

# **Formation, Development and Improvement of the Constitutional Justice in the Republic of Uzbekistan in the Modern Conditions of the Society**

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## **Abstract**

The place and role of the Constitutional Court in the system of public authorities and general patterns of development of constitutional justice in the Republic of Uzbekistan are revealed in this article using systems approach and comparative analysis. Study emphasizes the issues of formation, development and improvement of constitutional justice in the Republic of Uzbekistan, its organizational and legal mechanism and procedure for implementation, ways to ensure effectiveness, measures to improve its legislative framework and practice.

The article analyzes the legal nature and peculiarities of the institution of constitutional justice, examines its evolution and dynamics of development. In the context of trends in the legal development of constitutional justice in Uzbekistan, achievements and shortcomings in this area have been identified. On the basis of the analysis, specific proposals have been put forward to improve the legal framework and the mechanism for the functioning of constitutional justice, taking into account the needs of judicial and legal reform in the Republic of Uzbekistan in the light of the implementation of the Strategy of Action for the five priority development areas of the Republic of Uzbekistan in 2017-2021.

**Keywords:** constitutional justice, Constitutional court, judicial and legal reform, constitutional legal proceedings, rules of ethical behavior.

## I. Introduction

The main purpose of the modern state is to provide constitutional rights and freedoms of every human, to ensure consent and stability in society, to establish rule-of-law based state. The most important condition for the formation of a rule-of-law state is to ensure the supremacy of the Constitution in the system of normative legal acts, which requires the need for its special legal protection. Hence, the embodiment of the idea of a state based on the rule of law directly depends on the effectiveness of the mechanism for protecting the Constitution. The main determining element of this mechanism is constitutional control.

The successful development of independent Uzbekistan is reasonably associated with the stability of the constitutional system, with the expression in the Constitution of society's values. It is the Constitution that integrates in itself and builds on the highest regulatory and legal level the basic ideas, norms and directions for the democratic development of society and the state.

After Uzbekistan gained its independence on August 31, 1991, a need arose for profound transformations in the state and legal sphere, the adoption of a set of laws to ensure the transition from the old administrative and command system, where ideology dominated the law, to a truly democratic rule of law and society that ensured the priority of principles and norms of the Constitution of the country.

Article 1 of the 1992 Constitution of the Republic of Uzbekistan characterizes the state as a "sovereign democratic republic".<sup>1</sup> The republican form of the government clearly defines powers of state institutions, election of legislative and executive bodies. The Constitution declares the President as the head of the state in the Republic of Uzbekistan<sup>2</sup> elected by the people; as well as Oliy Majlis of Uzbekistan as the bicameral parliament, which is the supreme legislation body<sup>3</sup> (members are elected for 5 years). Local representative authorities, as well as citizens' self-governing bodies are also subject to election by the population. The Kengash of People's Deputies standing as local representative authorities are headed by khokims, who are also heads of executive power. The judicial branch is formed of (i) the Supreme Court, which manages an extensive network of local judicial bodies, and (ii) the Constitutional Court, which exercises constitutional justice.<sup>4</sup>

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1) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 1 (Uzb.).

2) *Id.* art. 89.

3) *Id.* art. 76.

4) *Id.* art. 107.

In a short period of time, significant steps were taken in the area of judicial and legal reform, the initial legal beginning of which was the adoption of the Constitution of Uzbekistan on December 8, 1992<sup>5</sup>, which marked the formation of an independent judiciary, called by the administration of justice, to secure consent in society, the protection of rights, and legitimate interests and rights.

The purpose of judicial and legal reforms was, first of all, ensuring the constitutional rights and freedoms of a person, harmony and stability in society.

The need to ensure the supremacy of the Constitution involves monitoring its compliance. In the world there are different models of constitutional justice. For example, there are specialized, and non-specialized bodies designed to prevent the adoption of laws and other regulations that are contrary to the constitution. In general, specialized constitutional control is an important and effective way to protect the supremacy of the constitution by legal means.<sup>6</sup> Currently, there are more than 100 special bodies of constitutional justice in the world (including constitutional courts of the subjects of the federation, in particular, Russia and Germany). For instance, in Italy, Germany, Spain, Portugal, Austria, Poland, Peru, Belarus, Tajikistan, and others. Constitutional courts have been established, to some extent separate from other bodies<sup>7</sup>. They exercise more than 30 authorities.<sup>8</sup> In these authorities, they exercise the establishment of the constitutionality of legislative acts, the specific control over the protection of human rights, the interpretation of the Constitution, and the resolution of disputes arising between different branches of power on the issue of authorities, determining the constitutionality of the activities of officials and political organizations, resolving disputes arising from election results.

The transformation processes of the post-Soviet states and the construction of a rule-of-law state in them highlight the need for a comparative legal analysis of their legislation on constitutional control, analysis of the essence and tendencies of formation of the institution of constitutional control, study of the features of constitutional justice, the specifics of their activities, subjects, object and subject of constitutional control.

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5) Konstitutsiyasi [Constitution], Dec. 8, 1992, (Uzb.).

6) Sravnitel'noje Konstitucionnoje Pravo [Comparative Constitutional Law] 95-104 (V.E. Chirkin ed., 2002).

7) A.S. AVTONOMOV. KONSTITUCIONNOE (GOSUDARSTVENNOE) PRAVO ZARUBEJNIH STRAN. [Constitutional (state) the law of foreign countries]. -M.: RiOR; INFRA-M, 2012.-p. 68.

8) A.S. Avtonomov, Prava Cheloveka Provozashitnaya I Provoohranitelnaya Deytelnost [Human Rights, Advocacy and Law Enforcement Activities] 448 (2009); A.S. Avtonomov, Mejdunarodnie Standarty V Sfere Otravleniya Pravasudiya [International Standards in the Field of Administration of Justice] 332 (2007).

Today, the need for a comparative legal analysis of the constitutional legislation of the states of the post-Soviet space was actualized; the analysis of the essence and tendencies of the transformation of the institution of constitutional control, the study of the features of the object of constitutional control, the specifics of the activities of subjects of constitutional control became important.

Over the past years, the Republic of Uzbekistan has been consistently developing constitutional control, taking into account the world trends on constitutional justice, while preserving the constitutional identity and features of the development of Uzbek statehood. The need to closely study the organizational and legal mechanism of constitutional control in Uzbekistan, the task of optimizing and stabilizing the institution of constitutional justice also follows from the fact of a significant update of the law on the Constitutional Court, adopted in 2017.<sup>9</sup>

#### **A. Factors that Contributed to the Establishment of the Institution of Constitutional Justice in the Republic of Uzbekistan**

As it is well known, totalitarianism denied the political and ideological pluralism, restricted and violated rights of citizens, subordinating them to the state-centric public and collective interests. Therefore, the scrapping of the totalitarian system in the post-socialistic states, is linked to (i) constitutional and legal consolidation of the priority of human rights and freedoms along with other universal values, (ii) radical reform of state and legal mechanisms for their provision and protection, (iii) creation of new institutions aimed at monitoring observance of human rights and their protection (ombudsman for human rights, etc.).<sup>10</sup> Constitutional courts have special role in protecting fundamental human rights and freedoms in post-totalitarian states.

Constitutional control in the Republic of Uzbekistan began to form in March 1990, when the Constitutional Supervision Committee was established, which was elected by the Supreme Council (the name of the Uzbek parliament in the Soviet period).<sup>11</sup> The Law of the Republic of Uzbekistan "On Constitutional Supervision of the Republic of Uzbekistan"<sup>12</sup>, adopted on June 20, 1990, for the

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9) *Law of the Republic of Uzbekistan "On the Constitutional Court"*, Oliy Majlis of the Republic of Uzb. Bull., no. 9, 1995, art. 178; CL of RUz, No. 22, art. 407 (2017) (Uzb.).

10) Avtonomov, *supra* note 7.

11) Supreme Council of the Republic of Uzb. Bull., no. 10-11, 1990, art. 226.

first time in the history of the country consolidated the principles of constitutional quasi-judicial control. Although the law introduced constitutional supervision, the Constitutional Supervision Committee of the Republic of Uzbekistan and the Constitutional Supervision Committee of the Republic of Karakalpakstan acted as a judicial body that strives justice. They ensured the conformity of acts of state bodies and public organizations in accordance with the Constitution of the Republic of Uzbekistan and the Constitution of the Republic of Karakalpakstan, the protection of constitutional rights and individual freedoms, the rights of the peoples of the Republic of Uzbekistan and the Republic of Karakalpakstan, and the democratic foundations of society.

The above-mentioned law defined the main principles of the activities of the constitutional supervision bodies (legality, collegiality, and transparency),<sup>13</sup> such as the procedure for their election<sup>14</sup> (election by the parliament on the proposal of its chairman for a period of 10 years, renewal of the composition half every five years), early termination of the authorities of judges,<sup>15</sup> and constitutional supervision of the Republic of Uzbekistan.

The system of constitutional control has changed in the framework of ongoing (and continuing to this day) justice reform. At the initial stage of the judicial and legal reform, a national strategy for radical reform of the judicial and legal system was determined and its constitutional and legal framework was created. The task was set and solved to form a coherent system of judicial power aimed at transforming the court from an organ that punishes and protects the interests of only the state, to the body that ensures the rule of law and the protection of human rights.

Taking into account the world experience, the Constitutional Court was established instead of the Constitutional Supervision Committee. As in the post-Soviet countries, the classical European (Kelsen) model of centralized constitutional control was used in the establishment of the Constitutional Court of the Republic of Uzbekistan. The choice of the European centralized model is due, in our opinion, to a number of reasons:

First, during the period of transformations and reforms at the end of the 20th century, the role of all branches of power and the need to implement the principle of separation of powers were strengthened.

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12) Supreme Council of the Republic of Uzb. Bull., no. 16-18, 1990, art. 289.

13) *Id.*

14) *Id.*

15) *Id.*

Secondly, the processes of formation of the legal states of the former USSR required concentration of efforts in the formation of a new statehood, ensuring the dynamism of social development, the stability of political processes, and the formation of national legal systems.

Thirdly, the establishment of a special body of constitutional control, the Constitutional Court with constitutional authorities, determined its role as the "guardian" of the Constitution.

In the legal literature there are two main directions in the study of the essence of constitutional control<sup>16</sup>: 1) its consideration as an element of the system of separation of powers: 2) as an organizational and legal form of the mechanism for legal protection of the constitution. V.E. Chirkin suggests a different approach to determining the place of the institution of constitutional control in the mechanism of separation of powers. In particular, he speaks of a tendency in the system of separation of powers that has emerged in the modern world, namely, the isolation of the control authority.<sup>17</sup> The French state scientist L. Favore adheres to another point of view. Its essence lies in the fact that the constitutional right-judge is outside the three powers, ensuring that they comply with their authorities.<sup>18</sup> The activities of the Constitutional Court illustrated the correctness of the chosen path. The analysis of the status and power of the court indicates that the institution of constitutional justice was actually established. Speaking about the widely used term "constitutional justice" (A. Medushevskiy<sup>19</sup>, D. Sergeev<sup>20</sup>, Boytsova I.<sup>21</sup>, Minasyan, N. G.<sup>22</sup>), one should keep in mind that other definitions of the term as "constitutional control" (A. Klishas<sup>23</sup>,

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16) Nasyrova T. Ya, *Konstitutsionnyy Kontrol* [Constitution Control] 7, 8 (1992).

