

**Qaracayev C. Ja.,**  
LLD, Judge

*Constitutional Court of the Republic of Azerbaijan,  
Member of the CPT (European Committee for the Prevention  
of Torture and Inhuman or Degrading Treatment or Punishment)*

## DUE PROCESS AS CONSTITUTIONAL CONTROL'S SUBJECT: THEORY AND PRACTICE OF THE CONSTITUTIONAL COURT OF AZERBAIJAN AND EUROPEAN COURT OF HUMAN RIGHTS

**Summary.** The aim of the article is to describe the theory of how due process is viewed as a subject of constitutional control and to illustrate this theoretical concept with examples from the practice of the Constitutional Court of Azerbaijan and the European Court of Human Rights.

It is generalized, that in contemporary law, the principle of due legal process, in the context of judgments by the European Court of Human Rights, has become a crucial legal procedural condition for protecting individuals from arbitrary state intervention. It serves as the foundation of an effective mechanism for investigating human rights violations. This principle is one of the objects of protection by constitutional control bodies as well. In addition, a characteristic of due legal process is its equitable nature in relation to the implementation of substantive constitutional rights.

It is summarized, that due process as a subject of constitutional control is essential for upholding the rule of law, protecting individual rights, and ensuring that governments act fairly and within the boundaries of their authority. Constitutional control mechanisms play a crucial role in maintaining the balance between governmental power and individual freedoms. So, "due process" as a subject of constitutional control plays a vital role in maintaining the integrity of legal systems and protecting individual rights. It's a dynamic field that evolves to address new challenges and ensure that justice and fairness prevail in the face of changing societal, legal, and governmental contexts.

It is concluded that in general, constitutional courts, in establishing due procedures for such cases, can fully utilize the standards of the CPT, which are available on their official website. There is no doubt that the enforcement of court decisions is part of the judicial process. In conclusion, as the law evolves, it complicates legal procedures. Various legal interests of a wide range of subjects of legal relations emerge abuses of rights occur, and, consequently, due legal procedure requires an assessment of fairness from the standpoint of its constitutional meaning.

**Key words:** due process, principle of due process, constitutional principles, constitutionalism, constitutional control, European standards, Council of Europe, European Court of Human Rights.

*The introduction.* In contemporary law, the principle of due legal process, in the context of judgments by the European Court of Human Rights, has become a crucial legal procedural condition for protecting individuals from arbitrary state intervention. It serves as the foundation of an effective mechanism for investigating human rights violations.

This principle is one of the objects of protection by constitutional control bodies as well. In addition, a characteristic of due legal process is its equitable nature in relation to the implementation of substantive constitutional rights.

Currently, most countries extensively regulate administrative, criminal, and in some cases civil procedures to ensure a transparent and fair mechanism for limiting rights and freedoms. However, sometimes established legal practices or the incorrect implementation of new legal provisions in a country compel constitutional courts to intervene in matters of procedural justice.

*The literature reviews.* There are some researches on this topic in the Ukrainian literature (see [1-4]) as well as in the foreign literature (see [5-7]), by the way, not only European authors pay attention to this problem in terms of the ECtHR functioning. But the relevant theory was never illustrated by the examples from the Republic of Azerbaijan – so in this part this article is innovative.

*The aim of the article* is to describe the theory of how due process is viewed as a subject of constitutional control and to illustrate this theoretical concept with examples from the practice of the Constitutional Court of Azerbaijan and the European Court of Human Rights.

*Main text.* "Due process" as a subject of constitutional control refers to the examination and oversight of the fairness and legality of governmental actions, including legislative, administrative, or judicial decisions, by constitutional courts or similar institutions. The term is most commonly associated with the legal systems of countries that adhere to the rule of law and respect for individual rights.

Here are some key aspects to consider when discussing "due process" as a subject of constitutional control.

1. Preservation of Fundamental Rights. One of the primary functions of constitutional control is to ensure that fundamental rights and liberties of individuals are protected. "Due process" involves scrutinizing actions by the government to ensure they do not infringe upon these rights.

2. Legal and Procedural Fairness. "Due process" requires that all legal proceedings and actions are conducted fairly and in accordance with established legal procedures. This includes the right to a fair trial, the right to be heard, and the right to legal representation.

3. Protection Against Arbitrary Actions. Constitutional courts assess governmental decisions to ensure that they are not arbitrary or capricious. This is especially important in systems where the rule of law is a fundamental principle.

4. Checks and Balances. "Due process" is often closely tied to the concept of checks and balances in a government. Constitutional control mechanisms provide a check on the actions of the executive, legislative, and administrative branches to prevent any overreach or abuse of power.

5. Judicial Review. In many countries, constitutional courts have the authority to engage in judicial review. They can examine the constitutionality of laws and government actions to determine if they conform to the constitution's principles, including those related to "due process."

6. Remedies and Redress. When a constitutional court identifies a violation of "due process," it may provide remedies or redress for the affected parties. This can include overturning unconstitutional laws, invalidating government actions, or awarding damages to victims of due process violations.

