AMERICAN JOURNAL OF SOCIAL SCIENCE
ISSN: 2996-5306 (online) | ResearchBib (IF) = 10.67 IMPACT FACTOR
Volume-3| Issue-10| 2025 Published: |30-11-2025|

THE CONCEPT AND DEVELOPMENT OF THE PRINCIPLE OF TRANSPARENCY AND OPENNESS IN JUDICIAL PROCEEDINGS: THEORY AND DOCTRINES

https://doi.org/10.5281/zenodo.17623497

Sabirov Erkinjon Kuchkarbaevich
PhD in Law, Independent Researcher
at the Law Enforcement Academy of the Republic of Uzbekistan

Abstract

This article analyzes theories and scholarly doctrines concerning the concept and development of the principle of transparency and openness in judicial proceedings. Based on the analysis, the article substantiates proposals aimed at improving the theoretical and legal foundations for ensuring transparency in civil and economic litigation.

Keywords

civil procedure, judicial proceedings, openness, transparency, principle, theoretical and legal foundations, doctrines, improvement.

In the context of a developing information society, ensuring the openness of all information concerning the activities of state bodies and maintaining their transparency and accessibility to the public and citizens has become a crucial process for protecting individual rights and preventing the abuse of power by public authorities. In legal doctrine, transparency is understood as the informational openness of state bodies' activities, which, in turn, enhances the possibility for citizens to exercise public oversight over such activities.

In society, legal scholars attach great importance to the transparency of state authorities, elevating it to the level of a fundamental principle of the rule of law, and they emphasize that transparency can only be achieved when information is accurate, timely, and reliable [1]. In this regard, Professor D. Yu. Khabibullaev also notes that "the concept of open justice represents a legal principle that requires judicial proceedings to be conducted transparently and under public scrutiny in order to protect the rights of individuals subject to judicial authority and to ensure public oversight. This term encompasses several closely interrelated meanings: it is regarded as a fundamental right that guarantees freedom; it outlines guidelines for how courts can operate with greater transparency; and, in some instances, it denotes an ideal state of judicial openness." [2]

AMERICAN JOURNAL OF SOCIAL SCIENCE
ISSN: 2996-5306 (online) | ResearchBib (IF) = 10.67 IMPACT FACTOR
Volume-3| Issue-10| 2025 Published: |30-11-2025|

Although the ideas put forward by the aforementioned scholars have primarily been developed within the framework of political research and the legal sphere, they, in fact, most accurately reflect the true nature of transparency, particularly in the field of civil procedure.

In its modern understanding, transparency is based on a complex, multi-component right to access information. This right is enshrined in Article 19 of the 1948 Universal Declaration of Human Rights, which states that everyone has the freedom to seek, receive, and impart information and ideas through any media and regardless of frontiers. This fundamental provision, interpreted as the "right to access information," has been institutionalized in Article 33 of the Constitution of the Republic of Uzbekistan and further developed within sectoral civil procedural legislation [3]. These legal norms are aimed at ensuring that participants in civil procedural relations are provided with information regarding the actions undertaken and the decisions made during judicial proceedings.

The implementation of transparency in civil proceedings may, in certain cases, be limited by general requirements, such as when cases involve state secrets, adoption-related confidential information, or other circumstances specified by law, which necessitate that the proceedings be held in a closed court session. For this reason, under civil procedural legal norms, the concept of transparency is typically applied only in connection with judicial activities.

In civil proceedings, the principle of transparency and openness is traditionally regarded in legal scholarship as one of the fundamental democratic pillars that ensures public confidence in the judicial system. Its essence lies in providing society and the media with unrestricted access to judicial processes, which serves as a key guarantee of fair trial and judicial accountability to the public. This principle is intrinsically linked to the right to a fair trial, which, as stipulated in Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950), considers the openness of judicial proceedings as a primary means of preventing courts from administering justice in secrecy and outside public oversight, while ensuring the credibility of the judiciary [4]. The transparent administration of justice thus serves to uphold the fairness of judicial proceedings.

At the same time, Article 14 of the 1966 International Covenant on Civil and Political Rights reflects a similar approach, indicating that openness and transparency in judicial proceedings are recognized as universal international values [5].