17) V.E. Chirkin, *Kontrolnaya vlast* [Control Power, State and Law] 11-12 (1993).

18) L. Favore, *Les Cours Constitution* 14 (1992).

19) A.N. Medushevskiy, *Konstitutsionnoe Pravosudie Kak Politicheskiy Institut V Sisteme Razdeleniya Vlastey* [Constitutional Justice as a Political Institution in the System of Separation of Powers], in *Sbornik Dokladov* [Collection of Lectures] (2004).

20) D.N. Sergeev, *Konstitutsionnoe Pravosudie V Rossii: Politiko-Pravovoe Issledovanie* [Constitutional Justice in Russia: Political-Legal Research] (2012) (unpublished dissertation, Candidate of Science Dissertation in Legal Sciences, Moscow).

21) L.V. Boytsova, *Konstitutsionnaya Yustitsiya Teoriya Interpretatsii I Demokraticheskiy Protsess* [Constitutional justice and theory of interpretation, democratic process], *2 Vestnik Konstitutsionnogo Suda Rossiyskoy Federatsii* 2, 2-11 (1997).

22) N.G. Minasyan, *Konstitutsionnaya Yustitsiya Stran SNG: Voprosi Teorii I Praktiki* [Constitutional Justice of the CIS countries: Questions of Theory and Practice] (2012) (unpublished dissertation, Candidate of Science Dissertation in Legal Sciences, Moscow).

23) A.A. Klishas, *Konstitutsionnyy Kontrol I Konstitutsionnaya Yustitsiya V Zarubejnih Stran*

G.Artunyan<sup>24</sup> and others) is used in the legal literature (often as synonyms). Individual experts (I. Maksimovskaya<sup>25</sup>) believe that the Constitutional Court acts both as a body of constitutional justice, and - the body that carries out legal regulation.

Taken into consideration of subject of this work, it is believed that constitutional justice can be viewed as a specific form of constitutional control exercised by a specialized judicial body through the administration of justice, which is strictly regulated; and its results are determined by legal consequences. At the same time, it should also be seen as a separate, independent type (direction) of justice in general.

It is a time to raise the question of introduction of a term “constitutional justice” into the legislation. In addition, it is necessary to comprehensively study the essence, content and characteristics of this particular branch of justice. The Constitutional Court, being a judicial body, carries out justice.

The President of the Republic of Uzbekistan adopted Decree No. 2612 of June 2, 2000 "On measures to implement the Program for the liberalization and deepening of reforms in the political, economic and spiritual spheres of society, ensuring the security of the country".<sup>26</sup> In the Program, among other measures, measures to improve constitutional justice were envisaged.

On May 31, 2017, the Law of the Republic of Uzbekistan, No. 430 "On Amending Certain Articles of the Constitution of the Republic of Uzbekistan (Articles 80, 93, 108 and 109)"<sup>27</sup> was adopted. The law is aimed at implementing the tasks of reforming the judicial and legal sphere, expanding the guarantees for the reliable protection of citizens' rights and freedoms, increasing their access to justice, the efficiency and quality of the judiciary, further

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[Constitutional Control and Constitutional Justice of Foreign Countries] 217 (2007).

24) G.G. Artunyan, *Konstitutsionniy Kontrol: Xarakter Funktsionirovaniya I Xarakter Razvitiya Sistemi Monografiya* [Constitutional Control: Character of Functioning and Character of Development System] 138 (1997).

25) I.N. Maksimovskaya, *Konstitutsionniy Sud V Gosudarstvenno-Pravovom Mexanizme Rossii* [Constitutional Court in State-Legal Mechanism] (2006) (unpublished dissertation, Candidate of Science Dissertation in Legal Sciences, Nizhny Novgorod).

26) *O Merakh Po Realizatsii Proframmy Po Liberalizatsii I Uglubleniyu Reform V Politicheskoy, Ekonomicheskoy I Dukhovnoy Sferakh Obshchestva Obespecheniyu Bezopasnosti Strany* [About Measures for Implementing the Program on Liberalization and Deepening Reforms in Political, Economic and Spiritual Spheres of Society, Ensuring the Security of the Country], Presidential Decree No. UP-2612, June 2, 2000 (Uzb.).

27) CL of RUz, No. 22, art. 406 (2017) (Uzb.).



improving the system of selecting candidates and appointing judges.

With a view to improving constitutional justice, the new version of the law "On the Constitutional Court of the Republic of Uzbekistan", which introduced a new procedure for the election of the Constitutional Court, clarified and significantly expanded its authorities, was adopted in the framework of the ongoing judicial reform.<sup>28</sup> The improvement of the institution of constitutional control in the Republic of Uzbekistan means the further implementation of the principle of separation of powers in practice, the implementation of an effective mechanism for the protection of the Constitution.

Thus, it is possible to speak tendencies of increasing role of constitutional justice in modern Uzbekistan. These trends are as follows<sup>29</sup>:

- increase the authority of democratic constitutional values. Constitutional and legislative amendments are aimed at strengthening the guarantees and empowering the institution of constitutional justice;
- clarification and detailing of the functional authorities of the body of constitutional justice, aimed at strengthening the guarantees of direct action and protection of the Constitution;
- systemic support of the functions and authorities of the Constitutional Court;
- Strengthening the mechanism for the protection of the Constitution, strengthening the guarantees of constitutional stability;
- Expanding the capacity to identify and assess violations of the rule of the Constitution;
- Democratization of the composition of the Constitutional Court, clarification of the requirements for candidates for membership in this body of constitutional justice.

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28) *Id.*; *Id.* art. 407; CL of RUz, No. 37, art. 978 (2017) (Uzb.).

29) B. Mirboboev, *Dalneyshaya Demokratizatsiya Vzaimootnosheniy Konstitutsionnogo Suda Respubliki Uzbekistan S Drugimi Sudami I Natsionalnimi Institutatmi Po Pravam Cheloveka [Further Democratization of the Relationship of the Constitutional Court of the Republic of Uzbekistan with Other Courts and National Human Rights Institutions]*, Const. Ct. of the Republic of Uzb. Bull., no. 19, 2015, at 146-52.

## II. A Brief Overview of Publications on Constitutional Justice in Uzbekistan

The Institute of Constitutional Justice in the science of constitutional law of Uzbekistan has not been fully developed. Scientific knowledge of constitutional justice today is scattered and not systematized. Textbooks and textbooks on constitutional law are limited to the chapter or paragraph, which outlines the provisions of articles 108 and 109 of the 1992 Constitution and the Law on the Constitutional Court of the Republic of Uzbekistan. It is also difficult to talk about any active research on the problems of constitutional justice in Uzbekistan.

The authors of the works published in different years mainly considered the essence and content of the status of the Constitutional Court, explored the practical aspects of the functions and specific areas of its activities, and wrote about the significance of its activities in the process of forming the rule of law in Uzbekistan.

To optimize the analysis of a wide array of materials in this area, we will try to systematize and classify them according to the following groups:

- Dissertational research;
- Scientific publications (monographs, journal articles, collections of scientific forums, etc.);
- Comments on the Constitution and laws;
- textbooks, teaching aids, etc.

Thus, Mukhitdinova F.F. in her research (2011)<sup>30</sup> briefly revealed the genesis of the institution of constitutional justice in the Republic of Uzbekistan. In her opinion, the establishment of the institution of the Constitutional Supervision Committee was initiated by amending the 1978 Constitution in March 1990 with the subsequent adoption of the Law on Constitutional Supervision Committee of June 20, 1990.<sup>31</sup> The next stage in the development of constitutional justice received with the outlines of Articles 108 and 109 of the Constitution of independent Uzbekistan of December 8, 1992 in the wording and amending the Law "On the Constitutional Court of the Republic of Uzbekistan" of August 30, 1995. In 2012, F. Kh. Adilkarieva's monography "The Legal Status of the Constitutional Court of the Republic of Uzbekistan" (in

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30) F.F. Mukhitdinova, Formation and Development of Judicial Power in the Republic of Uzbekistan (2012) (Unpublished Ph.D. dissertation, Tashkent State Institute of Law).

31) Supreme Council of the Republic of Uzb. Bull., *supra* note 10.

Uzbek) <sup>32</sup> was published, where the author more or less describes and ascertains the importance of constitutional justice, reveals issues of the origin and formation of constitutional control. In her work, she considers the Constitutional Court as a legal institution, with the analysis of its organization and principles. The author of this study revealed the characteristic features of constitutional justice, summarizing the opinions that exist in the legal literature. An attempt was made to differentiate the concepts of "constitutional supervision" and "constitutional control". In her opinion, the constitutional control reveals laws that are not in compliance with the Constitution, and takes measures to prevent the consequences of violations of the law.

In the educational literature published in previous years in Uzbekistan on issues of constitutional law, such as textbooks prepared in co-authorship: Tajikhanov U., Adilkariev H., Saidov A. Kh. (2001); Tansykbaeva G.M. (2003); Adilkariev H., Tulteyev I.T., Mukhamedov U. Kh. (2005); as well as by the staff of the faculty of the Tashkent State Institute of Law (2005)<sup>33</sup>, the issues of the constitutional-legal status of the Constitutional Court were reflected, its place in the system of state authorities was determined, its role in ensuring the supremacy of the Constitution, control. The leading experts of Uzbekistan in the field of law prepared several comments to the Constitution of the Republic of Uzbekistan in 1992 (in 1997, 2001 and 2011)<sup>34</sup>, where in post-article comments to the Basic Law of the country explanations of the content of articles devoted to the judicial system of Uzbekistan, in particular, articles 108-109, which determine the status of the Constitutional Court and its authority.

Since 1998, the "Bulletin of the Constitutional Court of the Republic of Uzbekistan" has been published. It publishes all decisions of the Constitutional Court, information about the events held in court. In addition, the "Bulletin" is recognized to contribute to the formation of citizens' legal awareness and respect for the Constitution and laws. To improve the professionalism of the employees of the jurisdiction, materials on the practice of law enforcement,

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32) F.X. Adilkarieva, Legal status of the Constitutional Court of the Republic of Uzbekistan 128 (2012).

33) U. Tadjihanov et al., Constitutional Law of the Republic of Uzbekistan 752 (2001); G.M. Tansykbaeva. Constitutional Law of the Republic of Uzbekistan (2003); H.T. Odilkariev et al., Constitutional Law of the Republic of Uzbekistan (2005); Tashket St. Inst. of L., Constitutional Law of the Republic of Uzbekistan (2005).

34) Commentary, *Constitution of the Republic of Uzbekistan* (1997); Commentary, *Constitution of the Republic of Uzbekistan* (2001); Review of the Constitution of the Republic of Uzbekistan (2013).

judicial ethics and other issues relevant to the work of the Constitutional Court are also published here.

