emphasize that the subject of constitutional law in the Republic, as rightly noted by C. Qaracayev, includes social relations related to one of the following groups: the legal status of individuals; the legal organisation of the state; the legal organisation of civil society. The regulation of these social relations involves the application of a number of principles.

The constitutional principle is a fundamental position or rule that underlies the constitutional system of the state and defines its basic values and norms. Constitutional principles usually cover a wide range of aspects, such as the division of state powers into three branches, the protection of fundamental rights and freedoms, the characteristics of the state structure, the democratic system of the state, and so on. They serve as a basis for the development, interpretation and application of constitutional norms and constitute the legal system of the country.

These principles are usually derived from the text of the constitution, legal practice, precedents and fundamental legal provisions – they are either directly or indirectly enshrined in them (as is currently the case with the principle of subsidiarity). Despite the fact that the principle of subsidiarity is not directly enshrined in the text of the Constitution or laws of the Azerbaijan Republic or other legal acts, this does not exclude its significance and consideration in the interpretation and application in the country.

The principles used to regulate legal relations in the field of constitutional law include legal principles. However, not all legal principles are equally applicable to constitutional law as to other branches of law. Constitutional law has its own characteristics and peculiarities, which require special principles and approaches to its regulation. The legal principles most relevant to constitutional law include the principle of legality, the principle of separation of powers, the principle of justice, the principle of liberty and others. However, in the context of constitutional law, these principles may acquire a special interpretation and meaning, taking into account the specificities of constitutional norms and institutions. Thus, legal principles are an important tool for regulating legal relations in the field of constitutional law, but their application and interpretation should take into account the specific features of this branch of law.

The principle of subsidiarity, although it is a legal principle, is most often studied in the field of constitutional law due to its key importance for

the organisation and functioning of public authorities at the constitutional level. This principle dictates that decisions should be taken at the lowest possible level of state authority capable of dealing effectively with the issue, taking into account the interests and needs of the recipients of administrative services.

In the context of constitutional law, the principle of subsidiarity is usually applied to the separation of powers between central and local levels of government. It implies that central government bodies should only deal with matters that cannot be dealt with effectively at the regional or local (territorial) level. This principle also emphasises the importance of state support for local self-government in dealing with local issues and problems.

Constitutional control bodies use the principle of subsidiarity to assess the conformity of legislation and actions of public authorities with constitutional norms. They analyse whether the actions of these bodies comply with the principle of subsidiarity, i.e. whether they exceed their powers or encroach on the competence of subordinate (local) authorities. If this principle is violated, constitutional oversight bodies may declare certain norms or actions of public authorities unconstitutional and annul them, recommending a redistribution of powers in accordance with the principle of subsidiarity.

Constitutional control bodies play a crucial role as guardians of individual rights and freedoms within the legal framework of a state. They serve as a safeguard against potential violations of constitutional norms and principles by state authorities. These bodies, which may include constitutional courts or similar institutions, interact with legal institutions and public authorities across different levels to ensure that laws and actions taken by the government align with the constitution and respect the rights of citizens.

By conducting reviews and assessments of legislation and government actions, constitutional control bodies help maintain the balance between governmental powers and individual liberties. Their oversight functions include examining the constitutionality of laws, regulations, and administrative decisions, thereby preventing potential abuses of power and ensuring that the principles of subsidiarity are upheld.

Through their actions, constitutional control bodies contribute to the protection of human rights by holding public authorities accountable for their actions. They act as a check on the exercise of governmental authority, ensuring that decisions are made in accordance with constitutional provisions and that the rights and freedoms of individuals are respected.

In essence, these bodies serve as a subsidiary protection mechanism for individual rights and

freedoms within the legal system. By upholding constitutional principles and ensuring compliance with the law, they contribute to the promotion of good governance, the rule of law, and the protection of citizens' rights. Thus, their role is integral to maintaining a just and democratic society where the rights and freedoms of every individual are upheld and protected.

Therefore, studying the principle of subsidiarity in the field of constitutional law allows for a deeper understanding of its role and significance in the organisation of public authority, including the practical application of the principle of the separation of powers into three branches, as well as the principles of guaranteeing the rights and freedoms of individuals and citizens, prioritising human rights and freedoms over state interests.

The principle of subsidiarity is closely related to other principles in the field of constitutional law. Among these principles, the following are of primary importance:

- The principle of subsidiarity dictates that public authority should be delegated to the level of government closest to the recipient of administrative services, which is able to deal with the tasks effectively. It is linked to the principle of separation of powers, which stipulates that governmental functions are divided between different branches of power (legislative, executive and judicial) and levels of government (central, regional, local).

- The principle of decentralisation: the principle of subsidiarity is linked to the principle of decentralisation, which states that decisions should be taken at the level closest to the recipients of administrative services, where they can be better tailored to existing needs and conditions.

- The principle of recognising and guaranteeing local self-government: The principle of subsidiarity is also linked to the principle of recognising and guaranteeing local self-government, which recognises the right of citizens to participate in the management of society at the local level. This principle emphasises the importance of the participation of territorial collectives in the decision-making process that affects their interests and living conditions.

Thus, the principle of subsidiarity is one of the key principles that define the relationship between the different levels of public authority in the State. Studying this principle makes it possible to understand which functions and powers should belong to local, regional and central public authorities (including the judiciary) and how to ensure a balance between them for the effective functioning of the system. As a result, studying the principle of subsidiarity helps to further improve the functioning of the system of public authorities and its compliance with the fundamental principles of democracy and the rule of law.

In the context of constitutional law, the principle of subsidiarity involves the separation of public powers between different levels in such a way that each level retains its autonomy and responsibility for its own areas of activity. This principle is often regarded as a fundamental principle of federalism and decentralisation in governance (including its use in structuring the judicial system).

So, the main idea of the principle of subsidiarity is to bring decision-making as close as possible to those who have the greatest knowledge of the specific circumstances and needs of the recipients of the administrative service in question. Overall, this principle contributes to the efficiency of public administration, strengthens democratic institutions and protects the rights of citizens. This is the essence of subsidiarity.

In conclusion, the principle of subsidiarity plays a crucial role in constitutional law as a guiding principle for the organisation of public authority and the allocation of governmental powers. By emphasising decision-making at the most appropriate level of government, the principle ensures efficiency, accountability and respect for individual rights and freedoms. By studying the principle of subsidiarity, scholars gain valuable insights into the complexity of governance structures and the balance between centralisation and decentralisation in modern democratic societies. Moreover, the application of this principle promotes the development of effective public policies and contributes to the promotion of

democratic values and principles. As such, the principle of subsidiarity remains an essential cornerstone in the ongoing discourse on constitutional law and governance frameworks, shaping the future of democratic governance and the protection of citizens' rights worldwide.

Further constitutional research on the principle of subsidiarity could explore its application in specific contexts, such as the interaction between supranational and national legal systems. In addition, comparative studies analysing how different countries implement and interpret the principle could provide valuable insights into its effectiveness and potential differences between legal traditions.

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