



The interaction of constitutional court and other state bodies

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ABSTRACT

The article analyzes the issues of improving constitutional control, ways to increase its effectiveness. The subject of the research is the legislative foundations of constitutional justice in Uzbekistan. The actual issues of interaction between the Constitutional Court of Uzbekistan, and the state bodies of Uzbekistan, the parliament, government and the Supreme Court of the Republic of Uzbekistan within the system of separation of powers are indicated.

In order to analyze the current state, the author briefly shows the role of constitutional justice. Taking into account the specifics of the functional purpose, powers and legal consequences caused by the adoption of final decisions, the Constitutional Court occupies a special place not only within the judicial system, but also in the whole mechanism of exercising state power in our country, which allows it to be considered as an independent and independent body of state power, standing from the point of view of its constitutional and legal status on a par with President, parliament and government.

Analysis of the current state of constitutional review allows us to note the following. The control carried out by the Constitutional Court needs to improve its legal framework and the practice of exercising constitutional control. The absence of the proper determination of the legal framework of the interaction of Constitutional Court with other state bodies makes constitutional review ineffective.

The issues of introducing the consideration the gaps in law by the Constitutional Court, granting citizens right to apply to the Constitutional Court were considered. The author claims that when introducing this practice, the analysis of the experience of foreign countries is especially relevant.

In conclusion, measures to improve the cooperation of the Constitutional Court with state bodies of Uzbekistan, taking into account the peculiarities of its constitutional and legal status are proposed.

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Конституциявий суд ва бошқа давлат органлари муносабатлари

АННОТАЦИЯ

Калит сўзлар:

конституциявий одил судлов,
ҳокимиятлар бўлиниши,
ўзаро муносабат,
Олий суд,
ўзаро ҳамкорлик.

Мақолада конституциявий назоратни такомиллаштириш масалалари, уни самарадорлигини ошириш йўллари таҳлил қилинган. Ўзбекистонда конституциявий одил судловнинг қонунчилик асослари тадқиқот предметини ташкил қилади. Ҳокимиятлар бўлиниши тизимида Ўзбекистон Республикаси Конституциявий суди ва бошқа давлат органлари, парламент, ҳукумат ва Ўзбекистон Республикаси Олий суди ўртасидаги ўзаро муносабатларнинг долзарб масалалари ёритилган.

Муаллиф амалдаги ҳолатни таҳлил қилиш учун конституциявий судловнинг ролини қисқача кўрсатиб ўтади. Якуний қарорлар қабул қилишдан келиб чиқадиган функционал мақсад, ваколат ва ҳуқуқий оқибатларнинг ўзига хос хусусиятларидан келиб чиққан ҳолда, Конституциявий суднинг нафақат суд тизимида, балки давлат ҳокимиятининг амалга оширишнинг бутун механизмида алоҳида ўрин тутиши қайд этилади. Бу уни конституциявий ва ҳуқуқий мақоми нуқтаи назаридан Президент, парламент ва ҳукумат билан бир қаторда давлат ҳокимияти органи сифатида кўриб чиқишга имкон беради.

Конституциявий назоратнинг ҳозирги ҳолатини таҳлил қилиш асосида қуйидагиларни қайд этиш мумкин. Конституциявий суд томонидан амалга ошириладиган назоратнинг норматив-ҳуқуқий асослари ҳамда конституциявий назоратни амалга ошириш амалиётини такомиллаштириш талаб қилади. Конституциявий суднинг бошқа давлат органлари билан муносабатларининг аниқ ҳуқуқий асосларининг мустаҳкамланмаганлиги конституциявий назоратни самарадорлигини пасайтиради.

Конституциявий суд томонидан ҳуқуқдаги бўшлиқларни кўриб чиқиш, бу борада фуқароларнинг мурожаат қилиш ҳуқуқини бериш масалалари атрофлича кўриб чиқилди. Муаллиф ушбу амалиётни жорий қилишда хорижий мамлакатларнинг бу борадаги тажрибасини эътиборга олиш лозим, деб таъкидлайди.

Хулоса қисмида, Конституциявий суднинг конституциявий ва ҳуқуқий мақомининг ўзига хос хусусиятларини ҳисобга олган ҳолда давлат органлари билан ҳамкорлигини такомиллаштириш бўйича таклифлар илгари сурилган.

Взаимоотношения конституционного суда с другими органами власти

АННОТАЦИЯ

Ключевые слова:
конституционное правосудие,
разделение властей,
взаимодействие,
Верховный суд,
взаимное сотрудничество.

