



**SOME MATTERS OF THE CONSTITUTIONAL COURT
PROCEEDINGS**

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Abstract: This article highlights the modern approaches to the concept of constitutional proceeding, its content and theoretical aspects. Also given an analysis of the opinions of foreign scientists, and presented recommendations and proposals for enriching the doctrine of constitutional proceeding.

Key words: constitutional justice, constitutional proceeding, Constitutional court, rules of procedure, the principles of constitutional proceeding.

The analysis of contemporary legal literatures shows that there are various concepts and categories in the description of the procedural forms of the functioning of the constitutional court. In particular, “the constitutional proceedings”, “constitutional judiciary” “constitutional justice”, “constitutional trials”, and so on. The lack of unity among the authors to highlight the above mentioned concepts complicates the understanding of the constitutional proceedings in practice.

At present, the constitutional proceeding is described by scholars in terms of its formal legal position. In particular, M.W. Baglay and B.N. Gabrichidze mean the constitutional court proceedings as the order and procedure for reviewing and resolving issues related to the constitutional court jurisdiction as established by the constitution, constitutional laws and Rule of procedures of Constitutional Court¹.

B. Evdokimov describes the constitutional proceeding as a judicial review of compliance of Constitution laws and the legal acts². It should be noted that the author hereby interprets the only in terms of function of constitutional review of Constitutional court. Apart from the review function of the institutes of the constitutional courts, there are functions such as interpretation (comment), maintaining the balance between authorities and the application of constitutional liability. From that point of view the constitutional court proceedings should be interpreted as a system of procedural actions for the consideration and resolution of cases by the constitutional courts within his competence.

According to the definitions, it can be concluded that constitutional proceeding is a procedure of the consideration and resolving the cases and issues

¹Baglay M.V., Gabrichidze B.N. Constitutional law of the Russian Federation. – M., 1996. – P. 418

²Evdokimov V.B. Constitutional legal proceedings in the United States. – Ekaterinburg, 1996. – P.3.

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within the competence of the Constitutional court established by the constitution, laws and Constitutional court regulation:

The Constitutional Court shall determine the procedure established in legal acts for considering and resolving the cases concerning the activities of the Constitutional Court;

– the constitutional proceeding is an activity of competent subjects associated with the constitutional justice;

– this is the system of legal norms which determine the constitutional procedure.

It should be noted that constitutional proceeding is the procedure of exercising the constitutional supervision. Justice is exercised on civil, criminal, economic and administrative proceedings. According to the chapter 3 of the Constitutional Law of the Republic of Uzbekistan “On the Constitutional Court of the Republic of Uzbekistan” used the term “constitutional proceeding”.

Constitutional proceeding and its order in the Republic of Uzbekistan are regulated by the Constitution of the Republic of Uzbekistan, Constitutional Law of the Republic of Uzbekistan “On the Constitutional Court of the Republic of Uzbekistan” and the Rule of Procedure of Constitutional Court. In the Constitutional Law of the Republic of Uzbekistan “On the Constitutional Court of the Republic of Uzbekistan” in the chapter of constitutional proceeding specified the right to submit the issues to the Constitutional Court, the terms of consideration of cases, the attendance of the participants of the court session, the language of the proceedings, the calling for the trial of the Constitutional Court, the expenses of experts, specialists and translators, acts of the Constitutional Court, the publication of the Constitutional Court and its legal force and the revision of the Constitutional Court’s acts.

The Constitutional Court will start to study the issue no later than seven days from the date of receipt of the materials, if they meet the requirements.

The decision on the issue under consideration is made in the Constitutional Court not later than three months from the date of receipt of the relevant material.

