

THE ESSENCE AND LEGAL FOUNDATIONS OF THE CONSTITUTIONAL COURT'S
CONSIDERATION OF APPEALS FROM CITIZENS AND LEGAL ENTITIES IN
UZBEKISTAN

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Abstract. *This study conducts a legal analysis of the right of citizens and legal entities to petition the Constitutional Court of the Republic of Uzbekistan for reviewing the constitutionality of laws. Individuals have the right to appeal to the Constitutional Court if a law violates constitutional rights and freedoms, has been applied in courts for a specific case, and all legal remedies have been exhausted. The research examines the legal foundations of this mechanism, current legislation, and the practices of the Constitutional Court. The work analyzes the importance of ensuring constitutional justice in Uzbekistan's legal system, as well as the role of this institution in safeguarding citizens' rights. The study concludes with recommendations for maintaining legislative balance and strengthening adherence to the Constitution.*

Keywords: *Constitutional Court, constitutional rights, constitutionality of law, mechanisms of legal protection, freedoms of citizens, Constitution of Uzbekistan, judicial proceedings, constitutional complaint.*

In recent years, reforms in the judicial and legal sphere have not only ensured the independence of the judiciary and the openness and transparency of courts but also strengthened guarantees for protecting the rights and legitimate interests of citizens and entrepreneurs. In accordance with the short-term strategy for elevating the judicial system to a qualitatively new level for 2023-2026, the main objectives have been defined as: forming a truly fair judicial system based on the idea of "For Human Dignity"; directing its activities towards effectively protecting the interests of the people and human dignity; strengthening public trust, including that of entrepreneurs, in the judicial system by ensuring the adoption of fair judicial decisions; and creating all opportunities for citizens and entrepreneurs to defend their rights and legitimate interests in courts¹. This, in turn, paves the way for further strengthening the position of the

¹ Decree of the President of the Republic of Uzbekistan dated January 16, 2023 No. UP-11 "On Additional Measures to Further Expand Access to Justice and Increase the Efficiency of Courts" <https://lex.uz/mact/-6358976>

Constitutional Court of the Republic of Uzbekistan in the system of national government bodies and increasing its role.

Granting the Constitutional Court of Uzbekistan the authority to consider appeals from citizens and legal entities serves to ensure the conformity of state power with constitutional principles, and also plays a crucial role in protecting the constitutional rights of citizens. This function of the Constitutional Court is of significant importance in upholding the rule of law, safeguarding human rights, and fostering democratic principles in the country.

A.Gafurov defines the essence of the constitutional complaint institution as follows: A constitutional complaint is an appeal by citizens and legal entities to the constitutional justice body, requesting to determine the constitutionality (conformity to the Constitution) of a specific normative legal act when the rights and freedoms established in the Constitution are violated by that normative legal act².

While agreeing with the above definition, we believe that the essence of the Constitutional Court's consideration of appeals from citizens and legal entities is the protection of their constitutional rights. If citizens and legal entities consider their rights and freedoms to have been violated, they may appeal to the Constitutional Court, which provides them with constitutional protection.

The following classifications of appeals to the Constitutional Court exist:

1) Direct appeal - this is always carried out at the request of authorized state bodies if they have doubts about the compliance of the disputed legislative acts with the provisions of the Constitution. Its implementation is not directly related in any way to the emergence of a specific legal fact or a practical issue.

There are the following types of direct appeals:

a) Public complaint (*Actio popularis*), in Roman law, *Actio popularis* was understood as an individual's actions in the interests of society. Kelsen notes this type of constitutional appeal as the main guarantee of constitutional review in terms of every person's right to appeal to the Constitutional Court, and does not present *actio popularis* as an effective solution due to inevitable abuses³. In this type of constitutional control, which is considered the most comprehensive in terms of scope, every member of society, as a guardian of the Constitution, based on his civic

² Gafurov A.B "Formation and development of constitutional judicial control in Uzbekistan: issues of theory and practice" Abstract Tashkent - 2022. Page 21