В статье анализируются вопросы совершенствования конституционного контроля, пути повышения его эффективности. Предметом исследования выступают законодательные основы конституционного правосудия в Республике Узбекистан. Освещены вопросы взаимодействия Конституционного суда Узбекистана с государственными органами Узбекистана, парламентом, правительством и Верховным судом Республики Узбекистан в рамках системы разделения властей.

В рамках изучения современного состояния, автором показано становление конституционного контроля. Учитывая специфику функционального предназначения, полномочия и правовые последствия, вызываемые вынесением итоговых решений, Конституционный Суд занимает особое место не только в рамках судебной системы, но и в целом механизма осуществления государственной власти в нашей стране, которое позволяет его рассматривать в качестве самостоятельного и независимого органа государственной власти, стоящего с точки зрения своего конституционно-правового статуса в одном ряду с Президентом, парламентом Правительством.

Контроль осуществляемый Конституционным судом нуждается в совершенствовании его нормативно-правовых основ и практики осуществления конституционного контроля, а отсутствие четко определения правовых основ взаимодействия Конституционного Суда с другими государственными органами делает конституционный контроль неэффективным.

Рассмотрены вопросы рассмотрения Конституционным Судом пробелов в законодательстве, предоставления гражданам право обращаться в Конституционный суд. Автор утверждает, что при внедрении это практика особенно актуально комплексное изучение и анализ опыта ведущих зарубежных стран.

В заключение предлагаются меры по улучшению взаимодействия Конституционного суда с государственными органами Узбекистана с учетом особенностей его конституционно-правового статуса.

INTRODUCTION

In Uzbekistan the constitutional principle of separation of powers implies both the unity of powers of the state and their functional separation. According to Article 11 of the Constitution of the Republic of Uzbekistan the principle of separation of powers into the

legislative, executive and judicial shall underlie the system of state authority of the Republic of Uzbekistan. State bodies shall be independent within their powers: they shall interact among themselves, check and balance one another. The implementation of this principle in relation to the judiciary is ensured by certain constitutional and legal guarantees. The Constitution establishes that the judicial power shall be independent; it shall interact with the legislative and executive powers. First of all, definition of interaction should be highlighted. The concept of interaction is a philosophical category reflecting the processes of impact of different objects on each other, their mutual conditionality, change of state, a transition, as well as causing one object to another. In another words interaction is mutual or reciprocal action or influence.

Based on this definition, the Constitutional Court of Republic of Uzbekistan either directly or indirectly interacts with state bodies. According to the Constitution of Uzbekistan the judicial system in the Republic of Uzbekistan shall consist of the Constitutional Court of the Republic of Uzbekistan, the Supreme Court of the Republic of Uzbekistan, the Higher Economic Court of the Republic of Uzbekistan, the supreme courts of the Republic of Karakalpakstan on civil and criminal cases, the Economic Court of the Republic of Karakalpakstan elected for the term of five years, regional and Tashkent city courts on civil and criminal cases, interdistrict, district and city courts on civil and criminal cases, martial and economic courts for the same term.

THE CONSTITUTIONAL COURT IN THE SYSTEM OF STATE POWER

The Constitutional Court is a branch of the State judicial power which is characterized by its specific regulation of formation and competence. The Constitutional Court, in contrast to the other courts, is a permanent judicial authority to review cases on the constitutionality of legislative and executive acts. As B.Mirbabayev rightly pointed out that there is the following aspects of Constitutional Court as a state body.

Firstly, the powers of Constitutional Court are established by the Constitution, this provides the significance of role of Constitutional court to safeguard the human rights and freedoms. The powers of other bodies of judicial power is not enshrined in the Constitution, but by the relevant laws reflecting their legal status. Secondly, The Constitutional Court through constitutional control also implements the legislative function of state at a certain stage. This is reflected to exercise the powers of defining the compliance of the Constitution of the Republic of Uzbekistan, laws and resolutions of the chambers of the Oliy Majlis, interpreting the norms of the Constitution and laws, giving an opinion on the compliance of the Constitution of the Republic of Karakalpakstan with the Constitution of the Republic of Uzbekistan, the laws of the Republic of Karakalpakstan – the laws of the Republic of Uzbekistan. Thirdly, The Constitutional Court not only considers disputes of a particular legal nature, but also has an impact on the settlement of political disputes.

