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## UNRAVELING THE THREADS OF CONSTITUTIONAL INTERPRETATION: EXPLORING KEY PRINCIPLES

The analysis looks at how each of these principles influences the process of constitutional interpretation and how they may conflict or complement each other. Such an analysis helps to better understand how the judicial system makes decisions based on these principles and how they affect legal proceedings and enforcement within the constitutional framework.

The principles of constitutional interpretation encompass a nuanced framework that defines the understanding and application of a country's foundational legal document. The cornerstone is textualism, which emphasises a literal reading of the constitutional text in order to ascertain its original intent. Such an approach is often aligned with originalism, which asserts that the constitution should be interpreted in accordance with the understanding of its framers.

Conversely, living constitutionalism recognises the ability of the document to adapt to changes in society over time. It asserts that the meaning of the constitution evolves to address contemporary issues while preserving its core values.

Precedent plays a crucial role and judicial decisions serve as a guide for future interpretations. The doctrine of stare decisis promotes consistency and stability in the interpretation of the law, thus promoting predictability in the application of constitutional principles.

The structural approach to interpretation involves analysing the constitutional framework and the distribution of powers among the branches of government. This approach recognises that the architecture of the constitution reflects a deliberate choice in favour of maintaining a system of checks and balances.

**Key words:** Constitution, interpretation, principles, constitutional law, originalism, textualism, living constitutionalism, judicial review, historical context, strict construction, precedent, broad construction, original meaning, contextual interpretation, evolving standards, rule of law, stare decisis.

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### Конституциялық түсіндіру жіптерін шешу: негізгі принциптерді зерттеу

Бұл ғылыми мақалада Конституциялық контексте құқықтық мәселелерді шешуге негіз болатын конституцияны түсіндірудің негізгі принциптеріне шолу берілген. Мәтінді түсіндіру, тарихи контекст, заң рухы, қосу және алып тастау және stare decisis доктринасы сияқты негізгі принциптер қарастырылады. Осы талдау принциптердің әрқайсысы конституцияны түсіндіру процесіне қалай әсер ететінін және олардың бір-біріне қалай қайшы немесе толықтыра алатынын қарастырады. Мұндай талдау сот жүйесінің өз шешімдерін осы принциптерге сүйене отырып қалай қалыптастыратынын және оның конституциялық шеңбердегі сот талқылауы мен орындалуына қалай әсер ететінін жақсы түсінуге көмектеседі.

Конституцияны түсіндіру принциптері елдің негізгі құқықтық құжатын түсіну мен қолдануды анықтайтын құрылымды қамтиды. Текстуализм конституцияның бастапқы ниетін түсіну үшін оның тұжырымдамаларын сөзбе-сөз оқуға баса назар аудара отырып, іргетас ретінде қызмет етеді. Бұл тәсіл көбінесе Конституцияны жасаушылардың түсінігіне сәйкес түсіндіру керек деген түпнұсқаға сәйкес келеді.

Керісінше, тірі конституционализм құжаттың уақыт өте келе қоғамдағы өзгерістерге бейімделу қабілетін мойындайды. Онда конституцияның мәні оның негізгі құндылықтарын сақтай отырып, қазіргі заманғы мәселелерді шешу үшін дамиды деп тұжырымдайды.

Прецедент шешуші рөл атқарады, ал сот шешімдері болашақ түсіндірулерге басшылық етеді. Stare decisis доктринасы конституциялық принциптерді қолдануда болжамдылыққа ықпал ете отырып, заңдарды түсіндіруде жүйелілік пен тұрақтылықты ынталандырады.

Түсіндірудің құрылымдық тәсілі конституциялық шеңберді талдауды және билік тармақтары арасында өкілеттіктерді бөлуді қамтиды. Бұл тәсіл конституцияның архитектурасы тежемелік және тепе-теңдік жүйесін сақтау үшін саналы түрде таңдауды көрсететінін мойындайды.

**Түйін сөздер:** Конституция, түсіндіру, принциптер, конституциялық құқық, оригинализм, текстуализм, тірі конституционализм, сот қайта қарауы, тарихи контекст, қатаң құрылым, прецедент, кең құрылым, бастапқы мағына, контекстік интерпретация, дамып келе жатқан стандарттар, заңның үстемдігі, *stare decisis*.

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### Распутывание нитей конституционного толкования: изучение ключевых принципов

В данной научной статье представлен обзор фундаментальных принципов толкования конституции, которые лежат в основе разрешения правовых вопросов в конституционном контексте. Рассматриваются ключевые принципы, такие как интерпретация текста, исторический контекст, дух закона, включение и исключение, а также доктрина *stare decisis*. Анализ посвящен тому, как каждый из этих принципов влияет на процесс толкования конституции и как они могут противоречить или дополнять друг друга. Такой анализ помогает лучше понять, как судебная система формирует свои решения на основе этих принципов и как это влияет на судебное разбирательство и правоприменение в конституционных рамках.

Принципы толкования конституции охватывают тонкую структуру, которая определяет понимание и применение основополагающего правового документа страны. Текстуализм служит краеугольным камнем, подчеркивая буквальное прочтение формулировок конституции для понимания ее первоначального замысла. Такой подход часто согласуется с оригинализмом, который утверждает, что конституцию следует толковать в соответствии с пониманием ее создателей.

И наоборот, живой конституционализм признает способность документа адаптироваться к изменениям в обществе с течением времени. В нем утверждается, что смысл конституции эволюционирует для решения современных проблем при одновременном сохранении ее основных ценностей. Этот динамичный подход к устному переводу пересекается с целенаправленным подходом, при котором толкователи принимают во внимание более широкие цели, которых стремятся достичь конституция.

Прецедент играет решающую роль, а судебные решения служат руководством для будущих толкований. Доктрина *stare decisis* поощряет последовательность и стабильность в толковании законов, способствуя предсказуемости в применении конституционных принципов.

Структурный подход к толкованию предполагает анализ конституционных рамок и распределения полномочий между ветвями власти. Такой подход признает, что архитектура конституции отражает осознанный выбор в пользу поддержания системы сдержек и противовесов.

