

КОНСТИТУЦИОННОЕ ПРАВО. АДМИНИСТРАТИВНОЕ ПРАВО И ПРОЦЕСС
CONSTITUTIONAL LAW. ADMINISTRATIVE LAW AND PROCESS

IRSTI 10.15.33
UDC 342.5

10.51889/2959-6181.2025.82.4.003

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CONSTITUTIONAL COURTS OF UZBEKISTAN AND KAZAKHSTAN:
COMPARATIVE ANALYSIS OF STATUS AND COMPETENCE

Abstract

The article presents a comparative analysis of the legal status and competence of the Constitutional Courts of the Republic of Kazakhstan and the Republic of Uzbekistan in the context of modern constitutional and legal reforms. The results presented in the work are based on a comprehensive study of regulatory legal acts, doctrinal sources and practices of the constitutional control bodies of both countries. The author reveals significant institutional differences between two models: Kazakhstan, focused on the development of judicial constitutionalism, strengthening the human rights function and expanding citizens' access through the mechanism of an individual constitutional complaint, and Uzbek, which retains elements of the classical judicial vertical with indirect, limited citizens' access to constitutional control procedures.

Particular attention is paid to the analysis of the influence of political and legal factors on the processes of the formation of the judiciary and the institutional independence of constitutional control bodies. It is shown that in Kazakhstan, despite significant achievements in the development of mechanisms for the protection of constitutional rights, the problems of the execution of decisions of the Constitutional Court, the integration of its legal positions into judicial practice and the risks of selective constitutional activism remain. Uzbekistan has identified challenges such as the absence of a direct constitutional complaint, the dependence of the appeal mechanism on the discretion of the courts and the limited competence of the Constitutional Court in protecting the rights of specific citizens.

Comparative analysis demonstrates that the further development of the constitutional justice systems of Kazakhstan and Uzbekistan requires strengthening guarantees of judicial independence, improving appeal procedures, expanding the human rights function of constitutional control and improving the level of constitutional culture. The findings can serve as a basis for improving the mechanisms for ensuring the rule of the Constitution and protecting human rights in Central Asian countries.

Key words: constitution, human rights, constitutional justice, constitutional control, constitutional court, constitutional reform, constitutional complaint.

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ӨЗБЕКСТАН МЕН ҚАЗАҚСТАННЫҢ КОНСТИТУЦИЯЛЫҚ СОТТАРЫ: МӘРТЕБЕСІ МЕН ӨКІЛЕТТІГІНІҢ САЛЫСТЫРМАЛЫ ТАЛДАУЫ

Аңдатпа

Бұл мақала Қазақстан Республикасы мен Өзбекстан Республикасының Конституциялық соттарының құқықтық мәртебесі мен өкілеттігін қазіргі конституциялық-құқықтық реформалар контекстінде салыстырмалы талдауға арналған. Зерттеу нәтижелері екі елдің конституциялық бақылау органдарының нормативтік-құқықтық базасын, доктриналық дереккөздерін және құқық қолдану тәжірибесін кешенді зерттеуге негізделіп отыр. Автор екі модельдің маңызды институционалдық айырмашылықтарын айқындайды: Қазақстандағы модель – сот конституционализмін дамытуға, құқық қорғау функциясын күшейтуге және азаматтарға жеке конституциялық шағым механизмі арқылы қолжетімділікті кеңейтуге бағытталған; ал Өзбекстан моделінде – классикалық соттық вертикаль элементтері сақталып, азаматтардың конституциялық бақылау рәсімдеріне тікелей қатысу мүмкіндігі шектеулі.

Мақалада судьялық корпус қалыптастыру үдерістеріне және конституциялық бақылау органдарының институционалдық тәуелсіздігіне саяси-құқықтық факторлардың ықпалына ерекше назар аударылады. Қазақстанда конституциялық құқықтарды қорғау тетіктерін жетілдіру бойынша елеулі нәтижелерге қарамастан, Конституциялық сот шешімдерінің орындалуы, оның құқықтық ұстанымдарының сот тәжірибесіне интеграциясы және селективті конституциялық белсенділік тәуекелдері сияқты мәселелердің бар екендігі көрсетілген. Өзбекстанда тікелей конституциялық шағым институтының болмауы, жүгіну механизмінің соттардың қалауы мен бағалауына тәуелділігі және Конституциялық соттың жеке азаматтардың құқықтарын қорғаудағы құзыретінің шектеулілігі негізгі сын-қатерлер ретінде анықталған.

