

## Impact Factor:

ISRA (India) = 6.317  
ISI (Dubai, UAE) = 1.582  
GIF (Australia) = 0.564  
JIF = 1.500

SIS (USA) = 0.912  
ПИИИ (Russia) = 3.939  
ESJI (KZ) = 9.035  
SJIF (Morocco) = 7.184

ICV (Poland) = 6.630  
PIF (India) = 1.940  
IBI (India) = 4.260  
OAJI (USA) = 0.350

SOI: [1.1/TAS](#) DOI: [10.15863/TAS](#)

### International Scientific Journal Theoretical & Applied Science

p-ISSN: 2308-4944 (print) e-ISSN: 2409-0085 (online)

Year: 2021 Issue: 09 Volume: 101

Published: 01.09.2021 <http://T-Science.org>

QR – Issue



QR – Article



Meder Almazbekovich Satilganov  
Police Academy of KR  
adjunct  
Kyrgyz Republic, Bishkek

## SOME QUESTIONS OF THE CORRELATION OF THE CONSTITUTIONAL FOUNDATIONS AND THE CONSTITUTIONAL PRINCIPLES OF EQUALITY

**Abstract:** In the article, the author attempts to analyze the correlation of the constitutional foundations and the constitutional principles of equality. At the same time, the author notes that the constitutional foundations should not be identified with the constitutional principles. In addition, it is noted that the norms-goals play an important role in the process of legal regulation.

**Key words:** constitutional foundations of equality, constitutional principles of equality, the concept and essence of the category of constitutional foundations, constitutional and legal regulation.

**Language:** English

**Citation:** Satilganov, M. A. (2021). Some questions of the correlation of the constitutional foundations and the constitutional principles of equality. *ISJ Theoretical & Applied Science*, 09 (101), 264-266.

**Soi:** <http://s-o-i.org/1.1/TAS-09-101-21> **Doi:**  <https://dx.doi.org/10.15863/TAS.2021.09.101.21>

**Scopus ASCC:** 3308.

### Introduction

It seems that within the framework of this study, the problem of determining the concept and essence of the category of constitutional foundations is essential for clarifying the constitutional foundations of equality. Its solution is possible by referring to the essence of the constitutional law itself.

Thus, V. O. Luchin points out that the Constitution mainly fixes the provisions that are fundamental, the main ones, which then receive concretization and disclosure in other normative legal acts; meanwhile, as the researcher points out, there are cases of direct action of these constitutional provisions, since they regulate all the most important aspects of the life of society and the state, while such regulation is carried out not in detail, but generically, indicating only the most significant points. Thus, the constitutional and legal regulation aims to establish a general, universal regulation of the status of legal entities [1].

It seems that the most universal approach is that followed by such researchers as A. A. Belkin, M. N. Marchenko and I. A. Umnova, who define the constitutional foundations as an independent category of constitutional law. This approach is based on the emphasis on the legal and constitutional nature of the

means by which the consolidation and protection of public relations, which serve as the foundations, take place. From these positions, it should also be said about the special legal function of the constitutional foundations, which are both general and special—they are a kind of mediating link that regulates individual legal relations [2, 3, 4].

M. N. Marchenko rightly pointed out the inadmissibility of identifying the content of the constitutional and legal foundations with the constitutional and legal principles. "The establishment of the constitutional and legal bases presupposes, firstly, the consolidation of the constitutional goals of legal regulation, secondly, the definition of the fundamental principles of legal regulation, and thirdly, the establishment of the basic rights and obligations of participants in legal relations and guarantees of their implementation" [5].

From these positions, the constitutional and legal foundations of equality consist in the following: fixing the achievement of formal equality as the goal of legal regulation; defining the fundamental principles of legal regulation; establishing the basic rights and obligations of participants in the relevant legal relations and guarantees for their implementation.

## Impact Factor:

**ISRA (India) = 6.317**  
**ISI (Dubai, UAE) = 1.582**  
**GIF (Australia) = 0.564**  
**JIF = 1.500**

**SIS (USA) = 0.912**  
**ПИИИ (Russia) = 0.126**  
**ESJI (KZ) = 9.035**  
**SJIF (Morocco) = 7.184**

**ICV (Poland) = 6.630**  
**PIF (India) = 1.940**  
**IBI (India) = 4.260**  
**OAJI (USA) = 0.350**

Thus, it should be recognized that the establishment of the constitutional and legal foundations of equality before the law and the court is a way of constitutional and legal regulation of this group of public relations and consists in mediating legal relations between the foundations of the constitutional system and the organization and activities of public administration bodies to establish, ensure the implementation, protection and protection of the principle of equality before the law and the court.