In European legal doctrine, the concept of "openness" is applied in civil proceedings with a meaning that differs from that in our national legal doctrine. In

AMERICAN JOURNAL OF SOCIAL SCIENCE
ISSN: 2996-5306 (online) | ResearchBib (IF) = 10.67 IMPACT FACTOR
Volume-3| Issue-10| 2025 Published: |30-11-2025|

Uzbekistan, the existing legal doctrine understands openness as the public conduct of court hearings and the general accessibility of all information concerning the activities of judicial bodies. In contrast, European standards for open court proceedings focus on ensuring a sufficient level of public access to information, while also allowing for certain limiting rules in specific circumstances.

On this basis, in the civil procedural doctrine and practice of our country, the concept of transparency has long been primarily associated with court hearings and the activities of judicial bodies.

Thus, in civil procedural processes, the concept of transparency must encompass a system of legally established rules that provide all interested parties with the opportunity to access information on civil cases while preventing any unjustified interference with the rights and legitimate interests of others. In civil proceedings, transparency should ensure both the openness of judicial activities and the accessibility of information regarding cases under consideration. However, this process must be balanced with legal limits aimed at protecting state secrets, adoption-related confidential information, personal data of participants, correspondence confidentiality, and other secrets safeguarded by law. Such protections serve not only to ensure the proper and timely consideration and resolution of civil cases but also to prevent the disclosure of information that could harm the rights and legitimate interests of the participants. The idea of conducting civil proceedings entirely openly at all stages may conflict with the vital interests of the state and society, such as oversight of citizens and judicial activity, and could negatively affect the protection of personal rights, freedoms, and security. In this regard, there is a clear need to study the issue of openness in judicial proceedings in depth within the legal doctrines of foreign countries.

It is noteworthy that the principle of openness in judicial proceedings is interpreted differently in the legal doctrines of foreign countries. For example, Paragraph 169 of Germany's Gerichtsverfassungsgesetz (Law on the Organization of Courts, GVG) emphasizes that the openness of court sessions prevents the issuance of unjust judicial decisions and establishes "reliable public oversight" by society [6]. In French legal traditions, openness is interpreted as the "social function of justice," meaning that justice is not limited to issuing decisions but also serves to convey the values of equality and legality to society. French legal scholars, for instance, interpret équité (equity) as a legal category that complements or, in some cases, corrects statutory norms. As René David noted, "équité is a factor capable of adapting the rigid rules of law to the realities of life."[7]

Although the principle of the rule of law holds decisive importance in France, judges take various social relationships into account when applying legal norms.

For instance, according to Charles Jarro, "the fairness of a court decision is not only the correct application of the law but also the assurance of a balance between the rights and interests of the parties." Other French scholars also regard the principle of justice as a key element of the legal system. For example, Michel Troper views fair judicial decisions as "a means of expressing the legal consciousness of society and ensuring citizens' confidence in the judicial system." [8]

At the same time, certain debates exist within the doctrine. According to Julio Clermont, the concept of justice is not always precise or universal; it can sometimes be shaped by a judge's personal views and the surrounding social circumstances. This, in turn, may pose a threat to legal certainty and stability [9].

Thus, according to the general conclusion of French legal scholars, the fairness of judicial decisions consists in finding a balance between legal norms and real-life circumstances. This not only upholds the principle of the rule of law but also strengthens public confidence in the judicial system.

The legal doctrine described above is also reflected in French legislation. For instance, in French law, équité (equity) serves as a source of inspiration for judicial decisions, but it is not an independent source that allows a judge to go beyond written law. This approach has been traditional since the ideas of Jean-Etienne-Marie Portalis: the law should embody "wisdom, justice, and rational understanding," yet the judge is primarily regarded as the "voice" of the law. In this sense, justice functions only as a source of inspiration and a corrective factor, rather than as an independent basis for decision-making [10].

In the Anglo-American legal system, the doctrine of "open justice" is based on case law. This doctrine encompasses measures aimed at ensuring transparency, such as allowing the public to observe and listen to court proceedings in real time, broadcasting trials on television, recording proceedings for later viewing, publishing the content and documents of court cases, and providing access to court session transcripts. The principle seeks to make the events occurring in court understandable and accessible to both the public and the media [11].