Салыстырмалы талдау Қазақстан мен Өзбекстандағы конституциялық әділет жүйелерін одан әрі дамыту үшін сот тәуелсіздігі кепілдіктерін күшейту, өтініш беріп жүгіну рәсімдерін жетілдіру, конституциялық бақылаудың құқық қорғау функциясын кеңейту және конституциялық мәдениетті арттыру қажеттігін көрсетеді. Алынған нәтижелер Орталық Азия елдерінде Конституцияның үстемдігін және адам құқықтарын қамтамасыз ету тетіктерін жетілдіруге негіз бола алады.

Түйін сөздер: конституция, адам құқықтары, конституциялық әділет, конституциялық бақылау, конституциялық сот, конституциялық реформа, конституциялық шағым.

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КОНСТИТУЦИОННЫЕ СУДЫ УЗБЕКИСТАНА И КАЗАХСТАНА: СРАВНИТЕЛЬНЫЙ АНАЛИЗ СТАТУСА И КОМПЕТЕНЦИИ

Аннотация

Статья представляет сравнительный анализ правового статуса и компетенции Конституционных судов Республики Казахстан и Республики Узбекистан в контексте современных конституционно-правовых реформ. Изложенные в работе результаты основаны на комплексном исследовании нормативных правовых актов, доктринальных источников и практики органов конституционного контроля обеих стран. Автор выявляет существенные

институциональные различия двух моделей: казахстанской, ориентированной на развитие судебного конституционализма, усиление правозащитной функции и расширение доступа граждан посредством механизма индивидуальной конституционной жалобы, и узбекской — сохраняющей элементы классической судебной вертикали с опосредованным, ограниченным доступом граждан к процедурам конституционного контроля.

Особое внимание уделено анализу влияния политико-правовых факторов на процессы формирования судейского корпуса и институциональную независимость органов конституционного контроля. Показано, что в Казахстане, несмотря на значительные достижения в развитии механизмов защиты конституционных прав, сохраняются проблемы исполнения решений Конституционного суда, интеграции его правовых позиций в судебную практику и риски селективного конституционного активизма. В Узбекистане выявлены такие вызовы, как отсутствие прямой конституционной жалобы, зависимость механизма обращения от усмотрения судов и ограниченная компетенция Конституционного суда в вопросах защиты прав конкретных граждан.

Сравнительный анализ демонстрирует, что дальнейшее развитие систем конституционной юстиции Казахстана и Узбекистана требует усиления гарантий судебной независимости, совершенствования процедур обращения, расширения правозащитной функции конституционного контроля и повышения уровня конституционной культуры. Полученные выводы могут служить основой для совершенствования механизмов обеспечения верховенства Конституции и защиты прав человека в странах Центральной Азии.

Ключевые слова: конституция, права человека, конституционная юстиция, конституционный контроль, конституционный суд, конституционная реформа, конституционная жалоба.

Introduction

The institution of constitutional justice occupies a key place in the architecture of the modern state, based on the principles of the supremacy of the Constitution, the protection of human rights and the effective functioning of the system of checks and balances. In the countries of Central Asia, primarily in Uzbekistan and Kazakhstan, the development of constitutional control bodies has acquired particular significance against the backdrop of political and legal transformations of the last decade. The constitutional reforms carried out in Uzbekistan in 2017-2023, as well as the large-scale constitutional modernization of Kazakhstan in 2022, including the restoration of the Constitutional Court, significantly changed the institutional logic of the legal system and increased the role of judicial constitutionalism. Despite the common historical and legal prerequisites, the models of constitutional control in Uzbekistan and Kazakhstan developed differently. Uzbekistan has retained the Constitutional Court since independence, gradually expanding its powers and strengthening the human rights component. In Kazakhstan, the first model of the Constitutional Court (1992-1995) was replaced by the Constitutional Council, which functioned until 2022 and was deprived of direct jurisdiction over citizens' appeals. Only after the January events of 2022 and the ensuing referendum did Kazakhstan return to the classic Kelsen model, restoring the Constitutional Court with expanded competence and mechanisms for individual appeals. These changes make it possible today to compare two independent institutional structures in the dynamics of their democratic development. Studies of constitutional control in Uzbekistan in recent years are concentrated around the evolution of the status of the Constitutional Court, the expansion of its competence and the introduction of a constitutional complaint [1; 2]; Uzbek doctrine analyzes the legal foundations of judicial and constitutional control, the distribution of powers between the courts of general jurisdiction and the Constitutional Court [3]; considering the effectiveness of the Constitutional Court [4; 5; 6].

