STRUCTURE AND AUTHORITY OF THE JUDICIARY WITHIN THE LEGAL ORDER OF THE TAJIKISTAN REPUBLIC

INTRODUCTION

1 General principles

The Tajikistan Constitution of 1994 provides the principle of separation of powers. According to (Art. 9), “State power is exercised on principle of the division of legislative, executive and judicial powers.”

The following further “Fundamentals of the Constitutional Structure”, such a:

- the Republic of Tajikistan identified, inter alia, as a “democratic, law-governed State”, (Art. 1);
- the “recognition, observance and protection of human and citizen rights are the obligation of the State”, (Art. 5, parag.2);
- the Constitution is given to have “supreme legal authority” and “direct applicability” of its norms, (Art. 10, parag.1);
- the all State organs and agents are “bound to observe and implement the Constitution and laws of the Republic”, (Art. 10, parag.2) and
- the international instruments recognized and became an integral part of the Republic legal order has the priority in the case of they contradicts with the internal legislation (Art. 10, parag.3), necessitates providing a full efficacy to the judiciary in order to be the guarantor of the both human rights and to keep alive the rule of law.
2 Specific purposes

According to (Art. 84, parag.1) of the Constitution, “the judicial power is independent and protects the rights and freedoms of persons, the interests of the State, organizations and establishments and legality and justice.”

(Art. 1) of the Constitutional Law of the Republic of Tajikistan on the Judicial System” (Law No.86, dated: 03/11/1995) (herein after referred as the “Law on the Judicial System”) provides that “the justice in the Republic of Tajikistan is realized only by a court, which has the independent judicial power.” And in accordance with the (Art. 3, parag. 1) of the same Law, “a court in the Republic of Tajikistan is called to protect the rights and freedoms of a person, interests of the State, organizations, institutions, lawfulness and justice proclaimed by the Constitution, other laws and international human rights instruments recognized by Tajikistan.”

Two more elements are included to these basic purposes in the following paragraphs of the same Article. One is that, any citizen or a legal person can find the protection of their violated rights through a court and second is that strengthening lawfulness and maintenance of the principle of social justice is the purposes of a court.

Especially the latter element has a great importance due to lack of sufficient social, economic and cultural rights and freedoms within the Constitution and lack of clarification how the second generation of human rights are implemented. It may be added, the inclusion of this principle into the (Art. 84) of the Constitution will be functional. Such an attempt will also complement the (Art. 1, parag. 2) of the Constitution, which identifies the Republic of Tajikistan as a “social State”.

(Art. 1, parag. 2) of the Constitutional Law on the Status of Judges in the Republic of Tajikistan” (Law No.92, dated: 03 November 1995) (herein after referred as the “Law on the Status of Judges”) provides that “judicial power is independent and acts equally with legislative and executive powers, which protects rights and freedoms of a person, interests of the State, organizations, institutions, lawfulness and justice.”

Within the light of all these provisions it is possible to conclude that, there is an inseparable linkages between the principle of independence of judicial power and the function of the courts for the realization of rule of law.