Scientific research in the legal field also indicates that transparency in judicial proceedings has a dual nature: on one hand, it serves as a procedural guarantee, ensuring citizens' rights to participate in and observe court processes; on the other hand, it manifests as a social value, reinforcing public trust in the judiciary and strengthening its legitimacy.

At the same time, in the context of modern digital technology, the concept of "openness" is expanding: transparency is no longer limited to physical access to the courtroom, but is also ensured through the online broadcasting of court sessions and the publication of decisions in electronic databases. Currently,

countries such as Estonia, Canada, and South Korea provide relatively advanced practices in this regard. For example, in Estonia, the e-File electronic system allows parties and the public to access case materials online [12]. In particular, in France, decisions of higher courts and administrative courts are disseminated via legal information websites, while in the United Kingdom, notable court decisions are regularly published through the media [13].

In the United States, court decisions are available not only in electronic form but also in printed versions. Specifically, all U.S. court decisions are published in compilations relevant to their respective courts, which can be accessed in legal libraries. However, it is worth noting that legal scholarship also highlights ongoing debates regarding the depersonalization (anonymization) of court decisions.

According to Uzbek scholar Khvan Leonid Borisovich, the issue of depersonalizing court decisions was raised as early as the late 1990s. Within the framework of the Council of Europe's initiatives, discussions in the CIS countries focused on ensuring transparency and openness of judicial documents and improving access to legal information. However, these debates were never considered as grounds for restricting the publication of judicial rulings. Rather, they revolved around technical measures that did not affect individuals personally, such as those unrelated to a participant's legal status, personal emotions, or sense of fear. One of the earliest practical measures involved removing identifying information from court documents, including names, passport data, addresses, workplaces, family composition, ethnicity, phone numbers, medical conditions, or vehicle registration numbers. Despite such depersonalization, the full text of court decisions continued to be published, which allowed the public to understand the essence of the case, the reasoning of the court, and the strategies employed by prosecutors or defense attorneys. Importantly, the information related to representatives of state bodies, such as prosecutors, officials, and experts from state institutions, remained accessible, as they are considered public figures accountable to society. Although this approach faced criticism for certain shortcomings and potential risks, it was regarded as a necessary compromise between the principles of judicial transparency and the protection of personal data. Nonetheless, Khvan notes that such depersonalization measures did not, by themselves, guarantee the protection of participants' legitimate interests or ensure their personal safety within judicial proceedings.

Decisions rendered in closed court proceedings may, in certain instances, remain unpublished; however, such cases are exceedingly rare. Even then, the fundamental principle that "the court's decision shall in any case be publicly

pronounced" continues to apply. This means that the operative part of the judgment remains open to an undefined group of persons and, therefore, may be publicly announced.

If a court hearing is conducted in open session, its outcomes must likewise be fully accessible to the public without any restrictions or depersonalization measures, for instance, a journalist may freely publish the substance of the court's decision. Conversely, if the hearing is held in closed session, the disclosure of its results may be limited in accordance with the procedure established by the Civil Procedure Code.

There is no logical basis for requiring the consent of participants before placing court decisions in open-access databases. The legislature addressed this issue long ago by determining that it is the participants themselves who decide the type of court proceedings, whether they should be held in open or closed session.

The legislature has also clearly defined the limitations in this regard. According to Article 10 of the Civil Procedure Code of the Republic of Uzbekistan, a closed court hearing is permitted only to prevent the disclosure of information related to an individual's private life, to protect the secrecy of adoption, or to ensure the confidentiality of personal correspondence. A court may decide to hold a closed session only if there are well-founded reasons for doing so. However, even in such cases, the court's decision must be publicly announced and made accessible to the public. Certain parts of the judgment, such as the descriptive section, may be subject to restrictions. For instance, Article 19 of the Criminal Procedure Code of the Republic of Uzbekistan explicitly provides that "court verdicts, rulings, and decisions shall in all cases be publicly pronounced", including situations in which the hearing itself was conducted behind closed doors.