In Kazakhstan, the modern body of work is already focusing on a new model of the Constitutional Court, operating from January 1, 2023. The Constitutional Court is justified as a transitional institution from a quasi-judicial body (Constitutional Council) to a full-fledged Constitutional Court, when the novel of direct appeal of citizens is clearly distinguished, the load is analyzed (thousands of appeals per year) and the risks are indicated: maintaining political dependence on the procedure for appointing

judges and potential formalization of the institution in the absence of effective implementation of decisions and parliamentary control [7; 8; 9], the stages of the development of constitutional control in Kazakhstan are being reconstructed [10].

The purpose of the article: to conduct a comparative legal analysis of the legal status, competence and effectiveness of the Constitutional Courts of Uzbekistan and Kazakhstan, revealing their similarities, differences and prospects for further development. The object of the study is the institution of constitutional justice of the two states; the subject is the norms of constitutional law governing the organization and activities of the relevant courts, as well as the practice of their functioning. The research presented contributes to a greater understanding of regional models of constitutional justice and identification of factors that influence their institutional sustainability and practical effectiveness.

Materials and methods

The research materials are normative legal acts of the Republic of Kazakhstan and the Republic of Uzbekistan, including the Constitution of the Republic of Kazakhstan of 1995, the Constitution of the Republic of Uzbekistan of 1992 (as amended by the reforms of 2017-2023), the Constitutional Law of the Republic of Kazakhstan "On the Constitutional Court of the Republic of Kazakhstan" of 2022, the Law of the Republic of Uzbekistan "On the Constitutional Court of the Republic of Uzbekistan," the regulations of the constitutional courts of both countries, as well as official decisions of the Constitutional Court of the Republic of Kazakhstan and the Constitutional Court of the Republic of Uzbekistan. As an empirical basis, regulatory decisions of the Constitutional Court of the Republic of Kazakhstan 2023-2024, decisions of the Constitutional Court of Uzbekistan on constitutional complaints and control over regulations, as well as data on the number and structure of appeals, were used.

The theoretical basis is scientific research in the field of constitutional control, constitutional justice and judicial constitutionalism. A set of scientific methods was used in the study. The historical and legal method was used to analyze the genesis of constitutional control bodies in Uzbekistan and Kazakhstan, including the stages of development: the period of the initial creation of independent constitutional courts; the transformation stage in Kazakhstan (1995-2022) through the Constitutional Council; the stage of modern reform 2022 - 2023. The formal-legal method was used to analyze the content of constitutional norms, laws on constitutional courts, procedures for considering appeals, the procedure for forming the composition of judges, as well as the legal force of decisions of constitutional courts. Comparative legal (comparative) method as the main research method aimed at comparing the status and organizational structure of the Constitutional Court of Kazakhstan and the Constitutional Court of Uzbekistan; scope of competence, including access to an individual constitutional complaint; mechanisms for monitoring bills, international treaties and acts of authorities; features of law enforcement of decisions.

The dialectical method is used to identify the relationship between the norms of constitutional legislation, the real practice of their application and the political and legal conditions for the functioning of constitutional control bodies. The method of content analysis of regulatory decisions is used to identify recurring legal positions, trends in judicial interpretations, dynamics of consideration of individual complaints (in Kazakhstan since 2023, in Uzbekistan - since the introduction of elements of a constitutional complaint). Content analysis is aimed at identifying the quantitative and qualitative characteristics of acts of constitutional control. The method of institutional analysis was used to assess the actual effectiveness of the activities of constitutional courts and their place in the system of state power, in particular, the impact of the procedures for appointing judges on the independence of the court, the role of the institution of individual complaint, the degree of consideration of decisions of constitutional control bodies in law-making and law enforcement. The method made it possible to determine to what extent institutional conditions support or limit the democratic potential for constitutional control.

A comprehensive combination of these methods provides an opportunity for a comprehensive study of the institution of constitutional justice and allows you to identify regulatory differences in constitutional control models; actual efficiency of their functioning; the influence of the political and legal environment on the independence and sustainability of constitutional justice bodies.

Results and discussion

The results of the study demonstrate that the transformation of constitutional control institutions in Uzbekistan and Kazakhstan took place along various trajectories due to the political and legal specifics of states.

In Kazakhstan, institutional development went through three stages: 1992-1995: the functioning of the first Constitutional Court, which had the status of the highest judicial body to protect the Constitution; 1995 - 2022: the period of activity of the Constitutional Council, based on the French model of preventive control and devoid of an individual complaint mechanism; from 2023: the restoration of the Constitutional Court, which is seen as a return to a full-fledged Kelsen model.