**Ключевые слова:** Конституция, толкование, принципы, конституционное право, оригинализм, текстуализм, живой конституционализм, судебный пересмотр, исторический контекст, строгая конструкция, прецедент, широкая конструкция, первоначальное значение, контекстуальная интерпретация, эволюционирующие стандарты, верховенство закона, *stare decisis*.

*«The interpretation of the constitution is a delicate art,  
where the scales of justice are balanced  
not only by the words on parchment  
but by the evolving heartbeat of a nation's values and  
aspirations».*

*Dauren Makhambetsaliyev*

## Introduction

Constitutional interpretation is fundamental to any legal system governed by a written constitution. Guided by a set of principles, this intricate and profound endeavour provides unique perspectives

on how to approach and comprehend constitutional texts.

In this investigation, we undertake a journey to elucidate these principles, demonstrating their importance and offering understanding into their complex relationships. These principles act as an essential guide for judges, legal experts, and policymakers, influencing the direction of constitutional law and maintaining the vigour and pertinence of a country's constitutional structure.

As we investigate the realm of constitutional interpretation, we shall scrutinize diverse approaches

and methodologies that underpin this field. From textualism and originalism to pragmatism and purposivism, each approach embodies a distinct philosophy on how to extract meaning from constitutional texts. We shall also explore the significance of historical context, the broader spirit of the law, and the doctrine of *stare decisis* in shaping judicial decisions and constitutional development.

Furthermore, we will explore the intricate interplay of these principles, at times in harmony and at others in tension, as they inform the interpretation and application of the constitution by the judiciary in practical cases. This delicate dance of principles weaves and reweaves the constitutional fabric of a nation, adapting to the evolving social landscape while remaining true to its fundamental principles and values.

It will illustrate how the interpretation of a nation's fundamental charter is not a static endeavor but a living process that responds to the challenges and aspirations of each generation. The text is already clear, concise, and adheres to the principles of objectivity and logical structure. Ultimately, understanding these principles is essential for anyone seeking to navigate the rich tapestry of constitutional jurisprudence and contribute to the ongoing discourse on the meaning and impact of our most sacred legal documents.

## Materials and methods

**Comparative Analysis:** A comparative analysis was conducted to compare and contrast various constitutional interpretation approaches. The study covers cultural, historical, and political factors that influence these principles.

**Analysis of Judicial Practice:** A study was carried out on the judicial practice, involving an investigation of significant court cases that have impacted the interpretation of the constitution. The decisions, dissenting opinions, and their reasoning were analyzed to comprehend the application of different principles in practice.

**Content Analysis:** Content analysis was used to investigate legal journals, court decisions, and parliamentary debates on constitutional interpretation. This entailed identifying trends, recurring arguments, and alterations in interpretation principles throughout history.

## Literature review

«Principles of Constitutional Interpretation» takes readers on a comprehensive and erudite

exploration of the fundamental principles underpinning the interpretation of constitutional texts.

The article excels at making this complex subject matter accessible to a broad audience. It commences with an insightful survey of the historical progression of constitutional interpretation from its early legal roots to its present-day importance. This historical context establishes a foundation for a meticulous exploration of the principles that shape the interpretation of constitutional documents worldwide.

One noteworthy aspect of this article is its examination of the living constitution doctrine. The authors meticulously analyse this concept, emphasising its dynamic character and ability to enable constitutions to adjust to changing societal norms and values. This discourse is especially pertinent in the present fast-paced world, where constitutional texts must stay up-to-date and adaptable.

The issues surrounding textualism and originalism present a fair and astute analysis of two prominent ideological perspectives in the interpretation of constitutional law. The authors adeptly explain the subtleties of these methodologies, furnishing readers with a more profound appreciation of the ongoing discussions within the legal community.

Moreover, this article provides a thorough analysis of the role of precedent, case law, and *stare decisis* in interpreting constitutional law, illuminating the interplay between historical judgments and current concerns. Additionally, technical jargon and abbreviations are explained in order to facilitate a clear and concise text. The article stresses the significance of upholding consistency in legal verdicts, while simultaneously recognizing the need to adjust to changing circumstances.

«Principles of Constitutional Interpretation» tackles the issues and disputes that surround constitutional interpretation. The authors recognise the likelihood of subjectivity and bias in the process, and they suggest methods to alleviate these problems. Additionally, the book covers the intricate balance between protecting individual rights and maintaining the larger societal interest – a crucial topic in the field of constitutional law.

The writings of the aforementioned constitutional scholars have been cited, including Barack A., Dworkin R., Hesse K., Shmagin O., Kenenova I.P., Troitskaya A.A., Shustrov D.G., and Gadzhiev G.

In conclusion, «Principles of Constitutional Interpretation» serves as an essential guide for

legal scholars, practitioners, and individuals seeking a more profound comprehension of constitutional law. The article's scrupulous research, lucid writing, and impartial perspective render it a precious contribution to the field. As we negotiate the constantly transforming landscape of constitutional law, this text provides us with an unwavering compass, directing us through the maze of constitutional interpretation with lucidity and discernment.

### **Result and discussion**

In one of the initial works dedicated to the principles of interpretation, a differentiation was established between theoretical and practical principles of interpretation. The former belong to the domain of science, while the latter relate to the practical activity (art) of interpretation. The practical task of interpretation involves accumulating and summarizing practical rules and maxims of interpreting a specific class of texts. The objective of the science of interpretation is to examine the nature of the interpretation process and, using deduction-based techniques, identify the principles it is founded upon and which must guide practical interpretation activities (Hawkins 1898:577).

It appears that the two do not impede each other, and instead, science and the art of interpretation support each other. Analysing judicial practice is an integral part of the research program on constitutional interpretation principles. It helps recognise and generalise, and adequately express fundamental necessities for determining constitutional text's meaning. It presents evidence-based criteria for interpretation that have a qualitative impact on its process and results, allowing for evaluation of the accuracy of interpretation.