7. International Standards. Many constitutional courts also consider international standards and treaties related to human rights and due process when evaluating the actions of their governments. When it comes about the Constitutional Court of Azerbaijan, most often the standards of the Council of Europe are taken into the account.

8. Public Trust and Accountability. The oversight of "due process" by constitutional control bodies contributes to public trust in the legal system and ensures that governments are held accountable for their actions.

So, due process as a subject of constitutional control is essential for upholding the rule of law, protecting individual rights, and ensuring that governments act fairly and within the boundaries of their authority. Constitutional control mechanisms play a crucial role in maintaining the balance between governmental power and individual freedoms.

The procedural theoretical aspects on the subject of "due process" as it pertains to constitutional control, include some of the consideration as follows.

It is very important to pay attention to the existing types of due process. Due process typically consists of two main components: substantive due process and procedural due process. Substantive due process involves evaluating whether the content of a law or government action is fair and just. Procedural due process focuses on the fairness of the legal procedures followed in specific cases, especially in legal proceedings and administrative actions.

Then, it is very important to pay attention to the balance of interests: constitutional courts must often strike a balance between government interests, such as public safety or national security, and the protection of individual rights. This balancing act is a complex task in constitutional control, requiring courts to consider the context and circumstances of each case.

In the legal literature there is thesis about the legal remedies, it should be also taken into the consideration. When constitutional courts find a due process violation, they may prescribe legal remedies to rectify the situation. Remedies can include the striking down of unconstitutional laws, injunctions against government actions, compensation to affected individuals, or orders to retry cases under fair procedures. It is essential to underline the connection between the due process and so called 'preventative role': constitutional control mechanisms also have a preventive role. By examining proposed legislation and administrative regulations, they can prevent unconstitutional actions before they occur, rather than just addressing violations after the fact.

Last but not least in brief:

- public awareness and education: the principles of due process and the role of constitutional control in safeguarding them are crucial for public awareness and legal education. Ensuring that citizens understand their rights and the mechanisms available to protect them is essential for a functioning democracy;

- complex cases: due process issues can become highly complex, especially in cases involving new technologies, national security, or novel legal challenges. Constitutional courts must grapple with these complexities while upholding core principles;

- evolution of due process: the interpretation and application of due process evolve over time. Constitutional courts often adapt to changing social norms, technologies, and legal developments to ensure that due process remains effective and relevant;

- international comparisons: the principles of due process can vary among countries, but many nations are guided by international standards, such as those set forth in the Universal Declaration of Human Rights, the European Convention on Human Rights, or regional agreements. Constitutional courts often consider these international standards in their evaluations.

So, "due process" as a subject of constitutional control plays a vital role in maintaining the integrity of legal systems and protecting individual rights. It's a dynamic field that evolves to address new challenges and ensure that justice and fairness prevail in the face of changing societal, legal, and governmental contexts.

One of the practical examples of the case with the due process as a subject of constitutional control in the Republic of Azerbaijan is the case of Ms. Khalilova.

In the case of Gabala District Court to the Constitutional Court, in its decision dated April 15, 2011, essentially established a new fair procedure for involuntary psychiatric treatment in psychiatric hospitals and the mechanism for appealing it.

S. Khalilova was criminally charged with assaulting her mother but was declared mentally ill in court and sent for involuntary treatment. Although, according to the legislation, the assessment of S. Khalilova's health status was formally conducted every six months, the duration of her stay in the psychiatric clinic practically exceeded the statutory term under the Criminal Code, for which she was supposed to serve her sentence (for information: the maximum penalty for the relevant article was 6 months, and the applicant was held for over 2 years) [7].

Treatment and assessment of her health condition were carried out by the chief physician of the psychiatric hospital. Therefore, the applicant had the impression that involuntary treatment was carried out with violations, including the principle of due process.

In the Resolution, it was noted that the concept of a "medical-psychiatric commission", as mentioned in Article 98.1 of the Criminal Code, does not envision a medical consultation commission of the medical institution that administers involuntary treatment. Instead, it implies that the assessment should be provided by an independent medical-psychiatric commission [7].

Thus, it was concluded that there is a need for the establishment of independent professional medical-psychiatric commissions, and the court, on its own initiative when considering the extension, replacement, or revocation of the application of involuntary medical measures, should utilize or has utilized the right to appoint a reexamination by these independent commissions.

Actually, the Constitutional Court reinstated or laid the foundations for establishing a proper and fair procedure for involuntary psychiatric treatment.

Alongside the improvement of legal procedures, there is a question about the observance of the principle of fairness in their implementation. This issue was addressed by the Constitutional Court of the Republic of Azerbaijan in 2015. It appears that the problem that arose at that time and the practice of its resolution may be of interest to many post-Soviet constitutional courts.