In Uzbekistan, on the contrary, the institutional line has been continuous: the Constitutional Court has been operating since the 1990s, but its powers have expanded significantly after the reforms of 2017-2023. The introduction of elements of a constitutional complaint, increased control over regulatory legal acts and a revision of appeal procedures indicate a gradual transition to a model of expanded judicial constitutional control.

Comparative analysis showed that the models for the formation of the composition of judges differ significantly. In Kazakhstan, judges are appointed by three subjects: the President (4 judges), the Senate (3 judges), the Mazhilis (3 judges), and the President, with the consent of the Senate, appoints the Chairman of the Constitutional Court. Such a system emphasizes the strong role of the head of state, which reflects the peculiarities of the presidential model of governance [11].

In Uzbekistan, the appointment mechanism is also distributed among various bodies, but the share of parliament is higher than in Kazakhstan. The Uzbek model assumes a more balanced participation of the branches of government, which, according to Uzbek authors, is associated with an emphasis on strengthening the institutional stability of the court after reforms.

Unlike Kazakhstan, where the President of the Republic of Kazakhstan (appointing the Chairman and four judges) plays a decisive role in the formation of the Constitutional Court, the model of Uzbekistan demonstrates a more even distribution of powers between the branches of government. This directly follows from the norms of the Constitution of the Republic of Uzbekistan (revised after the reforms of 2023) and the Law "On the Constitutional Court of the Republic of Uzbekistan," which enshrine the multi-entity formation of the composition of the court and the system of mutual restrictions on the appointment of judges. According to article 109 of the Constitution of the Republic of Uzbekistan, the Constitutional Court is formed by the Legislative Chamber and the Senate of the Oliy Majlis, the President of the Republic of Uzbekistan, which already reflects the principle of institutional balance. The distribution of powers (at the level of the Constitution) is presented as follows. The President of the Republic of Uzbekistan makes proposals on the appointment of the Chairman of the Constitutional Court; participates in the procedure for forming the composition of the court on a par with parliament, but does not have dominant influence.

The Senate of the Oliy Majlis approves the candidacies of judges (including the chairman) submitted by the President; independently appoints part of the judges according to their own quota; participates in the formation of qualification requirements for judges. The Legislative Chamber of the Oliy Majlis appoints judges by parliamentary quota; participates in the procedure for consideration of candidates submitted by the President.

Thus, the formation of the Constitutional Court is distributed between the two chambers of parliament and the President, while in Kazakhstan 4 out of 11 judges are represented by the presidential quota, and the chairman of the court is appointed by the President with the consent of the Senate alone. More detailed mechanisms for the distribution of powers are enshrined in the Law "On the Constitutional Court of the Republic of Uzbekistan" (as amended after the reforms of 2021-2023)¹ The key provisions of the Act reflect the status of the Constitutional Court. The Constitutional Court consists of the President, Deputy President and judges. Judges are appointed by the Senate of the Oliy Majlis,

¹Law "On the Constitutional Court of the Republic of Uzbekistan" // <https://lex.uz/ru/docs/5391999?ONDATE=13.01.2024>

but nominations can be proposed by the President, as well as committees of the chambers of parliament; some judges are nominated by the Legislative Chamber, which strengthens the parliamentary component. The appointment procedure includes a mandatory consideration of qualification criteria, as well as discussions in the relevant committees of both chambers. The president does not wield exclusive or predominant influence because he cannot single-handedly appoint any judge; cannot appoint the President of the Constitutional Court without the consent of the Senate; does not define the rules of court. These norms create an institutional model in which parliament has the casting vote and the President has the initiating influence but no control over the appointment process.

The institutional logic of the reforms shows that the Uzbek model is more balanced. The reforms of 2017-2023 in Uzbekistan were aimed at strengthening parliamentary control and increasing the independence of the judiciary. The doctrine of Uzbek researchers emphasizes that the redistribution of powers towards parliament was due, firstly, to the need to increase the legitimacy of the Constitutional Court, since the parliamentary approval of judges ensures the representativeness and political neutrality of the process; secondly, the requirements of international organizations (Venice Commission), since the recommendations provided for a multicenter structure for the appointment of judges as a guarantor of independence; thirdly, the transition from presidential dominance to strengthening parliament, because the reforms provide for the development of the principle of the supremacy of parliament in the system of separation of powers.