Principles of Constitutional Interpretation – This entails necessary requirements for the determination of the meaning of constitutional text, which include the limits and procedures of interpretation, the choice of interpretive methods, resolution of conflicts between possible interpretive outcomes, and the verification of the interpretation results.

The need to establish the true meaning of the Constitution through the application of constitutional interpretation methods, and potentially, construction, is apparent from the text of the document itself. Although certain sections of the Constitution do not generate significant discussions concerning the preferred way of interpreting them, a substantial proportion of the Constitution is framed

in general language, which provides the Court with considerable latitude to construe its provisions before implementing them in specific legal and factual situations (Shmagin, 2012: 283-284).

The principle of colourful legislation pertains to the competence of the legislative body when enacting provisions of a law. This practice aligns with the legislative body's operation, holding particular significance for the issue of competence in enacting provisions of a law. It involves a practice by which the legislative body adopts a provision that may not appear to be sanctioned by the constitution and imparts to it a substitutive purpose that indirectly accommodates the original intent. This doctrine prioritises comprehending the genuine nature and features of the law. It indicates that the true subject matter is open to questioning, rather than its incidental effect on other areas. This principle relates to the fact that the legislative body enacts laws on matters listed, but occasional violations by the legislative body can lead to declaring a particular law as *ultra vires*. The reasoning behind this doctrine is that the Legislative Assembly of the Central District and the state may encroach upon each other's areas of jurisdiction at any point in time (Hesse, 1981).

State constitutionalism is an important but inadequately developed component of American federalism, in which state courts independently decide cases on constitutional grounds. Our system of dual sovereignty ensures that state courts possess the power to construe their own constitutions, providing greater protection of individual freedoms than the federal constitution. When they make such decisions, they are exempt from federal court review, unless those decisions are linked to a federal matter (Soboleva, 2000: 44-46). The method for interpreting state constitutions remains an unexplored realm. Courts seldom state when they shall interpret their state constitutions autonomously and how they shall perform this function. Consequently, judicial practice becomes confusing and heterogeneous, and constitutional rights may not be shielded to the extent envisaged by the drafters of the constitutions. State court judges are frequently accused by practitioners of neglecting to sufficiently raise and advance arguments concerning state constitutions. Nevertheless, without a reliable methodology for ascertaining when and how to autonomously interpret state constitutions, how can practitioners determine when to raise these arguments and how best to present them? (Llewellyn, 1949-1950: 395). Our citizens require more than what the majority of

state courts have offered: a transparent and reliable determination of when we will interpret our state constitution independently and the methods that we will use to do so.

Possible sources of interpreting the Constitution encompass its textual content, original historical context, including the socio-political surrounding in which it was established, the evolving history of constitutional interpretation, and the societal, political and moral values.

When interpreting a nation's fundamental law, such as its Constitution, it is advisable to consider the position taken by the Court of the European Communities in interpreting the Treaty that established the European Economic Community and its laws. The Court makes use of teleological methods of interpretation, rather than historical ones, seeking to give effect to what it deems to be the essence of the law, as opposed to its strict wording. The interpretation of treaty provisions evolves with the growth of communities, which are seen as living and expanding organisms.

A dynamic Constitution is undoubtedly one that can be amended. If the Constitution is not fixed, if it alters periodically, it signifies that an individual is modifying it, adhering to their own notions of what the Constitution must resemble. Normally, it is assumed that this individual is a cohort of judges. Subsequently, a dynamic Constitution no longer exists as a Constitution; genuinely, it is not even a statute anymore (Thompson, 1982: 597). If we wish to ascertain the demands of the Constitution, we must investigate the actions of the people: the words they selected and the meaning they conveyed, as well as their intentions when enacting those provisions. Our analysis must cease at that point. If we venture beyond the text and the initial understanding, we are no longer pursuing the law; instead, we are engaging in another activity, like imbuing the law with our personal values.

Textualism must recognize the existence and relevance of unwritten law. Understanding textualism requires considering two theoretical models: positivism and formalism. Positivism asserts that judges must "follow external sources of law" and refrain from exercising their discretion when making decisions, while formalism acknowledges that the rule may not always align with the reasoning behind it. Misinterpretation of the law may occur if every choice made during its drafting is assumed to have been deliberate. Instead, it should be recognised that at times, the legislative body may choose not to make any decisions regarding the text, and instead

allow the remaining issues to be determined at the discretion of previous law, whether it is written or unwritten, as per the view suggested by Scalia and Garner (2012 a: 56).

The interpretation of the Constitution and laws is a crucial aspect of judicial power that will have a significant impact on the relationships between individuals and the government, particularly on issues that greatly impact people's lives (Matis, 2015: 204).

Textualism is a crucial term in discussions about judicial appointments and decisions. Textualist judges can offer the highest level of assurance that the judiciary will uphold the Constitution and the rule of law.

Textualism is a simple concept but can be difficult to execute. It revolves around the idea of judges guaranteeing adherence to the Constitution and laws that comply with it (which is why judges, like other government officials, swear to uphold the Constitution). Textualists strive to uphold the meaning of the Constitution and laws to the letter. If the language is unambiguous, the judge refrains from going beyond it. If ambiguous, the judge attempts to determine their meaning by applying established rules of construction (Barnett, 1940: 213-214).

Judicial restraint is a procedural or substantive approach to the judicial review process. As a procedural doctrine, the principle of judicial restraint calls on judges to refrain from deciding legal issues, particularly those of a constitutional nature, unless it is necessary to resolve a specific dispute between opposing parties. Basically, judges who are contemplating constitutional issues should exhibit appreciable respect for the opinions of the elected government and nullify their actions only if the government clearly transgresses constitutional limits (Grimm, 2004: 17).

Courts and judges select one of the behavioral models *sub suo periculo*, resulting in an unpredictable outcome. Following behavioral models has an impact on the principles of interpretation. Both behavioral models may produce positive or negative results for the rule of law. Under certain circumstances, judicial activism can uphold the rule of law and bolster the authority of the court, although it directly contradicts the principles of interpretation. Conversely, the court's restraint in decision-making, while formally adhering to the principles of interpretation, can result in tragic consequences for the rule of law, such as the breach of the "in dubio pro libertate" principle (Shustrov, 2019: 81-82).