³ Achour R. Ben. "Le contrôle de la constitutionnalité des lois: quelle procédure?", Actes du colloque international «L'effectivité des droits fondamentaux dans les pays de la communauté francophone», Port-Louis (Île Maurice), 29—30 septembre, 1er octobre 1993. P. 401 // URL: <http://www.bibliotheque.refer.org/livre59/15905.pdf>.

duty, can appeal to the Constitutional Court from the point of view of public interests, even if the established law does not directly affect his interests at present.

b) abstract complaint (Quasi actio popularis - the necessity to prove legitimate interest) - there are criteria for accepting this complaint for consideration. The quasi actio popularis institution occupies a middle position between the abstract actio popularis and the normative constitutional complaint.

2) Unlike the above, the basis for indirect appeals is the violation of constitutional rights and freedoms of citizens and legal entities.

Types of indirect appeals:

a) **Appeal for constitutional protection** (recurso de amparo), which is a constitutional oversight mechanism aimed at safeguarding the constitutional rights and freedoms of individuals, legal entities, and government bodies based on judicial acts issued by courts of general jurisdiction. This type of appeal covers a much broader range of issues.

b) **a specific constitutional complaint** - any person may file a complaint if they find that their constitutional rights and freedoms have been violated in an individual act adopted on the basis of a normative act. The decision on this issue is binding only on the parties. (Malta, Croatia, Ghana, Gabon) (Panama, Paraguay, Colombia, Hungary)

There are also the following types of constitutional complaints:

full - can apply to the constitutional court after exhausting all possibilities for the protection of their rights on the issue of determining the constitutionality of any legal act (Germany);

partially - a distinctive feature of this type of complaint is the limited scope of the objects of the constitutional complaint. This is mainly the issue of the constitutionality of a specific law applied by the courts, which is disputed in the Constitutional Court. (For example, in the Russian Federation and Uzbekistan, the issue of the constitutionality of laws applied in a specific case is considered, not all normative legal acts). In Russia, a partial constitutional appeal model operates, meaning that not every normative legal act, but rather the law applied in a specific case, can be the object of appeal. In particular, in the Russian Federation, citizens' appeals for verification of the constitutionality of laws are widespread, with approximately 15-20 thousand constitutional complaints received annually⁴. If we pay attention to German practice, normative legal acts (laws

⁴ Обращения в Конституционный Суд РФ // URL: <http://www.ksrf.ru/ru/Petition/Pages/NewReference.aspx>. (дата обращения: 9 января 2018 г.)

and by-laws), law enforcement administrative acts, and court decisions are also the subject of a constitutional complaint⁵.

In conclusion, **Firstly**, in accordance with Article 27 of the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan," appeals from citizens and legal entities to the Constitutional Court are submitted in the form of complaints.

Secondly, citizens and legal entities can appeal to the Constitutional Court not under any circumstances, but only in a case that has been considered in court and has exhausted all the stages of judicial defense. This justifies the fact that an indirect (specific constitutional complaint) type of appeal operates in Uzbekistan.

Thirdly, in Uzbekistan, citizens and legal entities can file complaints to the Constitutional Court not against all normative acts, but only against laws. This means that a partial constitutional complaint system is in effect in Uzbekistan.

Regarding the legal basis for the Constitutional Court's consideration of appeals from citizens and legal entities in Uzbekistan, as a result of the comprehensive reforms being carried out in all spheres of social life at the initiative of the President of the Republic of Uzbekistan, the guarantees of judicial protection of citizens' rights and freedoms, ensuring genuine independence of the judiciary, and reliable protection of human rights and freedoms are being further strengthened. The Action Strategy on five priority areas of development of the Republic of Uzbekistan for 2017-2021 served as an important foundation for this.