Unlike Kazakhstan, where the appointment of judges of the Constitutional Court is partially concentrated in the hands of the President (4 judges + the Chairman), in Uzbekistan the appointment relies on the parliamentary majority, the participation of both chambers, an open procedure for discussing candidates, and the limited powers of the President in the formation of the court. These elements, according to Uzbek researchers, are directly aimed at minimizing political pressure and strengthening the institutional stability of the court, which is especially important after the constitutional reform of 2023.

An important result of the study is the different positioning of constitutional courts in the system of public power. In Kazakhstan, the Constitutional Court is not included in the judicial branch of government. In Uzbekistan, the Constitutional Court is part of the judicial system, preserving the traditional signs of a judicial body of constitutional control. This reflects a more classical model of the structure of the justice system.

For our study, it is important to compare the competence and powers of the constitutional control bodies of Uzbekistan and Kazakhstan. One key difference is the mechanism of individual treatment. In Kazakhstan, an individual constitutional complaint has been introduced since 2023; its application is rapidly expanding, which indicates a high demand for the mechanism among citizens. An individual constitutional complaint is one of the central novelties of constitutional reform and is a qualitatively new mechanism for the direct protection of the constitutional rights of citizens. Its normative consolidation is contained in the Constitution of the Republic of Kazakhstan and the Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan". Accordingly, the right of a citizen to apply to the Constitutional Court is enshrined directly in the Basic Law. Article 71 of the Constitution of the Republic of Kazakhstan (revision after the reform of 2022) regulates: the Constitutional Court considers citizens' appeals to verify the regulatory legal acts of the Republic of Kazakhstan, if such acts affect the constitutional rights and freedoms of a citizen. From now on, the circle of those who can apply to the Constitutional Court has been significantly expanded, primarily at the expense of citizens (to check the regulatory legal acts of the Republic of Kazakhstan that directly affect their rights, in accordance with the constitutional law). This confirms that the individual complaint has become part of the constitutional defense mechanism since the reconstitution of the Constitutional Court.

The content and procedure of an individual complaint are detailed in the Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan"². Let's highlight the most important positions.

² Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan" dated November 5, 2022 No. 153-VII SAM // <https://adilet.zan.kz/rus/docs/Z2200000153>

1) Who has the right to appeal (Article 45 of the Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan"): a citizen's appeal is allowed, even if a judicial act has been issued that has entered into legal force (paragraph 1 of paragraph 2 of Article 45). This means that a constitutional complaint does not depend on the presence or absence of litigation; it is allowed to file a complaint after the completion of the entire judicial procedure, which expands citizens' access to protection.

2) Subject of individual complaint. In accordance with the law, a citizen has the right to ask the Constitutional Court to check: the constitutionality of a normative legal act; if that act directly violates or is likely to violate its constitutional rights. Thus, the Kazakhstan model approaches the European constitutional courts (Germany, Spain), and not to the Soviet system of abstract control.

3) The law establishes the admissibility of a complaint only if there is a direct influence of the norm on constitutional rights. This filter does not weaken the right to complain, but reduces the risk of abuse and massive unreasonable appeals.

The right to file a complaint is not limited to the stage of the trial. This has formed a high interest of citizens: any norm that worsens the legal status of a person can be challenged directly.

The Constitutional Court can even check the regulatory rulings of the Supreme Court, which strengthens the human rights role of the complaint. This approach is unique for post-Soviet countries, most of which do not allow verification of the acts of the highest courts. The significance of the individual complaint for judicial constitutionalism is extremely important. The Constitutional Court became the final mechanism for protecting rights; a body that purges the legal system of unconstitutional norms; central to a new model of judicial constitutionalism. For the first time in the history of Kazakhstan, a citizen received a direct right to apply to the constitutional control body; a complaint is allowed even after the end of the judicial procedure (paragraphs 1, paragraph 2 of Article 45 of the Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan"); the subject of the complaint can be all regulations, including acts of the Supreme Court. The new model dramatically increased the volume of appeals, and the Constitutional Court became the first-line body for protecting constitutional rights, which is a fundamental change from the previous Constitutional Council.

At the same time, it should be pointed out the problems of implementing the institution of constitutional complaint in the Republic of Kazakhstan. Despite the importance of introducing an individual constitutional complaint from 2023, its functioning faces a number of conceptual and practical difficulties. Analysis of the Constitution of the Republic of Kazakhstan, the Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan" revealed the following problematic blocks.