The impact of «internal-judicial» factors on interpretation principles is unavoidable since these

principles have always been, are presently, and will always be established and shaped by judges. Nevertheless, judges operate within an «open society of constitution interpreters» (Haberle, 2003: 21) when undertaking constitutional interpretation. Although constitutional courts hold ultimate interpretive authority and are responsible for formulating and applying principles of constitutional interpretation, they do not engage in interpretation in isolation. This means that judges are obligated to interpret constitutional law with mandatory consideration of the opinions of professionals and the public, as well as taking into account their perspectives. The validity of a judicial decision is not always enough; in certain situations, it may necessitate legitimacy, which is gained by adhering to the principles of constitutional interpretation. Participants and observers in the interpretation process have logical expectations about these principles.

The lack of a normative codification of interpretive principles presents a significant challenge in attempting to fully encompass their complete set. Within scholarly literature, there is a lack of consensus concerning the catalogue and classification of constitutional interpretation principles. P. Schneider defined principles as «requirements for liberal-democratic constitutional interpretation», and included them in his work. The requirement of fair interpretation.

1) The requirement of interpretation in accordance with the constitution.

2) The requirement of interpreting the constitution and laws in order to maintain their validity as elements of order and peace based on an objective method, taking into account the time of their emergence.

3) The requirement of interpreting competence in accordance with the substantive function entrusted to the body and considering the constitutional rights of citizens (Schneider, 1961: 50).

They essentially constitute factual rules for solving a problem... [They are] an expression of constitutional prior understanding of certain constitutional issues». Constitutional interpretation principles are divided into two groups.

He categorized them as substantive legal principles:

1) The principle of interpreting the constitution as unity.

2) The principle of interpreting fundamental rights based on the system of fundamental rights.

3) The principle of «in dubio pro libertate» (in doubt for liberty).

4) The principle of efficiency.

5) The principle of the interconnection of fundamental rights and competencies.

Functional-legal principles of interpretation encompass:

1) The principle of interpretation in accordance with the constitution.

2) The doctrine of the «political question».

3) The doctrine of «privileged freedoms».

According to K. Hesse, the principles of constitutional interpretation have «guiding and limiting significance for determining the combination and assessment of... methods [of interpretation] to solve the problem». These principles of constitutional interpretation include:

1) The principle of the integrity of the constitution.

3) The principle of practical consistency.

3) The principle of functional correctness.

4) The principle of integrative impact.

5) The principle of the normative force of the constitution (Hesse, 1981).

Within the textualist approach to interpretation advocated by A. Scalia and B. Garner, the following principles of interpretation were emphasized:

1) The principle of interpretation (any application of the text to specific circumstances requires interpretation).

2) The principle of textual superiority.

3) The principle of interconnected canons of interpretation.

4) The presumption against inefficacy (one should choose an interpretation of the text that is more conducive than obstructive to achieving the document's purpose).

5) The presumption of validity (an interpretation that confirms is favored over one that invalidates) (Scalia, 2012 b: 56).

The aforementioned academic views affirm that constitutional interpretation principles are a topic of scientific research, but there is a lack of agreement on their categorisation and classification. Certain principles are recognised by most authors, irrespective of their specific labels, while other principles are peculiar to individual authors.

Another factor for assessing the credibility of constitutional interpretation principles is their acknowledgement in judicial practice. It is challenging to establish an absolute listing of principles in this context as courts may either directly indicate interpretation principles while constructing their arguments, or they may not name specific principles as the core basis for their

decisions. Nonetheless, the principled foundation can still be inferred from their arguments. Thus, constitutional interpretation principles encompass not only the obvious facets of judicial practice but also the expectations of participants and observers from academic and practical standpoints in the interpretation process.

At the same time, it is important to comprehend that there will often be questions about why certain demands are acknowledged as principles of constitutional interpretation while others, like public morality, order, and security, economic prosperity, and social equity, are not. In answering this query, two standards for concurrent deployment can be suggested:

1) The legal nature of a particular requirement: whether it is a secondary rule directly related to the process and/or outcome of interpretation, rather than a primary rule – a constitutional principle aimed at establishing fundamental viewpoints on the reality of the legal system.

2) Simple empirical recognition of a requirement as a principle of constitutional interpretation in scholarly literature and judicial practice.

3) The limits of interpretation are defined by its nature, beyond which it cannot exceed into other legal activities, such as lawmaking. To avoid criticism of subjectivity and maintain legitimacy, interpretation must be objective and within its boundaries. These limits are dictated by the language of the text and the judicial nature of interpretation. In addition, the boundaries of interpretation are not set in stone. Rather, they are adaptable, depending on the nature and type of the act being interpreted, its specific provisions, the particular historical circumstances of the case, and the problem being discussed.

The principles of interpretation involve the language principle of the text and the nature of judicial activity during interpretation.

The principle of language use within the text necessitates that meaning should only be derived from the words written. It is commonly accepted that constitutional interpretation is limited to the point where understanding of the text ends or when a decision contradicts the written norm. Where the interpreter exceeds the limits of the constitution, they cease to interpret and start to alter or violate the constitution. (Hesse 1981c: 53).

According to A. Barak, interpretation is a rational process that conveys meaning to a legal text, solely based on its language. This prerequisite is both necessary and sufficient to establish interpretation. The boundaries of the text define the

limits of interpretation in law, while the boundaries of language establish the limits of the text. An activity is considered interpretive if it imparts meaning to the text that corresponds to one of its (explicit or implicit) meanings, encompassed by the language used in the text. Imputing meaning to the text that goes beyond its semantic content is not considered an act of interpretation and should rely on non-interpretive doctrines. Furthermore, interpretation concludes when language concludes. Additionally, interpretation can impart either an expansive or restrictive sense to the text. But it is essential to note that interpretation imbues the text with a significance that is dependent on the language it is conveyed in (Barak, 2005).