In the session of the Constitutional Court may participate The President of the Republic of Uzbekistan, the Speaker of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, his deputies, the Chairman of the Senate of the Oliy Majlis of the Republic of Uzbekistan, his deputies, the Prime Minister of the Republic of Uzbekistan, the Representative of the Oliy Majlis of the Republic of Uzbekistan for human rights (ombudsman), the Chairman Zhokargy Kenes of the Republic of Karakalpakstan, Chairman of the Supreme Court of the Republic of Uzbekistan, Chairman of the Supreme Judicial Council of the Republic of Uzbekistan, the Procurator-General and Minister of Justice of the Republic of



Uzbekistan. They have the right to state their position on all issues under consideration. Persons with the necessary information or materials, experts and specialists may be summoned to a meeting of the Constitutional Court. In order to further improve the institute of the Constitutional Court, a number of scholars in Uzbekistan have considered that the procedure of the Constitutional Court specified by the Rule of procedures of the Constitutional Court and in the contemporary trends it is necessary to adopt a law on Proceedings of Constitutional Court which determines the procedure and forms of proceedings³. This idea is acceptable. In the period of democratic reforms in Uzbekistan it is necessary to develop and adopt the normative-legal act called “on Proceedings of Constitutional Court” that regulates the procedural issues of the constitutional court proceedings. The issues of constitutional regulation should be clarified in this regard: in the law “on Proceedings of Constitutional Court” should be reflected the procedural forms and other aspects of proceeding, in the Rule of Procedure of Constitutional Court should be fixed the internal organizational issues of the Constitutional Court. The existence of a procedural form will strengthen the independence of the court. The law “On Proceedings of Constitutional Court” was adopted in Georgia on March 21, 1996⁴, in Belarus on January 8, 2014, and in Moldova on June 16, 1995⁵.

When it comes to the constitutional proceedings, principles are the first and most important factor. In legal literatures the principles of the proceedings of Constitutional Court classified: general and special according to the degree of their influence on the regulation of social relations⁶. General principles reflect the general, organizational status and functions of the constitutional justice. For example, the justice of the judiciary, the independence of court and judges, publicity, transparency, the right of parties to dispute and so on. According to the current legislation, the supremacy of Constitution, the independence, collegiality, transparency, the right to dispute and equality of parties, the presumption of constitutionality of normative and legal documents are defined as the fundamental principles of the Constitutional Court.

The Constitutional Court, with all its activities, is intended to ensure the supremacy of the Constitution of the Republic of Uzbekistan, the implementation of the constitutional principle of the priority of human rights and freedom and

³Muhammedzhanov A.Z. Judicial legal reform and the development of constitutional justice in the Republic of Uzbekistan // State and law, 2018, – P.84-92. B.Mirboboev Judicial control over the constitutionality of normative legal acts protecting human rights and freedoms // Bulletin of the Constitutional Court of the Republic of Uzbekistan 2006. №14 P. 21-27.

⁴On constitutional legal proceedings: Law of Georgia, March 21, 1996 // <http://www.constcourt.ge>
The Code of Constitutional Jurisdiction of Moldova of June 16, 1995. The Code of Constitutional Jurisdiction of Moldova of June 16, 1995 No. 502-XIII. http://www.constcourt.md/index_en.html

⁶Constitutional Court proceeding textbook for universities / ed. M.S.Salikov.M. : Norma, 2003. P-416.