Moreover, The Constitutional Court not only considers the compliance of constitution but also the court has power interpretation the norms of constitution and laws, considering the appeal of the Supreme Court of the Republic of Uzbekistan, initiated by the courts, about the compliance of the Constitution of the Republic of Uzbekistan with regulatory acts to be applied in a particular case, impact on the settlement of political disputes and other powers established by law.

Constitutional Court also determines the compliance of the Constitution of the Republic of Uzbekistan with the constitutional laws of the Republic of Uzbekistan, laws of the Republic of Uzbekistan on ratification of international treaties of the Republic of Uzbekistan – prior to their signing by the President of the Republic of Uzbekistan.

The activity of the Constitutional Court of the Republic of Uzbekistan is regulated by a number of laws, including the laws “On Courts” and “On the Constitutional Court of the Republic of Uzbekistan”. The Constitutional Court is a special requirement of the democratic state, as a reliable guarantee of human rights and freedoms which guarantees the supremacy of the Constitution, strengthening the legal environment in our country.

One of the important features of the Constitutional Court as a judicial body is that the acts of the Constitutional Court are binding on all bodies of state authorities and governance, as well as for enterprises, institutions, organizations and public associations, officials and citizens. The main difference of the Court from other courts is that first of all, the powers of the Constitutional Court are established by the Constitution, second of all, the decision of the Constitutional Court is final and not subject to appeal, thirdly, the court has right to carry out preliminary and subsequent control, fourthly, the Constitutional court is a body officially interprets the norms Constitution and laws.

This court is important not only in the judicial system, but also in the system of state governance. The Constitutional Court interacts with the President, the Parliament, the Government and other authorities in the exercise of its powers. In relation with the President first of all, it's important the participation of the President in the election of judges.

In this aspect before The Constitutional Court was elected on the proposal of the President of the Republic of Uzbekistan by the Senate of the Oliy Majlis, consisting of the Chairman, Deputy Chairman and five members of the Constitutional Court, including a judge from the Republic of Karakalpakstan. Now according to the new changes to the legislation, 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. The President as a head of the state has significant influence in the formation of the Court.

The one of the main directions of the interaction is the power of The Constitutional Court annually submission to the Chambers of the Oliy Majlis of the Republic of Uzbekistan and the President of the Republic of Uzbekistan information on the state of constitutional legality in the country based on the results of summarizing the practice of constitutional legal proceedings. Providing this type of information to the head of state is important in making relevant decisions, and this is where cooperation comes into play. This is important in assessing the level of legality in the country. Besides according to the article 93 of The Constitution the President of the Republic of Uzbekistan shall guarantee observance of rights and freedoms of citizens, the Constitution and laws of the Republic of Uzbekistan.

Furthermore, Constitutional Court interrelates with the President during the consideration of political disputes.

In accordance with Article 95 of the Constitution of the Republic of Uzbekistan Constitutional Court advises the President of the Republic of Uzbekistan in deciding on the dissolution of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of

Uzbekistan. Western scholars view the role and significance of the Constitutional Court as a guarantee of political relations with the function of arbitration for the resolution of political conflicts in the modern democratic world. The main reason is that in any constitutional dispute, there is a political issue. This function of the Constitutional Court is reflected in ensuring the constitutionality of laws and actions of state bodies and officials. The President of the Republic of Uzbekistan is also one of the subjects entitled to submit the matter to the Constitutional Court and participate in its debates.

In the system of separation of powers it's important further improvement of the relation of the Constitutional Court between the President of the Republic of Uzbekistan, which ensures the coordinated functioning and interaction of state bodies.

The Constitutional Court of the Republic of Uzbekistan among state authorities enters into legal relations jointly with the Parliament – the Oliy Majlis of the Republic of Uzbekistan. One of the first relationships is that the Constitutional Court of the Republic of Uzbekistan has the right to initiate legislation on matters within its competence in accordance with Article 75 of the Regulations. Proposals for the adoption of a particular law, as well as for the amendment or repeal of an existing law, are regularly submitted to parliament by the competent authorities established by the Constitution. The constitutions of the world differ in defining the range of subjects entitled to legislative initiative. The Constitutional Court has so far adopted decisions on 32 legal issues. Almost 14 of these decisions were adopted on the issues of legislative initiative of the Constitutional Court. If we analyze the essence of decisions, Since 1998, the Constitutional Court has widely used the right of legislative initiative. The last decision of the Constitutional Court was also dedicated to on introducing changes and amendments to the Civil Procedure Code of Republic of Uzbekistan, the Code of Economic procedure of Republic of Uzbekistan and Administrative procedure code of Republic of Uzbekistan Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan in 2018.