On the problems of constitutional justice, a number of republican and international scientific and practical conferences were held to discuss the issues of improving constitutional justice, the problems of the constitutional process, the protection of human rights by the bodies of constitutional justice, etc. Thus, in a collection of materials published in the 2016 international scientific and practical conference "The role of the constitutional court in implementing the principle of separation of branches of power and protection of human rights: the experience of Uzbekistan and foreign countries"<sup>35</sup> was published including materials that reveal the role of the Constitutional Court in implementing the principle of separation of powers and protection of human rights; control over constitutionality of normative legal acts of legislative and executive branches of power; the constitutional principle of separation of branches of power and protection of human rights, the role of national institutions in improving their scientific and legal bases. In addition, the collection includes articles on the cooperation of the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan on Human Rights with the judicial branch of government in the protection of human rights.

Various articles have been published in various legal journals of Uzbekistan, related in any way to constitutional justice, but on the whole they were of the nature of a historical digression, that is, they covered the evolutionary stages of the development of the Constitutional Court, in other cases such articles had an overview- statistical nature. Thus, in the article of the member of the Constitutional Court, S. Khakimova "The activities of the Constitutional Supervision Committee of Uzbekistan in 1990-1991", the issues of the formation of a new body of Uzbekistan and its state-political appointment and law-making activity are considered. Noting the important historical significance of the Constitutional Supervision Committee, the author states that "... the work of the Committee fully absorbed all the positive potential of the process of liberation of Uzbekistan from the braking, historically doomed Moscow guardianship, the resolute declaration of a young independent state power."<sup>36</sup> As you know, Constitutional control in the Republic of Uzbekistan

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35) The Role of the Constitutional Court in Implementing the Principle of Separation of Branches of Power and Protection of Human Rights: the Experience of Uzbekistan and Foreign Countries 160 (2016).

36) Sayyora Hakimova, *Activity of the Committee for Constitutional Oversight of Uzbekistan*

began to form in March 1990 (before Uzbekistan gained state independence), when the Constitutional Supervision Committee was created, which was elected by the Supreme Council. The Law of the Republic of Uzbekistan "On Constitutional Supervision of the Republic of Uzbekistan"<sup>37</sup>, adopted on June 20, 1990, for the first time in the history of Uzbekistan consolidated the principles of constitutional justice. The Constitutional Supervision Committee of Uzbekistan functioned until the creation of the Constitutional Court of the Republic (1995).

S. Khakimova in another article "The Formation and Improvement of Constitutional Justice in the Republic of Uzbekistan" highlights some aspects of the next stage of development of this institution in the light of the new Law "On the Constitutional Court of the Republic of Uzbekistan" of August 30, 1995.<sup>38</sup> The author notes that "... the main the criterion for assessing the activities of the institutions of constitutional control is how much it really affects the public practice of maintaining the constitutional balance in it, sustainable development and deepening democratic processes in society".<sup>39</sup> In the article prof. B. Ismailov "The main models of constitutional justice in law enforcement practice of foreign states" the analysis of foreign experience was conducted. It shows that the acceptable, positive, and necessary methods for the positive moment of domestic legal practice that can be adapted to the conditions of Uzbekistan are determined. The author justifies the necessity of "introducing the institution of individual complaints, that is, the right of citizens to submit questions to the Constitutional Court". This, B. Ismailov further writes, would be the step "... which would allow them to fully realize their rights and freedoms guaranteed by the Constitution. And in this case, constitutional control could be carried out in the form of concrete norm control".<sup>40</sup>

A separate area of the study of constitutional justice in Uzbekistan is an appeal to the implementation of the competence of the Constitutional Court. Speech, in particular, is about his authorities relating to the interpretation of the norms of the Constitution and laws of the Republic of Uzbekistan (paragraph

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*in 1990-1991*, Const. Ct. Bull., no. 4, 1999, at 52-55.

37) Supreme Council of the Republic of Uzb. Bull., *supra* note 10.

38) *Law of the Republic of Uzbekistan "On the Constitutional Court"*, *supra* note 8.

39) Sayyora Hakimova, *Formation and Improvement of Constitutional Justice in the Republic of Uzbekistan*, Const. Ct. of the Republic of Uzb. Bull., no. 9, 2004.

40) Bakhodir Ismailov, *Basic Models of Constitutional Justice in Law Enforcement Practice of Foreign States*, Const. Ct. Bull., no. 16, 2008, at 82-91.

4.10.99 of the Constitution of the Republic of Uzbekistan). In the articles of Prof. Kh. Adilkariev and a candidate of legal sciences, G. Tastanbekova, they wrote from the point of view justifying the casual situation that an objective and thorough assessment of the constitutionality issue of an act is resolved by the court. It is necessary not only to interpret the provisions of the Constitution, but also to study the meaning of the provisions of the verified acts.<sup>41</sup>

### **III. Legal Bases of Activity of the Constitutional Court of the Republic of Uzbekistan**

Formation and development of constitutional control in the Republic of Uzbekistan, including the evolution of the legal foundations of its activities can be divided into several stages:

- a. 1990-1992 - the period of establishment and formation of constitutional supervision. This stage was characterized by the definition of the constitutional and legal status of the Constitutional Supervision Committee as an organ that has supervisory and control-supervisory functions.
- b. The next stage is the activity of the Constitutional Court on the constitutionalization of the processes connected with the active formation of the system of constitutional justice of the country (1993-2016). On the basis of the Constitution of the Republic of Uzbekistan, the Law "On the Constitutional Court of the Republic of Uzbekistan"<sup>42</sup> was adopted, which clarified the role and place of the Constitutional Court in the judicial system, taking into account the new constitutional and legal status.

During this period there was a process of forming a national system of legislation on the basis of the development of the provisions of the Constitution and generally recognized principles and norms of international law. The main efforts of the Constitutional Court were aimed at assessing compliance with the constitutional provisions in legislation and law enforcement practice, their full and consistent implementation, the development at the legislative level of mechanisms for the exercise of constitutional rights and freedoms of citizens. The Constitutional Court also adopted decisions aimed at eliminating gaps and collisions in the legislation.

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41) H.T. Odilkariev, Role and Role of the Constitutional Court in Interpreting the Law 10 (2006); G. Tastanbekova, Constitutional Court: Function of Interpretation of Its Rule of Law: Rights and Obligations.

42) *Law of the Republic of Uzbekistan "On the Constitutional Court"*, *supra* note 8.

Through legal positions, the Constitutional Court actively promoted the constitutionalization of public relations, directing the legislator to consistently and purposefully implement constitutional principles and norms in the legislation, development and protection of constitutional values and goal.

- c. The current stage of development begins with the adoption of the Decree of the President of the Republic of Uzbekistan "On the Strategy for Further Development of the Republic of Uzbekistan" on February 7, 2017, No. 4947.<sup>43</sup>

This stage of development of constitutional justice is aimed at expanding the authorities of the Constitutional Court, increasing its role in the life of society and the state. This formulation of tasks is conditioned by the need to ensure direct action by the Constitution of the country, its supremacy. In the conditions of the formed legal system, achieved political and social stability in the country, close interaction of the authorities in the legislative process, the emphasis is on improving and detailing the proceedings in the Constitutional Court.

Recognizing the rather high social significance of the stability of the Constitution of the Republic of Uzbekistan, we want to note that maintaining the continuity of the Constitution and its adaptation to changing social and legal conditions are equally justified and necessary. After all, "stiffness," the absolute immutability of the Constitution contradicts the socio-historical nature of the country's development and the changes in the Constitution are objectively conditioned. It is necessary to recognize the question of introduction into the scientific circulation of legal science of such term as "constitutional justice," research of the essence, and content and characteristics of this particular branch of justice. The Constitutional Court, being a judicial body, carries out justice.

In order to improve constitutional justice, the Law of the Republic of Uzbekistan on 31 May, 2017, No.430 adopted "On Amending Certain Articles of the Constitution of the Republic of Uzbekistan (Articles 80, 93, 108 and 109)"<sup>44</sup> and the Constitutional Law Of the Republic of Uzbekistan of 31 May, 2017, No. 431 "On the Constitutional Court of the Republic of Uzbekistan".<sup>45</sup>

These laws clarified and significantly expanded the authorities of the Constitutional Court of the Republic of Uzbekistan. Thus, such authorities as:

- determination of compliance of the Constitution with constitutional laws, laws on ratification of international treaties of Uzbekistan - before their

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43) CL of RUz, No. 6, art. 70 (2017) (Uzb.).

44) CL of RUz, No. 22, art. 406 (2017) (Uzb.).

45) *Id.* art. 407; CL of RUz, No. 37, art. 978 (2017) (Uzb.).

- signing by the President of the Republic of Uzbekistan;
- consideration of the appeal of the Supreme Court initiated by the courts on the compliance of the Constitution with normative and legal acts to be applied in a particular case;
- annual presentation on the results of generalizing the practice of constitutional proceedings to the Chambers of Oliy Majlis and the President of the Republic of Uzbekistan on the state of constitutional legality in the country.

In addition, the procedure for electing judges, the term of their authorities, and the requirements for candidates for judges have been changed. Now the Constitutional Court's judges are elected by the Senate of Oliy Majlis on the recommendation of the President of the country from among the persons recommended by the Supreme Judicial Council. It is not allowed to elect the members of the Constitutional Court more than twice, while retaining the current five-year term of office. An increase in the age limit of a candidate for a judge from 30 to 35 years is envisaged, and the maximum age of a judge shall be 70 years, as rule. The grounds for the early termination of the authority of the judge have been expanded.<sup>46</sup>

The circle of subjects authorized to submit an issue for consideration by the Constitutional Court has been expanded to include the Cabinet of Ministers and the Commissioner for Human Rights of the Oliy Majlis of the Republic of Uzbekistan (Ombudsman). The procedure for making cases in the Constitutional Court is detailed.

Thus, the Constitutional Court is the supreme constitutional body of specialized constitutional control, independently and independently exercising judicial authority in the form of constitutional proceedings in order to restrict public authority and ensure a balance between the branches of authority, the supremacy of natural law over positive, the Constitution over law, the principles of law over political and administrative discretion. Achievement of these goals is the content of the activities of the Constitutional Court, i.e. implementation of constitutional justice.

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46) *Id.*



#### **IV. Some Aspects of the Legal Position of the Constitutional Court**

In the Constitutional Court there is a constant process of studying the laws and normative acts adopted, during which their compliance with the Constitution is revealed, and the norms in the legislation contradicting each other are revealed.

An analysis of the decisions taken by the Constitutional Court of the Republic of Uzbekistan testifies that in most cases they were aimed at ensuring the rights and freedoms of citizens guaranteed by the Constitution.<sup>47</sup> For example, in the case on verification of constitutionality of clause 17 of Article 5 of the Regulations on the procedure for the appointment and payment of benefits for state social insurance, the Constitutional Court concluded that the provision of this Regulation restricting the rights of an employee on regular or additional leave for work to receive benefits to care for a sick family member, does not comply with the Constitution.<sup>48</sup> As a result, the legislation was brought into line with the Constitution to ensure its supremacy.