It is important to remind the project authors that their use of the phrase "with the consent of court participants" is legally incorrect. What exactly is meant by "court participants"? The procedural codes distinguish between terms such as "persons participating in the case," "participants in criminal (or civil) proceedings," and "participants in judicial proceedings." Are they referring only to the plaintiff and defendant, or the accused and the victim? In any case, the publication of court documents cannot be made dependent on the will or consent of these individuals. The category of "persons participating in the case" includes not only the parties themselves, but also third parties, their representatives, prosecutors, state authorities, organizations, and other persons involved.

Introducing such a condition would completely undermine the idea of judicial transparency in Uzbekistan, a principle that was specifically emphasized in one of the President's initial decrees. For example, the number of participants in a case

may range from 8 to 20–30 individuals, and it is practically impossible to obtain consent from all of them or to present the information to the public in a transparent manner. Implementing such a requirement would necessitate substantial amendments to the legislation. Moreover, it would still be unworkable, as a situation could arise in which some participants consent while others do not, creating disputes and legal conflicts. Therefore, there is no legal or organizational rationale for such a condition.

The authors have overlooked the fundamental fact that courts are not arbitration panels. While arbitration operates under the principle of confidentiality, state courts function as a governmental institution issuing decisions on behalf of the state. Courts are, by nature, public-legal institutions, and the boundaries of transparency are clearly defined in procedural codes. Transparency in judicial proceedings guarantees not only the rights of the participants but also the rights of society as a whole, since the judicial system exists and operates at the expense of public funds.

Scholars from the CIS consistently emphasize in their research that the primary purpose of publishing court decisions is to ensure transparency of justice, which provides the public with the opportunity to exercise oversight and serves as a safeguard against abuses within the judicial system. Any individual who examines court documents can observe how the principles of justice, such as independence, impartiality, fairness, and legality, are applied in practice.

Of course, many judges may find it difficult to operate under such transparent conditions. However, if this were the case, it would undermine the very purpose of judicial and legal reforms as well as all the objectives outlined within the framework of the Strategy [14].

Another group of scholars also criticizes the depersonalization of court decisions, describing it as meaningless and even absurd. According to them, depersonalizing judgments severely hinders the ability to study their content, as valuable information is removed, ultimately rendering the text of the court decision virtually unreadable and unusable [15].

In practice, depersonalization results in a significant portion of the information contained in court decisions being removed from the text, leaving them on court websites in a largely content-empty form. The extent of this impact varies across different types of cases, but it is most pronounced in civil proceedings. For example, research shows that in civil cases, nearly 46% of information essential to understanding the case is removed, whereas in criminal cases, 26% of the information necessary to comprehend the essence of the case is omitted [16].

AMERICAN JOURNAL OF SOCIAL SCIENCE
ISSN: 2996-5306 (online) | ResearchBib (IF) = 10.67 IMPACT FACTOR
Volume-3| Issue-10| 2025 Published: |30-11-2025|

Depersonalization of court decisions has also created another problematic issue: the workload of court staff in this area has increased significantly. As a result, district courts are often unable to publish court decisions regularly and in full. For example, according to a summary of practices ensuring access to information on court activities in 2013 and the first half of 2014, one-third of civil case decisions were published on district court websites with delays, and approximately 20% were not published at all [17].

Thus, the depersonalization of court decisions has rendered the principle of judicial transparency partially illogical: while the goal is to make decisions accessible to the public, in practice, this process often results in them being partially or entirely devoid of meaningful content.

However, it must also be acknowledged that legislative safeguards are necessary to protect personal data when publishing the texts of court decisions. For this reason, proposals to depersonalize court decisions are fully justified only in cases where a request is submitted by a person participating in the case. If no such request is made, the full text of the court decision must be published in its entirety on the official court website.

Thus, despite the difficulties that arise in the process of publishing information about court activities on the Internet, making court decisions available on official websites provides broad opportunities for citizens and organizations. This practice serves to ensure the uniformity of judicial practice, encourages judges to act with greater responsibility in formalizing their decisions, and allows the judicial branch to achieve the highest level of openness, transparency, and public accessibility.

In legal scholarship, the principle of transparency in judicial proceedings is traditionally regarded as a key factor in ensuring fair trial and strengthening public confidence in the judicial system. Theoretical doctrines emphasize that this principle reflects a balance between the public interest, achieved through the transparency of court activities, and the need to protect the private lives of persons participating in the case.