In this regard, the Constitutional Court is also elected by the Senate on the proposal of the President from among the persons recommended by the Supreme Council of Judges. Therefore, the oath being determined by a judge of the Constitutional Court at a session of the Senate where this judge is elected – indicates that it is expedient to carry out whatever body is elected.

Not only the chambers of the Oliy Majlis have the right to submit their cases to the Constitutional Court, but also the Authorized Person of the Oliy Majlis for Human Rights (Ombudsman). The Constitutional Court, in turn, implements the principle of the separation of powers and the resolution of political disputes on the principle of interdependence. (The article 95 of the constitution).

PROSPECTS FOR THE DEVELOPMENT OF CONSTITUTIONAL JUSTICE

The gaps in law are an important object in the relations between the Parliament and the Constitutional Court. We define this concept as “legal vacuum” “ambiguity of law”, “gap in legislation”, “disproportionate implementation of constitutional values and principles in legislative activity” gaps in legislation or legal practice arising from the interpretation of the legal document. The gaps in law must be the subject of constitutional control. In the laws of such countries as Russia, Belarus and Armenia, gaps in the law are determined as the subject of the constitutional control. In particular, Article 158 of the Law of the Republic of Belarus “On constitutional legal proceedings” Appeals to the Constitutional

Court of the state bodies, other organizations, as well as individuals, including individual entrepreneurs, who have information on the existence of gaps, collisions and legal uncertainties in the normative legal acts and their collision and legal uncertainties shall be basis for the proceeding. The Constitutional Court shall decide on the gaps in the regulations and the need to eliminate collisions and legal ambiguities in them and send them to the appropriate state body or official. It should be noted that the legislative body fills in the gaps while the Constitutional Court considers the cases to eliminate gaps and collisions by exercising constitutional oversight.

In accordance with Armenian law, gaps in legislation may be subject to constitutional jurisdiction if legal uncertainty arising from the content of a legal conflict in question results in the application or interpretation of a rule that violates or may violate a particular constitutional right in law enforcement.

The introduction to the legislation the competence of Constitutional court on the consideration of gaps in legislation will enhance the effectiveness and prestige of the legal process and the rule of law.

In the course of its activity the Constitutional Court shall interact with the Cabinet of Ministers of the Republic of Uzbekistan. Under the 2017 amendment, the Cabinet of Ministers also had the right to submit a case to the Constitutional Court. The Cabinet of Ministers also participates in the process of reviewing the constitutionality of legislation at meetings held by the Constitutional Court. The Constitutional Court, in turn, determines the constitutionality of government decisions.

In some literatures determined five factors supporting independence of constitutional courts. Five factors seem to be of particular importance: ethical standards for and of constitutional judges, a constitutional culture of respect for co-justice, a well-balanced role of the use of mass media, the protection of individual rights and international co-operation between constitutional courts. We believe that independence of constitutional court may also be assisted by bilateral co-operation between other courts in the state.

In this aspect The Constitutional Court interacts with the Supreme Court of the Republic of Uzbekistan. These relations are limited only the consideration the appeal of the Supreme Court of the Republic of Uzbekistan, initiated by the courts, on the compliance with the Constitution of the Republic of Uzbekistan of regulatory legal acts to be applied in a particular case and the right of the Supreme Court to submit questions to the Constitutional Court and participation in the meetings of the Court.

Today, improvement of the interaction of the Constitutional Court of the Republic of Uzbekistan with the Supreme Court of the Republic of Uzbekistan is important. The legislation should include that the Plenum of the Supreme Court, which is convened at least every four months, must be present at the Chairman of Constitutional Court and his deputies. In accordance with the article 15 of law on Courts the Prosecutor General of the Republic of Uzbekistan takes part in the meetings of the Plenum of the Supreme Court of the Republic of Uzbekistan. The article also determines that The Chairperson of the Constitutional Court, the Chairperson of the Supreme Judicial Council, the Minister of Justice of the Republic of Uzbekistan, judges, members of the Scientific Advisory Council at the Supreme Court of the Republic of Uzbekistan *can participate* in meetings of the Plenum of the Supreme Court of the Republic of Uzbekistan. Furthermore, as stated in the first paragraph of the second part of article 17 of the law Plenum of the Supreme Court of the

Republic of Uzbekistan considers materials of generalization of judicial practice and gives explanations on issues of application of the legislation. It is well known that the Constitutional Court of the Republic of Uzbekistan also has the power to explain and interpret the laws. Determination of the need for participation in the Plenum of the Supreme Court of the Republic of Uzbekistan by the Chairman and Deputy Chairmen of the Constitutional Court of the Republic of Uzbekistan shall ensure mutual cooperation between the courts and assist in the implementation of the goals and objectives envisaged in the Constitution.