In the resolution of the Constitutional Court of the Republic of Uzbekistan "On the Program of Measures to be Implemented by the Constitutional Court in Connection with the Adoption of the New Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan": "In recent years, in accordance with the Action Strategy, the improvement of the legal framework for the activities of the Constitutional Court has been reviewed in the context of the new Uzbekistan, bringing to the forefront the need for further enhancement of the Constitutional Court's activities.

Therefore, on April 27, 2021, the new Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan"⁶ was adopted and entered into force. Its adoption marked the beginning of a new era in the activities of the Constitutional Court of the Republic of Uzbekistan.

One of the most important features of the new law is granting citizens and legal entities the right to appeal to the Constitutional Court. It has been emphasized that "International experience

⁵ Benda, Klein. Verfassungsprozessrecht. C. F. Müller Verlag Heidelberg, 2004. S. 147

⁶ Constitutional Law of the Republic of Uzbekistan "On the Constitutional Court of the Republic of Uzbekistan." National Database of Legislation, March 18, 2020, No. 03/20/612/0326. <https://lex.uz/acts/3221763>

in the field of constitutional proceedings demonstrates that the introduction of the institution of appeals to the Constitutional Court by citizens and legal entities is an important mechanism for effectively protecting human rights and freedoms"⁷

Today, the legal basis for the Constitutional Court's consideration of appeals from citizens and legal entities in Uzbekistan consists of the following:

1. Constitution of the Republic of Uzbekistan: One of the innovations introduced in the new version of the Constitution of the Republic of Uzbekistan, adopted on April 30, 2023, is the institution of constitutional complaint. Initially, this institution, which entered our national legislation as an important feature of a democratic state, was included in the Constitutional Law "On the Constitutional Court" adopted in 2017. It was then enshrined as a constitutional norm in Article 133 of the new Constitution. According to this article, citizens and legal entities have the right to apply to the Constitutional Court of the Republic of Uzbekistan with a complaint regarding the constitutionality of a law applied to them by a court in a specific case, if all other means of judicial protection have been exhausted and the court proceedings have been concluded⁸.

2. The Constitutional Law of the Republic of Uzbekistan "On the Constitutional Court" was adopted in a new edition on April 27, 2021. This law serves as the fundamental document regulating the structure, powers, and activities of the Constitutional Court. It establishes the procedures and conditions for petitioning the court. In particular, Article 27 of the law enumerates the subjects entitled to apply to the Constitutional Court. Among these, it is established that citizens and legal entities have the right to petition the Constitutional Court with a complaint to verify the law's compliance with the Constitution if, in their opinion, the law violates their constitutional rights and freedoms, does not conform to the Constitution of the Republic of Uzbekistan, has been applied in a specific case where court proceedings have concluded, and all other means of legal defense have been exhausted.

Article 28 establishes the grounds for considering cases in the Constitutional Court. According to this article, appeals from state bodies and officials who have the right to address the

⁷ Resolution of the Constitutional Court of the Republic of Uzbekistan No. 2 "On the Program of Measures Implemented by the Constitutional Court in Connection with the Adoption of the New Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan." 30.04.2021 <http://www.konstsud.uz/uploads/2021/05/kck-2-con.pdf>

⁸ Constitution of the Republic of Uzbekistan (National Database of Legislation, 01.05.2023, No 03/23/837/0241), <https://lex.uz/docs/-6445145>

Constitutional Court, as well as complaints from citizens and legal entities, serve as the basis for case consideration in the Constitutional Court⁹.

In summary, the Constitutional Court's consideration of appeals from citizens and legal entities plays a crucial role in developing the rule of law in Uzbekistan. This court stands as one of the fundamental institutions for safeguarding citizens' constitutional rights, reinforcing the principle of separation of powers, ensuring the legality of governing bodies, and overseeing the compliance of normative acts with existing constitutional principles.

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⁹ Constitutional Law of the Republic of Uzbekistan "On the Constitutional Court of the Republic of Uzbekistan." National Database of Legislation, 28.04.2021, No 03/21/687/0380. <https://lex.uz/acts/-5391934?ONDATE=28.04.2021%2000#-5400101>