The constitutional and legal regulation of the principle of equality before the law and the court is based, inter alia, on the Constitution, which defines the protection of human and civil rights and freedoms as a subject of joint jurisdiction. With such a model of legal regulation, it is assumed that the constitutional and legal foundations of equality before the law and the court will be further developed by the norms of, firstly, sectoral legislation; secondly, the legislation of the republic.

As follows from the above, the constitutional foundations should not be identified with the constitutional principles. Constitutional principles are an integral part of the constitutional foundations, but they differ from other types of constitutional foundations in their legal significance and functional purpose - most researchers agree that "constitutional principles determine the general principles of legal regulation of the entire legal system of the state" [6].

It seems that the analysis of the constitutional and legal nature of the principle of equality of all before the law and the court is impossible without studying the concept of a legal principle. The term "principle" itself has Latin roots and means "the basis, the beginning, the foundation, the guiding idea, the basic rule of behavior" [7].

In legal science, the principles are traditionally understood as "the most fundamental ways of knowing the legal reality" [8], "the foundations and laws of the formation and development of law" [9], "guidelines for law-making and law-realization activities" [10].

A. M. Vasiliev notes that the principles of law reflect the results of economic relations and the political conditions for the development of society [11].

The principles of law can be represented as a kind of "supporting structure", which is the basis for the consolidation and implementation of not only specific legal norms, institutions or branches of law, but also the entire legal system. As Professor M. N. Marchenko notes, the principles of law play the role of the main reference point in the implementation of various types of state activities: law-making, law enforcement, and law enforcement. Therefore, it is possible to trace the relationship between how stable, coherent and effective the legal system is and the degree of compliance with the principles of law [12].

S. S. Alekseev defines the principles of law as the initial normative guiding principles expressed in law,

characterizing the content of legal regulation, defining its foundations, that is, in fact, the laws of public life, fixed in the norms of law, acting "as special legal phenomena". Their purpose in the mechanism of legal regulation is to ensure a direct connection between the content of law and the laws of social life that underlie the construction of this system of law, i.e. its foundations [13].

The fixation of a legal principle in a rule of law, as a consequence, extends its effect to a certain sphere of public relations. Consequently, the effectiveness of legal principles depends on their validity, on the legal tools with which they are fixed, and on the level of socio-cultural development of society and the state [14].

Of course, the highest normativity, the highest level of legal force has the principle of law, which is enshrined in the Constitution [15]. At the same time, the Constitution enshrines not only the principles of legal regulation, - this conclusion is based on an analysis of the content of its norms. Thus, the Constitution establishes not only the rights, freedoms and duties of a person and a citizen, but also the duties of the state related to the implementation of these rights and freedoms. At the same time, the successful implementation of a large number of fundamental human and civil rights and freedoms requires assistance from the state, including the adoption of regulatory legal acts specifying the procedure for the implementation of constitutional rights and freedoms.

Thus, they are implemented not only directly. The Constitution also contains a significant number of norms-goals that fix normative guidelines for both the development of legislation and the development of legal activity in general [16].

Norms-goals play an important role in the process of legal regulation. They orient the development of legislation and legal practice on the values that underlie the legal policy of the state, since they reveal the meaning and meaning of the very existence of legal means and reflect public needs and aspirations [17]. The constitutional norms-goals can include, for example, the norms of the preamble; the norms of the Constitution, which enshrines a person, his rights and freedoms as the highest values and defines the main directions of law-making and law-enforcement activities of state bodies and local self-government bodies.

Thus, the constitutional principles should include those fundamental ideas and principles that are either directly reflected in the norms of the constitution of the state, or directly follow from its provisions.

The latter are formulated by the Constitutional Body on the basis of the interpretation of traditional constitutional principles or general principles of law: "in fact, this is a right distinguished from principles - the principles of law and law from principles.

The Constitutional Body deduces the greatest number of commands addressed to the legislator from

## Impact Factor:

ISRA (India) = 6.317  
ISI (Dubai, UAE) = 1.582  
GIF (Australia) = 0.564  
JIF = 1.500

SIS (USA) = 0.912  
ПИИИ (Russia) = 0.126  
ESJI (KZ) = 9.035  
SJIF (Morocco) = 7.184

ICV (Poland) = 6.630  
PIF (India) = 1.940  
IBI (India) = 4.260  
OAJI (USA) = 0.350

the principles of the rule of law and the rule of law, enriching the legal arsenal of lawyers with ideas about such principles as the principle of legal certainty (the principle of stability of business conditions is its component part), the principle of public reliability of legal norms and the principle of proportionality of restrictions. Even 10-15 years ago, these principles were *terra incognita* for Russian jurisprudence" [18]. Thus, most researchers agree that "constitutional principles determine the general principles of legal regulation of the entire legal system of the state" [19].