The language used in a text presents a vast scope for interpretation, and as language is dynamic and continues to evolve over time, this boundary is somewhat flexible. In the words of K. Hesse, «The text provides the framework that defines the mode of action. The extent of interpretation of the text determines the range of possible options» (Hesse, 1981:53).

The court is a legal entity whose purpose is to interpret the law, and it must avoid intervening in the resolution of political issues under the jurisdiction of other authorities. The determination of whether a question is of political or legal nature is a broad category. Nonetheless, the classification of a question as political or legal is vital in deciding whether a court should accept or decline a case for consideration. If a question is primarily political, it should be dealt with by political authorities.

Each organ of constitutional review independently imbues the concept of a «political question» with meaning. For example, in the case of *Baker v. Carr*, the U.S. Supreme Court, guided by the function of the separation of powers, formulated several distinguishing features of political questions that may vary depending on the circumstances of a specific case:

1) textual evidence of constitutional allocation of the question to the competence of a political organ of authority;

2) the absence of readily available and effective standards for its resolution;

3) the impossibility of deciding the matter without initial policy determination that is explicitly non-judicial in nature;

4) the impossibility of deciding the matter without showing disrespect to other branches of government;

5) the extraordinary need for unquestioning adherence to a political decision;

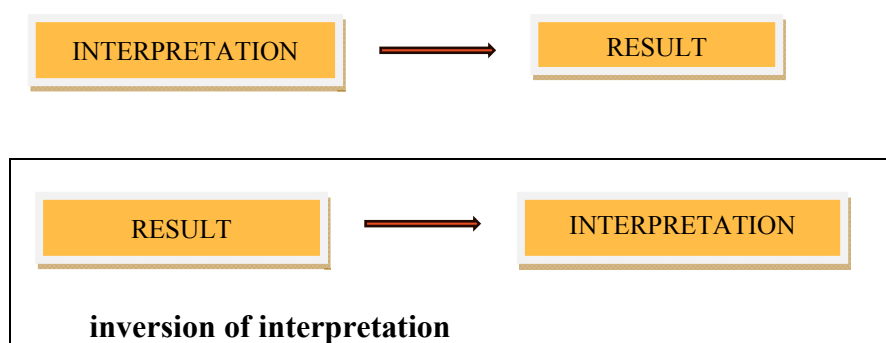
6) potential conflicts arising from different positions of organs on the same issue (U.S. Supreme Court. *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

The principles of interpretation include the principle of objective interpretation and the principle of reasonable interpretation.

**The principle of objectivity** requires that the interpretation be carried out honestly, impartially, fairly, conscientiously, without any intention to abuse the authority of the interpreter, i.e. with the sole purpose of determining the true meaning

of the text. No one and nothing should sway the judge towards a particular result of interpretation, but this does not mean that the judge may not (indeed must not) assess various external factors influencing his decision, provided that these factors are objective.

In the process of interpretation, the so-called inversion of interpretation, whereby the judge moves from the result to the interpretation rather than from the interpretation to the result, is categorically unacceptable.



**Figure 1** – Interpretative subjectivism: Inversion of Interpretation

In an objective approach, the text acquires meaning through the process of interpretation, which involves the sequential application of interpretive methods. In contrast, an inverted or subjective approach ascribes a preconceived meaning to the text, supported by an interpretation that justifies it. The court, on the basis of an examination of the facts, intuitively selects a decision that is acceptable for political, ethical and other considerations, and only then matches it with an interpretation and argumentation that justifies the result (Frank 1949:104).

Interpretation must comply with **the principle of reasonableness**. The breadth of the concept of ‘reasonableness’ makes it difficult to define, yet it is frequently used in legal arguments, often influencing the outcome of cases. There are even suggestions in the literature that the concept of ‘reasonableness’ should be given an ad hoc content, as it ‘does not translate into a fixed set of requirements or rigid rules, but rather provides a multifaceted criterion, the content of which varies from case to case’. The different spheres and manifestations of reason are such that they give rise to open criteria and standards. This flexibility of the reasonable ... explains why the concept is so widespread in legal discourse and

serves a wide range of functions; reasonableness can be described ... as a context-dependent normative criterion that is defined differently depending on the context” (Bongiovanni, 2009:11).

In the broadest sense, reasonableness means correctness. The reasonableness of interpretation is based on the rational nature of that activity, so reasonableness implies logic, motivation, objectivity and sound argumentation. But correctness can be both instrumental and moral. Reasonableness includes rationality but is not identical with it, since, in the precise words of J. Rawls, «rationality lacks a sense of justice» (Rawls, 1993:52). It is therefore concerned with goodness and truth and is not limited to instrumental logic and efficiency (Alexy, 2010:7).

Law is a rational phenomenon (Vlasenko, 2011:57), therefore the principle of reasonableness in interpretation explicitly excludes absurdity in its outcome. Absurd interpretation should be rejected: «a normative provision may be either disregarded or judicially corrected as an error if to do otherwise would produce a result that no reasonable person could approve» (Scalia, 2012: 234). It must be shown that the absurdity is obvious and obvious to any reasonable person and that the absurd result



is the only possible interpretation of the norm (Shmagin, 2012:277).

The principles for selecting methods of interpretation and resolving conflicts between possible interpretations include:

- The principle of equal significance and absence of hierarchy among interpretive methods.

- The principle of systemic unity and integrity of the constitution and constitutional law.

- The «in dubio pro libertate» principle (in doubt, in favor of liberty).

- The principle of integration.

- These principles guide the process of legal interpretation and conflict resolution in the domain of constitutional law.

Interpretation does not require the selection of one method, but the correct application of all methods. The German Federal Constitutional Court states: «The objective of interpretation is ensured by interpretation on the basis of the text of the norm (grammatical interpretation), its context (systematic interpretation), its purpose (teleological interpretation) and the legal materials and the history of its origin (historical interpretation). In order to understand the objective will of the legislator, all these methods of interpretation are permissible. They are not mutually exclusive but complementary» (BverfGE 11, 126 – Nachkonstitutionalieller Bestätigungswille).