Defining compliance of the Constitution of Uzbekistan with this or that law or its norms, the Constitutional Court thereby protects the rights and freedoms of citizens. Thus, Art. 536 of the Code of Criminal Procedure of the Republic of Uzbekistan it was determined that the conditional early release from punishment and replacement of the not served part of the sentence with a softer one is applied by the judge on the recommendation of the administration of the institution for the execution of punishment.<sup>49</sup> This provision did not provide for the possibility of addressing convicts directly to the court with a request for parole of punishment and replacing the not-served part of the sentence with a softer one. After examining the issue, the Constitutional Court decided that such practice does not comply with Art. 44 of the Constitution of the Republic of Uzbekistan, according to which everyone is guaranteed judicial protection of his rights and freedoms.<sup>50</sup> In accordance with the decision of the Constitutional Court, the Oliy Majlis of the Republic of Uzbekistan adopted the Law on Amending this Article, which provides for the right of the convicted person to

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47) Materials are prepared on the basis of data posted on the website of the Constitutional Court of the Republic of Uzbekistan. *See* Republic of Uzb. Const. Ct., [www.ksu.uz](http://www.ksu.uz) (last visited Jan. 21, 2018).

48) Constitution of the Republic of Uzbekistan 15 (2014).

49) Crim. Proc. Code, No. 2013-XII, Sept. 22, 1994, art. 536 (Uzb.).

50) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 44 (Uzb.).

apply to the court for parole and to replace the unserved part of the sentence with a softer one.

By exercising its authority to interpret the norms of the Constitution and laws, the Constitutional Court of the Republic of Uzbekistan resolves ambiguities, eliminates the incorrect or contradictory practice of applying these norms by officials and state bodies of all three branches of government. Using this authority, considering the case of the interpretation of Art. 59 of the Tax Code (TC)<sup>51</sup>, the Constitutional Court decided that the benefits provided for in Art. 59 TC of Uzbekistan<sup>52</sup>, also apply to income received on dividends and interest. This interpretation of the rule of law eliminated its misuse.

As we see, the Constitutional Court, in the course of revealing the essence and content of the norms of legislative acts, develops certain legal positions. For correct law enforcement practice, it is important for the Constitutional Court to clarify the meaning of the act in question, relying on fundamental constitutional provisions, the "spirit" of the Constitution, thereby providing a legal and technical assessment through its conclusion or interpretation. In this aspect, the conclusion and interpretation of the Constitutional Court is an important source of law.

According to Art. 31 of the Law of the Republic of Uzbekistan "On the Constitutional Court of the Republic of Uzbekistan", the Constitutional Court makes decisions only on specific issues that are being questioned of its constitutionality.<sup>53</sup> At the same time, it can check the constitutionality of the normative legal act and at the same time decide on another act that have not been a subject of the initial case. The decision of the Constitutional Court on the constitutionality of an international treaty and the normative act is called a decree, and in other cases is referred to as a conclusion or may have a different form. Decrees, conclusions and other decisions of the Constitutional Court come into force from the day of its official publication, are final and are not subject to appeal. At the same time, the author notes that the law does not regulate such issues as the form, procedure and terms of implementation of the decision or conclusion of the Constitutional Court. Therefore, it is proposed to adopt a separate law that would provide details of all procedural aspects of the legal proceedings.

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51) Tax Code, No. ZRU-136, Dec. 25, 2007, art. 59 (Uzb.).

52) Oliy Majlis of the Republic of Uzb. Bull., no. 7, 2002, at 85-88.

53) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

## V. Interaction of the Constitutional Court with Other State Authorities

### A. The Constitutional Court and the President

In accordance with Art. 25 of the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan", the President of the Republic of Uzbekistan has the right to submit issues for consideration by the Constitutional Court, consideration of which is assigned to its competence by the Constitution and laws.<sup>54</sup>

The interaction of the Constitutional Court with the President of the Republic of Uzbekistan in accordance with the legislation is carried out mainly in two areas. First of all, on the personnel issue, according to Art. 5 The Constitutional Court is elected by the Senate of the Oliy Majlis of the Republic of Uzbekistan on the proposal of the President of the Republic of Uzbekistan from among the persons recommended by the Supreme Judicial Council of the Republic of Uzbekistan, including a representative from the Republic of Karakalpakstan.<sup>55</sup> Each judge of the Constitutional Court is elected individually. The person who received the majority of votes from the total number of members of the Senate of the Oliy Majlis of the Republic of Uzbekistan is considered elected.

In addition, the President is one of those named in Art. 25 of this Act subjects who have the authority to submit questions to the Constitutional Court.<sup>56</sup> In accordance with Article 76 of the Rules of Procedure of the Constitutional Court of the Republic of Uzbekistan, the Constitutional Court, when deciding whether to give consent to the President of the Republic of Uzbekistan to decide on the dissolution of the Legislative Chamber, Senate of the Oliy Majlis of the Republic of Uzbekistan, establishes the presence or absence of facts<sup>57</sup>:

- unsettled differences in the composition of the Legislative Chamber or the Senate of the Oliy Majlis of the Republic of Uzbekistan, jeopardizing their normal functioning;
- unanimous decision-making by them, contradicting the Constitution of the Republic of Uzbekistan;

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54) *Law of the Republic of Uzbekistan "On the Constitutional Court"*, *supra* note 8, art. 25.

55) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

56) *Id.*

57) Rules of Proc. of the Const. Ct. of the Republic of Uz., Feb. 14, 2017, art. 76, <http://www.ksu.uz/en/page/index/id/9> (Uzb.).

- the emergence of insurmountable differences between the Legislative Chamber and the Senate, which jeopardize the normal functioning of the Oliy Majlis of the Republic of Uzbekistan.

Based on the results of the case, the Constitutional Court makes one of the following decisions:

- giving consent to the President of the Republic of Uzbekistan to take a decision on dissolution of the Legislative Chamber, Senate of the Oliy Majlis of the Republic of Uzbekistan;
- refusal to give consent to the President of the Republic of Uzbekistan to take a decision on dissolution of the Legislative Chamber, Senate of the Oliy Majlis of the Republic of Uzbekistan.

## **B. The Constitutional Court and the Government**

Since the system of executive authorities in practice cannot fail to carry out norm-setting activities, although the norm-setting function seems to be incompatible with the legal nature of the executive. It is known that the main task of this system is to provide management of the execution of laws. But without a law-making function, it is impossible to carry out a managerial process.

The Cabinet of Ministers of the Republic of Uzbekistan in its daily activities carries out the specification of the legal norms of laws, gives them an operational character. So, one of such issues was connected with granting to disabled people of the II World War and families receiving pensions on the occasion of loss of a bread-winner for a deceased serviceman, privileges for payment of living space and communal services. By the decision of the Constitutional Court, the Cabinet of Ministers of the Republic of Uzbekistan was invited to bring normative acts on this issue in line with the Decree of the President of the Republic of Uzbekistan.<sup>58</sup>

Acts issued by the government in the management sphere are of a diverse nature, they constitute one of the largest numbers of normative legal acts and they need control.

In modern states, the interaction between the body of constitutional control and the government is the institution and process of taking political and legal decisions, the subject of which is the Constitutional Court, and the object is the

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58) These materials are prepared based on the Bulletin and practice of the Constitution court of the Republic of Uzbekistan.

law-making activity of the government. Through such interaction, a publicly responsible influence is exercised, namely, control over the implementation of normative functions of the supreme executive body.

### **C. Constitutional Court and Parliament**

The relationship between the Constitutional Court and the chambers of the parliament is determined by the Constitution, the Constitutional Laws "On the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan" and "On the Senate of the Oliy Majlis of the Republic of Uzbekistan",<sup>59</sup> the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan" and other laws.

The Oliy Majlis of the Republic of Uzbekistan defines the system and authorities of the bodies the judicial power of the Republic of Uzbekistan, including the authorities of the Constitutional Court. It should be noted that the Constitutional Court of the Republic of Uzbekistan has the right to legislative initiative,<sup>60</sup> i.e. the right to submit draft laws to the legislative chamber of the Oliy Majlis. This right of the Constitutional Court was used only several times, but each time the bill reached the stage of introduction into legal force. Thus, based on this law, the Constitutional Court introduced a draft law on making amendments and additions to Art. 74 of the Law "On Joint Stock Companies and Protection of Shareholder Rights".<sup>61</sup> As a result, the provision of the Law was abolished providing for the notarization of aof attorney to vote at a general meeting of shareholders on behalf of a legal entity.

In accordance with Article 109 of the Constitution<sup>62</sup>, the Constitutional Court determines the compliance of the Constitution of the Republic of Uzbekistan with the laws and resolutions of the Chambers of the Oliy Majlis of the Republic of Uzbekistan.

The election of members of the Constitutional Court of the Republic of Uzbekistan is carried out by the upper house of parliament - the Senate. The subjects of appeal to the Constitutional Court are the houses of parliament, the Speaker of the Legislative Chamber, the Chairman of the Senate of the Oliy Majlis, and a group of deputies - not less than one fourth of the total number of

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59) Oliy Majlis of the Republic of Uzb. Bull., no. 12, 2002, art. 213, 215.

60) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 83 (Uzb.).

61) Oliy Majlis of the Republic of Uzb. Bull., no. 5-6, 1996, art. 61.

62) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 109 (Uzb.).

deputies of the Legislative Chamber and a group of senators - not less than one fourth of the total number of members of the Senate.

More than once the Constitutional Court enjoyed the right of legislative initiative given to it by the Constitution. He submitted proposals to the Oliy Majlis on improving the administrative, criminal, civil, labor, criminal procedure, and penal enforcement legislation. Thus, having considered the issue "On the inclusion in the Oliy Majlis of the Republic of Uzbekistan of a proposal to eliminate the discrepancy between articles 53, 54 and 257 of the Code of Administrative Responsibility of the Republic of Uzbekistan," The Constitutional Court recognized the provisions of Articles 53, 54, which do not correspond to part two of Article 257 of the Code of the Republic of Uzbekistan on administrative responsibility, and introduced a proposal to eliminate this discrepancy as a legislative initiative to the Uzbek parliament.<sup>63</sup>

In accordance with Article 95 of the Constitution,<sup>64</sup> the Legislative Chamber and the Senate may be dissolved by a decision of the President of the Republic of Uzbekistan, which the decision is adopted after the consultation with the Constitutional Court in the event of incompatible differences in the composition of the Legislative Chamber or the Senate jeopardizing their normal functioning or their repeated decisions contradicting the Constitution, and also in case of the emergence of insurmountable differences between the Legislative Chamber and the Senate, which threaten the normal functioning of the Oliy Majlis. In parliamentary practice, such a situation has not been observed yet. The sessions of the Legislative Chamber and the Senate, as well as at the meetings of their bodies, may be attended by the President of the Constitutional Court, which occurs very often at plenary meetings of the Chambers, and almost always at joint meetings of the Chambers. In accordance with Art. 21 of this Law<sup>65</sup>, the Speaker of the Legislative Chamber, his deputies, the Chairman of the Senate, his deputies may participate in the sessions of the Constitutional Court. However, at the same time, representatives of the legislature do not interfere in the activities of the Constitutional Court. This is conditioned by the constitutional provision that in their activities the judges of the Constitutional Court are independent and subject only to the Constitution. The Chairman of the Constitutional Court takes part in the meetings of legislative bodies as well,

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63) Sayyora Hakimova, *Formation and Improvement of Constitutional Justice in the Republic of Uzbekistan*, Const. Ct. of the Republic of Uzb. Bull., no. 12, 2005, at 95.

64) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 95 (Uzb.).

65) CL of RUZ, No. 22, art. 407 (2017) (Uzb.); CL of RUZ, No. 37, art. 978 (2017) (Uzb.).

without interfering in their activities.

In accordance with Article 83 of the Constitution, the Constitutional Court of the Republic of Uzbekistan has the right of legislative initiative, that is, the right to submit draft laws to the Legislative Chamber. In accordance with the law, the bill should be discussed at a meeting of the Constitutional Court on a collegial basis and a decision is made to submit this draft to the Legislative Chamber. When a draft law is submitted to the Legislative Chamber of the Oliy Majlis, the Constitutional Court must present this decision.

If the draft law submitted by the Constitutional Court does not comply with the Law on the Procedure for Preparation of Draft Laws and their Submission to the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan<sup>66</sup> and the Legislative Chamber Regulations, the Kengash of the Legislative Chamber may decide to return the bill to the Constitutional Court. The Constitutional Court has the right to re-submit the revised draft law to the Legislative Chamber, taking into account the proposals of the Legislative Chamber. The Constitutional Court has the right to revoke the draft law submitted to the Legislative Chamber before it is adopted in the first reading.

The Constitutional Court gives an official interpretation of the norms of the Constitution and laws adopted by the legislative authority. Interpretation of the norms of the Constitution and laws is carried out in case of unclearness in them, irregularities or contradictory practice of their application. In the process of official interpretation of the Constitution and laws of the Republic of Uzbekistan, the introduction of addenda, amendments, and complements aimed at clarification of clauses shall not be allowed. When the case on interpretation of the norms of the Constitution and laws is considered in the Constitutional Court, a representative of the legislative body is invited to the session of the Constitutional Court as a party.

#### **D. The Constitutional Court and Other Courts**

The Constitutional Court of the Republic of Uzbekistan as well as the constitutional courts of other countries is, as it were, in a privileged, special position among the judicial bodies. This is justified by the fact that the authorities of the Constitutional Court are established by the Constitution itself. Authorities of other judicial bodies are established not by the Constitution, but by laws.

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66) CL of RUz, No. 41, art. 406 (2006) (Uzb.).

Secondly, the legal status of the Constitutional Court is determined by a separate law - the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan", the legal status of other courts is determined by the Law "On Courts".

Thirdly, the Constitutional Court considers cases not in accordance with the usual procedure established by the procedural codes of the Republic of Uzbekistan, which are governed by other courts, but by those rules and norms of constitutional proceedings, which are fixed in the Rules of Procedure of the Constitutional Court. This Regulation was approved by the Constitutional Court.<sup>67</sup>

Fourthly, the ethics of judges of other courts is regulated by the Rules of Ethical Conduct of Judges approved by the Higher Qualification Commission for Selection and Recommendations for the Position of Judges under the President of the Republic of Uzbekistan, and the ethics of judges of the Constitutional Court is regulated by the Code of Honor of a judge of the Constitutional Court approved by the Constitutional Court.

The issue of the relationship between the Constitutional Court and other courts is closely related to the question of their commonality and the difference between them. Thus, the Constitutional Court reviews cases on the constitutionality of normative legal acts. The courts on civil cases and economic courts had the right to consider cases on the legality of normative legal acts. In accordance with Art. 12 of the Civil Code of the Republic of Uzbekistan<sup>68</sup>, an act of a state body or self-governing body of citizens that does not comply with the law and violates civil rights and the interests of a citizen or legal entity protected by law may be declared invalid by the court.

Until 2002, the Law "On the Constitutional Court of the Republic of Uzbekistan" provided that a judge of the Constitutional Court could not be prosecuted, arrested or subjected to administrative penalties imposed in court, without the consent of the Oliy Majlis, and between sessions - without consent Council (Kengash) of the Oliy Majlis. Such a rule contradicted the constitutional principle of separation of powers. In addition, the Law on Courts provided that a judge could not be prosecuted, imprisoned without the consent of the Plenum of the Supreme Court or the Plenum of the Supreme Economic

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67) By the decision of April 17, 2015, the Constitutional Court approved the Rules of the Constitutional Court of the Republic of Uzbekistan. *See* Constitutional Court of the Republic of Uzbekistan (Collection of Documents) (Tashken, Baktria Press, 2015).

68) Civil Code, No. 257-I, Aug. 29, 1996, art. 12 (Uzb.).



Court, respectively. In this norm, the principle of separation of powers was taken into account. Therefore, the law "On the Constitutional Court of the Republic of Uzbekistan" was amended, providing that a judge of the Constitutional Court cannot be brought to criminal and administrative responsibility, and also taken into custody without the consent of the Constitutional Court itself.

In accordance with Article 83 of the Constitution<sup>69</sup>, both the Constitutional Court and the Supreme Court have the right to legislative initiative, in the implementation of which they interact with each other. Thus, in accordance with the Decree of the President of the Republic of Uzbekistan "On organizational measures to further improve the activities of the courts" of November 30, 2012, a minimum age of 30 years was established for judges of courts of general jurisdiction and economic courts.<sup>70</sup>

In accordance with the decree, the Supreme Court prepared a draft law providing for changes and additions to the relevant laws. During the discussion of this project in the Constitutional Court, it was suggested that such age should be applied to judges of the Constitutional Court. The Supreme Court took into account the opinion of the Constitutional Court on this issue and submitted its proposal to the draft law. After the adoption of the amendment to the Law on the Constitutional Court of the Republic of Uzbekistan, a citizen of the Republic of Uzbekistan who has reached the age of thirty can be elected a judge of the Constitutional Court.

The chairman of the Supreme Court of the Republic of Uzbekistan is one of the subjects that has the right to submit questions to the Constitutional Court.<sup>71</sup> Unfortunately, the Supreme Court has not yet used this right to practice. However, according to its status and the nature of the functions performed, it is one of those bodies with which the Constitutional Court interacts particularly closely. On many issues accepted for consideration, the Constitutional Court asks the chairman of the Supreme Court to give an opinion on them or otherwise express his position. In accordance with Article 4 of the Law of the Republic of Uzbekistan "On the Constitutional Court of the Republic of Uzbekistan", the Constitutional Court may consider the appeal of the Supreme Court of the Republic of Uzbekistan initiated by the courts on the compliance of the Constitution of the Republic of Uzbekistan with normative and legal acts

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69) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 83 (Uzb.).

70) At present, the age limit of a candidate for a judge is raised from 30 to 35 years.

71) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 83 (Uzb.).

subject to application in a particular case.<sup>72</sup>

The Plenum of the Supreme Court of the Republic of Uzbekistan adopts normative decisions, but they remain outside the constitutional control, which requires its legislative decision.

According to the law, the enquire to the Constitutional Court with the question of the constitutionality of any normative act to be applied in a particular case can be initiated by any court of the country, not directly but only by initiating this matter in the Supreme Court.<sup>73</sup>

### **E. The Constitutional Court and Other Bodies of State Power**

In the Republic of Uzbekistan, along with the judiciary, extrajudicial protection of human rights exists and is being developed by the Ombudsman of the Oliy Majlis of the Republic of Uzbekistan (Ombudsman) and the National Center for Human Rights of the Republic of Uzbekistan. Their main task is to protect the rights and freedoms of citizens proclaimed by the Constitution and laws of the Republic of Uzbekistan by the legal means inherent in each of them.

Thus, the legal status of the Ombudsman was defined in the Law "On the Commissioner for Human Rights of the Oliy Majlis of the Republic of Uzbekistan (Ombudsman)", adopted on April 24, 1997.<sup>74</sup> On August 27, 2004, the Law "On the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan on Human Rights (Ombudsman)" was adopted in a new wording, which currently regulates the authorities and activities of the Ombudsman.<sup>75</sup> The legal status of the National Center for Human Rights of the Republic of Uzbekistan is defined in the Decree of the President of the Republic of Uzbekistan of October 31, 1996 "On the Establishment of the National Center for Human Rights of the Republic of Uzbekistan"<sup>76</sup> and the Regulations on it approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan on November 13, 1996.<sup>77</sup>

The Ombudsman is a constitutional body, that is, it is provided for by the Constitution of the Republic of Uzbekistan. Article 78, paragraph 16, of the

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72) *Law of the Republic of Uzbekistan "On the Constitutional Court"*, *supra* note 8, art. 4.

73) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

74) Oliy Majlis of the Republic of Uzb. Bull., no. 4-5, 1997, art. 102.

75) Oliy Majlis of the Republic of Uzb. Bull., no. 9, art. 170.

76) Oliy Majlis of the Republic of Uzb. Bull., no. 10, 1996, art. 202.

77) Gov't Res. of the Republic of Uzb., No. 11, 1996, art. 32 (Uzb.).

Constitution of the Republic of Uzbekistan is devoted to him.

In accordance with the law, the Ombudsman is an official authorized to ensure parliamentary control over compliance with the legislation on human rights and freedoms by state bodies, enterprises, institutions, organizations and officials.

All this predetermined the need for the Constitutional Court to cooperate with the Ombudsman and the National Center for Human Rights. Therefore, on December 2, 1998, between the Constitutional Court and the Ombudsman of the Oliy Majlis on Human Rights, an agreement was signed "On cooperation in ensuring the supremacy of the Constitution of the Republic of Uzbekistan and protecting human rights and freedoms". This agreement was based on such principles as the supremacy of the Constitution and laws, the independence of these bodies, the coordination of their activities to ensure the rights and freedoms of citizens. The cooperation of the Constitutional Court with the Ombudsman and the National Center for Human Rights is also based on independence and non-interference in each other's affairs and is implemented in the following forms:

- 1) The leaders of the Constitutional Court, the National Center for Human Rights and the Ombudsman invite each other to events and meetings affecting human rights and freedoms.<sup>78</sup>
- 2) Cooperation is also carried out in the field of preparing proposals for improving legislation. Thus, the draft laws prepared by the Ombudsman are reviewed by the experts of the Constitutional Court and the experts give specific comments on the draft law.<sup>79</sup>
- 3) For the purpose of researching some of the legal problems outlined in citizens' appeals, as well as providing qualified assistance to the Commissioner, 2 employees of the Administration of the Constitutional Court are members of the expert council on a voluntary basis with the Ombudsman of the Oliy Majlis for Human Rights.<sup>80</sup>
- 4) A regular exchange of information is carried out within the framework of cooperation between the Constitutional Court, the Ombudsman and the National Center for Human Rights. So, the Constitutional Court sends them materials of the session of the Constitutional Court, materials of regulatory and legal nature, as well as the periodical "Bulletin of the

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78) Mirboboev, *supra* note 28, at 151.