1. The narrow subject of the complaint: checking only the normative legal acts, and not judicial acts. An individual constitutional complaint in Kazakhstan allows challenging only normative legal acts affecting constitutional rights (Article 71 of the Constitution; Article 45 of the Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan"). This means that a citizen cannot appeal the judicial act itself, even if he considers it violating the Constitution; The Constitutional Court does not check judicial errors, but only the constitutionality of the norm; if the violation arose from an incorrect interpretation of the norm by the court, the Constitutional Court cannot intervene. This approach limits the human rights potential of the complaint, especially in cases where the violation does not arise from the law, but from the practice of its application.

It is important to note the high threshold of admissibility due to the need to prove a direct impact of rights. According to Art. 45 of the Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan", the complaint is accepted only if the applicant proves the direct effect of the norm on his rights; the presence of legal uncertainty created by the norm; no other methods of protection. In practice, this raises two problems: a significant proportion of complaints are rejected at the admissibility stage; claimants may not always be legally able to argue directly for their rights. In fact, the filter system is strictly applied, which reduces the availability of the mechanism.

The absence of the institution of representative (public) complaint should not be overlooked either. In Kazakhstan, only a citizen whose rights are affected can file a complaint. This excludes the possibility of applying to NGOs in the interests of an indefinite number of people; complaints on

systemic problems (ecology, social rights, discrimination); collective complaints or publication complaints (as in Germany or Spain). Many norms that violate the rights of large groups do not reach the Constitutional Court, since citizens cannot initiate an appeal in an abstract form.

The still unresolved problem remains the limited access to the Constitutional Court through the courts of general jurisdiction and specialized courts. Although the courts have the right to appeal (paragraphs 3 and 4 of Article 71 of the Constitution of the Republic of Kazakhstan) in practice, the courts rarely file appeals with the Constitutional Court; there is no formed practice of court requests; courts are not always ready to recognize the constitutional and legal uncertainty of the norm. All this reduces the effectiveness of the mediated mechanism of constitutional control, important for the protection of rights.

The political and institutional problem, which focuses on dependence on the procedures for forming the Constitutional Court, cannot be ignored either. The dominant role of the President in the formation of the composition of the constitutional justice body can create risks, firstly, the politicization of the institution; secondly, reducing the objectivity of the Constitutional Court in cases affecting the interests of the executive branch; thirdly, selective constitutional activism - selective activity of the Constitutional Court, in which it actively uses its powers only in politically safe cases, avoiding sensitive cases affecting the interests of the authorities. In addition to these factors, it should be noted such as limited awareness of the population and the legal complexity of the procedure. Despite the high demand for the mechanism, many citizens do not understand in what cases a constitutional complaint is filed; the content of the complaint requires high legal training; legal aid in this area is poorly developed. Due to these factors, the likelihood of an increase in the percentage of rejected complaints at the admissibility stage increases.

Also, unlike such states as Germany, Kazakhstan does not yet have guiding explanations on constitutional complaints, methodological recommendations for courts, and a uniform doctrinal position on admissibility criteria. This may give rise to fragmentation of practice and instability of legal approaches.

The Constitution of the Republic of Uzbekistan does not provide for the direct authority of citizens to submit an individual constitutional complaint. The Constitution defines the subjects of the President's appeal, the Legislative Chamber of the Oliy Majlis, the Senate, the Cabinet of Ministers, the Prosecutor General, the Commissioner for Human Rights, the Supreme Court, the Khokimiyat and other authorities (depending on competence). Citizens as direct subjects of appeal are not included in the Constitution, which is the first systemic difference from the European model. The current model provides that a citizen can apply only through a court or state body that will consider his case and, if necessary, submit a request to the Constitutional Court. Such indirect access means that a citizen cannot initiate a test of the constitutionality of a norm himself; a court or body may refuse to apply to the Constitutional Court if it sees no reason; the issue of verification depends on the discretion of third parties, and not on the need to protect the rights of the applicant.

At the same time, the law provides that when considering a specific case in court, if a citizen believes that the applied norm of the law is contrary to the Constitution, he can apply for a request to be sent to the Constitutional Court. However, the court is not obliged to satisfy the petition, the judge decides alone and most often the courts refuse to make requests.

In Uzbekistan, direct appeal of citizens to the Constitutional Court is not provided and a citizen cannot challenge court decisions; a citizen cannot challenge the normative legal acts on his own; there are no deadlines for considering applications for transferring the case to the Constitutional Court; there is no mechanism for appealing court decisions on refusal to send a request. Strictly speaking, the Uzbek model is essentially a procedural filter, not a human rights mechanism.