Therefore, all methods of interpretation should be used equally, but depending on the dispute before the court. Clearly, if the case is relatively straightforward and the outcome does not lead to absurdity, a literal or grammatical interpretation of the legal provisions may be sufficient to arrive at the correct decision. If the case is complex (Dvorkin, 2004: 22), a literal interpretation alone may not be sufficient. Moreover, if the dispute also generates significant public reaction, the entire arsenal of argumentation methods will be needed, except for those that would yield no results. However, even the non-application of certain methods must be explicitly mentioned and explained. These methods should be applied sequentially.

The starting point for interpretation will always be the grammatical method. If this method does not lead to a clear result, or if there are doubts about the correctness of the interpretation, then one should turn to the historical method, which can either confirm or refute the results of the grammatical interpretation. If the application of the grammatical and historical methods of interpretation still raises questions, it is necessary to resort to the systematic method and try

to find the answer within the interpreted document or within the legal system as a whole.

In the process of interpretation it is also possible to use other methods of interpretation, which help to confirm the results of the application of «classical» methods of interpretation. The cultural method helps to understand the cultural characteristics of the society in which the interpreted norm is implemented and to assess the consequences of the interpretation. Economic analysis of law helps to find the most rational and advantageous interpretation of the norm and an efficient solution to the problem.

In cases of conflict between methods, the court's determination of the outcome should be based on a reconciliation of the variants obtained in terms of the best societal, political, economic, moral, etc. perspectives, and it should be thoroughly reasoned. Such a choice inevitably falls within the realm of judicial discretion (Barak, 1999).

According to the principle of systemic unity and integrity, constitutional provisions are interrelated and interdependent, which requires constitutional provisions to be considered in unity and integrity within the general system. This should contribute to the internal consistency and harmony of the various provisions of constitutional law. Constitutional law constitutes a comprehensive system regulating a set of political relations. Constitutional legal norms should be interpreted in such a way as to avoid contradictions with other constitutional legal norms – in the Constitution, in legislation, in other laws, etc.

The principle of «in dubio pro libertate» requires that legal provisions be interpreted in such a way as to maximise the protection of human rights. The text of the law should be interpreted in the broadest possible way to minimise any infringement of human rights. Where interpretation based on different methods leads to conflicting results, the interpretation most favourable to human rights and freedoms should be chosen. Thus, priority should be given to the interpretation that imposes the least burden on human rights and freedoms.

This principle of constitutional interpretation was first discussed in German literature during the Weimar Republic. R. Thoma, for example, argued that fundamental rights should, in case of doubt, be interpreted in such a way as to maximise the legal force of the specific norm (Thoma, 1929:42).

The purpose of the constitution is to create and preserve national unity and integrity (Smend, 2000:219), so interpretation should aim to affirm them. The principle of integration requires

that interpretation ensures the preservation of national unity and integrity. In cases of conflicting interpretations, priority should be given to the interpretation that most effectively ensures the preservation of national unity and integrity.

The principle of integration is somewhat contradictory to the principle of *in dubio pro libertate*: the former gives priority to the collective value of common existence, the latter to individual values. However, these principles balance each other and are of equal importance. In the event of a conflict between these principles, the result of the interpretation in each specific case is based on the harmonisation of the values behind them.

The principle of legal certainty is a general legal principle that arises from the principle of the rule of law (Gadzhiev 2012:19). Certainty is an ideal for the law to strive for. It is obvious that in addition to certain provisions, the law always contains uncertain provisions that are open to multiple interpretations.

The relationship between legal certainty and interpretation is complex. The initial uncertainty of normative provisions can lead in practice to «arbitrary interpretation and, consequently, arbitrary application».

Finally, interpretation itself must comply with the principle of legal certainty, which includes requirements of legal quality. Interpretation must be easily accessible, precise and clear, avoiding ambiguity, ensuring predictability of legal consequences, striking a reasonable balance between the principles of *res judicata* and *restitutio in intergum*, preventing retroactive legislation that worsens the situation of individuals, safeguarding the «legitimate expectations» of individuals, their confidence in the law and in government action, and maintaining stability and consistency in judicial practice.

Law serves its underlying objectives and is a means to achieve them effectively (Iering 2006: 90). Objectives always require efficiency. The principle of efficiency implies that constitutional and legal norms must be interpreted in such a way that they are valid, rational, specific and definite, effective and capable of realisation, so that they can create specific relationships and ensure the achievement of their underlying objectives.

This principle has been consistently applied in the practice of the European Court of Human Rights for a long time, which has allowed the Convention for the Protection of Human Rights and Fundamental Freedoms (Konvencija o zashhite prav cheloveka i osnovnyh svobod) to be truly effective. The

literature points out that “the key factor underlying the interpretation of the Convention by the European Court, which is key to realising its ‘object and purpose’, is the need to ensure effective protection of the rights guaranteed (Harris, 2016:19).

The European Court emphasises that «in interpreting the Convention, account must be taken of its special character as a treaty for the collective guarantee of human rights and fundamental freedoms... The object and purpose of the Convention as a legal instrument for the protection of human rights require that its provisions be interpreted and applied in such a way as to render its guarantees real and effective.... Moreover, any interpretation of the rights and freedoms guaranteed must be in harmony with the general spirit of the Convention, which is a legal instrument aimed at safeguarding and developing the ideals and values of a democratic society» (European Court of Human Rights judgment of 7 July 1989).

The Convention must be truly effective in ensuring compliance. «The Convention and its institutions were created for the protection of individuals and, accordingly, the procedural provisions of the Convention should be applied in such a way as to render the system of individual applications effective» (Judgment of the European Court of Human Rights of 6 September 1978). Not only the procedural, but above all the substantive provisions of the Convention, which proclaim the protected human rights and fundamental freedoms, must be effective. The Convention does not aim to guarantee theoretical or illusory rights, but rights that are practical and effective. The Convention requires that «a person actually enjoys his right» under conditions not inconsistent with the relevant article (judgment of the European Court of Human Rights of 9 October 1979).