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other norms of the Constitution of the Republic of Uzbekistan. The Constitutional Court resolves cases and gives opinions guided exclusively by the Constitution of the Republic of Uzbekistan. The Constitutional Court and its judges are independent in their activities and are subject only to the Constitution of the Republic of Uzbekistan. Judges of the Constitutional Court, making decisions, express their legal position, free from considerations of practical expediency, political inclinations and other extraneous influences. Interference in the activities of the Constitutional Court is not allowed and entails responsibility in accordance with the law. Consideration of cases and decision-making is carried out in the Constitutional Court collectively, consisting of at least four judges. Constitutional legal proceedings are carried out on the basis of competition and equality of the parties. The parties on the basis of competition enjoy equal rights and opportunities to present evidence, make petitions, express opinions, and defend their position on the case under consideration. Decisions of the Constitutional Court are obligatory for all bodies of state power and administration, as well as enterprises, institutions, organizations and public associations, officials and citizens. The requirements of the Constitutional Court for the submission of legal acts, documents and their copies, for giving explanations and consultations on the issues before them are binding for all the bodies to which they are addressed. The full and practical implementation of the principle of publicity guarantees that the effective activity of the Constitutional Court. In order to implement the principle of transparency, a number of developed European countries use different methods. In particular, in accordance with Article 46 of the Spanish Organic Law on the Constitutional Court, if the *amparo*⁷ is applied by a public defender or a prosecutor, the Tribunal Chamber shall issue a complaint in the Official Bulletin. Moreover, there is also a prevalent practice of posting judges' opinions in foreign countries. For example, in the Federal Republic of Germany, determined the possibility of representing opinions of members of the Federal Constitutional Court in the law of 21 December 1970⁸. The law provides for the practice of publishing a proportionate "for" and "against" vote. Article 164 of the Spanish constitution fixed that the decisions of the Constitutional Court, and the dissenting opinions of the judges published in the official bulletin (*Le Bolet's* official de Estado). Also, according to the law of Russian Federation On Constitutional Court, if a minority has voted for the adoption of a judgment or decision on the matter considered by the RF

⁷ *Amparo*, generally granted by a supreme or constitutional court, serves a dual protective purpose: it protects the citizen and their basic guarantees, and protects the constitution itself by ensuring that its principles are not violated by statutes or actions of the state that undermine the basic rights enshrined therein. It resembles, in some respects, constitutional remedies such as the *tutela* available in Colombia, the writ of security (*Mandado de Segurança*) in Brazil and the constitutional complaint (*Verfassungsbeschwerde*) procedure found in Germany.

⁸ Benda E., Klein E *Verfassungsprozessrecht* – Bonn, 2001



Constitutional Court, or if there is a minority issue in the voting for the substantiated part of the decision, the judge shall have the right to write his dissenting opinion. In this case, the written dissatisfaction of the judge should be summarized in the case materials and published in the Russian Constitutional Court Bulletin. The search for information related to the functioning of the constitutional courts, achieving freedom of expression allows the impartial assessment of the activities of these bodies.

Based on the above, it is proposed that Article 33 of the Law of the Republic of Uzbekistan "On the Constitutional Court of the Republic of Uzbekistan" to state as follows:

Resolutions, conclusions and other acts of the Constitutional Court *as well as the dissenting opinions of judges about resolutions and conclusions* are published in the mass media and on the official website of the Constitutional Court.

The official sources of publication of the decisions of the Constitutional Court are the Assembly of Legislation of the Republic of Uzbekistan, the newspapers Xalk Suzi and Narodnoe Slovo, the Bulletin of the Constitutional Court of the Republic of Uzbekistan, and the National Legislation Database of the Republic of Uzbekistan.

The decision of the Constitutional Court shall enter into force on the day of its official publication.

The decision of the Constitutional Court is final and not subject to appeal. In addition, to ensure the publicity and transparency of the activity of Constitutional court broadcasting of sessions plays important role. The Government is committed to increasing transparency and providing the public with information on the operation of public services - the justice system is no exception. Public understanding of how the courts work, is critical to confidence in the system and to its effectiveness in ensuring that justice is done. These measures will help promote that legal culture. The opportunity of watching broadcasting and the records should be available to every person. This practise is widespread in Germany, Russia, France and other developed countries. The introduction of this rule in our national legislation enables to ensure the publicity. So it's proposed to introduce the following changes to the article 40 of Rules of Procedure of Republic of Uzbekistan.

Broadcast the sessions of Constitutional court in the information and telecommunication network – The Internet is allowed on the initiative of the Constitutional Court of Republic of Uzbekistan or with the permission of the Constitutional Court of the Republic of Uzbekistan at the request of the persons involved in the case present at the meeting.



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To conclude, the improvement of the proceedings at the constitutional court enables to strengthen the independence of Constitutional Court and enhance the guarantees for the protection of the rights and freedoms of citizens.