As noted at the round table “Constitutional Court in the System of State authorities: tasks and perspectives” organized by the Constitutional Court of the Republic of Uzbekistan and the OSCE Project Coordinator in Uzbekistan, the legislative and executive bodies of the Constitutional Court, national cooperation with institutions and non-profit organizations, including the promotion of human rights through the courts, to improve the chambers of the Parliament of the Constitutional Court, the Supreme Court, the Ombudsman and mutual cooperation on issues of critical importance.

CONCLUSION

In conclusion, we believe that the law should include a new chapter on the relationship between the Constitutional Court of the Republic of Uzbekistan and other state bodies. The Constitutional Court interacts with a number of state bodies, both as a public body and as a branch of the judiciary. This chapter should cover the relationship of the Constitutional Court of the Republic of Uzbekistan with the President of the Republic of Uzbekistan, the Oliy Majlis of the Republic of Uzbekistan, the Cabinet of Ministers of the Republic of Uzbekistan, the Supreme Court of the Republic of Uzbekistan and local authorities.

REFERENCES:

1. National Legislation Database, 10/16/2018, No. 03/18/498/2051; 03/06/2019, No. 03/19/527/2706
2. URL: <http://dic.academic.ru/dic.nsf/bse/74156/>. <https://www.merriam-webster.com>
3. B.Mirbabaev. Constitutional and judicial protection of human rights in Uzbekistan / Materials of the international conference “National system for ensuring reliable protection of human rights and freedoms in Uzbekistan: achievements for years of independence” October 20-21, 2016. Tashkent city and Samarkand city / Rev. ed. A.Kh.Saidov – T., 2017. – P. 177.
4. X.Turdiyev. The interaction of the parliament and the government in the legislative process. Review of law sciences. 2020. №2. – P.19-20.
5. <http://www.ksu.uz/uz/decisions>
6. G.G. Harutyunyan Chairman of the Constitutional Court of the Republic of Armenia, Doctor of Law, Professor Problem of legislative gaps in the practice of constitutional justice of the Republic of Armenia // Report at the XIV Congress of the European Conference of Constitutional Courts. (Vilnius, June 3-6, 2008)
7. Resolution of the Constitutional Court of the Republic of Armenia dated September 14, 2010 No. PKS-914 “On Termination of the Proceedings on the Limitation of the Conformity of Part Two of Article 228 of the Civil Code of the Republic of Armenia to

the Constitution of the Republic of Armenia on the Basis of the Appeal of the Human Rights Defender of the Republic of Armenia// Reference legal system “Legislation of the CIS countries”. Resolution of the Constitutional Court of the Republic of Armenia dated January 25, 2011 No. PKS-933 “In the Case of Determining the Compliance of Part 2 of Article 427, Articles 429 and 430 of the Code of Criminal Procedure of the Republic of Armenia on the Basis of the Appeal of Citizen Karen Harutyunyan// Reference legal system “Legislation of the CIS countries”. Resolution of the Constitutional Court of the Republic of Armenia dated January 25, 2011 No. PKS-932 “In the Case of Determining the Compliance of Part 7 of Article 221 of the Code of Criminal Procedure of the Republic of Armenia with the Constitution of the Republic of Armenia based on the appeal of the Human Rights Defender of the Republic of Armenia” // Reference legal system “Legislation of the CIS countries”.

8. Grabenwarter C. Separation of Powers and the independence of Constitutional Courts and Equivalent bodies. Keynote Speech 16 January 2011 2nd Congress of the World Conference on Constitutional Justice, Rio de Janeiro // <https://www.venice.coe.int/WCCJ/Rio/>

9. <http://www.ksu.uz/uz/news/view/id/42>; <http://uza.uz/ru/society/konstitutsionnyy-sud-v-sisteme-organov-gosudarstvennoy-vlast-29-05-2018>

10. Турдиев Х. Конституционно-правовые основы отношений между парламентом и властью в Республике Узбекистан //Review of law sciences. – 2018. – №. 3.