The limited subjects of the appeal are confirmed by the doctrine: Uzbek scientists emphasize that in Uzbekistan there is no full-fledged institution of individual complaint; The Constitutional Court is not a body for the protection of citizens' rights in the literal sense; the mediation mechanism restricts access to justice; the 2023 upgrade did not lead to the introduction of a direct complaint, despite discussions.

The limited competence of the Constitutional Court on citizens' complaints is manifested in the fact that even if a citizen's application reaches the Constitutional Court through the court, the court considers only the constitutionality of the norm, but not judicial errors, misinterpretation of the law, the factual circumstances of the case, which, accordingly, deprives the complaint of the status of a full-fledged remedy.

Despite the reforms of 2017-2023, Uzbekistan has not implemented a full-fledged model of an individual constitutional complaint. The reasons for this are normative, institutional and political-legal in nature. Uzbekistan retains a model inherited from the late Soviet system, where constitutionality control was an oversight of regulations rather than a means of protecting specific citizens. Therefore, the legislator is focused on abstract control, and not on individual protection.

As practice shows, there is a fear of overloading the court, which to a certain extent justifies the need to filter appeals in the form of mandatory appeal through courts of general jurisdiction, and not directly.

In this context, a conservative approach of the judicial system to the revision of judicial acts is seen. The Uzbek judicial system, as a rule, is hierarchical, focused on the sustainability of judicial acts, and avoids creating a parallel super-cassation level.

As for political and institutional reasons, the Constitutional Court of Uzbekistan is not separated from the judicial branch of government, is built into the vertical of the judicial system, and depends on the judicial corps in terms of personnel policy. There is a preservation of administrative control over appeals. Courts of general jurisdiction play the role of a filter and mediator, to some extent and a controller of citizens' access to the Constitutional Court. This is consistent with the logic of gradual reform, where the state seeks to expand access to justice, but in a controlled form.

The regulatory framework of Uzbekistan has the potential for evolution: the gradual expansion of the circle of subjects of circulation, the introduction of new forms of complaint and the adjustment of legislation will bring the system closer to the model in force in Kazakhstan and European countries. During the period of recent reform, Kazakhstan has demonstrated a more rapid development of the human rights function of constitutional justice.

With regard to the authority to control regulatory acts, we note that the Constitutional Courts of Uzbekistan and Kazakhstan have the right to preliminary control of laws, subsequent control, and verification of international treaties. In Kazakhstan, a significant novelty is the control of acts of the Supreme Court, which is reflected in the decision of the Constitutional Court on the regulatory decision of the Supreme Court of 31.03.2016 (on genetic examination), where the constitutional control body for the first time canceled the judicial explanation of the Supreme Court³.

Until 2023, the Supreme Court actually had a quasi-legislative function. Now the Constitutional Court has become a real deterrent mechanism. The decision of the Constitutional Court on the Regulatory Decision of the Supreme Court of 31.03.2016 is the most important stage in the development of Kazakhstani judicial constitutionalism. It established the limits of judicial rule-making, ensured the effective protection of citizens' rights, increased the role of the Constitutional Court as an independent institution, and implemented such a novelty of constitutional reform as control over the acts of the Supreme Court.

In Uzbekistan, the practice of such decisions is more limited and less confrontational.

Practice has demonstrated how the historical weakness of the institution of constitutional control of Kazakhstan leads to the fact that :1) the judicial system is not focused on the Constitutional Court, and on the Supreme Court, 2) constitutional control is perceived more as a political institution, and not as a judicial arbitrator, 3) decisions of a quasi-judicial body of constitutional control remain without a real enforcement mechanism, devoid of monitoring, sanctions, revision of judicial acts, 4) constitutional norms are not directly applied by the courts, there is formalism, legal positivism, and lack of constitutional argumentation.

³ On consideration for compliance with the Constitution of the Republic of Kazakhstan of the fifth paragraph 3 of the regulatory decision of the Supreme Court of the Republic of Kazakhstan dated March 31, 2016 No. 2 "On the practice of the courts of applying legislation on the adoption (adoption) of children" Regulatory decision of the Constitutional Court of the Republic of Kazakhstan dated June 1, 2023 No. 18-NP// <https://adilet.zan.kz/rus/docs/S2300000018>

In Uzbekistan, the effectiveness of enforcement was higher, since the decisions of the Constitutional Court are integrated into the practice of courts of general jurisdiction, but the general legal culture of constitutional control remains in the development stage.