There is no doubt that, first of all, the modern development of states as a state governed by the rule of

law presupposes reliance on legal values that are the basis of the norms of the Constitution.

Fixed as the fundamental principles of the state structure, they, nevertheless, are not limited only to the establishment of the principles of constitutional federalism proper, but they determine the state of all areas of public relations.

Thus, it should be noted that one of the central places in the system of constitutional principles of the rule of law is occupied by the principle of equality before the law and the court, since it is with the help of this principle that justice and humanism as legal goals are achieved, there is a real guarantee of human and civil rights and freedoms.

## References:

1. Luchin, V.O. (1997). *Konstitutsionnyie normyi i pravootnosheniya*. (p.66,122). Moscow.
2. Belkin, A.A. (1983). Kategoriya «osnova» v Konstitutsii SSSR. *Vestnik LGU*, # 11, p.77.
3. (2001). *Obschaya teoriya gosudarstva i prava*. Akademicheskij kurs v 3-h tomah. Izd. 2-e, pererab. i dop. / Otv. red. prof. M.N. Marchenko. Tom 3. (p.287,292-293). Moscow.
4. Umnova, I.A. (2000). *Konstitutsionnyie osnovyi sovremennogo Rossiyskogo federalizma*. (p.45). Moscow.
5. (n.d.). *Obschaya teoriya gosudarstva i prava*. Akademicheskij kurs v 3-h tomah. Izd. 2-e, pererab. i dop. / Otv. red. prof. M.N. Marchenko. Tom 3, p. 287.
6. Svirin, Yu.A. (2012). *Divergentsiya v sisteme prava: monografiya*. (p.392). Moscow: Astra Poligrafija.
7. (1966). *Kratkij slovar inostrannyih slov* / Sost. S.M. Lokshina. (p.240). Moscow.
8. Vasilev, A.M. (1976). *Pravovyye kategorii: metodologicheskie aspekty razrabotki sistemy kategoriy teorii prava*. (p.9). Moscow.
9. Lukasjeva, E.A. (1970). Printsipy sotsialisticheskogo prava. *Sovetskoe gosudarstvo i pravo*, # 6, p.22.
10. Kartashov, V.N. (1982). *Printsipy pravoprimenitelnoy deyatel'nosti. Protseessualnyie voprosy povysheniya effektivnosti pravovogo regulirovaniya sotsialisticheskikh obschestvennyih otnosheniy*. (p.50). Yaroslavl.
11. Vasilev, A.M. (1976). *Pravovyye kategorii. Metodologicheskie aspekty razrabotki sistemy kategoriy teorii prava*. (p.216). Moscow.
12. (2003). *Obschaya teoriya gosudarstva i prava*. Akademicheskij kurs v 3-h tomah. Izd. 2-e, pererab. i dop. / Otv. red. prof. M. N. Marchenko. Tom 2. (p.23). Moscow.
13. Alekseev, S.S. (1973). *Problemy teorii prava*. T. 2. (p.102). Sverdlovsk.
14. Vasilev, A.M. (n.d.). *Pravovyye kategorii. Metodologicheskie aspekty razrabotki sistemy kategoriy teorii prava*. (p. 216).
15. Dzhagaryan, A.A. (2009). O prirode konstitutsionnyih printsipov v natsionalnoy pravovoy sisteme. *Konstitutsionnoe i munitsipalnoe pravo*, # 17, pp.2-4.
16. Tihomirov, Yu.A. (2011). Povedenie v obschestve i pravo. *Zhurnal rossiyskogo prava*, # 2, pp.5-11.
17. Shundikov, K.V. (2003). *Tseli i sredstva v politike i prave*. Rossiyskaya pravovaya politika: Kurs lektsiy / Pod red. N.I. Matuzova i A.V. Malko. (pp.78-101). Moscow.
18. Gadzhiev, G.A. (2012). Printsip pravovoy opredelennosti i rol sudov v ego obespechenii. *Kachestvo zakonov s rossiyskoy tochki zreniya. Sravnitel'noe konstitutsionnoe obozrenie*, N 4, pp.16-28.
19. Svirin, Yu.A. (2012). *Divergentsiya v sisteme prava: monografiya*. (p.392). Moscow: Astra Poligrafija.