The principle of conformity of interpretation requires that the result of the interpretation ensures the operation of the Constitution, does not contradict it and, even better, is directly consistent with it and does not cast doubt on the constitutionality of the interpretation itself. In the presence of several non-contradictory options, the one that more fully ensures its implementation should be chosen. The interpretation should strengthen the Constitution, not weaken it; it should help, not hinder, its operation.

At the heart of the principle of interpretative conformity is the idea of normative hierarchy, according to which lower-level normative acts should not contradict higher-level acts, up to and including the Constitution. Since the Constitution,

which has the highest legal force and supremacy, is at the top of the normative hierarchy, it serves as the ultimate argument in disputes over correct interpretation.

The principle of conformity of constitutional interpretation includes a presumption of validity, according to which «an interpretation that renders it valid outweighs one that renders it invalid». ... The presumption of validity refutes an interpretation that would invalidate a provision or the entire act, for example, an interpretation that might render a law unconstitutional. The presumption can be seen as a form of presumption against invalidity, since an interpretation that renders a provision invalid (unlawful) «maximally impedes its application» (Scalia, 2012:66).

The principle of constitutional avoidance was first established in the practice of the United States Supreme Court. In the 1830 decision, it was stated that when an interpretation raises “the gravest doubts” as to the constitutionality of a statute, «no court should, unless it is unavoidable, give a construction to the statute which would result in a violation, however unintentional, of the Constitution» (The Decision of the Supreme Court of the United States in 1830).

In cases where two equally plain and reasonable constructions are possible, the court should ... adopt that construction which, without abusing the meaning of the words used, will make the statute conform to the provisions of the Constitution. ... This principle was stated by the Supreme Court of Mississippi in *Marshall v. Grimes*, 41 Miss. 27, 31, where it was said: «General words in a statute should not be so construed as to place it beyond the power of the legislature, and thus render it unconstitutional. But, if possible, such construction should be given to the statute as will render it free from constitutional objections, and it should be presumed that the legislature intended to confer such rights as are lawfully within its power» (The decision of the Supreme Court of the United States in 1884).

This fundamental principle of interpretation implies that one should «seek every reasonable construction to save the statute from unconstitutionality» (The Supreme Court of the United States, 1895) and interpret the statute in a way that «endeavours, as far as possible, to conform it to the Constitution and to higher law» (The Supreme Court of the United States, 1869).

Thus, «if the language of the statute is susceptible of two equally valid interpretations, the one which is plainly in harmony with the provisions

of the Constitution is to be preferred» (The decision of the Supreme Court of the United States in 1902). Furthermore, «the statute must be construed not only so as to preserve its constitutionality, but also so as to avoid all possible doubt as to its constitutionality» (The decision of the Supreme Court of the United States in 1908).

In cases «where the constitutionality of a statute is in doubt, if the statute is reasonably susceptible of two interpretations, one of which is unconstitutional and the other valid, our clear duty is to adopt the interpretation which will save the statute from being declared unconstitutional. This principle should not be interpreted to mean that our duty is first to find that the law is unconstitutional and then to claim that such a finding was unnecessary because the law is susceptible to an interpretation under which it does not conflict with the Constitution. On the contrary, this principle must mean unequivocally that if the statute is reasonably susceptible of two interpretations, one of which raises doubts and serious questions of constitutionality, while the other excludes such questions, our duty is to adopt the latter interpretation» (The United States Supreme Court Decision of 1909).

Thus, the interpretation that raises «serious and doubtful questions of constitutionality», «in accordance with established practice... shall not be adopted if another... reasonable interpretation is possible and should prevail» (1926 decision of the Supreme Court of the United States). «The court must first determine whether an interpretation of the statute that avoids these questions is possible» (The Supreme Court of the United States, 1932). The law cannot be interpreted as violating the Constitution if there is another possible interpretation (The decision of the Supreme Court of the United States in 1979). For this to happen, laws must be interpreted and applied in accordance with, and not in defeat of, the purpose of the Constitution (The decision of the Supreme Court of the United States in 1937).

«The court must construe the statute so as to avoid serious constitutional problems unless such a construction is clearly contrary to the intent of Congress. This basic principle has long been applied by the Court and is beyond dispute. This approach not only reflects a prudent concern that constitutional questions should not be decided unnecessarily, but also recognises that Congress, like the Court, is bound by the Constitution and has sworn to uphold it. Therefore, courts will not readily presume that Congress intended to infringe upon constitutionally

protected liberties or to arrogate to itself powers» (The United States Supreme Court, 1988).

«Constitutional interpretation requires that among several possible interpretations of provisions, some of which lead to unconstitutional results and others to partially constitutional results, preference be given to those which are in conformity with the Basic Law» (BverfGe 32, 373 – Ärztliche Schweigepflicht. Decision of the Second Senate of 8 March 1972. 2 BvR 28/71. Rn. 50). «If a provision is susceptible to more than one interpretation, the Federal Constitutional Court may therefore examine whether the provision is compatible with the Basic Law in the interpretation in question. If the norm contradicts the Basic Law in all possible interpretations, it is unconstitutional as such. If a norm is open to several interpretations, some of which lead to unconstitutional results, the norm is constitutional and must be interpreted in accordance with the Constitution. Decisions that interpret the norm in a way that is contrary to the Basic Law must be annulled» (BverfGe 19, 1 – Neuapostolische Kirche. Decision of the First Senate of 28. April 1965. 1 BvR 346/61. Rn 9).

Constitutional interpretation not only requires the selection of an interpretation that does not contradict the constitution, but also implies an interpretation that most effectively promotes the realisation of the constitution. Through constitutional interpretation, constitutional principles influence sectoral legislation by giving constitutional meaning to its norms. In this way, constitutional values permeate legislative norms.

Despite the fact that the constitution and constitutional law constitute a system, they are not free from conflicts between co-equal norms and the values that underlie them. To resolve these conflicts, the arsenal of constitutional law methodology includes specialised techniques: proportionality, weighing and balancing (Aleinikoff, 1987: 919). Each of these techniques (in part or as a whole) aims to reconcile and balance conflicting values.