Conclusion

The analysis allows us to conclude that the institutional architecture of constitutional control in Kazakhstan and Uzbekistan is developing along two different trajectories due to historical features, the legislative framework and the political and legal context. After its restoration in 2023, the Constitutional Court of Kazakhstan embodies the model of enhanced judicial constitutionalism, focused on direct protection of citizens' rights, expanded competence and active influence on the development of the legal system. The introduction of an individual constitutional complaint, the possibility of checking the acts of the Supreme Court, as well as the normative and doctrinal strength of the legal positions of the Constitutional Court allow us to talk about a qualitative change in the nature of constitutional control and a return to the Kelsen nature of this institution.

Uzbekistan, on the other hand, maintains a model of constitutional control built into the judicial system and based on indirect access of citizens. Despite the important reforms of 2017-2023, the Constitutional Court remains limited in jurisdiction, and the mechanism of citizens' appeal through the courts involves a significant filter that does not correspond to the European model of individual complaint. This reduces the potential of the court as a human rights mechanism and limits its influence on the development of the legal space.

Both systems face institutional challenges. Kazakhstan - with the problem of the execution of decisions of the Constitutional Court, insufficient integration of its legal positions into judicial practice and the risks of selective constitutional activism due to the dominant role of the President in the formation of the composition of the court. Uzbekistan - with the absence of a direct constitutional complaint, a limited circle of subjects of appeal, insufficient autonomy of the court and the traditional dominance of judicial formalism.

A comparison of models shows that the effectiveness of constitutional control depends not only on the scope of powers, but also on the quality of law enforcement, the degree of independence of the court, the availability of conversion mechanisms and the level of constitutional culture in general. Based on this, it can be concluded that the further development of the constitutional courts of Kazakhstan and Uzbekistan requires improving the procedures for the formation of the judiciary, strengthening guarantees for the execution of decisions, increasing the openness and transparency of the activities of constitutional justice bodies, as well as expanding the mechanisms for the participation of citizens.

Thus, strengthening the constitutional justice system in both states is a condition for ensuring the supremacy of the Constitution, protecting human and civil rights and freedoms, as well as the formation of a stable legal statehood.

Authors' contributions

Adam Ye. carried out the development of the research concept, formulated the scientific problem, the purpose and objectives of the article, and also performed a comparative legal analysis of the status and competence of the Constitutional Courts of the Republic of Kazakhstan and the Republic of Uzbekistan.

Mukhamedzhanov O.Z. conducted an analysis of regulatory legal acts and law enforcement practice of the constitutional control bodies, prepared sections on the effectiveness of the constitutional courts and the problems of the execution of their decisions. The authors jointly participated in the interpretation of the results, discussion of the conclusions, and final editing of the article.

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МРНТИ 10.15.23

10.51889/2959-6181.2025.82.4.004

УДК 342.71: 342.715 (574)

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ПРОБЛЕМЫ ПРАКТИЧЕСКОЙ РЕАЛИЗАЦИИ ПОЛОЖЕНИЙ ЗАКОНОДАТЕЛЬСТВА, РЕГУЛИРУЮЩЕГО ПРЕКРАЩЕНИЕ И ИЗМЕНЕНИЕ ГРАЖДАНСТВА РЕСПУБЛИКИ КАЗАХСТАН

Аннотация

В данной статье рассматриваются актуальные вопросы практической реализации законодательства Республики Казахстан о прекращении и изменении гражданства. Автор отмечает усиление интеграционных процессов в современном мире и на территории Содружества Независимых Государств, которые влияют на миграцию и правовое положение граждан с изменяющимся статусом. Основой для исследования является Конституция Республики Казахстан, Закон о гражданстве и ратифицированные международные договоры. Целью работы является выявление правовых и организационных проблем при прекращении и смене гражданства с разработкой соответствующих рекомендаций, основанных на международных стандартах. Анализ показывает необходимость дальнейшего совершенствования национального законодательства в различных аспектах, включая уточнения процедурных стандартов, определение «существенных обязательств» и восполнение пробелов обеспечения прав человека. Рассматриваются возможные методы решения этих проблем путём координации действий государственных органов, укрепления международного сотрудничества и гармонизации правовых норм в рамках СНГ. Результаты данного исследования представляют интерес как для теории права, так и для практики его применения. Они способствуют повышению правовой защищенности граждан и оптимальному использованию возможностей интеграционных процессов.

Ключевые слова: гражданство, прекращение гражданства, изменение гражданства, правовое регулирование, правоприменительная практика, международные договоры, права человека.