The problem involved the formal application of the judicial control institute at the pre-trial stage of criminal proceedings. A local court approached the Constitutional Court, which perceived a formality in the judicial control when law enforcement agencies began to conduct urgent seizures of physical evidence (such as narcotics) more frequently and only formally sent the seizure protocol to the court. Moreover, the court's consent for conducting operational-search measures was not required.

The Constitutional Court of the Republic of Azerbaijan noted that, in case of a formal approach to the issue, the court should render an appropriate decision, while assessing the necessity of conducting operational-search measures in accordance with the law. A copy of this decision is sent to the body conducting operational-search activities and to the prosecutor in charge of the preliminary investigation. Furthermore, when considering the merits of the case, the results of this operational measure are reviewed in the standard manner. In other words, the results of operational-search measures are examined and evaluated, just like any other evidence.

The formality of judicial control can resemble the function of "passive legitimization". For this reason, the Constitutional Court of the Republic of Azerbaijan, considering that there are virtually no procedural legal powers of a judge in terms of judicial control before the consideration of the case on its merits (pre-trial stage) in the criminal procedural legislation, noted in the aforementioned decision that a judge, in the process of pre-trial judicial control, possesses the following powers:

- to authorize the conduct of operational-search measures and to grant or reject petitions related to the conduct of such measures;
- to extend the duration of a ruling on the lawful restriction of a person's constitutional rights and freedoms;
- to request additional materials on the grounds for conducting operational-search measures;
- to hear the person whose rights and freedoms have been restricted and, when necessary (depending on the covert or overt conduct of operational-search measures), to inform the applicant of the reasons for conducting such measures;
- to take other measures aimed at guaranteeing the person's constitutional rights and freedoms.

Today for European countries, particularly for post-soviet countries the question of due legal procedure in connection with the effective investigation of cases of inhuman treatment of detainees or convicts (in terms of ensuring the right to be free from torture under Article 3 of the ECHR) remains relevant.

Literally in a new case of *Shahzad v. Hungary* 5 October 2023, EHRC found that the investigating authorities' failure to interview the applicant, order a forensic medical assessment of his injuries, and take all the necessary investigative measures to resolve the factual contradictions and uncertainties with which they were faced rendered the investigation into the applicant's alleged ill-treatment ineffective, that there has been a violation of Article 3 of the Convention in its procedural aspect [8]. As we know, the relevant general principles are summarized in *Bouyid v. Belgium* [9] as well.

**Conclusions.** In general, constitutional courts, in establishing due procedures for such cases, can fully utilize the standards of the CPT, which are available on their official website. There is no doubt that the enforcement of court decisions is part of the judicial process. In conclusion, as the law evolves, it complicates legal procedures. Various legal interests of a wide range of subjects of legal relations emerge abuses of rights occur, and, consequently, due legal procedure requires an assessment of fairness from the standpoint of its constitutional meaning.

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#### **Гараджаєв Дж. Належний процес як предмет конституційного контролю: теорія і практика Конституційного суду Азербайджану та Європейського суду з прав людини**

**Анотація.** Метою статті є охарактеризувати, як належний процес розглядається як предмет конституційного контролю, і проілюструвати цю теоретичну концепцію прикладами з практики Конституційного Суду Азербайджану та Європейського Суду з прав людини. Узагальнено, що в сучасному праві принцип належного судового процесу в контексті рішень Європейського суду з прав людини став вирішальною правовою процесуальною умовою захисту особи від свавільного втручання держави. Це є основою ефективного механізму розслідування порушень прав людини. Цей принцип є одним із об'єктів захисту й органів конституційного контролю. Крім того, характеристикою належного судового процесу є його справедливий характер щодо реалізації основних конституційних прав.

Підсумовується, що належний процес як предмет конституційного контролю має важливе значення для підтримання верховенства права, захисту прав особи та забезпечення того, щоб органи публічної влади діяли

чесно та в межах своїх повноважень. Конституційні механізми контролю відіграють вирішальну роль у підтримці балансу між державною владою та особистими свободами. Таким чином, «належний процес» як предмет конституційного контролю відіграє життєво важливу роль у підтримці цілісності правових систем та захисту прав особи. Це динамічна сфера, яка розвивається, щоб вирішувати нові виклики та гарантувати, що справедливість і справедливість переважають перед обличчям мінливих суспільних, правових та державних умов.

Зроблено висновок, що загалом конституційні суди, встановлюючи належні процедури для таких справ, можуть повною мірою використовувати стандарти

ЄКПТ, які доступні на їхньому офіційному веб-сайті. Немає сумніву, що виконання судових рішень є частиною судового процесу.

Підсумовуючи, автор аргументує: оскільки закон розвивається, він ускладнює судові процедури. Виникають різноманітні правові інтереси широкого кола суб'єктів правовідносин, виникають зловживання правами, а отже, належна судова процедура потребує оцінки справедливості з позицій її конституційного змісту.

**Ключові слова:** належний процес, принцип належного процесу, конституційні принципи, конституціоналізм, конституційний контроль, європейські стандарти, Рада Європи, Європейський суд з прав людини.