79) *Id.*

80) *Id.*

Constitutional Court of the Republic of Uzbekistan". The Ombudsman sends his annual reports and other materials to the Constitutional Court.

- 5) The Constitutional Court, the Ombudsman and the National Center for Human Rights jointly prepare and conduct scientific and practical conferences, seminars with the participation of representatives of state bodies, non-governmental organizations and citizens on certain issues of protecting the rights and freedoms of citizens.

The practice of the activity of the Constitutional Court of the Republic of Uzbekistan shows that it is approached for interpretation of the norms of laws and bodies that do not have the right to do so under the Constitution and the Law "On the Constitutional Court". Thus, the Institute for Monitoring Current Legislation under the President of the Republic of Uzbekistan applied to the Constitutional Court on two issues:

- 1) on the interpretation of Art. 118 of the Labor Code on the possibility of establishing a shorter working time for certain categories of workers;
- 2) on the verification of the constitutionality of the rules governing the procedure for the appointment and payment of benefits in connection with the care of a sick family member. Both issues were recognized by the judges of the Constitutional Court as meritorious at the court session. Their correct resolution allowed to significantly expand workers' rights for shorter working hours and receive benefits in connection with the care of a sick family member.

The Mahalla charitable foundation appealed to the court with a request to interpret Art. 105 of the Constitution on self-governing bodies of citizens. According to the copies of the decisions of khokimiyats (local authorities) received from citizens, the issue of the procedure for seizing land and buildings used by legal entities and citizens, the procedure for privatization of apartments, indexation of deposits held in a people's bank.<sup>81</sup>

According to Art. 25 of the Constitutional Law<sup>82</sup> "On the Constitutional Court of the Republic of Uzbekistan", the Prosecutor General of the country has the right to submit questions to the Constitutional Court. He has the right to participate in the court session, state his position on all issues under consideration.

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81) These materials are prepared based on the Bulletin and practice of the Constitution court of the Republic of Uzbekistan.

82) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

## **VI. Structure of the Constitutional Court**

The Constitutional Court consists of seven judges of the Constitutional Court, including the chairman and his deputy. The Chairman of the Constitutional Court and his deputy are elected from among the judges of the Constitutional Court at its meeting. In accordance with the law, a judge of the Constitutional Court may elect a citizen of the Republic of Uzbekistan not younger than thirty-five years from among experts in the field of politics and law, who possesses high moral qualities and necessary qualifications.

For the purposes of organizational, scientific, expert, information-reference and other support of the activities of the Constitutional Court, an Administration of the Constitutional Court is created in its structure (Art. 35 of the Law).<sup>83</sup> Regulations on the Administration of the Constitutional Court of the Constitutional Court of the Republic of Uzbekistan were approved by the Constitutional Court of the Republic of Uzbekistan on April 17, 2015. The main objective of the Administration of the Constitutional Court is organizational-technical, scientific-analytical, information-reference and financial and economic support of the activities of the Constitutional Court.

The structure and staffing of the Staff are approved by the Chairman of the Constitutional Court within the limits of the allocated appropriations. The employees of the Administration of the Constitutional Court are appointed and dismissed by the Chairman of the Constitutional Court.

Members of the Administration of the Constitutional Court are assigned class ranks in accordance with the legislation. The official duties of the Staff are regulated by the job description that was approved by the Chairman of the Constitutional Court. General management of the Office is directly carried out by the head of the secretariat whose responsibilities include the organization of the activities of the Staff. The head of secretariat is also responsible for the performance of the tasks and functions assigned to the Administration of the Constitutional Court.

### **A. The Legal Status of a Judge of the Constitutional Court**

The Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan" provides for a number of guarantees aimed at ensuring the independence of the Constitutional Court. In particular, judges of the

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83) *Id.*

Constitutional Court cannot be senators, deputies of representative bodies of state authority. Judges of the Constitutional Court cannot be members of political parties, participate in political movements, or engage in any other types of paid activities, except for scientific and pedagogical activities.

The constitutional law "On the Constitutional Court of the Republic of Uzbekistan" provides that judges of the Constitutional Court are irremovable during the period of execution of their authorities. The principle of non-removability of judges of the Constitutional Court means that the authorities of judges of the Constitutional Court can be terminated ahead of schedule only in cases provided for by law under the decision of the Senate of the Oliy Majlis of the Republic of Uzbekistan.<sup>84</sup> The law provides for the following grounds for terminating the authorities of a judge of the Constitutional Court:

- violation of the oath of the judge;
- submission of a written application;
- the attainment of the maximum age of the judge in office;
- the entry into force of the conviction of the court against him;
- continuation of the judge activities that are incompatible with the position of the judge, after the warning given to him or suspension of his authorities;
- his inability for health reasons or other valid reasons for a long time to perform the duties of a judge;
- loss of citizenship of the Republic of Uzbekistan;
- recognition of him in an established manner incompetent or severely incapable;
- death or declaration of his death by a court decision.

Judges of the Constitutional Court have immunity, and are not liable for criminal and administrative claims. They also cannot be detained without the consent of the Constitutional Court of the Republic of Uzbekistan. A criminal case against a judge of the Constitutional Court cannot be initiated only by the Prosecutor General. It is not allowed to drive, detain, as well as to inspect personal belongings, luggage, transport, housing, office premises of a judge of the Constitutional Court.<sup>85</sup>

Authorities of a judge of the Constitutional Court may be suspended by a decision of the Constitutional Court in the following cases: bringing him to criminal liability; engage in activities that are incompatible with the position of the judge; recognition of his missing decision by the court. Suspension of the

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84) *Id.*

85) *Id.*

authorities of the judge, with the exception of cases in which a judge was placed in custody as a preventive measure, does not entail suspension of payment of his salary and does not deprive him of immunity.<sup>86</sup>

In Art. 14 of the Code of Honor of a judge of the Constitutional Court of the Republic of Uzbekistan, approved by the Constitutional Court of the Republic of Uzbekistan on January 30, 2004 (amended on April 17, 2015) for committing an official or other crime, the judge is liable in accordance with the law.<sup>87</sup>

For committing an act discrediting the Constitutional Court, the authorities of the judge may be suspended or terminated early in the prescribed manner.

Art. 79 of the Rules of Procedure of the Constitutional Court stipulates<sup>88</sup> that the suspension of the authorities of a judge of the Constitutional Court shall be carried out upon the decision of the Constitutional Court, taken no later than one month after the date of revealing the grounds for their suspension. Suspension of the authorities of a judge of the Constitutional Court in the case of bringing him to criminal responsibility is carried out simultaneously with giving consent to bringing him to criminal liability.

The Constitutional Court suspends the authorities of the judge until the grounds for their suspension are dropped. Restoration of the authorities of a judge is formalized by a decision of the Constitutional Court.

Art. 24<sup>89</sup>, which deals with guarantees for the employment of judges of the Constitutional Court after the termination of their authorities, indicates that the judges of the Constitutional Court, after the termination of their authorities, are given the previous work (position) that they occupy before the election to the position of a judge of the Constitutional Court, and in its absence, another equivalent job (position).

## **B. Functions of the Constitutional Court**

The competence and daily activities of the Constitutional Court embody the independence of the judiciary from the legislative and executive powers as one of the most important constitutional principles. Unlike other courts, the Constitutional Court reviews and resolves cases on the constitutionality of acts

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86) *Id.*

87) Constitutional Court of the Republic of Uzbekistan (Collection of Documents) 147 (Tashkent, Baktria Press, 2015).

88) *Id.*

89) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

of the legislative and executive branches, and draws conclusions based solely on the Constitution of the Republic of Uzbekistan. It ensures the supremacy of the Constitution by resolving the issues brought to its consideration.

The Constitutional Court reviews cases on the constitutionality of acts of the legislative and executive authorities and, upon the results of their consideration, takes an appropriate decision.

The main principles of the activity of the Constitutional Court are the supremacy of the Constitution of the Republic of Uzbekistan, independence, collegiality, transparency, competitiveness and equality of the parties<sup>90</sup> (Article 7 of the Constitutional Law on the Constitutional Court of the Republic of Uzbekistan). Judges, when making decisions, express their legal position, free from considerations of practical expediency, political inclinations and other extraneous influences (Article 9 of the above Law).

Independence of the Constitutional Court is ensured by following procedures: the election and release of judges and their inviolability; resolving cases and issues within the competence of the court; a secret meeting of judges in making decisions; liability of contempt of the Constitutional Court for interference in its work (organizational and technical activities of the Constitutional Court as well as material and social support for judges).

The function of the Constitutional Court is not a result of the will of any institution of power, but is directly entrusted to the Constitutional Court by law, the supreme law of the state by the Constitution.

Among the advantages of the preliminary (preventive) control is the fact that this form of control:

1. Preliminary clarifies the issue of the constitutionality of the normative act, which strengthens the reliability and stability of the legal system.
2. Promotes the most effective work of the legislator and increase of his authority.
3. Prevents the difficulties that can arise if the law in force for a number of years or its separate provision is declared unconstitutional;
4. Prior to the ratification of the international treaty and the acceptance by the state of international obligations, a final and authoritative decision is made on the constitutionality of these obligations.

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90) *Id.*



### C. The Subject of the Constitutional Court Control

Constitutional justice is a powerful tool for ensuring the stability of the legal system, the state and society by ensuring consistency, legitimacy of their functioning. It is the latter that is the most important criterion for the effectiveness of constitutional justice.

The subject of control of the Constitutional Court of the Republic of Uzbekistan is:

- issues of compliance with the Constitution of the Republic of Uzbekistan:
  - a) laws of the Republic of Uzbekistan (including constitutional laws, laws on ratification of international treaties of Uzbekistan - before their signing by the President of the country) and resolutions of the chambers of the Oliy Majlis of the Republic of Uzbekistan,
  - b) decrees, resolutions and orders of the President of the Republic of Uzbekistan,
  - c) government decrees,
  - d) decisions of local government bodies,
  - e) interstate contractual and other obligations of the Republic of Uzbekistan;
- issues of compliance of the Constitution of the Republic of Karakalpakstan with the Constitution of the Republic of Uzbekistan, laws of the Republic of Karakalpakstan - laws of the Republic of Uzbekistan;
- the meaning and essence of the norms of the Constitution and laws of the Republic of Uzbekistan (interpretation, interpretation);
- appeals of the Supreme Court of the Republic of Uzbekistan on compliance of the country's Constitution with normative and legal acts subject to application in a particular case;
- the state of constitutional legality in the country.

At the same time, the Constitutional Court refrains from conclusion and investigation of actual circumstances in all cases when such actions are within the competence of other courts or other bodies.

Such power allows the state's legislative and normative legal actions, regardless of its sectoral affiliation, falls under the jurisdiction of the Constitutional Court. However, they are considered only for the purpose of determining their constitutionality, i.e. compliance with the Constitution of the country. This means its unlimited jurisdiction over all legal acts - laws and by-laws.

Thus, the control subject of the Constitutional Court is the circle of relations related to ensuring the supremacy and direct operation of the Constitution, as

well as the protection of the basic constitutional principles and values proclaimed and guaranteed by the Constitution.