Thus, an analysis of foreign legislation and doctrinal approaches allows us to conclude that the principle of openness and transparency is not merely a formal procedural norm, but a fundamental democratic mechanism that ensures a balance between justice, societal interests, and individual rights. Its effective implementation requires the continuous improvement of procedural legislation and the efficient use of modern technologies, which is particularly critical for our country in the context of ongoing judicial and legal reforms. Accordingly, the broad introduction of modern information technologies in court activities, the acceleration of digitalization in case management, and the development of a “Digital Court”

concept have become priority objectives. This concept envisages a complete transition from paper-based to fully electronic civil case management, the creation and implementation of a court document archive module based on the Supreme Court's information systems, the integration of artificial intelligence to predict case outcomes, and the automatic generation of draft court decisions, thereby streamlining and simplifying judicial procedures. These measures reflect the contemporary demands and are essential for the future development of an open, efficient, and technologically advanced judicial system.

REFERENCES:

1. Колосович М.С. Процессуальные средства обеспечения гласности и тайны в уголовном судопроизводстве: концептуальные основы // Автореферат диссертации на соискание ученой степени доктора юридических наук. - Волгоград. 2019. – 51 с.; Малько Е.А. Гражданская процессуальная правовая политика в современной России // Автореферат диссертации на соискание учёной степени кандидата юридических наук. - Саратов. 2012. -23 с.
2. Khabibullaev, D.Y. Procedural Issues in Civil Case Management // Dissertation for the degree of Doctor of Legal Sciences (DSc). – Tashkent: Tashkent State University of Law, 2024. – 94 pages.
3. The Constitution of the Republic of Uzbekistan // https://lex.uz/docs/6451070
4. The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950)// https:// https://www.echr.coe.int/
5. The International Covenant on Civil and Political Rights (ICCPR) // https://www.ohchr.org/en
6. Gerichtsverfassungsgesetz (GVG) // https://www.gesetze-im-internet.de/gvg/BJNR005130950.html
7. R. David. Les grands systèmes de droit contemporains (droit comparé) [note bibliographique] // Revue internationale de droit comparé Année. 1965. 17-1 pp. 254-257.
8. Thomas Berns, Julie Allard. Pensées du droit, lois de la philosophie En l'honneur de Guy Haarscher (Michel Troper. L'autonomie de la théorie constitutionnelle) // Editions de L'universite de Bruxelles. 2012 by Editions de l'Université de Bruxelles Avenue Paul Héger 26 1000 Bruxelles (Belgique) Editions@.ulb.be http://www.editions-ulb.be

9. Le juge et l'équité (2010) // https://www.doc-du-juriste.com/droit-public-et-international/histoire-et-philosophie-du-droit/dissertation/juge-equite-457547.html

10. Discours préliminaire sur le projet de code civil. de Jean-Etienne-Marie Portalis (Extrait de ce discours, présenté le 1er pluviôse an IX) // https://ledroitcriminel.fr/la_science_criminelle/penalistes/la_loi_penale/generalites /portalis_discours_code_civil.htm?utm_source=chatgpt.com

11. Open justice // https://en.wikipedia.org/wiki/Open_justice

12. Грудцына Л.Ю. Цифровое правосудие в Эстонии // https://cyberleninka.ru/article/n/tsifrovoe-pravosudie-v-estonii

13. Барнар К. Пути и способы распространения информации о судебных решениях в Великобритании / В сб.: Судебная практика как источник права. –М., 2000. –С. 71-72.

14. http://strategy.regulation.gov.uz/ru/document/table-comment?id=68

15. Бухарев А.В. Обеспечение открытости и прозрачности деятельности судебной системы на современном этапе судебной реформы // Вестник КГУ им. Н.А. Некрасова. № 3, 2015. –207 с.

16. Абсурдность и юридическая несостоятельность деперсонализации судебных актов // http://pravo.ru/ review/view/66359

17. Непечатный приговор // Ведомости. 2014. № 228 (3732). 8 декабря. http://www.vedomosti.ru/ newspaper/article/807541/nepechatnyj-prigovor