The principle of practical consistency proposed by K. Hesse suggests that «protected legal values in constitutional relations should be combined when dealing with an issue in such a way that there is no doubt about the validity of any of them. In the case of conflicts, a «balancing of values» at the expense of one another is inadmissible. The task of optimisation is posed: both values must be constrained in order for them to have an optimal effect. Constraints should be set in each specific case. The restrictions should not be greater than what is necessary to reconcile both legal values» (Hesse, 1981: 51).

Thus, the principle of practical consistency requires that constitutional provisions, as well as the values they protect, should be combined (practically harmonised) and correspond to each other in the resolution of constitutional disputes in such a way that there is no doubt about their validity and that no priority is given to certain norms (values) over others, but that the norms are simultaneously optimised. The aim of reconciliation is to achieve a balance between conflicting values (Lerhe, 1994: 240).

Despite the rather well-structured concept, weighing, balancing and harmonising tend to exist in the «semi-shadow» of the rational, since it is impossible to establish an objective scale or to create scales that would perform these operations and assess the significance of conflicting values.

The principle of practical consistency is used in constitutional practice to resolve constitutional disputes relating to the examination of the constitutionality of limitations imposed by the legislature on individual rights and freedoms, based on the principles of proportionality, weighing or balancing, in order to reconcile private and public interests.

The German Federal Constitutional Court actively applies this methodology. In the Lebach case, for example, it is stated: «In resolving a conflict, it is to be assumed that both constitutional values are essential components of the free democratic system of the Basic Law in the sense of the constitution, so that neither of them can claim a fundamental advantage. ... Since both values are constitutional, in the event of a conflict between them they should be reconciled as far as possible; if this is not possible, a decision should be made, taking into account the characteristics and specific circumstances of the individual case, as to which interest should be given priority. In doing so, both constitutional values must be considered in relation to human dignity as the core of the constitutional value system» (BverfGE 35, 202 (Lebach) Decision of the First Senate of 5 June 1973 1 BvR 536/72).

***Recommendations for legal scholars and judges of the Constitutional Court when interpreting the constitution:***

**1. Textualism and Originalism:**

– Start with the text of the Constitution itself. Interpret its provisions by relying on the ordinary meaning of the words used at the time of adoption.

– Examine original intent by studying historical documents, debates, and the intentions of the framers to understand how they understood and intended to use the constitutional provisions.

**2. Broad vs. Narrow Interpretation:**

– Distinguish between broad and narrow interpretations. A broad interpretation may favour a flexible, evolving approach, while a narrow interpretation may prioritise adherence to the original text and intent.

**3. Stare Decisis:**

– Respect precedent. Examine how previous decisions on similar constitutional issues have been resolved, and consider the principle of stare decisis when formulating new interpretations.

**4. Living Constitution:**

– Recognise that the constitution can be a «living» document, adaptable to changing social, political and economic circumstances. Such a perspective allows for more flexible interpretations over time.

**5. Balancing Rights and Interests:**

– Strive to strike a balance between individual rights and collective interests, particularly where rights may conflict with each other or with the common good.

**6. Avoiding Absolutism:**

– Be wary of absolutist interpretations. Few constitutional provisions are absolute, and the majority may be subject to reasonable restrictions.

**7. Presumption of Constitutionality:**

– A presumption that laws enacted by legislative bodies are constitutional unless proven otherwise. This presumption ensures that the courts do not casually invalidate the actions of the elected branches of government.

**8. Avoiding Political Bias:**

– Endeavor to maintain impartiality and refrain from political bias when interpreting the constitution.

**9. Clear and Convincing Evidence:**

– Demand clear and convincing evidence when challenging the constitutionality of a law or government actions. This places the burden of proof on those seeking to invalidate such actions.

**10. Principle of Proportionality:**

– Ensure that the limitation is not more extensive than necessary to achieve a legitimate government objective.

**11. Considerations of Public Policy:**

– Assess the broader implications of constitutional interpretations for public policy. Strive for decisions that promote the common good and do not undermine the stability of the legal system.

**12. Contemporary Values:**

– Recognize that societal values and norms can evolve over time. When interpreting the constitution,

take into account how contemporary values may influence the understanding of constitutional principles.

**13. Global Perspectives:**

– Draw insights from comparative constitutional law and international human rights standards to substantiate interpretations, particularly in cases involving fundamental rights.

**14. Public Engagement:**

– Encourage public involvement and dialogue on constitutional matters to foster a sense of ownership and legitimacy in constitutional interpretation.

**15. Judicial Restraint and Activism:**

– Strike a balance between judicial restraint (deference to the elected branches) and judicial activism (an assertive role in protecting constitutional rights) based on the specific context and constitutional issue at hand.

These guidelines serve as the cornerstone of an approach to constitutional interpretation that takes into account the intricacies and nuances involved in ensuring a just and stable legal system. The ultimate aim is to uphold the supremacy of the law, protect individual rights and promote the collective well-being of society.

## Conclusion

In conclusion, the principles of constitutional interpretation are fundamental to the functioning of any constitutional democracy. These principles provide a framework for understanding and applying the Constitution, which is the supreme law of the land. While there may be different approaches to interpretation, such as originalism, textualism or living constitutionalism, the ultimate goal is to ensure that the constitution remains a living document that can adapt to the changing needs and values of society while maintaining its core principles and values.

The principles of constitutional interpretation, including the importance of text, historical context, precedent and the spirit of the constitution, help guide judges, legislators and citizens in making sense of the provisions of the constitution. They provide a means of resolving disputes, upholding the rule of law and protecting individual rights and freedoms.

It is essential that those involved in the interpretation and application of constitutional law approach their responsibilities with a commitment to fairness, justice and a deep respect for the

principles on which the Constitution is founded. In doing so, we can ensure that our constitutional system remains a beacon of democracy, protecting the rights and freedoms of all citizens and promoting the principles of justice, equality and the rule of law.

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