The subject of constitutional control is to ensure the constitutionality of regulations at the stage of their development, which allows improving the quality of legislative work.

#### **D. Preliminary and Follow-up Control of Legal Norms**

The President of the country can apply to the Constitutional Court with a proposal to check the compliance of the Constitution of the country with any draft normative-legal act, incl. before signing the law or signing an international treaty.<sup>91</sup> The procedure is standard, as consideration of any other appeal of bodies and officials possessing this right.

Although the legislation of Uzbekistan does not explicitly mention preliminary constitutional normative control, in fact the Constitutional Court is entitled to participate in the legislative process, since it is included in the circle of subjects of the law of legislative initiative. On the other hand, practically all bills go to the Constitutional Court for recall.

In addition, in accordance with the competence of the Constitutional Court, it carries out the so-called subsequent constitutional control. Participation of the Constitutional Court in the normative control is carried out mainly through the resolution of cases on the constitutionality of the normative legal act and the official interpretation of the norms of the Constitution.

Thus, we can talk about two aspects of the activities of the Constitutional Court:

- consideration of issues on the compliance of the Constitution of the Republic of Uzbekistan with all normative legal acts, i.e. implementation of the function of the "negative" legislator;
- initiating the adoption of new laws, thereby realizing the function of a "positive" legislator.

#### **E. Legal Control Procedure**

As an independent procedural form of the functioning of the Constitutional Court of the Republic of Uzbekistan, constitutional litigation is an aggregate of procedures and legal relations between the Constitutional Court and other

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91) *Id.*

participants in constitutional proceedings in constitutional and legal issues and competence disputes in order to achieve the goals set for it, and regulated by procedural constitutional norms and tasks.

It is the establishment of proper legal procedures and rules of constitutional legal proceedings that helps to ensure correct understanding and application of the requirements of material constitutional norms, protection of rights, freedoms and legitimate interests of subjects of constitutional legal proceedings and, ultimately, the adoption by the Constitutional Court of a comprehensive and objective final decision on the results of consideration of a concrete case.

Constitutional legal proceedings are a separate, independent, along with civil, criminal, economic and administrative, type of judicial proceedings. The establishment of a special procedure for the exercise of judicial power for the Constitutional Court is conditioned by the difference in the constitutional and legal position of the Constitutional Court from the legal status of other judicial bodies in terms of competence, organization, the nature of the cases under consideration and decisions, their legal force and enforcement mechanism. Implementation of the exclusive function of the Constitutional Court - the control over the constitutionality of normative acts in the state predetermines and a special procedure for the implementation of the judiciary - constitutional court proceedings.

Organizational form of the implementation of constitutional court proceedings is judicial sessions. It should be specially noted that the session of the Constitutional Court of the Republic of Uzbekistan is conducted in compliance with the rules and procedures established by the Rules. The sessions of the Constitutional Court shall be convened by the chairman, in his absence - by the deputy chairman, and in the absence of the chairman of the Constitutional Court and his deputy or the impossibility of fulfilling their duties - by the oldest judge of the Constitutional Court. The Constitutional Court in the resolution of cases is guided solely by the Constitution of the Republic of Uzbekistan. In accordance with Art. 18 of the Regulations of the Constitutional Court of the Republic of Uzbekistan<sup>92</sup> of April 17, 2015, the parties to constitutional proceedings are a state body or official who submitted the matter for consideration by the Constitutional Court; a state body or an official who has adopted (issued) a normative legal act, the constitutionality of which is subject to verification; a state body whose competence includes issues contained in an interstate

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92) Constitutional Court of the Republic of Uzbekistan (Collection of Documents) 127 (Tashkent, Baktria Press, 2015).

contractual or other obligation of the Republic of Uzbekistan; chambers of the Oliy Majlis of the Republic of Uzbekistan, on matters concerning interpretation of the norms of the Constitution and laws of the Republic of Uzbekistan and giving consent to the President of the Republic of Uzbekistan to take a decision on dissolution of the Legislative Chamber, Senate of the Oliy Majlis of the Republic of Uzbekistan; Zhokargy Kenes of the Republic of Karakalpakstan on matters of giving a conclusion on the compliance of the Constitution of the Republic of Karakalpakstan with the Constitution of the Republic of Uzbekistan, laws of the Republic of Karakalpakstan - laws of the Republic of Uzbekistan.

When a question is submitted to the Constitutional Court on the initiative of judges of the Constitutional Court, the party is a state body, a legal entity or an individual whose appeal was the reason for submitting the question.

A party has the right to have one or several representatives who represent its interests in the Constitutional Court. When submitting the matter to the Constitutional Court for consideration by a group of deputies or senators, they must appoint one or more representatives.

As representatives of the parties, lawyers, specialists and other persons may act on the basis of a authority of attorney issued by a party specifying their authorities.

Representatives of the parties in the Constitutional Court may be the position of the heads of state bodies and legal entities specified in parts one and two of this article. Representatives of the parties represent the interests of the party without a power of attorney.

Art. 19 of the Rules of the Constitutional Court of the Republic of Uzbekistan<sup>93</sup> emphasizes that the parties and their representatives have the right to get acquainted with all the materials of the case; state your position on the case; submit written feedback; to file petitions, including on the challenge of a judge, the appointment of an expert examination, calling witnesses, experts and specialists to court; nominate experts and specialists; ask questions to participants in constitutional proceedings.

The Constitutional Court makes decisions only on specific issues under consideration, the constitutionality of which is questioned. He can, having checked the constitutionality of the normative act, at the same time make a decision also with regard to normative acts based on a verified normative act or reproducing its provisions, although they were not mentioned in the issue

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93) *Id.* at 128.

brought before the Constitutional Court. The decision of the Constitutional Court is made by open voting. The decision is considered adopted if the majority of the judges present at the meeting voted for it.

The Constitutional Court must render a decision on the issue in question not later than 3 months after the receipt of the relevant material (Art. 26 of the Law ).<sup>94</sup> The Constitutional Court makes a decision only on specifically considered issues. At the same time, the Constitutional Court has the right, while verifying the constitutionality of normative and legal acts, to simultaneously make a decision also in relation to other normative and legal acts based on a verified normative legal act or reproducing its provisions, although they were not mentioned in the introduction Constitutional Court issue. Decisions of the Constitutional Court shall come into force from the moment of publication (Art. 33 of the Law).<sup>95</sup> They are final and are not subject to appeal, they act directly and do not require confirmation by other bodies and officials. It is this order of entry into force of a decision of the Constitutional Court that ensures independent and independent exercise of judicial power by it through constitutional legal proceedings.

#### **F. Civil complaint (Constitutional Complaint) as a Means of Monitoring Legal Norms**

A special role in the protection of fundamental rights and freedoms of person and citizen in the post totalitarian states belongs to constitutional courts. A number of national systems of constitutional justice provides only an indirect protection of the constitutional (fundamental) human and civil rights (for example, in the process of preliminary and posterior review of the constitutionality of laws and regulations- Armenia, Belarus, Bulgaria, Belgium, Italy, Poland, Romania etc.)

Each state sets its own model for the protection of the rights and freedoms of citizens, including constitutional ones. Special powers for protection of the constitutional rights and freedoms of citizens are given to the constitutional courts and other specialized bodies of constitutional control.

The right to appeal of citizens is one of the important factors of ensuring and effective protection of human rights, provided in accordance with Article 35 of

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94) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

95) *Id.*

the Constitution of the Republic of Uzbekistan.<sup>96</sup> In Uzbekistan's legislation, this issue has a special place and principles for its implementation. The state is implementing a gradual reform of the current legislation in this direction. Currently, a number of laws have been adopted and are being implemented that are being improved.

One of these legal acts is the Law of the Republic of Uzbekistan "On applications of individuals and legal persons",<sup>97</sup> adopted in a new edition on September 11, 2017. This Law has improved the procedure for filing applications to state bodies, as well as their consideration. The responsibility for violations in this sphere is provided, the procedure for applying to state bodies, to officials is specified.

This law defines such important provisions as: the procedure for filing complaints by individuals and legal persons; the procedure for considering appeals by state bodies; the rights of individuals and legal persons and the duties of state bodies when examining appeals. In addition, the law defines the forms, types of applications, requirements for them, as well as guarantees for the reception of individuals and representatives of legal entities. This normative-legal act reflects the norms concerning the procedure, the terms for filing and consideration of applications, the grounds for leaving the applications without consideration, the rights of individuals and legal entities in reviewing applications and the responsibilities of state bodies, compensation for material damage and compensation for moral harm, responsibility for violation of the legislation on appeals.

One of the main changes related to scientific and technological progress and modern information technologies was the consolidation of the right to circulation in electronic form. Now individuals and legal entities can apply in the established order to the relevant departments or to officials using information and communication technologies.

Despite the fact that the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan" does not provide for the consideration of citizens' appeals about the unconstitutionality of a law, as well as appeals on the interpretation of the Constitution, the petition of individuals and legal entities can be grounds for consideration of the matter in the Constitutional Court in that case, if this issue is submitted for consideration by at least three judges of the Constitutional Court (Art. 25 of the Law).<sup>98</sup>

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96) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 35 (Uzb.).

97) CL of RUz, No. 49, art. 578 (2014) (Uzb.).

98) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

A judge of the Constitutional Court examining a citizen's appeal that contains issues within the competence of the Constitutional Court may:

- to call the citizen who sent the appeal, for clarification of the issue in question and the collection of additional material;
- to analyze the practice of implementing a legislative act, the compliance of which with the Constitution is being questioned;
- to invite representatives of the authorized organization that ensures the implementation of a legislative act, the compliance of which with the Constitution is being questioned;
- require additional information on the case in question from the relevant authorities and officials.

The conclusion on the examination is prepared by the Constitutional Court judge for inclusion in the Constitutional Court session and submitted to the Chairman of the Constitutional Court or his deputy.

Judges of the Constitutional Court, on their own initiative, on the basis of examining appeals and materials submitted to the court, may bring issues to the court regarding the protection of human rights and freedom. In accordance with Art. 44 of the Constitution of the Republic of Uzbekistan,<sup>99</sup> everyone is guaranteed judicial protection of his rights and freedoms; illegal decisions and actions (or inaction) of public authorities, public associations and officials may be appealed to the court. In this mechanism for the protection of human and civil rights and freedoms, the Constitutional Court holds a special place. Unlike the courts of general jurisdiction and economic it has a decisive role in ensuring the supremacy of the Constitution and laws.<sup>100</sup>

Art. 4 of the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan" contains a list of issues that only this court considers. In addition, it differs from courts of general jurisdiction that the legislator restricts the range of subjects entitled to submit questions for consideration by this court.<sup>101</sup>

The Constitutional Court determines the compliance of the Constitution of the Republic of Uzbekistan with laws and other legal acts, and therefore protects citizens from violations of their rights and freedoms by an unconstitutional law that has been or is being applied.

The protection of citizens' rights and freedoms will also be implemented if the

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99) Konstitutsiyasi [Constitution], Dec. 8, 1992, art. 44 (Uzb.).

100) Nargis Karieva, *The Constitutional Court and Citizens' Appeals*, Const. Ct. of the Republic of Uzb. Bull., no. 10, 2004, at 171-74.

101) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

Constitutional Court, using its right of legislative initiative, applies to the legislative body with a proposal to amend legislative acts and this initiative will be supported.

From the meaning of Art. 4 of the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan"<sup>102</sup> it follows that citizens or stateless persons can initiate the appeal<sup>103</sup> of an organ or person entitled to apply to the Constitutional Court with a relevant request in cases where they:

- a) consider that their rights are violated by the law of the Republic of Uzbekistan or by another act adopted by the Oliy Majlis, by a decree of the President of Uzbekistan, by a decree of the government or local government authority, by an international treaty or by another obligation of the Republic of Uzbekistan that does not comply with its Constitution;
- b) believe that the Constitution of the Republic of Karakalpakstan or the law of the Republic of Karakalpakstan does not comply with the Constitution of the Republic of Uzbekistan or the law of the Republic of Uzbekistan;
- c) ask for an interpretation of the norms of the Constitution and laws of the Republic of Uzbekistan.<sup>104</sup>

For example, a citizen S. Yakubjanov asked the Constitutional Court of the Republic of Uzbekistan to give an interpretation of the procedure for making audio recordings during the trial of a case.

The Code on Administrative Procedure and the Economic Procedural Code of the Republic of Uzbekistan establishes by law that the court, after discussing the petition of the court participants, may allow or not permit the recording, that is, if the court participant's petition is not satisfied, the court does not have the right to sound recording, while anyone present at the court hearing may record, keep

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102) *Id.*

103) See the notion of the word "*Actio popularis*"

104) V. Frolov addressed the Constitutional Court with a complaint about the unlawful deprivation of his benefits provided for in Part II of Article 16 of the Law of the Republic of Uzbekistan "*On Guarantees of Freedom of Entrepreneurial Activity.*" It was about the misunderstanding and application of the rule of law by the tax and financial authorities. Having examined the circumstances of the case and the relevant arguments of the Ministry of Finance and the State Tax Committee of Uzbekistan, three judges of the Constitutional Court came forward with the initiative of submitting this issue to the court. As a result of consideration, the court came to the conclusion that it is necessary to interpret this rule because the above-mentioned bodies interpret it in their own way, which entails certain legal consequences not only for V. Frolov, but also for other subjects of small and private entrepreneurship. Hakimova, *supra* note 62, at 94.



a transcript, make written notes without the permission of the court.

Photographing, video recording, and also broadcasting of the court session on radio and television are allowed with the permission of the court hearing the case. ” Thus, contrary to the principle of publicity of court proceedings, proclaimed in the Constitution of the Republic of Uzbekistan (Article 113 of the Constitution of the Republic of Uzbekistan), the right of participants in court proceedings is restricted by determining their possibility of making sound recordings only by court permission, while other persons present in court proceedings are entitled for recording without the permission of the court.

In relation with this Decision of the Constitutional Court of the Republic of Uzbekistan dated November 14, 2018, it was proposed to introduce to the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan in order of legislative initiative a draft law of the Republic of Uzbekistan “On introducing changes and amendments to the Civil Procedural Code of the Republic of Uzbekistan, Economic Procedural Code of the Republic of Uzbekistan and the Administrative Procedural Code of the Republic of Uzbekistan in the hearing of all the three codes, as well as the elimination of infringement of the right of the participant of the court session to carry out recording.<sup>105</sup>

According to Art. 25 of the Constitutional Law<sup>106</sup> "On the Constitutional Court of the Republic of Uzbekistan", only the chambers of the Oliy Majlis of the Republic of Uzbekistan have the right to submit questions to the Constitutional Court; President of the Republic of Uzbekistan; The Cabinet of Ministers of the Republic of Uzbekistan; The Ombudsman of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (ombudsman); Jokargy Kenes of the Republic of Karakalpakstan; a group of deputies - not less than one fourth of the total number of deputies of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan; a group of senators - at least one fourth of the total number of members of the Senate of the Oliy Majlis of the Republic of Uzbekistan; The Supreme Court of the Republic of Uzbekistan; The Prosecutor General of the Republic of Uzbekistan.

A question for consideration by the Constitutional Court of the Republic of Uzbekistan can be submitted and on the initiative of at least three judges of the Constitutional Court. Thus, the rule of this article of the law strictly limits the

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105) See: Newspaper “The People’s Word Newspaper”(in Russian “NARODNOE SLOVO”). November 16, 2018

106) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

circle of subjects entitled to bring to the Constitutional Court this or that issue that is within the competence of the latter. Therefore, citizens' appeals alone cannot directly initiate constitutional proceedings. In other words, citizens' appeals and the right to submit questions to the Constitutional Court are different concepts. Citizens do not have the authority to submit questions to the Constitutional Court, which means that the appeal submitted to them will be considered in accordance with the procedure provided for in the Law on Appeals of Individuals and Legal Entities, and not on the procedure for judicial proceedings. That is, the consideration of citizens' appeals cannot directly lead to the decision of the Constitutional Court, which was rendered in procedural order.

In this regard, the Constitutional Court has developed and adopted the "Regulations on the procedure for considering appeals of citizens to the Constitutional Court of the Republic of Uzbekistan", which regulates mechanisms that allow citizens to exercise their constitutional right to protect their rights and legitimate interests.

Applications, complaints, proposals are submitted to the Constitutional Court very much. If in 2017 there were about 432, then in 2018– 708.<sup>107</sup> As we can see, the number of appeals to the Constitutional Court on issues of violation of constitutional rights and freedoms tends to increase. This means that an increasing number of citizens of the country are developing the legal system and are beginning to actively use it.

Since a limited number of subjects have the right to submit enquiries to the Constitutional Court (the chambers of the Oliy Majlis, the President of the country, the Cabinet of Ministers, the Ombudsman, the Zhokargy Kenes of Karakalpakstan, each parliament has a group of deputies or senators - at least one fourth of their total number, the Supreme Court, the Prosecutor General and at least three judges of the Constitutional Court), it necessary to include citizens in it, as the most responsive subjects to violations of the constitutionality of legislative acts and requiring special protection from the Constitutional Court.

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107) According to the materials of the Constitutional Court of the Republic of Uzbekistan.

## VII. The Legal Nature of the Decisions of the Constitutional Court and their Legal Force

In accordance with Art. 31 of the Law<sup>108</sup> "On the Constitutional Court of the Republic of Uzbekistan", the Constitutional Court makes decisions only on specific issues under consideration, the constitutionality of which is questioned. The Constitutional Court may, by verifying the constitutionality of the normative legal act, simultaneously make a decision also with regard to normative and legal acts based on the verified act or reproducing its provisions, although they were not mentioned in the issue brought before the Constitutional Court.

The decision of the Constitutional Court is made by open voting. A judge of the Constitutional Court has no right to abstain or not to vote. The decision of the Constitutional Court shall be deemed adopted if the majority of the judges present at the meeting voted for it. In the case when the votes are divided equally, the voice of the presiding officer is decisive.

A judge of the Constitutional Court who does not agree with the decision of the Constitutional Court has the right to state his opinion in writing and attach it to the record of the session of the Constitutional Court (Art. 31 of the Law).

In accordance with Art. 32 of this Law, it is stated that the decision of the Constitutional Court on the merits of the case on the constitutionality of an international treaty and a normative legal act is referred to as a decree. Resolutions are passed by the Constitutional Court in the name of the Republic of Uzbekistan. In other cases, the decision of the Constitutional Court is called a conclusion or may have a different form.

The procedure for publishing decisions of the Constitutional Court and their entry into force are reflected in Art. 33 of the Law. Decisions, conclusions and other decisions of the Constitutional Court are published in the mass media and on the official website of the Constitutional Court. Official sources of publication of the decisions of the Constitutional Court are the "Collection of Legislation of the Republic of Uzbekistan", the newspapers "Khalk Suzi"(in Uzbek) and "Narodnoe Slovo"(in Russian), "Bulletin of the Constitutional Court of the Republic of Uzbekistan", as well as the National Database of Legislation of the Republic of Uzbekistan. The decision of the Constitutional Court comes into force from the day of its official publication. The decision of the Constitutional Court is final and cannot be appealed.<sup>109</sup>

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108) CL of RUz, No. 22, art. 407 (2017) (Uzb.); CL of RUz, No. 37, art. 978 (2017) (Uzb.).

109) *Id.*

Decisions of the Constitutional Court are of a prejudicial nature. Art. 33 of the Law provides that the decision of the Constitutional Court may be reviewed by it on its own initiative<sup>110</sup>:

- due to newly discovered circumstances unknown to the Constitutional Court at the time of the decision;
- in case of a change in the constitutional norm, on the basis of which a decision was taken;
- in case the Constitutional Court recognizes the adoption of this decision in violation of the established procedure for production.

The decision of the Constitutional Court comes into force from the date of its publication. The decision of the Constitutional Court is final and cannot be appealed. Decisions of the Constitutional Court are binding on all state bodies, public associations, enterprises, institutions, organizations, officials and citizens (Art. 33 of the Law; art. 69 of the Rules of the Constitutional Court of the Republic of Uzbekistan).<sup>111</sup>

## VIII. Conclusion

Over the past period, legal mechanisms for systemic constitutional control of laws and other normative legal acts have been established in the Republic of Uzbekistan with a view to protecting human and civil rights and freedoms. The existing constitutional and legal basis allows for the further development of constitutional control, the continuation of an active search for the optimal combination of various forms of constitutional control, the improvement of constitutional judicial proceedings, and the enhancement of the effectiveness of constitutional justice.

An analysis of the activities of the Constitutional Court of the Republic of Uzbekistan shows that the current legislation regulating constitutional justice needs further democratization and liberalization. The improvement of the activity of the Constitutional Court on verification of the constitutionality of laws and by-laws adopted in the country is impossible without the development of a clear legal mechanism and procedures for constitutional judicial proceedings, a significant expansion of its authorities. Therefore, we consider it necessary:

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110) *Id.*

111) *Id.*; Constitutional Court of the Republic of Uzbekistan (Collection of Documents) 143 (Tashkent, Baktria Press, 2015).

- to develop and adopt the law of the Republic of Uzbekistan "On the Constitutional Court Proceedings", which establishes clear terms and procedure for the completion of procedural actions of the Constitutional Court;
- Develop a detailed legal mechanism for the submission and consideration of individual and collective appeals to the Constitutional Court;
- to give the Constitutional Court additional authorities to consider cases on the compliance of the Constitution of the country with the activities of political parties and social movements, and to resolve issues on recognizing them as unconstitutional. In addition, it is necessary to give the Constitutional Court additional authorities to confirm the results of the elections of the President of the Republic of Uzbekistan, elections to the lower house of the Oliy Majlis and a referendum. The consideration of disputes related to the constitutionality of elections is within the competence of the Supreme Court, although in Article 110 of the Constitution it is strictly defined in the sphere of civil, criminal and administrative proceedings.

Thus, effective constitutional justice becomes one of the most important criteria for the "maturity" of civil society. It presupposes the improvement of appropriate forms and methods of organizing judicial proceedings.

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